IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRITNY KEYES, on behalf of herself and all persons similarly situated,	:	
Plaintiff,	:	**Civil Action No.: 2:18-cv-01115-PD**
v.	:	
G.E.C. Restaurant Management & Design, LLC, *et al*.,	:	**Jury Trial Demanded**
Defendants.	:	

PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION

Plaintiff Britny Keyes ("Keyes") on behalf of herself and other similarly-situated past and current Servers employed by Defendant G.E.C. Restaurant Management & Design, LLC, d/b/a Green Eggs Café, Defendant Green Eggs Café 1306, Inc., d/b/a Green Eggs Café, Defendant G.E.C. Shorepoints, LLC, d/b/a Green Eggs Café, (collectively "Green Eggs" and collectively with Green Eggs and co-Defendants[1] Stephen Slaughter and William Bonforte, "Defendants") at any restaurant in Pennsylvania or New Jersey, by and through undersigned counsel, and for the reasons set forth in the attached Memorandum of Law and pursuant to 29 U.S.C. § 216(b), respectfully request that this Court:

[1] As described in further detail in the First Amended Complaint, Individual Defendants Slaughter and Bonforte have individual liability due to their exercise of supervisory discretion on behalf of Green Eggs. They are not referred to in the class definitions, as their liability is derivative of the liability of the various Green Eggs defendants.

1. Conditionally certify a class of all persons who are working or have performed work for Green Eggs as a Server within Pennsylvania or New Jersey at any time since May 1, 2015 (collectively "Servers" or the "FLSA Class");[2]

2. Order Defendants to produce to Plaintiff's counsel the names, last known addresses, telephone numbers, and email addresses of all potential members of the FLSA Class within ten (10) days of the date of Order; further Order Defendants to post notices in conspicuous locations at each of their restaurants in Pennsylvania and New Jersey;

3. Permit Plaintiff to issue notice to all potential members of the FLSA Class by first-class mail and email, informing them of their right to opt in to this case;

4. Order an opt-in period of ninety (90) days, beginning from the date of Plaintiff's first issuance of notice;

5. Allow Plaintiff to send reminder notices by first-class mail and email to all potential members of the FLSA Class who have not yet responded to notice within forty-five (45) days of the first issuance of notice;

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[2] With regard to those who have already filed a signed consent form with the Court, those members of the FLSA Class have an earlier limitations period, tolled as of the dates of their filings.

6. Approve Plaintiff's proposed form of notice, attached hereto as Exhibit D, and Plaintiff's proposed Opt-In Consent Form, attached hereto as Exhibit E, to be included in the issuance of notice pursuant to paragraphs 2-5.

Dated: May 2, 2018

Respectfully Submitted,

JENNINGS SIGMOND, P.C.

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR CONDITIONAL CERTIFICATION

Dated: May 2, 2018

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INTRODUCTION

This is a collective action lawsuit seeking unpaid minimum wages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*. Plaintiff Britny Keyes ("Keyes"), brings this action on behalf of herself and other similarly-situated past and current Servers employed by Defendant G.E.C. Restaurant Management & Design, LLC, d/b/a Green Eggs Café, Defendant Green Eggs Café 1306, Inc., d/b/a Green Eggs Café, Defendant G.E.C. Shorepoints, LLC, d/b/a Green Eggs Café, (collectively "Green Eggs" and collectively with Green Eggs and Co-Defendants[1] Stephen Slaughter and William Bonforte, "Defendants") at any restaurant in Pennsylvania or New Jersey from May 1, 2015 through the present.[2] For the reasons described below and pursuant to 29 U.S.C. § 216(b), Plaintiff respectfully requests that the Court:

1. Conditionally certify a class of all persons who are working or have performed work for Green Eggs as a Server within Pennsylvania or New Jersey at any time since May 1, 2015 (collectively "Servers" or the "FLSA Class");

2. Order Defendants to produce to Plaintiff's counsel the names, last known addresses, telephone numbers, and email addresses of all potential members of the FLSA Class within ten (10) days of the date of Order; further Order Defendants to post notices in conspicuous locations at each of their restaurants in Pennsylvania and New Jersey;

---

[1] As described in further detail in the First Amended Complaint, Individual Defendants Slaughter and Bonforte have individual liability due to their exercise of supervisory discretion on behalf of Green Eggs. They are not identified in the class definitions because their liability is derivative of the liability of the Green Eggs defendants.

[2] With regard to those who have already filed a signed consent form with the Court, those members of the FLSA Class have an earlier limitations period, tolled as of the dates of their filings.

3. Permit Plaintiff to issue notice to all potential members of the FLSA Class by first-class mail and email, informing them of their right to opt in to this case.

4. Order an opt-in period of ninety (90) days, beginning from the date of Plaintiff's first issuance of notice.

5. Allow Plaintiff to send reminder notices by first-class mail and email to all potential members of the FLSA Class who have not yet responded to notice within forty-five (45) days of the first issuance of notice.

6. Approve Plaintiff's proposed form of notice, attached hereto as Exhibit D, and Plaintiff's proposed Opt-In Consent Form, attached hereto as Exhibit E, to be included in the issuance of notice pursuant to paragraphs 2-5.

FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

On March 14, 2018, Plaintiff Keyes filed this FLSA Collective Action Lawsuit, on behalf of herself and other similarly-situated past and current Servers (collectively "Servers") employed in Pennsylvania or New Jersey within the past three years, alleging minimum wage violations. **ECF No. 1**. Concurrent with this Motion, Plaintiff Keyes files her First Amended Class and Collective Action Complaint ("FAC"), on behalf of herself and other similarly-situated past and current Servers, adding additional defendants and claims. **ECF No. 6**.

B. The Parties

Defendant G.E.C. Restaurant Management & Design, LLC ("RMD"), d/b/a Green Eggs Café, is a Pennsylvania limited liability company headquartered and operating in Philadelphia, Pennsylvania. **FAC ¶ 4.** Defendant Green Eggs Café 1306, Inc. ("1306"), d/b/a Green Eggs

Café, is a Pennsylvania limited liability company headquartered and operating in Philadelphia, Pennsylvania. **FAC ¶ 5.** Defendant G.E.C. Shorepoints, LLC ("Shorepoints" and collectively with RMD and 1306, "Green Eggs"), d/b/a Green Eggs Café is a New Jersey limited liability company headquartered and operating in North Wildwood, New Jersey. **FAC ¶ 6.**

Defendant William Bonforte ("Bonforte") is an adult individual who resides in Haddon Heights, New Jersey. Bonforte is an owner and managing agent of Green Eggs in Pennsylvania and New Jersey. **FAC ¶ 7.** Defendant Stephen Slaughter ("Slaughter" and collectively with Bonforte and Green Eggs, "Defendants") in an adult individual who resides in Philadelphia, Pennsylvania. Slaughter is a managing agent of Green Eggs in Pennsylvania and New Jersey. **FAC ¶ 8.**

Defendants collectively operate three restaurants in Philadelphia, and from approximately May 2017 through September 2017, also operated a restaurant space under the name "Green Eggs Café" at Keenan's Irish Pub ("Keenan's") in North Wildwood, New Jersey. **FAC ¶¶ 16, 17.**

From approximately May 2017 through August 2017, Defendants employed Plaintiff Keyes as a Server. **FAC ¶¶ 18, 20, 21.** In May 2017, Plaintiff Keyes worked four uncompensated training shifts out of Defendants' South Philadelphia restaurant, **FAC ¶¶ 20**, and from approximately June 2017 through August 2017, Plaintiff Keyes worked as a Server for Defendants out of Keenan's, **FAC ¶¶ 21.**

Pursuant to 29 U.S.C. § 216(b), Plaintiff Keyes consented in writing to her party status in this action. **FAC ¶ 3, ECF No. 1 at Ex. A**. To date, in addition to Plaintiff Keyes, two other Servers have elected to join this case as Opt-In Plaintiffs. **ECF Nos. 4, 5**.

