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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Andrew Harrington; Katie Liammaytry; Jason Lenchert, individually and behalf of themselves and all other persons similarly situated, *Plaintiffs*, v. Cracker Barrel Old Country Store, Inc., *Defendant*.	§ § § § § § § § § § § §	Case No. 2:21-CV-00940-DJH **PLAINTIFFS' AMENDED MOTION FOR CONDITIONAL CERTIFICATION AND MEMORANDUM IN SUPPORT** JURY TRIAL DEMANDED

Plaintiffs Andrew Harrington, Katie Liammaytry, and Jason Lenchert (collectively, "Named Plaintiffs") move this Court for an order: 1) conditionally certifying this lawsuit as a collective action under the Fair Labor Standards Act, 2) authorizing Named Plaintiffs to mail, email, text, and post notices to potential class members, 3) approving the Proposed

Notice and Consent to Join forms attached as Exhibit #12 and #13,[1] and 4) requiring that, within 21 days of the Court's ruling on this Motion, Defendant produce the names, mailing addresses, email addresses, cell phone numbers, last four digits of social security numbers, and dates of employment of all current and former servers who worked for the company from February 23, 2019 to the present and worked in a state where Cracker Barrel paid them less than minimum wage and/or took a tip credit.

INTRODUCTION

This case is about Cracker Barrel violating the FLSA by: 1) failing to pay servers minimum wage for work performed on non-tipped duties that exceeded 20% of their work time and/or for any non-tipped duties unrelated to their occupation as servers; 2) failing to timely inform its servers of the 29 U.S.C. § 203(m) notification requirements (i.e. the amount of the tip credit it would be taking, that the tip credit claimed cannot exceed the amount of tips actually received by the employee, and that all tips received by the employee are to be retained by the employee); and 3) requiring or allowing servers to work off-the-clock.[2] Making matters worse, at a time when the nation was suffering the ravages of COVID-19, Cracker Barrel amplified its servers' suffering by *increasing* their non-tipped duties and eliminating a night maintenance position.

Named Plaintiffs have filed a collective action under 29 U.S.C. § 216(b) *et seq.* to

[1] These are in compliance with the Court's prior order that inform potential opt-in plaintiffs that they can only join if they are not subject to arbitration.

[2] A full explanation of these facts are outlined in Plaintiff's Amended Complaint. *Docket #57, ¶¶ 24-54 (violation based on job duties and time spent), ¶¶ 59-64 (failure to provide a timely tip-credit notice), and ¶¶ 65-72 (off-the-clock-work).*

recover damages owed. Due to the uniform nature of Cracker Barrel's willful violations, the proposed class is all servers who worked for Cracker Barrel in states where it attempts to take a tip credit, under 29 U.S.C. § 203(m), over the last three years, which is the maximum time-period allowed under the law. 29 U.S.C. § 255(a).

BACKGROUND FACTS

I. FLSA violations at issue

This collective action case concerns three FLSA violations. First, Cracker Barrel attempts to take a "tip credit" by paying servers less than minimum wage, which can be permitted by 29 U.S.C. §203(m). But the employer must actually notify the employee of this tip credit, otherwise it owes the employee the full minimum wage. *See Hanke v. Vino Pinot Dining LLC*, 2018 U.S. Dist. LEXIS 226992, *5-6 (D. Ariz. Mar. 21, 2018). As will be shown, Cracker Barrel does not provide a timely tip credit notice to its servers.

Second, employees working under the "tip credit" scheme cannot spend more than 20% of their work time on non-tipped work related to their occupation, and they cannot spend *any* time on work unrelated to their occupation without being paid minimum wage. *See Marsh v. J. Alexander's LLC*, 905 F.3d 610, 625-632 (9th Cir. 2018) (finding that the tip-credit regulatory scheme requires an inquiry into the type of work performed as well as the time spent on it and the 20% Rule is appropriate); *Fast v. Applebee's Int'l, Inc.*, 638 F.3d 872, 880-81 (8th Cir. 2011) (same). This is commonly known as the "80/20 Rule." As will be shown, Cracker Barrel servers customarily and regularly spends more than 20% of their time on non-tipped duties including those that are unrelated to their occupation.

