

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Chris Gagliastre, *et al.*,

*On behalf of themselves and others similarly
situated,*

Plaintiffs,

v.

Captain George's of South Carolina, LP, *et al.*,

Defendants.

Case No. 2:17-cv-379

Judge Raymond A. Jackson

Magistrate Judge Robert J. Krask

ANDREW BILLER'S DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR
APPROVAL OF FLSA SETTLEMENT AND MOTION FOR AN AWARD OF ATTORNEY'S
FEES AND EXPENSES

I, Andrew Biller, hereby declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows,

1. I make this declaration in support of Plaintiffs' Motion for Approval of an FLSA Settlement and Motion for an Award of Attorney's Fees and Expenses. I am familiar with the facts set forth herein, and, if called to do so, I could testify competently to them.

2. Until December 31, 2018, I was the Partner-in-Charge of Markovits, Stock & DeMarco LLC's ("MSD") wage and hour practice. As of January 1, 2019, I am a partner of Biller & Kimble, LLC, which is of counsel to MSD.

3. I am co-lead counsel for the plaintiffs in this case.

4. We brought this case on behalf of a group of tipped restaurant workers. The workers sought unpaid wages from a group of restaurants generally known as Captain George's. The workers had numerous, factually and legally distinct claims, although they generally centered on whether Captain George's broke one or more of the FLSA's requirements to pay tipped minimum wage. Our Memorandum in Support of the Motion for Approval of an FLSA Settlement sets forth the facts and law for each of the claims.

5. This lawsuit was a substantial undertaking because of the case's complexity, class size, and that the defendants encompassed four restaurants that spanned three states. As a result, the firms that I am part of spent approximately 1,370 hours in attorney and support staff time. Below, I have summarized the tasks involved in this lawsuit. If the Court prefers to conduct a detailed analysis of the time spent, we can provide line-by-line billing records.

6. As the docket reveals, this case was hard fought by competent counsel throughout the litigation. During the course of the case, we briefed issues related to motions to dismiss, conditional certification, corrective class notice, the deadline for opt-ins in light of the defendants' delay in producing contact information, whether this case should proceed as a hybrid class/collective action, and numerous discovery disputes, including one related to the propriety of representative discovery in a collective action.

7. What the docket does not reveal, however, is the work that went into discovery and preparing for summary judgment and trial. In this case, we served the defendants with discovery requests that sought payroll information, tip information, policy documents, work time/schedules, and related items. Because this is a tip pool case, documents demonstrating money going into and out of the tip pool were of critical importance.

8. In response, the defendants created computer-addressable Excel spreadsheets of some of their payroll information. Unfortunately, the spreadsheets did not contain work time or full tip information that would allow us to trace the flow of dollars through the defendants' tip-out system. For this, the defendants made available over 100 bankers boxes of paper records. The defendants allowed us to inspect these records at their counsel's Norfolk office. Because of the critical nature of this information, we endeavored to scan, copy, and analyze these voluminous records. This was not an easy task because many of the records were non-standard-sized and difficult to efficiently scan. For example, some of the information was contained in "packets" of documents that consisted of a top sheet, folded over and attached by rubber bands to long, receipt-sized documents, many of which were difficult to read because the print had faded.

9. Because the case schedule gave us only three months for discovery, while we dealt with the paper discovery, we also conducted approximately ten depositions of about 12 people (one of the Rule 30(b)(6) depositions had more than one corporate designee). Some of the depositions or parts of the depositions were necessary because of the state of the defendants' records.

10. We also had to respond to Defendants' voluminous discovery. Defendants initially served approximately three sets of requests on nearly 370 individual opt-ins. Defendants also indicated a desire to depose all of those individuals. Plaintiffs successfully moved the Court to issue a protective order that limited discovery to a sampling. Still, the sampling that the Court ordered was substantial. The Court issued its protective order on November 15, 2018 (Doc. 222), but Defendants did not address how to conduct the sampling until November 29th. Defendants' discovery deadline was December 18, 2018. Rather than cause any delay, we

assigned a team of attorneys and support staff to promptly respond to Defendants' requests and schedule approximately 35 depositions. This was a substantial project, particularly because of the holiday season. Still, by the time the parties attended a mediation, we were able to obtain discovery responses from all designated plaintiffs and had approximately 28 of 35 plaintiff depositions scheduled. During this time, Plaintiffs' counsel was actively working with each of the 28 deponents to prepare for the depositions scheduled from December 14th to the 18th. In the event that mediation was unsuccessful, Plaintiffs' counsel was prepared to complete discovery on time.