C. Plaintiff Challenges a Common Illegal Pay Practice

In the FAC, Plaintiff Keyes alleges that she and other Servers at all locations in Pennsylvania and New Jersey:

1. were employed by Defendants within the last three (3) years as Servers in Pennsylvania and/or New Jersey, **FAC ¶¶ 18- 21;**
2. received no paystub or other accounting of their earnings, **FAC ¶¶ 52, 82;**
3. received no wages for hours spent performing training duties, **FAC ¶¶ 53, 55;**
4. received less than $2.13 per hour worked serving tables and received at most, only a portion of the cash customer gratuities collected from their tables, ***Id*.;**
5. were forced to share their tips with "runners" (one of whom was actually an expediter and did not have regular customer interaction), busboys and baristas, **FAC ¶¶ 57, 69-71;**

The collective allegations plausibly establish a widespread violation of 29 U.S.C. § 206(a) in that Defendants did not pay Servers at least $7.25 per hour worked, and also did not comply with the tip-credit rules found in 29 U.S.C. § 203(m) and corresponding Department of Labor regulations. The minimum requirements under Section 203(m) for an employer to lawfully take a tip credit of up to $5.12 per hour against a tipped employees' presumptive minimum hourly wage of $7.25 include that: (1) the employer pay the tipped employee at least the sub-minimum wage of $2.13 per hour, (2) in each workweek, the tipped employee receives tips sufficient to cover the remaining $5.12 for every hour worked, (3) if, as here, the employer utilizes a tip pool, the employees' tips may only be shared with those who "customarily and regularly receive tips," *id*, and (4) the employee is "informed…in advance of the employer's use of the tip credit," 29 C.F.R. § 531.59(b).

Defendants did not follow the rules required to take advantage of the tip credit. First, Defendants did not pay their Servers at least $2.13 per hour. Second, Defendants required Servers to pool their tips with expediters, who are employees that do not "customarily and regularly receive tips," 29 U.S.C. § 203(m) because Defendants' expediters have little to no customer interaction, *Ford v. Lehigh Valley Rest. Grp., Inc.*, No. 3:14CV227, 2014 WL 3385128 (M.D. Pa. July 9, 2014).

Third, with respect to New Jersey operations (at a minimum), Defendants failed to inform its Servers "in advance of the employer's use of the tip credit," 29 C.F.R. § 531.59(b), including "any required tip pool contribution amount," 29 C.F.R. § 531.54 (emphasis added). Defendants also illegally retained its Servers' tips for "other purpose[s]", *id*, including to offset Defendants' wage obligations to other employees who should not have been included in the tip pool or who could not be paid less than $7.25 per hour, such as the expediter. Plaintiff Keyes testified that in addition to never receiving "a paystub or any other written or verbal accounting of [her] retained cash," Keyes Decl.[3] at ¶ 15:

> Several times I questioned [my direct manager] Brian [Pizzi] as to how he calculated the cash that I was allowed to retain at the end of my shifts. Brian never answered my questions. On at least one occasion, he told me that I asked too many questions.

Keyes Decl. at ¶ 11.

Defendants' implementation of a cash-only system of smoke and mirrors also highlights their likely failure to maintain proper records of hours worked and wages paid, in violation of at least 29 U.S.C. § 211(c), 29 C.F.R. §§ 516.2, 516.5(a) and 516.6(a)(1). Furthermore, in view of Plaintiff's prima facie case that she and Servers were not paid at least $2.13 per hour, in order to

[3] Declaration of Britny Keyes, Exhibit A.

overcome the inference of a minimum wage violation, Defendants would need to produce records sufficient to rebut Plaintiff's prima facie case. *See Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 687–88 (1946) ("[A]n employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate."). *Accord Reich v. Gateway Press, Inc*., 13 F.3d 685, 701 (3d Cir. 1994).

D. Declaration Testimony Confirms that All Servers Were Subjected to a Common Plan in Which Defendants Failed to Pay the Minimum Wage and Failed to Comply With Tip Credit Rules

The declarations[4] of Plaintiff Keyes, as well as Opt-In Plaintiffs Rachel McCarthy ("McCarthy") and Jordan Strohl ("Strohl" and collectively with Keyes and McCarthy, "Declarants"), which constitute testimony based on personal knowledge of practices at all of Defendants' operating locations in Pennsylvania and New Jersey, confirms the allegations of the FAC that Defendants' scheme to illegally deny them the minimum wage required by the FLSA was a policy universally applied to all Servers. Declarants testified that they:

1. were employed by Defendants within the last three (3) years as Servers in Pennsylvania and/or New Jersey, **Keyes Decl. ¶¶ 2-4; McCarthy Decl. ¶¶ 2, 3; Strohl Decl. ¶¶ 2, 3;**

[4] The declarations offered in support of this Motion are referred to as follows: **Ex. A**, Declaration of Britny Keyes ("Keyes Decl."); **Ex. B**, Declaration of Rachel McCarthy ("McCarthy Decl."); **Ex. C**, Declaration of Jordan Strohl ("Strohl Decl.").

2. received no paystub or other accounting of their earnings as Servers; **Keyes Decl. ¶ 15; McCarthy Decl. ¶ 7; Strohl Decl. ¶ 6;**
3. received no wages for hours spent performing training duties; **Keyes Decl. ¶¶ 3, 5; McCarthy Decl. ¶ 8; Strohl Decl. ¶ 7;**
4. received less than $2.13 per hour worked serving tables and received at most, only a portion of the cash customer gratuities collected from their tables, **Keyes Decl. ¶¶ 3, 10-15; McCarthy Decl. ¶¶ 5, 6; Strohl Decl. ¶¶ 4, 5;**
5. were forced to share their tips with "runners" (one of whom was actually an expediter and did not have regular customer interaction), busboys and baristas, **Keyes Decl. ¶¶ 8, 16-17; McCarthy Decl. ¶¶ 11-13; Strohl Decl. ¶¶ 11-13;**

E. Publicly Available Information Further Confirms that All Servers Were Subjected to a Common Illegal Plan, Regardless of Location

Defendants hold themselves out to the public as one unified business called "Green Eggs Café," whether in Philadelphia or North Wildwood. Defendants clearly solicit those they wish to hire (including Servers) through a unified system of advertisement and hiring. Defendants exhibit a unified practice of treating "expos" (expediters) and runners as interchangeable employees, regardless of degree of customer interaction, further demonstrating their disregard of the Section 203(m) tip credit rules addressed in Sub-Part C, *supra*:[5]

[5] https://www.instagram.com/p/BTPJVYWh42m/?hl=en&taken-by=greeneggscafe ; https://www.instagram.com/p/BS_4jNPh6bx/?hl=en&taken-by=greeneggscafe (last accessed 4/9/2018). *See also* https://www.instagram.com/p/BV0j10NHvix/?hl=en&taken-by=greeneggscafe ; https://www.instagram.com/p/BWBSqHpH8u4/?hl=en&taken-by=greeneggscafe ; https://www.instagram.com/p/BYLvbmAncKI/?hl=en&taken-by=greeneggscafe (last accessed 4/10/2018).