Third, hourly employees must be paid for all the time they spend working; however,

Cracker Barrel servers customarily and regularly work off-the-clock, not receiving any pay. Cracker Barrel owes servers minimum wage for this off-the-clock work time. *See Marsh*, 905 F.3d at 618 (citing 29 U.S.C. § 206(a)(1)(C)).

II. Named Plaintiffs

The Named Plaintiffs confirm Cracker Barrel's illegal practices and policies. Andrew Harrington worked for Cracker Barrel in Cincinnati, Ohio starting in December 2016.[3] *Ex. #2, ¶¶2-3*. As a server, he was paid less than minimum wage, spending more than 20% of his work time on non-tipped duties, did not receive a timely tip credit notice, and spent time working off-the-clock. *Ex. #2, ¶¶4-7, 9*. Katie Liammaytry was employed by Cracker Barrel from approximately January 1, 2020 to August 22, 2021, in Morganton, North Carolina. *Ex. #3, ¶¶2-3*. Jason Lenchert has been employed by Cracker Barrel since June 2010 and has worked at three locations – one in New York and two in Florida. *Ex. #4, ¶¶2-4*. Liammaytry and Lenchert experienced the same FLSA violations as Harrington – being paid on a tip-credit basis (earning less than minimum wage), but spending more than 20% of their work time on non-tipped duties, not receiving a timely tip-credit notice, and spending time working off-the-clock. *Ex. #3, ¶¶4-10; Ex. #4, ¶¶4-8*.

III. Cracker Barrel's policies and practices violate the FLSA

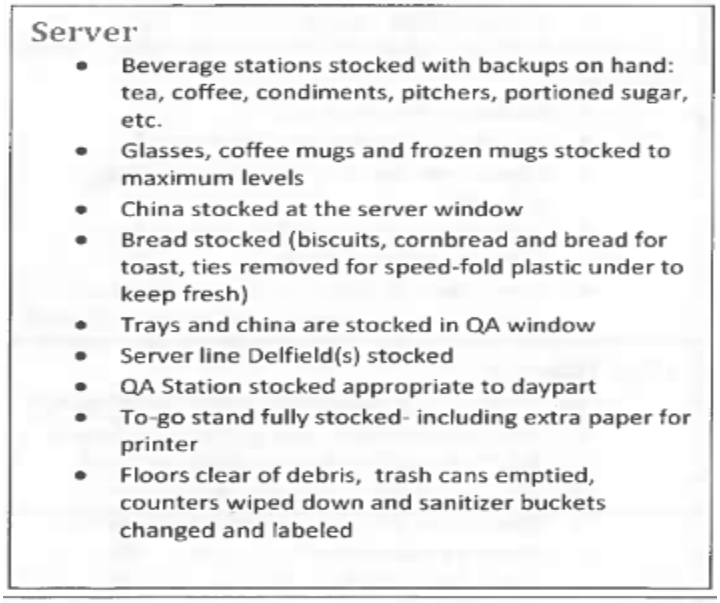
A former long term Cracker Barrel employee (Ashley Owen), who most recently worked as a Store Operations Supervisor (from September 2016 – September 2020) for the company's corporate office, as well as previously worked as a manager, training

[3] Harrington is no longer employed by Cracker Barrel.

coordinator, and server has provided information confirming Cracker Barrel's multiple FLSA violations. *Ex. #1*.

a) *Violation of the 80/20 Rule and performance of non-tipped duties unrelated to servers' occupation*

As explained by Owen, Cracker Barrel's upper management has been aware of violations of the 80/20 Rule, but did not take steps to fix it or train employees to comply with this rule. *Ex. #1, ¶4*. Cracker Barrel also has policies that go into detail about servers' obligations to perform "side work," MAC[4] duties, and other non-tipped duties. *Ex. #1, ¶¶5-6*. For example, at least one written corporate policy explicitly confirms that servers are expected to perform the following duties:



