

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 23-CI-_____

EMILY RICE, ON BEHALF OF HERSELF AND ALL
OTHER PERSONS SIMILARLY SITUATED

PLAINTIFF

v.

CLASS ACTION COMPLAINT AND JURY DEMAND

DJGN LEXINGTON, LLC d/b/a TONY'S STEAKS & SEAFOOD

Serve, via certified mail:

Thomas R. Yocum, registered agent
55 Elsmar Ave.
Ft. Thomas, KY, 41057

AND

TONY RICCI

Serve, via certified mail:

Kentucky Secretary of State
Secretary of State
Summons Branch
700 Capital Ave., Ste. 86
Frankfort, KY 40601

Who will forward the summons and complaint, via certified mail, to:

Tony Ricci
[REDACTED]
Loveland, OH 45140 [REDACTED]

COMES the Plaintiff, by counsel, and for her Complaint, hereby states as follows:

B. INTRODUCTION

1. Plaintiff Emily Rice brings this action against Defendant DJGN Lexington, LLC d/b/a Tony's Steaks & Seafood and Defendant Tony Ricci ("Defendants") to recover unpaid minimum and overtime wages, liquidated damages, attorneys' fees, and costs under the

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Kentucky Wages and Hours Act (“KWA”), KRS 337.010 *et seq.* Defendants paid bartenders a tipped hourly wage less than the statutory \$7.25 per hour minimum wage (and \$10.88 per hour minimum overtime wage for hours worked over 40 in a workweek) and relied on the “tip credit” provisions of the KWA to satisfy their statutory minimum wage obligations. However, Defendants illegally required their bartenders to participate in a tip pool whereby they were required to remit to the pool tips for distribution among employees of the employer, in violation of the version of KRS 337.065 in effect through June 30, 2022. The Kentucky Legislature amended KRS 337.065 to permit mandatory tip pooling effective July 1, 2022. In other words, prior to July 1, 2022, Defendants violated KRS 337.065. By violating KRS 337.065, Defendants forfeited their right to rely on the tip credit provisions of the KWA and failed to pay the required minimum wage (pursuant to KRS 337.275) and overtime wage (pursuant to KRS 337.285). Plaintiff asserts these KWA claims as a class action, on behalf of herself and all others similarly situated, pursuant to CR 23.

II. PARTIES

B. Plaintiff

2. Plaintiff Rice is a resident of Danville, Boyle County, Kentucky.
3. Defendants employed Plaintiff as a bartender at DJGN Lexington, LLC’s Tony’s Steaks & Seafood restaurant (“Tony’s”) in Lexington, Kentucky from approximately December 2018 through May 2021.
4. During her employment, Plaintiff received hourly wages of less than \$7.25 per hour plus customer tips.

B. Defendants

5. Defendant DJGN Lexington, LLC (“Defendant DJGN”) is a Kentucky limited

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liability company doing business within this judicial district as Tony's Steaks & Seafoods.

6. Defendant DJGN is headquartered at 401 West Main St., Ste. 102, Lexington, KY, 40507.

7. Defendant DJGN's registered agent is Thomas R. Yocum, who can be served at 55 Elsmar Ave., Ft. Thomas, KY, 41057.

8. Defendant DJGN has at all relevant times been an employer within the meaning of the KWAHA.

9. Defendant Tony Ricci ("Defendant Ricci") owns and operates Defendant DJGN, and is a citizen and resident of Cincinnati, Hamilton County, Ohio. He is subject to personal jurisdiction pursuant to KRS 454.210 because he has transacted business in the Commonwealth of Kentucky and, as a statutory employer under the Kentucky Wages & Hours Act, has caused injury within the Commonwealth of Kentucky in Fayette County.

10. Defendant Ricci may be served pursuant to KRS 454.210(3) by sending a copy of the summons and complaint to his statutory agent for service of process, the Kentucky Secretary of State, who will forward process via certified mail to Tony Ricci, 225 Joyce Ln, Loveland, Ohio, 45140-3172.

11. Among other things, Defendant Ricci:

- a. oversees and controls day-to-day operations of Defendant DJGN and Defendants' Lexington, Kentucky Tony's restaurant;
- b. set all employment policies and practices, including compensation policies and practices for bartenders at Defendants' Lexington, Kentucky Tony's restaurant;
- c. made hiring and firing decisions at Defendants' Lexington, Kentucky Tony's restaurant;
- d. disciplined employees at Defendants' Lexington, Kentucky Tony's restaurant;

- e. conducted meetings with tipped employees at each Tony's restaurant location about prior lawsuits challenging the policies and practices at issue in this lawsuit;
- f. acknowledged that he is an employer of the employees at each Tony's restaurant; and,
- g. exercised custody and control over the employment records of tipped employees, including bartenders, at each Tony's restaurant.

12. In short, Defendant Ricci has at all relevant times been an employer within the meaning of the KWA.

III. FACTS

A. Defendants maintained a mandatory tip pool for bartenders.

13. Plaintiff and those she seeks to represent in this action were bartender employees of Defendants at their Tony's Steaks & Seafood restaurant ("Tony's") in Lexington, Kentucky, who earned less than \$7.25 per hour at any time during the five years preceding the filing of this lawsuit through June 30, 2022, and who received customer tips.

14. Defendants paid Plaintiff and other bartenders an hourly wage below \$7.25. For example, Defendants paid Plaintiff an hourly wage of approximately \$4.13, and always less than \$7.25 per hour.