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greeneggscafe Who checked out Green Eggs brunch at @keenansnw this weekend?? Raise your hands!!! #brunch #philly #wildwood #miami

dee_b217 @launay Friday morning of the bach with whoever is there !

launay @dee_b217 sounds good! i think it'll only be us and the maria's and leann?

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ARGUMENT

I. Standard for Conditional Collective Action Certification

A. General Requirements

The FLSA permits a plaintiff to pursue a collective action on his or her own behalf and on behalf of "other employees similarly situated." 29 U.S.C. § 216(b). Plaintiff seeks the Court's authorization to send notice to all putative members of this collective action pursuant to 29 U.S.C. § 216(b). The collective action allows for expedited adjudication of similar claims so that "similarly situated" workers whose claims are usually too small to efficiently pursue on an individual basis to join together to litigate their claims using shared resources. *See Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989).

The Third Circuit has explained the dual purposes of employee resource pooling and judicial economy behind Section 216(b):

> Rule 23 permits plaintiffs "to pool claims which would be uneconomical to litigate individually." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). Similarly, § 216(b) affords plaintiffs "the advantage of lower individual costs to vindicate rights by the pooling of resources." *Hoffmann–La Roche*, 493 U.S. at 170, 110 S.Ct. 482. Rule 23 promotes "efficiency and economy of litigation." *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 349, 103 S.Ct. 2392, 76 L.Ed.2d 628 (1983). Similarly, "Congress' purpose in authorizing § 216(b) class actions was to avoid multiple lawsuits where numerous employees have allegedly been harmed by a claimed violation or violations of the FLSA by a particular employer." *Prickett v. DeKalb Cnty.*, 349 F.3d 1294, 1297 (11th Cir.2003).

Symczyk v. Genesis HealthCare Corp., 656 F.3d 189, 199–200 (3d Cir. 2011), *rev'd on other grounds*, 569 U.S. 66 (2013). *See also McNeil v. District of Columbia*, 1999 WL 571004, at *2 (D.D.C. Aug. 5, 1999) ("it makes sense to handle all such claims at the same time, resolving common issues of fact and law. The ability to join in such an action all similarly situated persons

might motivate claimants to assert their claims collectively; without collective action the amounts at issue may be too small to expect claimants to hire counsel to assert them.”).

B. This Court Applies a Two-Step Certification Process

This Court, like a majority of federal courts, has adopted a two-stage process to determine whether collective action certification should be granted. The first stage requires only a “modest factual showing” that potential class members are similarly situated:

> During the initial phase, the court makes a preliminary determination whether the employees enumerated in the complaint can be provisionally categorized as similarly situated to the named plaintiff. If the plaintiff carries her burden at this threshold stage, the court will “conditionally certify” the collective action for the purposes of notice and pretrial discovery.

Symczyk 656 F.3d at 192-3. *Accord Camesi v. Univ. of Pitt. Med. Cent*., 729 F.3d 239, 243 (3d Cir. 2013) (*citing Zavala v. Wal-Mart Stores, Inc*., 691 F.3d 527, 536 n.4 (3d Cir. 2012).

By contrast, the second stage occurs after discovery, typically “prompted by a defendant’s motion to decertify the class,” and provides the court an opportunity to review its initial determination with the benefit of the additional details uncovered through discovery. *McKinney v. United Stor-All Centers, Inc*., 585 F.Supp.2d 6, 8 (D.D.C. 2008); *cf. Bowser v. Empyrean Services, LLC*, --- F.R.D. ---, 2018 WL 1555182, at *5 (W.D. Pa. Mar. 30, 2018) (“Any dissimilarities in job functions which would exclude a class member will be reevaluated at stage two when discovery is complete.”). The Third Circuit explained that final certification is a significantly higher standard to overcome than at the notice stage:

> After discovery, and with the benefit of “a much thicker record than it had at the notice stage,” a court following this approach then makes a conclusive determination as to whether each plaintiff who has opted in to the collective action is in fact similarly situated to the named plaintiff. *Morgan v. Family Dollar Stores, Inc*., 551 F.3d 1233, 1261 (11th Cir.2008). “This second stage is less lenient, and the plaintiff bears a

> heavier burden." *Id*. Should the plaintiff satisfy her burden at this stage, the case may proceed to trial as a collective action.

Symczyk, 656 F.3d at 192-3.

In the first stage (or "notice stage"), the Court requires a plaintiff to make a "'modest factual showing' that the proposed recipients of opt-in notices are similarly situated." *Id*. at 192. To do so, a plaintiff must produce evidence, "'beyond pure speculation,' of a factual nexus between the manner in which the employer's alleged policy affected her and the manner in which it affected other employees. *Id* at 193 (*quoting Smith v. Sovereign Bancorp, Inc*., No. 03–2420, 2003 WL 22701017, at *3, (E.D.Pa. Nov. 13, 2003)).

The standard for conditional class certification at the notice stage is lenient and requires only a modest showing that there are other individuals similarly situated to Plaintiff. "The first step is assessed early in the litigation process when there is minimal evidence and places a relatively light burden on plaintiffs to show that potential opt-in plaintiffs are 'similarly situated.'" *Pereira v. Foot Locker, Inc*., 261 F.R.D. 60, 62 (E.D. Pa. 2009). "When discovery is complete, a more fact-specific second-stage inquiry occurs into whether the proposed opt-in class is, indeed, similarly situated." *Id*. At the notice stage, Plaintiff thus need only make a "'modest factual showing sufficient to demonstrate that they and potential plaintiffs together were victims of a common policy or plan that violated the law.'" *Chase v. AIMCO Props.*, 374 F. Supp. 2d at 200 (D.D.C. 2005) (*quoting Hoffmann v. Sbarro, Inc*., 982 F.Supp. 249, 261 (S.D.N.Y. 1997)). The court's application of this standard at the notice stage "typically results in certification of a representative class." *Rottman v. Old Second Bancorp, Inc.,* 735 F. Supp. 2d 988, 990 (N.D. Ill. 2010); *see also Bowser*, 2018 WL 1555182, at *5 ("The Court may make this determination with minimal evidence, and this step's fairly lenient standard typically results in a grant of conditional certification") (internal citations omitted).

"The merits of Plaintiff's claims do not need to be evaluated at this stage in order for notice to be approved and sent out to proposed conditional collective action members; this Court evaluates only whether the Plaintiffs are similarly situated." *Pereira v. Foot Locker, Inc.*, 261 F.R.D. 60, 63–64 (E.D. Pa. 2009). During the notice stage, courts "do not resolve factual disputes, decide substantive issues on the merits, or make credibility determinations." *Killion v. KeHE Distributors*, No. 3:12 CV 1585, 2012 WL 5385190, at *3 (N.D. Ohio Oct. 31, 2012) (*quoting Shipes v. Amurcon Corp.*, 2012 WL 995362, at *5 (E.D. Mich. 2012)). *See also Vaszlavik v. Storage Tech. Corp.*, 175 F.R.D. 672, 680 (D. Colo. 1997) ("whether plaintiffs can meet their burden in the liability phase … is irrelevant to the question of §216(b) certification."). "Once plaintiffs meet their burden at this stage, 'a defendant cannot overcome their showing by arguing that individual issues predominate.'" *Killion* at *3. It is only at the second stage that "the plaintiffs may engage in discovery to buttress their case that putative class members are similarly situated, and to gather the evidence necessary to meet their burden of proof on the merits when discovery is complete," *Chase*, 374 F. Supp. 2d at 200 (D.D.C. 2005) (emphasis added); *accord Bowser*, at *5 ("Unless patently obvious that a plaintiff cannot prevail as a matter of law . . . or that the commonality of generally applicable employment compensation *necessarily* pales in comparison to individualized determinations of liability, the court should allow notice and a period of discovery to allow for the development of a much thicker record by which to judge the propriety of a collective action vis-à-vis the similarly of a plaintiff to the proposed class members.") (alterations and emphasis in original) (internal quotations and citations omitted).