11. While Plaintiffs' Counsel worked through the voluminous discovery in this case, other team members crafted a robust motion for summary judgment, the majority of which was completed by the time of mediation. In order to receive a decision in time for the January 29, 2019 trial date, we intended to file the motion a few days after the mediation, if the mediation was unsuccessful.

12. And, at the same time, we prepared for a complex case mediation. This involved analysis of detailed spreadsheets and other documents and constructing damages models that tried to account for legal and factual strengths and weaknesses in Plaintiffs' claims.

13. In the end, we were able to reach a settlement that I believe to be a good result for the class and reflects the strengths of our clients' case and our thorough preparation to take the case to a conclusion. At a minimum, the settlement is fair, reasonable, and adequate, and I believe the settlement should be approved.

14. Our firm agreed to represent the plaintiffs under a contingency fee arrangement, and we have not received any compensation for the work we have performed to date or reimbursement for any expenses.

15. My team had hourly rates that ranged from \$125 to \$450 and worked the following approximate hours, as outlined in the chart below.

Timekeeper	Rate	Approximate Hours	Lodestar
Andy Biller	\$400	251	\$100,600
Andy Biller	\$450	16	\$7,200
Andrew Kimble	\$325	330	\$107,250
Andrew Kimble	\$385	261	\$100,485
Philip Krzeski	\$250	253	\$63,250
Eric Kmetz	\$250	40	\$10,000
Markovits, Stock, & DeMarco Support Staff	\$125	219	\$27,170
Total		1,370	\$415,955

The time included in the above chart does not include nearly any of the time spent dealing with the voluminous emails sent and received in this case, which would typically be billed at .1 per email sent or read. My records show at least 1,780 emails received and at least 570 emails sent. This would add at least \$94,000 to the lodestar for me. Mr. Kimble would likely have a similar amount.

16. My hourly rate for the majority of this case is \$400. Until January 1, 2019, this was my normal and customary hourly rate for wage and hour law cases. Starting January 1, 2019, I raised my rate to \$450 to bring it closer in line to a market rate for my practice area, years of experience, and expertise.

17. My hourly rate of \$400 was recently approved in *Arledge v. Domino's Pizza, Inc.*, No. 3:16-cv-386, 2018 WL 5023950, at *5 (S.D. Ohio Oct. 17, 2018) and *Dillow v. Home Care Network, Inc.*, No. 1:16-cv-612, 2018 WL 4776977, at *7 (S.D. Ohio Oct. 3, 2018).

18. In this case, we incurred over \$50,000 in expenses. Those expenses are detailed in the attached spreadsheet. Generally, the expenses are related to the notice process, travel and lodging, depositions and transcripts, and copying/scanning the defendants' documents. In addition, our co-counsel Josh Jewett incurred \$225 in expenses related to *pro hac vice* motions in this case.

19. I am a 2005 graduate of the University of Pittsburgh School of Law. I am admitted to practice in Ohio, Pennsylvania, the Sixth Circuit, the Western District of Pennsylvania, and the Northern and Southern Districts of Ohio.

20. I am a member of the Columbus Bar Association, Ohio State Bar Association, Ohio Employment Lawyers Association, National Employment Lawyers Association, Central Ohio Association for Justice, Ohio Association for Justice, and the American Association for Justice.

21. Since opening my own law firm in 2007 (prior to that, I was an associate for a small Pittsburgh firm), I have focused my practice almost exclusively on employment litigation. Within that space, almost all of my cases are wage and hour cases. The same is true with respect to my work at MSD and Biller & Kimble. Currently, almost 100% of my cases are wage and hour cases.

22. Over the last couple of years, my team and I have developed a nationwide wage and hour practice with cases in Arkansas, Colorado, Florida, Idaho, Illinois, Louisiana, Michigan, New Jersey, Pennsylvania, South Carolina, and Virginia.