Server

- Beverage stations stocked with backups on hand: tea, coffee, condiments, pitchers, portioned sugar, etc.
- Glasses, coffee mugs and frozen mugs stocked to maximum levels
- China stocked at the server window
- Bread stocked (biscuits, cornbread and bread for toast, ties removed for speed-fold plastic under to keep fresh)
- Trays and china are stocked in QA window
- Server line Delfield(s) stocked
- QA Station stocked appropriate to daypart
- To-go stand fully stocked- including extra paper for printer
- Floors clear of debris, trash cans emptied, counters wiped down and sanitizer buckets changed and labeled

Ex. #5. **None** of these tasks assigned to servers are tipped duties. In fact, none of them are related to the servers' occupation, and all time spent on such tasks should be compensated

[4] MAC stands for "Manager Assigned Cleaning."

at minimum wage.

b) Violation of the tip credit notice

A tip credit notice must be provided *before* an employee starts working at a tip-credit rate. But Cracker Barrel provides the initial notice too late – *after* the server has already spent two weeks working on a tip credit (below minimum wage) rate. Owen confirmed that Cracker Barrel does not provide a sufficient or timely "tip credit" notice. *Ex. #1,* ¶9. This FLSA violation is further shown by servers' paystubs. As an example, attached are two consecutive paystubs of a server from Kentucky. *Ex. #6.* When she first started working (going through orientation or not actually working as a server yet), she was paid minimum wage and there was no tip credit notice on her paystub. *Ex. #6, p. 2.* That paystub, apparently made available on or after October 18, 2018, covered her time worked from October 6-12, 2018. The following paystub (*Ex. #6, p. 1*), covers the week from October 13-19, and was apparently provided on or after October 25, 2018. That paystub shows Cracker Barrel attempted to take advantage of the tip credit rule by paying her $2.13/hour for the 27.46 hours she previously worked, and it does have a tip credit notice at the bottom. But that tip credit notice is too late. The plaintiff had already worked on a tip-credit rate for that week of October 13-19 (as well as the following week through October 25, 2018) *before* the notice was provided. Therefore, for those two weeks that Cracker Barrel tried to take advantage of the tip credit rule, the employee had not been given the required notice. Another example can be shown via another server from South Carolina, who started working in December 2020. *Ex. #7.* Cracker Barrel committed this FLSA violation for the first two weeks every server worked on a tip-credit rate, such that

Cracker Barrel owes them at least minimum wage for those two weeks.

c) Off-the-clock work

Finally, Owen confirmed that Cracker Barrel is aware of off-the-clock work being performed throughout its stores. *Ex. #1, ¶10*. Owen's declaration also shows that Cracker Barrel's violations were willful and not in any good faith attempts to comply with the law. In fact, Cracker Barrel knowingly took active steps to try to reduce labor costs and increase profits, at the detriment of its servers. *Ex. #1, ¶¶7, 11, 12*.

d) Cracker Barrel's knowledge – and disregard – of the FLSA violations

In addition to the information provided in Owen's affidavit, there is evidence of Cracker Barrel's knowledge of these company-wide FLSA violations. Servers have occasionally complained to their respective managers about Cracker Barrel's illegal pay practices but have essentially been told that nothing can be done about it, and in some occasions been penalized for raising concerns. *See, e.g., Ex. #8, ¶6* ("I complained to my manager about these problems and side-work pay, but management appeared too concerned about keeping labor costs as low as possible. I was told that the corporate office [had] forbidden management from hiring night maintenance due to COVID."); *Ex. #9, ¶6* ("Servers had to learn all the positions including how to jump on the line to cook, make biscuits and cornbread, and prepare chicken in the event the cooks were backed up and the servers could help. Management would never go back to change the pay or code for the job."); *Ex. #10, ¶7* ("I expressed to my managers numerous times, in different ways, all day, and every day about these problems, but nothing was done about it. I was told that's just the company's policy."); *Ex. #11, ¶8* ("I complained to my manager about these

problems and he/she would retaliate by cutting my work hours and cutting my table sections in half. I stopped complaining to my manager about it because I needed my hours.").