As explained by the Southern District of New York in *Guzman v. Three Amigos SJL Inc.*, 117 F. Supp. 3d 516, 526 (S.D.N.Y. 2015) (with emphasis added):

> "Because courts do not weigh the merits of the claim, extensive discovery is not necessary at the notice stage." *Lynch v. United Servs. Auto. Ass'n*, 491 F.Supp.2d 357, 369 (S.D.N.Y.2007) (citations omitted); *accord Kassman*, 2014 WL 3298884, at *6. As previously noted, "[a]t the first stage, 'any factual variances that may exist between the plaintiff and the putative class do not defeat conditional class certification.' " *Amador v. Morgan Stanley & Co. LLC*, 2013 WL 494020, at *3 (S.D.N.Y. Feb. 7, 2013) (*quoting Lynch*, 491 F.Supp.2d at 369) (additional citations omitted); see also *Hernandez v. Merrill Lynch & Co., Inc.*, 2012 WL 1193836, at *4 (S.D.N.Y. Apr. 6, 2012) ("The burden imposed at [the] first 'conditional certification' stage is minimal precisely because the second step allows for a full review of the factual record developed during discovery to determine whether opt-in plaintiffs are actually 'similarly situated' to the named plaintiffs.") (emphasis in original); *Iglesias–Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363, 368 (S.D.N.Y.2007) ("The court is not obliged to wait for the conclusion of discovery before it certifies the collective action and authorizes notice."). Thus, defendants' request is denied.

"Under the FLSA [] 'conditional certification' does not produce a class with an independent legal status, or join additional parties to the action. The sole consequence of conditional certification is the sending of court-approved written notice to employees[,] who in turn become parties to a collective action only by filing written consent with the court. *Symczyk*, 569 U.S. at 75 (*citing* 29 U.S.C. § 216(b); *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 171-2 (1989)) (emphasis added).

C. Defendants' Uniform Failure to Pay the Minimum Wage and to Meet the Conditions of the Tip Credit Establishes a Common Policy Applicable to All Servers; Merits Issues Should Not Be Considered At This Stage

"Courts routinely certify conditional collective actions based on the plaintiff's affidavit declaring they have personal knowledge that other coworkers were subjected to similar employer practices…Plaintiffs submitted three such affidavits in support of their Motion, and the Court concludes that this evidence is sufficient to establish the required 'modest factual showing' that the alleged policies were uniformly applied to potential opt-in plaintiffs." *Viscomi v. Diner*, No.

CV 13-4720, 2016 WL 1255713, at *5 (E.D.Pa. Mar. 31, 2016) (internal citations and quotations omitted).

It is well-established that at the notice stage, a plaintiff's allegations and threshold evidence that they and the putative class members were uniformly subject to a policy that violates the FLSA tends to establish that the putative class members are "similarly situated" within the meaning of 29 U.S.C. § 216(b). Thus, whether *in fact* a plaintiff was compensated in accordance with the FLSA is a merits question to be decided at the second stage (after full-blown discovery), not at the notice stage. *Viscomi*, 2016 WL 1255713, at *5 ("To the extent that defendants 'invite the Court to evaluate the credibility of [the affiants] or the merits of their claims, it is more properly considered at the second stage of the certification inquiry or on a motion for summary judgment.'") (*quoting Titchenell v. Apria Healthcare Inc.*, No. CIV.A. 11-563, 2011 WL 5428559, at *6 (E.D. Pa. Nov. 8, 2011)*, see also Bowser*, 2018 WL 1555182, at *6 ("The question of whether or not plaintiff has stated a cause of action, or will prevail, is a merits-based argument that the Court will not entertain at the conditional certification stage."); *Fiumano v. Metro Diner Mgmt LLC*, 2018 WL 1726574, at *3 (E.D. Pa. April 10, 2018) ("The court does not evaluate the merits of a plaintiff's case when ruling on a motion for conditional certification.").

For example, in *Titchenell*, this District conditionally certified a nationwide collective action brought on behalf of over 2,000 Customer Service Specialists who worked in approximately 500 offices. 2011 WL 5428559, at *1). The plaintiff alleged that the defendant maintained a single *unofficial* illegal policy whereby "defendant tacitly encourages Customer Service Specialists to work off the clock by setting unattainable productivity goals while severely limiting or refusing overtime." *Id*. at *4. The plaintiff in *Titchenell* offered two

Customer Service Specialist employee affidavits, a job description, an overtime payroll policy, and the plaintiff's attorney's affidavit who spoke with a sample of 9 out of 400 former Customer Service Specialists. *Id*. at *2. Based on this threshold showing, the court conditionally certified the nationwide collective action. *Id*. at *4.

Similarly, in *Pereira v. Foot Locker, Inc*., 261 F.R.D. 60 (E.D. Pa. 2009), this District conditionally certified a nationwide collective action consisting of Assistant Managers, based on alleged unofficial common corporate policy of pressuring the Assistant Managers to work off-the-clock. The plaintiff's threshold evidence consisted merely of the plaintiff's own declaration and the declarations of three other opt-in Plaintiff Assistant Managers.

Certifying a large nationwide collective action, the Southern District of Texas echoed stated:

> It simply cannot be that an employer may establish policies that create strong incentives for managers to encourage or allow employees to work off-the-clock, and avoid a FLSA collective action because <u>a large number of employees at a number of different stores are affected</u>. To a certain extent, any large class of employees working for a nationwide employer alleging FLSA overtime violations will encounter these difficulties, and there is no indication that Congress intended section 216 to only allow small collective actions involving unpaid overtime to proceed.

Falcon v. Starbucks Corp., 580 F. Supp. 2d 528, 539–40 (S.D. Tex. 2008). (Emphasis added).

Furthermore, district courts in the this circuit have routinely recognized that "[e]ven 'where a motion for conditional certification involves a potential class of employees that worked for separate, but related, employers, courts have reserved consideration of whether the separate employers are joint employers for a final, stage two determination.'" *Bowser v. Empyrean Services, LLC*, --- F.R.D. ---, 2018 WL 1555182, at *5 (W.D. Pa. Mar. 30, 2018) (quoting *Manning v. Goldbelt Falcon, LLC*, 2010 WL 3906735, at *2 (D.N.J. Sept. 29, 2010)

(conditionally certifying class based on common policy of categorizing contingent workers as exempt from overtime requirements); *see also Kuznyetsov v. West Penn Allegheny Health Sys., Inc. et al.*, 2009 WL 1515175 (W.D. Pa. June 1, 2009) (conditionally certifying class of all non-exempt hospital employees against numerous individual, hospital and healthcare network employers, "regardless of job title or work location," based on the common policy of reducing the employees' compensable time by 30 minutes for a working lunch); *cf. Mendoza v. Casa de Cambio Delgado, Inc., et al.*, 2008 WL 3399067, at *3 (S.D.N.Y. Aug. 12, 2008) ("The fact that the Plaintiffs' affidavits demonstrate difference in their work schedules, total hours worked, and their arrival and departure times at different locations does not preclude a finding that they are similarly situated with respect the common policies or plans [of unpaid unpaid overtime.]") .