23. I have served as lead counsel or co-counsel in many wage and hour lawsuits. Although some cases are individual cases, most are class/collective actions: *Arledge v. Domino's*

Pizza, Inc., 3:16-cv-386 (S.D. Ohio); *Arnold v. Howard Wershale & Co.*, 2:13-cv-1187 (S.D. Ohio); *Arp v. Hohla & Wyss Ent., LLC*, 3:18-cv-119 (S.D. Ohio); *Blose v. JARINC, LTD*, 1:18-cv-2184 (D. Col.); *Brandenburg v. Cousin Vinny's Pizza*, 3:16-cv-516 (S.D. Ohio); *Buckles v. EUBA Corp.*, 3:18-cv-355 (S.D. Ohio); *Cassley v. Kanji Lancaster Inc.*, 2:12-cv-336 (S.D. Ohio); *Casteel v. Antonio's Pizza, Inc.*, 1:18-cv-1277 (N.D. Ohio); *Castillo v. Morales, Inc.*, 2:12-cv-650 (S.D. Ohio); *Cheaney v. Five Star Pizza Co., Inc.*, 1:18-cv-606 (W.D. Mich.); *Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382 (6th Cir. 2016); *Crumbaker v. Parking Solutions, Inc.*, 2:15-cv-2446 (S.D. Ohio); *Dillow v. Home Care Network, Inc.*, 1:16-cv-612 (S.D. Ohio); *Edwards v. PJ Ops Idaho, LLC*, 1:17-cv-283 (D. Idaho); *Eisel v. Fortney Companies, Inc.*, 2:11-cv-298 (S.D. Ohio); *Forney v. Wyoming Pizza, Inc.*, 18-C-87-F (D. Wyo.); *Graham v. Chumleys of Columbus, LLC*, 2:15-cv-136 (S.D. Ohio); *Haight v. Minchak*, 2016-Ohio-1043 (S.Ct. Ohio); *Hogan v. Cleveland Ave. Restaurant*, 2:15-cv-2883 (S.D. Ohio); *Kessler v. Joarder Properties Limited Liability Company*, 1:18-cv-11867 (D. N.J.); *Martin v. MSK Management, LLC*, 2:18-cv-11874 (D. N.J.); *Mullins v. Southern Ohio Pizza, Inc.*, 1:17-426 (S.D. Ohio); *Nazih v. Café Istanbul of Columbus, LLC* 2:17-cv-947 (S.D. Ohio); *Pandey v. Rascal Unit, Ltd.*, 2:09-cv-550 (S.D. Ohio); *Rodino v. NRJM, Inc.*, 1:18-cv-5167 (N.D. Ill.); *Sigler v. The Inn at Cedar Falls, Inc.*, 2:11-cv-253 (S.D. Ohio); *Smith v. Captain George's of South Carolina*, 4:18-cv-2409 (D. S.C.); *Sullivan v. Lewisburg Pizza, LLC*, 3:18-cv-1455 (M.D. Penn.); *Thomas v. Papa John's International, Inc.*, 1:17-cv-411 (S.D. Ohio); *Wright v. Tiger Eye Pizza, LLC*, 4:18-cv-4127 (W.D. Ark.); *Yanni v. Red Brick Mortgage*, 2:07-cv-1260 (S.D. Ohio); *Young v. Rolling in the Dough, Inc.*, 1:17-cv-7825 (N.D. Ill.); *Zwerin v. 533 Short North, LLC*, 2:10-cv-488 (S.D. Ohio).

24. I have had the privilege of arguing a number of novel wage and hour issues before District Courts, the Ohio Court of Common Pleas, the Ohio Court of Appeals, the Supreme Court of Ohio, and the Sixth Circuit. The cases have included the first case to recognize an independent cause of action for recordkeeping violations under Ohio’s minimum wage law, the first Sixth Circuit case to recognize a reasonable diligence standard for employers in wage cases, the first case to certify a Rule 23 class action for Ohio minimum wage claims, and the first case to hold that Ohio’s minimum wage constitutional amendment is self-executing.

25. As a result of my work and expertise, I am a recognized authority on wage and hour law in Ohio. I base that statement on receiving calls from both sides of the bar asking for my opinion on various wage and hour matters. I have been selected as an Ohio Super Lawyers “Rising Star” in Employment and Labor for 2015–2019. I was also named to Columbus CEO magazine’s “Top Lawyers” for 2015 and 2016.

Executed on February 3, 2019.

/s/ Andrew Biller
Andrew Biller
Biller & Kimble, LLC