Similar factual issues were previously raised in a prior motion, and are being incorporated as necessary in support of this motion. *See, e.g., Docket #8, p. 7* ("I complained to my manager about lots of side-work which resulted in my hours being cut, and I was told that it's just company policy. I didn't want my manager to cut my hours so I stopped complaining about it."; "I complained to my manager about spending lots of time on side-work and MAC duties, but nothing was done about it. I was even told that I wouldn't get my tips unless I provide paperwork signed by a manager showing I completed MAC duties.").

The fact that a store manager cannot fix an illegal pay practice further confirms this being a company-wide problem.

IV. Further evidence of FLSA violations nationwide

In addition to the Named Plaintiffs, several other opt-in plaintiffs have joined the lawsuit. *See Docket Nos. 3, 5, 10, 11, 16-20, 22, 25, 34, 38, 40, 46, and 56.* Although the Court has issued a ruling regarding the applicability of an arbitration agreement (*Docket #47 and #55*), the evidence presented by these servers is essentially uniform. There are nearly 400 servers who have/had joined this case, from over 30 different states where Cracker Barrel attempts to utilize the tip-credit notice, and several (both current and former employees) have submitted declarations confirming the three FLSA violations. *See Docket #8, pp. 8-9 and #15, p. 2.*

Collectively, this relatively small sample of plaintiffs have indicated that they are personally aware of over 2,000 servers who experienced similar problems as they did and may be interested in joining the lawsuit.[5]

V. Willful violation

The FLSA provides for up to a three-year statute of limitations if the employer/defendant committed a willful violation of the law. 29 U.S.C. § 255(a). A three-year statute of limitations is likely to apply here, especially based on the information contained in Owen's affidavit. *See Ex. #1*. Other evidence also supports a willful finding. For example, Cracker Barrel's inexcusable treatment of minors, as articulated in several declarations and the evidence attached to the Amended Complaint (*Docket #57*), is extremely concerning and shows its willful violation of the FLSA. Previously, numerous opt-in plaintiffs have confirmed that Cracker Barrel is aware of state requirements to limit the amount of time minors can spend working, yet they are required to clock-out to avoid creating a record of such a violation, and continue working.[6] *See Docket #8, pp. 9-10 (including referenced exhibits)*. There are also bizarre practices where servers are apparently penalized for not selling enough alcohol, not performing additional non-tipped duties, or complaining about FLSA violations. These penalties take the form of having additional non-tipped duties or possibly not receiving their tips. *Docket #8, p. 10*.

These facts, coupled with the other evidence presented in this motion and the prior

[5] The last paragraph of each declaration references an approximate number of co-workers that worked with the server who experienced the same FLSA violations.

[6] No state law claims are being brought in this cause of action at this time; however, the purpose of this evidence is to show that a three-year statute of limitations is appropriate.

motion (*Docket #8*) and supplement (*Docket #15*), further support liability on a company-wide basis, as well as a finding of willfulness.

ARGUMENTS AND AUTHORITIES

I. The two-stage conditional certification standard is lenient

The FLSA allows workers to bring an action either on an individual basis or on a collective basis for him or herself "and other employees similarly situated." 29 U.S.C. § 216(b). The Ninth Circuit generally follows the lenient two-step approach to certification of actions under the FLSA. *See, e.g., Vega v. All My Sons Bus. Dev. LLC*, No. cv-20-00284-TUC-RCC, 2022 U.S. Dist. LEXIS 18080, *9-11 (D. Ariz. Jan. 31, 2022); *Villarreal v. Caremark LLC*, No. 14-cv-00652-PHX-DJH, 2014 WL 4247730, *3 (D. Ariz. Aug. 21, 2014). "In the first stage, courts determine whether the potential class should receive notice of the suit… Conditional certification 'require[s] little more than substantial allegations, supported by declarations or discovery, that the putative class members were together the victims of a single decision, policy, or plan.'" *Dualan v. Jacob Transp. Services, LLC*, 172 F. Supp. 3d 1138, 1144 (D. Nev. 2016).