More specifically, courts have routinely conditionally certified multi-facility classes against restaurants and other tipped-employee defendants, involving minimum wage and tip-credit violations under 29 U.S.C. §§ 203(m), 206, just like this case. *See, e.g., Alonso v. Uncle Jack's Steakhouse, Inc*., 648 F. Supp. 2d 484 (S.D.N.Y. 2009); *Viscomi,* 2016 WL 1255713, at *5 ("Plaintiffs submitted three such affidavits in support of their Motion, and the Court concludes that this evidence is sufficient to establish the required "modest factual showing" that the alleged policies were uniformly applied to potential opt-in plaintiffs."); *McCoy v. RP, Inc*., No. 2:14-CV-3171-PMD, 2015 WL 6157306 (D.S.C. Oct. 19, 2015); *Keawsri v. Ramen-Ya Inc. et al.*, 2018 WL 279756, at *1, 5 (S.D.N.Y. Jan. 2, 2018) (conditionally certifying class of restaurant servers at two locations against two related restaurant corporate entities, the owner of the corporate entity, and the manager of both restaurant locations based on common policies that "servers were, *inter alia*, paid from their tips and not in the wages from restaurant revenues, with a portion of tips being deducted for kitchen staff . . . ."); *Castillo v. Morales, Inc.,* 302 F.R.D. 480,

486 (S.D. Ohio 2014) ("Plaintiff alleges unlawful pay practices at each of the restaurant locations identified in the Complaint, at about the same time and place, in generally the same manner, which affected Plaintiff and the putative class members in the same way."); *Flood v. Carlson Restaurants Inc*., No. 14 CIV. 2740 AT, 2015 WL 260436, at *1 (S.D.N.Y. Jan. 20, 2015) (Certifying nationwide collective action, "Plaintiffs' declarations and depositions-which cover eight T.G.I. Friday's locations in four states-contain common allegations of FLSA violations, including Defendants' denial of full minimum wage and overtime compensation for tipped workers. This evidence, coupled with the evidence of Defendants' centralized control over T.G.I. Friday's restaurants nationwide, suffices to meet the minimal burden for conditional certification.").

Finally, differences in damages amongst putative class members are also not to be considered at the notice stage. "It is well-established that <u>individual questions with respect to damages</u> will not defeat class certification or render a proposed representative inadequate unless that issue creates a conflict which goes to the heart of the lawsuit." *Ansoumana v. Gristede's Operating Corp*., 201 F.R.D. 81, 86 (S.D.N.Y. 2001) (*quoting In re AM Int'l, Inc. Sec. Litig.*, 108 F.R.D. 190, 196 (S.D.N.Y. 1985)). (Emphasis added). "[A] defendant's claim or defense that individualized circumstances of employees render the matter unsuitable for collective treatment may be more appropriately reviewed during step two of the certification process." *Titchenell* 2011 WL 5428559, at *7 (*quoting Burkhart–Deal v. Citifinancial, Inc*., No. 07–cv–1747, 2010 WL 457127, at *2–3 (W.D.Pa. Feb.4, 2010)).

II. The Court Should Provisionally Certify This Case as a Collective Action and Issue Notice to all FLSA Class Members Who Worked Within the Past Three Years

It is abundantly clear that, at this initial notice stage, Plaintiff has made the required "'modest factual showing' that the proposed recipients of opt-in notices are similarly situated," in that they have produced evidence, "'beyond pure speculation,' of a factual nexus between the manner in which the employer's alleged policy affected her and the manner in which it affected other employees." *Symczyk,* 656 F.3d at 192-3 (*quoting Smith v. Sovereign Bancorp, Inc*., No. 03–2420, 2003 WL 22701017, at *3, (E.D.Pa. Nov. 13, 2003)).

Green Eggs Servers worked and/or continue to work under a common policy whereby they were denied the minimum wage required by 29 U.S.C. § 206 because they were paid less than $2.13 per hour worked. **Keyes Decl. ¶¶ 10-15; McCarthy Decl. ¶¶ 5, 6; Strohl Decl. ¶¶ 4, 5**. Even if Defendants did pay Servers (or some Servers at certain points of time) the subminimum wage of $2.13, which they did not, Defendants would not have been allowed to utilize a tip credit because, as Declarants affirm, tips were pooled and distributed to those such as expediters who do not customarily and regularly interact with customers, in violation of 29 U.S.C. § 203(m). **Keyes Decl. ¶¶ 8, 16, 17; McCarthy Decl. ¶¶ 11-13; Strohl Decl. ¶¶ 11-13**. Declarants, three Servers who collectively worked at each of Defendants' restaurants in Philadelphia, Pennsylvania and North Wildwood, New Jersey, testified to these common illegal practices. **Keyes Decl. ¶¶ 2-4; McCarthy Decl. ¶¶ 2, 3; Strohl Decl. ¶¶ 2-3**.

Although the merits of whether, <u>in fact</u> Defendants paid members of the FLSA class the minimum wage or violated tip credit rules are not to be considered at this stage, it is clear that Plaintiff has plausibly plead that she and the putative class members were paid less than the subminimum wage of $2.13 per hour. *Alonso v. Uncle Jack's Steakhouse, Inc*., 648 F. Supp. 2d

484 (S.D.N.Y. 2009); *Viscomi,* 2016 WL 1255713, at *5; **FAC ¶¶ 53-64; Keyes Decl. ¶¶ 10-15; McCarthy Decl. ¶¶ 5, 6; Strohl Decl. ¶¶ 4, 5**.

Furthermore, although the merits question of whether Servers were jointly employed by some or all of the Defendants or whether individual liability against defendants Slaughter and/or Bonforte in fact exists, is not to be decided at this stage, it is clear that Plaintiff has plausibly plead such employment relationship against all Defendants. **FAC ¶¶ 25-50; Keyes Decl.; McCarthy Decl.; Strohl Decl.** It is enough at this stage that the FAC plausibly alleges that related entities and individuals employed Servers. *See, e.g., Keawsri v. Ramen-Ya Inc. et al.*, 2018 WL 279756, at *1, 5 (S.D.N.Y. Jan. 2, 2018); *Bowser v. Empyrean Services, LLC*, --- F.R.D. ---, 2018 WL 1555182, at *5 (W.D. Pa. Mar. 30, 2018).

III. Notice Should Issue Promptly

In order to protect potential class members from serious prejudice as to their claims, the Court should decide this motion quickly. Since the statute of limitations for FLSA claims of potential opt-in Plaintiffs is not tolled by the filing of Plaintiff's Complaint, any delay in notifying potential class members seriously prejudices their claims. Indeed, the very reason for conditional certification of a putative class before extensive discovery takes place is "[b]ecause the statute of limitations continues to run for each individual plaintiff until he or she opts in." *Gortat v. Capala Bros.*, 2010 U.S. Dist. LEXIS, 35451, *30 (E.D.N.Y. Apr. 9, 2010); *Castillo v. P & R Enterprises, Inc*., 517 F. Supp. 2d 440, 444 (D.D.C. 2007) (same). In other words, damages for each week in which Defendants' Servers worked will expire on the three-year back-end until each putative class member has the opportunity to opt in to the action. Accordingly, the Court should issue notice promptly.

IV. Notice Should Issue Over First Class and Email and Posting at the Each of Defendants' Facilities; the Notice Period Should Be 90 Days, With a 45 Day Reminder Notice

In addition to traditional mail, courts authorize opt-in notices to be sent through email. *Contreras v. Land Restoration LLC*, No. 1:16-CV-883-RP, 2017 WL 663560, at *8 (W.D. Tex. Feb. 17, 2017) ("the court will permit Plaintiffs to distribute notice through mail, email, posting at the workplace, and inclusion in current employee's paychecks."); *Syed v. M-I, L.L.C.*, No. 1:12-CV-1718 AWI MJS, 2014 WL 6685966, at *10 (E.D. Cal. Nov. 26, 2014); *Hallissey v. Am. Online, Inc.,* No. 99-CIV-3785 (KTD), 2008 WL 465112, at *3 (S.D.N.Y. Feb. 19, 2008); *McPherson v. LEAM Drilling Sys., LLC*, No. 4:14-CV-02361, 2015 WL 1470554, at *16 (S.D. Tex. Mar. 30, 2015). Courts further authorize posting at the workplace. *Contreras,* 2017 WL 663560, at *8.

Courts regularly authorize ninety (90) day notice periods for putative class members to join FLSA collective actions. *See Encinas v. J.J. Drywall Corp*., 265 F.R.D. 3, 7 (D.D.C. 2010) ("Ninety days is a reasonable period for putative class members to respond to the notice."); *Hallissey v. Am. Online, Inc.,* No. 99-CIV-3785 (KTD), 2008 WL 465112, at *3 (S.D.N.Y. Feb. 19, 2008); *Jennings v. Cellco Partnership*, 2012 WL 2568146, at *6 (D. Minn. July 2, 2012); *Syed,* 2014 WL 6685966, at *9 (E.D. Cal. Nov. 26, 2014); *Mott v. Driveline Retail Merch., Inc*., 23 F. Supp. 3d 483, 490 (E.D. Pa. 2014) (120 days).

Courts also routinely approve reminder notices. *Morris v. Lettire Const., Corp*., 896 F. Supp. 2d 265, 275 (S.D.N.Y. 2012) ("Given that notice under the FLSA is intended to inform as many potential plaintiffs as possible of the collective action and their right to opt-in, we find that a reminder notice is appropriate.") (*citing Harris v. Vector Mktg. Corp*., 716 F.Supp.2d 835, 847 (N.D. Cal. 2010)); *Jennings*, 2012 WL 2568146, at *6; *McPherson*, 2015 WL 1470554, at *16;

Sanchez v. Sephora USA, Inc., 2012 WL 2945753, at *6 (N.D. Cal. July 18, 2012) ("The Court therefore authorizes Plaintiff to send a second notice, identical to the first, thirty days after the issuance of the first notice.").

Accordingly, Plaintiff respectfully requests that the Court authorize notice through first-class mail and email, a ninety (90) day notice period, with a forty-five (45) day reminder notice to those who have not responded.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Conditional Certification.

Dated: May 2, 2018

Respectfully Submitted,

JENNINGS SIGMOND, P.C.

by: /s/ James E. Goodley

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Attorneys for Plaintiff and the FLSA Class

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRITNY KEYES, on behalf of herself and all persons similarly situated,	:	
Plaintiff,	:	**Civil Action No.: 2:18-cv-01115-PD**
v.	:	
G.E.C. Restaurant Management & Design, LLC, *et al.*	:	**Jury Trial Demanded**
Defendants.	:	

ORDER

AND NOW, this _______ day of ________________________, 2017, upon consideration of Plaintiff's Motion for Conditional Certification and any response and reply memoranda thereto, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED** as follows:

1. **ORDERED** that this action is conditionally certified pursuant to 29 U.S.C. § 216(b) on behalf of the following: All persons who are working or have performed work for Defendants as a Server within Pennsylvania or New Jersey at any time since May 1, 2015 (collectively "Servers" or the "FLSA Class");[3]

2. **ORDERED** that Defendants will produce to Plaintiff's counsel the names and last known: addresses, telephone numbers and email addresses of all potential members of the FLSA Class within ten (10) days of the date of this Order; further **ORDERED** that Defendants

[3] The Court recognizes with regard to those who have already filed a signed consent form with the Court, those members of the FLSA Class have an earlier limitations period, tolled as of the dates of their filings.

will post notices in conspicuous locations at each of their restaurants in Pennsylvania and New Jersey;

3. **ORDERED** that Plaintiff may issue notice to all potential members of the FLSA Class by first-class mail and email, informing them of their right to opt in to this case.

4. **ORDERED** that there shall be an opt-in period of ninety (90) days, beginning from the date of Plaintiff's first issuance of notice.

5. **ORDERED** that Plaintiff is permitted to send reminder notices by first-class mail and email to all potential members of the FLSA Class who have not yet responded to notice within forty-five (45) days of the first issuance of notice.

6. **ORDERED** that Plaintiffs' proposed form of notice, attached to Plaintiff's Motion as Exhibit D, and Plaintiff's proposed Opt-In Consent Form, attached to Plaintiff's Motion as Exhibit E, are APPROVED, and shall be included in the issuance of notice pursuant to paragraphs 2-5.

BY THE COURT:

____
Diamond, J.

CERTIFICATE OF SERVICE

I, James E. Goodley, Esquire state under penalty of perjury that I caused a copy of the foregoing Motion for Conditional Certification to be served via U.S. Mail, and electronic mail on the date and to the addresses below:

(via U.S. Mail)
G.E.C. Restaurant Management & Design, LLC
Green Eggs Café 1306, Inc.
G.E.C. Shorepoints, LLC
William Bonforte
Stephen Slaughter
1306 Dickinson Street
Philadelphia, PA 19147

(via U.S. Mail and email)
Pasquale J. Colavita, Esquire
PASQUALE J. COLAVITA, P.C.
1026 Winter Street, Suite 300B
Philadelphia, PA 19107
pcolavita@gmail.com

/s/James E. Goodley
JAMES E. GOODLEY, ESQUIRE

Date: May 2, 2018

THIS DOCUMENT HAS BEEN ELECTRONICALLY FILED AND IS AVAILABLE FOR VIEWING AND DOWNLOADING FROM THE ECF SYSTEM

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRITNY KEYES, on behalf of herself and all persons similarly situated, **Plaintiff,** **v.** **G.E.C. Restaurant Management & Design, LLC, *et al*.** **Defendants.**	: : : : : : : : : : :	**Civil Action No.: 2:18-cv-01115-PD** **Jury Trial Demanded**

DECLARATION OF BRITNY KEYES

BRITNY KEYES declares:

1. I am a named Plaintiff in this case.

2. In approximately May 2017, I began my employment at Green Eggs Café.

3. In May 2017, I first worked approximately four training shifts at Green Eggs Café's South Philadelphia, Pennsylvania location at 1306 Dickinson Street. Green Eggs Café never compensated me for any of the time I worked on these training shifts. Although I served tables as part of my training, I was not allowed to retain any of the tips which my customers left for me on the tables I served during training.

4. After I completed my training shifts, from approximately June 2017 through approximately August 2017, I worked for Green Eggs Café as a Server at 113 Old New Jersey Avenue, North Wildwood, New Jersey, which is also Keenan's North Wildwood building. My understanding is that Green Eggs Café rented space out of Keenan's property and that Keenan's had nothing to do with the operation of Green Eggs Café's business.