Moreover, the allegations made by each plaintiff need not be identical at the first stage of the two-tier analysis. Any "disparities in the factual employment situations of any plaintiffs who choose to opt in should be considered during the court's second tier analysis," *Davis v. Westgate Planet Hollywood Las Vegas, LLC*, No. 2:08-cv-0072-RCJ-PAL, 2009 WL 102735, at *10 (D. Nev. Jan. 12, 2009). In fact, "[a]ll that need be shown is that some identifiable factual or legal nexus binds together the various claims of the class members in a way that hearing the claims together promotes judicial efficiency and

comports with the broad remedial policies underlying the FLSA." *Benedict v. Hewlett-Packard Co.*, No.: 13-CV-00119, 2014 WL 587135 at *5 (N.D. Cal. Feb. 13, 2014) (internal quotation omitted); *see also Collinge*, 2012 WL 3108836, at *2. This lenient standard usually leads to certification. *Id.*; *Juvera v. Salcido*, 294 F.R.D. 516, 520 (D. Ariz. 2013); *Schiller v. Rite of Passage, Inc.*, No. 2:13-cv-0576-HRH, 2014 WL 644565, at *3 (D. Ariz. Feb. 19, 2014) ("Given that a motion for conditional certification usually comes before much, if any discovery, and is made in anticipation of a later more searching review, a movant bears a very light burden in substantiating its allegations at this stage.")

This is necessary to protect collective members' rights because, unlike Rule 23 class actions where the filing of the complaint automatically tolls absent class members' claims, in FLSA cases the statute of limitations for other employees continues to run until they join the case. *See Bazzell v. Body Contour Centers, LLC*, No. C16-0202JLR, 2016 WL 3655274, *9 (W.D. Wash. July 8, 2016).[7] If a plaintiff meets the lenient notice standard, "the district court will conditionally certify the proposed class and the lawsuit will proceed to a period of notification, which will permit potential class members to opt-into the lawsuit." *Stickle v. SCI W. Mkt. Support Ctr., L.P.*, No. 08-083-PHX-MHM, 2009 WL 3241790, *2 (D. Ariz. Sept. 30, 2009).

II. Conditional certification is appropriate here.

Named Plaintiffs have sufficiently alleged that they and the putative class members

[7] In fact, courts often toll the statute of limitations during the pendency of a decision for conditional certification. *See Lemley v. Graham Cty.*, 2014 WL 11631714, *6 (D. Ariz. May 16, 2014).

"were victims of a single policy, or plan." *Dualan v. Jacob Transp. Services, LLC*, 172 F. Supp. 3d 1138, 1144 (D. Nev. 2016) (quoting *Benedict v. Hewlett–Packard Co.*, 2014 WL 587135, at *5 (N.D. Cal. Feb. 13, 2014)). The Amended Complaint, previously referenced facts (*Docket #8 and #15*), and the above-referenced facts, including exhibits to this motion, detail how Cracker Barrel's uniform policies and practices violated the FLSA.

A plaintiff seeking conditional certification is not required to submit declarations of other potential class members, as "quality, not quantity, controls." *Scales v. Info. Strategy Design Inc.*, 356 F. Supp. 3d 881, 886 (D. Ariz. 2018). Nevertheless, as summarized previously and above, Named Plaintiffs have provided numerous declarations from several servers from over a dozen different states confirming Cracker Barrel's nationwide FLSA violations. All declarants witnessed other servers at their locations being treated the same. Accordingly, the Court should grant conditional certification.

III. Notice and Consent to Putative Class Members.

Named Plaintiffs request notices of this lawsuit and consents to opt-in be sent via mail, email, text, and Cracker Barrel be required to post notice on its employee bulletin boards in each of its restaurants. Named Plaintiffs further request that the Court order a 90-day notice period for individuals to opt-in to the case, and that the putative class members may execute their consent forms electronically or with the assistance of a third-party administration company should Plaintiffs determine one is necessary.

a) Standard

The FLSA requires timely and effective notice. Notice in FLSA litigation is critical to protect the rights of putative collective members. Unlike in a class action brought under

Rule 23, the statute of limitations in a collective action brought under the FLSA is not tolled with respect to unnamed collective members. Rather, each member must affirmatively toll the statute of limitations by "opting into" the lawsuit. *Villarreal*, 2014 WL 4247730 at *2; *see also* 29 U.S.C. § 257. The opt-in collective action mechanism serves the dual purpose of lowering litigation costs for individual plaintiffs and decreasing the burden on the courts, through "efficient resolution in one proceeding of common issues of law and fact arising from the same alleged discriminatory activity." *Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989).