5. In approximately June 2017, I also worked an approximately six (6) hour

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uncompensated training shift for Green Eggs Café at the North Wildwood location.

6. At the Philadelphia and North Wildwood locations, Green Eggs Café operates as an all-cash business, meaning that customers must pay their bills and gratuities by cash only.

7. As a Server in North Wildwood, I collected the cash (customer bill payments plus gratuities) from all of my customers' tables during my shift.

8. At the end of my shift, I showed my manager Brian Pizzi how much cash I collected. While referring to a spreadsheet on his laptop (which was not visible to me), Brian told me how much he claimed Green Eggs Café was owed in customer bills, as well as what amount of my tips would be distributed to "runners," busboys and baristas.

9. Brian required me to immediately provide each of these amounts to him and I was allowed to retain only the remainder of the cash I had collected.

10. In addition, on a weekly basis beginning as of my first full week of serving in North Wildwood, Brian provided me between $20 and $30 of cash. Green Eggs Café never informed me what these weekly payments represented. I never received any other payments from Green Eggs Café.

11. Several times I questioned Brian as to how he calculated the cash that I was allowed to retain at the end of my shifts. Brian never answered my questions. On at least one occasion, he told me that I asked too many questions.

12. While employed by Green Eggs Café, I regularly worked between approximately twelve (12) and twenty-four (24) hours per week.

13. With respect to a week in which I worked 24 hours in North Wildwood, even assuming for sake of argument Brian provided me a $30 cash payment and that payment constituted a wage rather than tips, I would have been paid at most $1.25 per hour worked during

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that 24 hour week.

14. Similarly, with respect to a week in which I worked 12 hours in North Wildwood, even assuming for sake of argument Brian provided me a $20 cash payment and that payment constituted a wage rather than tips, I would have been paid at most $1.67 per hour worked during that 12 hour week.

15. Green Eggs Café never provided me a paystub or any other written or verbal accounting of either my retained cash referred to in paragraph 9, the weekly $20-$30 cash payments referred to in paragraph 10, or my precise hours worked. Therefore, I cannot at this time compute the exact wage, if any, that I received. Nevertheless, based on my personal knowledge of approximate hours worked and amounts of cash received, it is my belief that during each workweek, I did not receive wages totaling at least $2.13 per hour worked.

16. During a given shift at South Philadelphia or North Wildwood, two Green Eggs Café employees known as "runners" worked that shift.

17. However, one of these "runners" worked only in the kitchen arranging customer dishes and prepping food, while the other "runner" transported customer dishes to the customer. The first of these "runners" had little to no customer interaction and functioned as an expediter, while the second "runner" did interact with customers.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DocuSigned by:
Britny Keyes
8E7369EFD8724C3...

Signed on: 5/1/2018

BRITNY KEYES

Exhibit B

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRITNY KEYES, on behalf of herself and all persons similarly situated,	:	
Plaintiff,	:	**Civil Action No.: 2:18-cv-01115-PD**
v.	:	
G.E.C. Restaurant Management & Design, LLC, *et al*.	:	**Jury Trial Demanded**
Defendants.	:	

DECLARATION OF RACHEL MCCARTHY

RACHEL MCCARTHY declares:

1. I am an opt-in Plaintiff in this case.

2. From approximately February 2012 through approximately April 2017, I was employed by Green Eggs Café as a Server.

3. I worked as a Server at the following Green Eggs Café locations in Philadelphia during the estimated following time periods: South (1306 Dickinson Street), February 2012 through April 2012; Mid-town (212 S. 13th Street), April 2012 through May 2012; North (719 N. 2nd Street), May 2012 through August 2012; South, August 2012 through October 2012; South during the week and Mid-town during the weekend, June 2013 through April 2017.

4. I normally worked as a Server approximately four (4) shifts a week, at approximately ten (10) hours per shift.

5. I also worked approximately four (4) training shifts, all of which were uncompensated.

6. I never received any wages for my work as a Server.

7. I never received a paystub or other accounting of my compensation as a Server.

8. I never received any record of the actual hours I worked.

9. Green Eggs Café operates as an all-cash business, meaning that customers must pay their bills and gratuities by cash only.

10. As a Server, I collected the cash (customer bill payments plus gratuities) from all of my customers' tables during my shift.

11. At the end of my shifts at any of the Philadelphia restaurants, the manager on duty required each Server to pay to that manager the amount of customer bills for that Server's tables. Per Green Eggs Café policy, the remaining cash from all the Servers would be pooled, and out of that amount, a portion would be distributed out to "runners," busboys and baristas. The final amount would be distributed evenly among the Servers working that shift.

12. During a given shift, two Green Eggs Café employees known as "runners" worked that shift.

13. However, one of these runners was actually an "expediter," meaning that he worked only in the kitchen arranging customer dishes and directing the other runner to which table he should take particular dishes. The expediter almost never left the kitchen, and therefore had little to no customer interaction on a given shift. The other runner transported or "ran" customer dishes to the customer tables, and therefore did interact with customers.

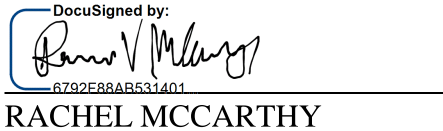
14. Defendant Stephen Slaughter was Green Eggs Café's General Manager. Stephen regularly visited each of the Philadelphia restaurants at least once per week to oversee and manage the restaurants. Stephen stepped in to relieve store-level managers when they were out. Stephen was responsible for setting payroll and compensation policy at Green Eggs Café, including the policy to not compensate Servers with wages. Stephen personally hired

employees, including Servers, at the Philadelphia restaurants. Stephen designed Green Eggs Café's menu layout and led its social media presence and other branding activities.

15. Defendant William Bonforte is, to my understanding, an owner of Green Eggs Café. William visits the South Green Eggs Café location on a daily basis, and also regularly visited the Mid-town location. William once personally terminated the employment of a Server because that Server drank out of a "to-go" cup, and on another occasion, he reprimanded a Server over the same issue. William also insisted on Green Eggs Café's policy of pooling the tips of its Servers.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Signed on: 4/30/2018



RACHEL MCCARTHY

Exhibit C

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRITNY KEYES, on behalf of herself and all persons similarly situated,	:	
Plaintiff,	:	**Civil Action No.: 2:18-cv-01115-PD**
v.	:	
G.E.C. Restaurant Management & Design, LLC, *et al.*	:	**Jury Trial Demanded**
Defendants.	:	

DECLARATION OF JORDAN STROHL

JORDAN STROHL declares:

1. I am an opt-in Plaintiff in this case.

2. Since approximately February 2017, I have been employed by Green Eggs Café.

3. From approximately February 2017 through September 2017, I worked approximately thirty (30) to forty (40) hours per week. Since September 2017, I have worked approximately two shifts per month. I have worked mostly as a Server, but I also worked some shifts as a barista. I worked at the South Philadelphia location, 1306 Dickinson Street.

4. I also worked at least four (4) training shifts, all of which were uncompensated.

5. I never received any wages for my work as a Server, though I did receive approximately $5.00 per hour for my work as a barista.

6. I never received a paystub or other accounting of my compensation as a Server.

7. I never received any record of the actual hours I worked.

8. As a barista I sometimes received a paycheck and other times received my hourly wage in the form of cash.

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9. Green Eggs Café operates as an all-cash business, meaning that customers must pay their bills and gratuities by cash only.

10. As a Server, I collected the cash (customer bill payments plus gratuities) from all of my customers' tables during my shift.

11. At the end of my shifts, the manager on duty required each Server to pay to that manager the amount of customer bills for that Server's tables. Per Green Eggs Café policy, the remaining cash from all the Servers would be pooled, and out of that amount, a portion would be distributed out to "runners," busboys and baristas. The final amount would be distributed evenly among the Servers working that shift.

12. Often on a given shift, two Green Eggs Café employees known as "runners" worked that shift.

13. However, one of these runners was actually an "expediter," meaning that he worked only in the kitchen arranging customer dishes and directing the other runner to which table he should take particular dishes. The expediter almost never left the kitchen, and therefore had little to no customer interaction on a given shift. The other runner transported or "ran" customer dishes to the customer tables, and therefore did interact with customers.

14. Defendant Stephen Slaughter was Green Eggs Café's General Manager. During summer 2017, he regularly traveled to the North Wildwood location on weekends to transport food, as well as to engage in other management duties. Stephen also regularly visited each of the Philadelphia restaurants at least once per week to oversee and manage the restaurants. Stephen stepped in to relieve store-level managers when they were out. Stephen was responsible for setting payroll and compensation policy at Green Eggs Café, including the policy to not compensate Servers with wages. Stephen personally hired employees, including

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Servers, at the Philadelphia restaurants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Signed on: 4/30/2018

DocuSigned by:
Jordan Strohl
520DA3B97D264CC...
JORDAN STROHL

Exhibit D

NOTICE OF COLLECTIVE ACTION LAWSUIT

***Keyes, et al. v. G.E.C. Restaurant Management & Design, d/b/a Green Eggs Café, et al.*,**
No. 2:18-cv-01115-PD
United States District Court for the Eastern District of Pennsylvania

TO: All current or former servers employed by G.E.C. Restaurant Management & Design, Inc. ("RMD"), Green Eggs Café 1306, Inc. ("1306"), and/or G.E.C. Shorepoints, LLC ("Shorepoints" and collectively with RMD and 1306, "Green Eggs"), who performed work at any restaurant in Pennsylvania or New Jersey at any time since May 1, 2015 (the "FLSA Class" or "Servers").

INTRODUCTION

This notice contains important information about your rights under the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. (the "FLSA").

You have received this notice because Green Eggs' records indicate that you are or were a Server who performed work in Pennsylvania or New Jersey for Green Eggs at any time from May 1, 2015 through present (the "FLSA Class").

Plaintiff Britny Keyes ("Plaintiff") has filed a collective action lawsuit against Green Eggs in the United States District Court for the Eastern District of Pennsylvania. In her Amended Complaint, Plaintiff claims that Green Eggs violated the FLSA by failing to pay its Servers at least the federal sub-minimum wage for Servers (currently $2.13 per hour worked), and also failed to comply with the legal requirements to pay its Servers the sub-minimum wage, rather than the full minimum wage (currently $7.25 per hour worked). Green Eggs denies the allegations in the Amended Complaint.

WHO IS ELIGIBLE TO JOIN THIS CASE?

You may be eligible to join this case if you worked as a Server in Pennsylvania and/or New Jersey during any week from May 1, 2015 through present (the "FLSA Class").

WHAT HAPPENS IF YOU JOIN THIS CASE?

If you choose to join this case, you may be required, with the help of Plaintiff's lawyers, to answer written questions, produce documents related to your work as a Server, attend a deposition, and/or testify in court. You will not be responsible for paying any lawyers' fees. Plaintiff's lawyers are being paid on contingency, which means that if Plaintiff does not receive a recovery in this case, no lawyer fees will be owed. If Plaintiff obtains a recovery, either by settlement or judgment, Plaintiff's lawyers may, pursuant to the FLSA, file a request with the Court to receive part of the recovery as compensation for their services. Any settlement or fee award would require the Court's approval as being fair and reasonable.

If Plaintiff and the other Servers win this case, you may receive compensation for unpaid minimum wages. The maximum possible recovery allowed under the FLSA is double (2x) any unpaid minimum wages. If you elect to join this case, you designate Plaintiff as your agent to make decisions for the FLSA Class relating to the litigation, including settlement, lawyer fees and costs, and any other matters relating to this case, regardless of whether a recovery is ultimately achieved. Thus, if you elect to join this case, Plaintiff's decisions will be binding on you and your claims. A recovery is not guaranteed and depends on the adjudication of the claims.

YOUR RIGHTS TO PARTICIPATE IN THIS CASE

You have the right to join, or not join, this case. If you fall within the definition of the "FLSA Class" above, you may join this case by completing, signing, and returning, the enclosed "Opt-In Consent Form," by mail or email to:

Green Eggs Café Wage Litigation
James E. Goodley
Jennings Sigmond, P.C.
1835 Market Street, Suite 2800
Philadelphia, PA 19103
jgoodley@jslex.com

If you have any questions or need any assistance, you may contact the Plaintiffs' attorneys, James E. Goodley or Marc Gelman of Jennings Sigmond, P.C. at 215-351-0614, or by email at: jgoodley@jslex.com or mgelman@jslex.com .

To join this case, please complete, sign and mail or e-mail the enclosed Opt-In Consent Form as soon as possible. Plaintiffs' lawyers must receive your form by [90 days from date of mailing] in order to preserve you right to join this case.

RETALIATION AND DISCRIMINATION PROHIBITED

The FLSA prohibits Green Eggs from retaliating or discriminating against you in any way because you elect to join this case. If you suspect you have been retaliated or discriminated against because of your choice to join this case, you may contact Plaintiff's lawyers to inform them.

PLEASE TAKE NOTE

There is a two (2) year deadline for filing your claims under the FLSA, or three (3) years if the violation is willful. Plaintiff has alleged that Green Eggs' violations of the FLSA were willful, while Green Eggs denies these allegations. The deadline begins to run from the date(s) in which hours were worked. Therefore, you should return the form as soon as possible to preserve your claims to the maximum possible extent.

Please do not contact the Court about this Notice.

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRITNY KEYES, on behalf of herself and all persons similarly situated,	:	
Plaintiff,	:	**Civil Action No.: 2:18-cv-01115-PD**
v.	:	
G.E.C. Restaurant Management & Design, LLC, d/b/a Green Eggs Café; et al.,	:	**Jury Trial Demanded**
Defendants.	:	

CONSENT TO JOIN COLLECTIVE ACTION LAWSUIT

Pursuant to 29 U.S.C. § 216(b), I consent to become a party plaintiff in the above-captioned Fair Labor Standards Act case, to be represented by Jennings Sigmond, P.C., and to be bound by judgment of the Court.

I worked as a Server for Green Eggs Café, from on or about _____________ (date) to on or about _____________ (date) including at the following location(s):

□ **212 S 13th St, Philadelphia, PA**

□ **719 N 2nd St, Philadelphia, PA**

□ **1306 Dickinson St, Philadelphia, PA**

□ **113 Old New Jersey Ave, North Wildwood, NJ (Keenan's North Wildwood)**

Signature: _____________________

Name: _____________________

Date of Birth: _____________________

Address: _____________________

Phone: _____________________

e-mail: _____________________

Return Form To:

James E. Goodley, Esq.
Jennings Sigmond, P.C.
1835 Market, Suite 2800
Philadelphia, PA 19103
jgoodley@jslex.com
(215) 351-0614