To provide other similarly situated employees with the opportunity to join the lawsuit, "[t]he court may authorize the named FLSA plaintiffs to send notice to all potential plaintiffs and may set a deadline for those potential plaintiffs to join the suit." *Adams* 242 F.R.D. at 535 (citing *Hoffmann–La Roche Inc.*, 493 U.S. at 169). Notice is intended to establish the contours of the action and to further the broad remedial purpose of the FLSA. *See Hoffman-LaRoche*, 493 U.S. at 171-72 (discussing importance of early notice in collective actions in order to "ascertain[] the contours of the action at the outset").

b) Estimated number of class members and demographics

Cracker Barrel has approximately 650 stores. Most of these are in states that allow for a tip-credit payment scheme, but only if the requirements of 29 U.S.C. § 203(m) are followed and the servers do not spend too much of their work time on non-tipped duties. According to Cracker Barrel's own financial disclosures, "store management is responsible for an average of 101 employees operating two shifts." https://investor.crackerbarrel.com/static-files/065d68cf-30c0-4948-bd4c-a3a34e1bee95

(page 9), and it had about 50,000 non-management employees as of July 31, 2020, and 70,000 as of August 2, 2019 (*Id.*, page 12)). This has increased over the subsequent year, as it has substantially increased its non-management number and percent of employees. https://investor.crackerbarrel.com/static-files/072b56d3-68af-4885-b6d6-b2f8672ebde6 (page 12). Furthermore, the turnover rate in the leisure and hospitality industry was 79% in 2019 and 130% in 2020. See U.S. BUR. OF LAB. STATS., *Economic News Release*, https://www.bls.gov/news.release/jolts.t16.htm (last visited February 22, 2022). Therefore, using this data, it is estimated that the potential class, covering a three-year time period, may be approximately 140,000 – 200,000 servers.

c) Methods of providing notice

The distinct "opt-in" structure of § 216(b) heightens the need for employees to "receiv[e] accurate and timely notice concerning the pendency of the collective action." *Id.* Accordingly, in addition to mail, email notice is a common form of notification in FLSA cases to preserve putative class members' rights and give effective notice. *See, e.g., Phels v. MC Commc'ns, Inc.*, 2:11-CV-00423-PMP-LRL, 2011 WL 3298414, at *6 (D. Nev. Aug. 1, 2011) (permitting email notice because it is an efficient, reasonable, and low-cost supplemental form of notice); *Santiago v. Amdocs, Inc.*, No. C 10-4317, 2011 WL 6372348, at *8 (N.D. Cal. Dec. 19, 2011) (permitting notice via email).[8]

[8] *See also Goudie v. Cable Commc'ns, Inc.*, 08-CV-507-AC, 2008 WL 4628394, at *9 (D. Or. Oct. 14, 2008) (permitting notice via email); *White v. Integrated Elec. Techs., Inc.*, No. 11-2186, 2013 WL 2903070, at *9 (E.D. La. June 13, 2013) ("Plaintiffs have submitted ample authority indicating that federal district courts…frequently utilize e-mail to provide notice of collective actions").

Similarly, text messaging is often used. *Vega*, 2022 U.S. Dist. LEXIS 18080 at *15-16; *Millin v. Brooklyn Born Chocolate, LLC*, No. 19-CV-336-ENV-RER, 2020 WL 2198125, at *3 (E.D.N.Y. May 6, 2020) ("There is no credible reason why notice should not be provided by email or text message, especially given the broad remedial purpose of the FLSA."); *Lawrence v. A-1 Cleaning & Septic Sys., LLC*, No. 4:19-CV-03526, 2020 U.S. Dist. LEXIS 74685, *16 (S.D. Tex. 2020) ("The reality of modern-day life is that some people never open their first-class mail and others routinely ignore their emails. Most folks, however, check their text messages regularly (or constantly)."); *Waller v. AFNI, Inc.*, No. 20-cv-1080-JES-JEH, 2020 WL 6694298 (C.D. Ill. November 13, 2020) (approving text message as a method of notice). Email and text are especially appropriate where the putative class members are low-wage, transient, and in a high-turnover industry. *See Carrillo v. Schneider Logistics, Inc.*, No. CV-11-8557-CAS, 2012 U.S. Dist. LEXIS 26927, at *56-57 (C.D. Cal. Jan. 31, 2012).

Finally, several courts have required the defendant company post notice of the FLSA action on their employee bulletin boards or similarly visible area. *See Lawrence*, 2020 U.S. Dist. LEXIS 74685, at *16 (collecting cases in which the defendant was required to post notices on their bulletin boards); *Ziglar v. Express Messenger Sys., Inc.*, No. CV-16-02726-PHX-SRB, 2017 U.S. Dist. LEXIS 220460, *23 (D. Ariz. Aug. 31, 2017), *vacated and remanded on other grounds by* 739 F. App'x 444 (9th Cir. 2018).

d) Time period to opt-in

A 90-day notice period is appropriate here, as many courts within the Ninth Circuit have permitted such a time-period. *See Saleh v. Valbin Corp.*, 297 F. Supp. 3d 1025, 1036-

37 (N.D. Cal. 2017); *Delara v. Diamond Resorts Int'l Mktg.*, 2020 U.S. Dist. LEXIS 75803, *12 (D. Nev. Apr. 30, 2020); *Ziglar*, 2017 U.S. Dist. LEXIS 220460 at *23 (D. Ariz. Aug. 31, 2017). Although Courts have approved both 60-day time periods and 90-day time periods, the longer 90-day time is especially necessary here given the high number of potential class members as well as their demographics, as described above.

Named Plaintiffs also propose that notice be sent to the putative class members twice during the 90-day opt-in period: the first time within 10 days of receiving the list of putative class members (or Day #1 of the notice period), and a second time 55 days later (Or Day #45 of the notice period) to those who had not already returned a completed notice. Sending the notice and consent form a second time ensures all persons interested in joining the action do so within the prescribed period. Other courts have recognized the importance of a reminder notice, and Named Plaintiffs request for it to be authorized here as well. *See, e.g., Gee v Suntrust Mortg., Inc.*, No. C 10-1509 RS, 2011 WL 722111, at *4 (N.D. Cal. Feb. 18, 2011); *Harris v. Vector Mktg. Corp.*, 716 F. Supp. 2d 835, 847 (N.D. Cal. 2010).

IV. Defendant Should Disclose Putative Class List and Contact Information**.**

Prompt disclosure of the names and contact information for the putative class members is necessary for Named Plaintiffs to provide those individuals with notice of the action. *See Hoffmann-La Roche*, 493 U.S. at 170. "[D]istrict courts have routinely ordered the production of names and addresses of potential collective action members to plaintiffs' counsel." *Bados Madrid v. Peak Constr., Inc.*, No. 2:09-cv-00311 JWS, 2009 WL 2983193, at *2 (D. Ariz. Sept. 17, 2009).

Therefore, Named Plaintiffs respectfully request that, in addition to entering an

order granting conditional and class certification and approving notice, the Court order Defendant to produce within 21 days of its order, lists in electronic and importable format, of all servers who worked for Defendant between February 23, 2019 and the date of the order, including: (1) their name, (2) mailing address, (3) email address, (4) telephone number, (5) last four digits of their social security number, and (6) dates of employment. All of the requested information is necessary to allow Named Plaintiffs sufficient information to confirm current addresses and/or to locate those persons who may have moved.

PRAYER AND CONCLUSION

Based on the foregoing, Named Plaintiffs have met the lenient standard for conditional certification and notice. Therefore, they respectfully request that the Court grant this motion, notice methods, consent to join form, and order Cracker Barrel to produce the information requested.

Dated: February 24, 2022

Respectfully submitted,

SUD LAW P.C.

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(pro hac vice)

Law Offices of Monika Sud-Devaraj, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the following was served upon the following counsel of record via the Court's CM/ECF filing system on February 24, 2022:

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