15. Defendants purported to utilize a tip credit for each hour worked by Plaintiff and other bartenders to comply with the KWA's required minimum wage of \$7.25 per hour (and \$10.88 per overtime hour). *See* KRS 337.275(2).

16. Defendants required Plaintiff and other bartenders to contribute a portion of the tips they received from customers to other employees.

17. Remitting tips to other employees was not voluntary; rather, it was a condition of employment and, therefore, mandatory.

B. Defendants' response to prior complaints about this practice was to

discourage employees from challenging the practice.

18. Several lawsuits have been brought challenging the uniform pay practices implemented by Defendants and related entities with respect to tipped employees, including in the following actions:

- a. *Harley v. DJGN Lexington, LLC*, No. 22-CI-00574 (Fayette Cir. Ct.) (“*Harley*”);
- b. *Sullivan v. DJGN Lexington, LLC*, No. 5:22-CV-00064-DCR (E.D. Ky.) (“*Sullivan*”);
- c. *Benjamin v. DJGN LLC, et al.*, No. 1:22-CV-00166-TSB (S.D. Ohio);
and
- d. *Brady v. DJGN Indy, LLC*, No. 1:22-CV-1381-RLY-MG (S.D. Ind.) (“*Brady*”).

19. Ultimately, the *Harley*, *Sullivan*, and *Brady* actions were consolidated for settlement purposes with the *Benjamin* action in the U.S. District Court for the Southern District of Ohio, and resolved only on behalf of servers and not on behalf of bartenders.

20. Following the filing of the *Harley*, *Sullivan*, and *Benjamin* actions but before the filing of the *Brady* action, Defendant Ricci held a series of meetings with all tipped employees at each Tony’s restaurant.

21. On or about April 4, 2022, Defendant Ricci held a meeting at Tony’s in Indianapolis, Indiana, which its employees were required to attend. A transcript produced from a recording of this meeting is attached hereto as Exhibit A.

22. Defendant Ricci led this meeting and addressed the employees present.

23. During this meeting, Defendant Ricci acknowledged that he is an employer of the employees at all of the Tony’s restaurants.

24. During this meeting, Defendant Ricci also acknowledged that the employment practices and policies are the same at the various Tony’s restaurants.

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25. During this meeting, Defendant Ricci explained that employees who worked at Tony's in Lexington, Kentucky, had brought a lawsuit.

26. Upon information and belief, Defendant Ricci was referring to the *Harley* and *Sullivan* lawsuits.

27. During this meeting, Defendant Ricci made several threatening and discouraging statements, including threatening that there would be financial and criminal consequences with the Internal Revenue Service that the employees will face if they exercise their right to take legal action to recover wages owed to them under the FLSA or applicable state law.

28. During this meeting, Defendant Ricci acknowledged that he knew that Kentucky state law prohibited employers from mandating the division of earned tips of employees.

29. Defendant Ricci specifically described those requirements as well as an earlier lawsuit brought against his Kentucky restaurant.

30. During this meeting, Defendant Ricci repeatedly demonstrated a particular disregard and disdain for the requirements of the KWHHA, disparaging both it and its drafters as follows:

- a. describing the Kentucky law as "stupid";
- b. stating that the Kentucky law is "f***ed up" and adding "no wonder there's a whole bunch of inbreds going on in the western side of that state"; and,
- c. musing that he may no longer "want to work in this state because it's f***ing stupid for me."

31. During this meeting, Defendant Ricci acknowledged that there had been a policy and practice of sharing bartenders' earned tips with management at all of the Tony's restaurants, including the Lexington restaurant.

32. During this meeting, Defendant Ricci announced that he had changed the policy of sharing the bartenders' earned tips with management, including the maître d'.

33. During this meeting, Defendant Ricci also announced that he would begin a new policy of deducting the employees' tips to pay credit card processing fees.

34. During this meeting, Defendant Ricci noted that he had already conducted a similar meeting with employees at the Tony's restaurant in Cincinnati, Ohio.

35. The meeting with Cincinnati employees was conducted on April 1, 2022.

36. During the April 4, 2022, meeting, Defendant Ricci also noted that he would conduct a similar meeting with employees at the Tony's Steaks & Seafood restaurant in Lexington, Kentucky.

37. The meeting with Lexington employees was conducted on April 9, 2022.

IV. CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action on her own behalf and, pursuant to CR 23, on behalf of the following class of individuals:

All current and former bartenders of Defendants at their Lexington, Kentucky restaurant at any time since May 23, 2028¹ through June 30, 2022.²

(the "Rule 23 Class").

39. Plaintiff is a member of the Rule 23 Class she seeks to represent.

40. Defendants have employed dozens of individuals as bartenders at their Lexington, Kentucky Tony's restaurant. Thus, the Rule 23 class is sufficiently numerous that joinder of all members is impractical, satisfying CR 23.01(a).

41. Plaintiff and the members of the Rule 23 Class share the same pivotal questions of law and fact, satisfying CR 23.01(b). For example, Plaintiff and the members of the Rule 23 Class she seeks to represent were subject to the same compensation and tip policies. As a result,

¹ The statute of limitations under the KWA is five years. KRS 413.120(2).

² The Kentucky Legislature amended the KWA to authorize mandatory tip-pooling, effective July 1, 2022. KRS 337.065.

the Rule 23 Class shares several factual and legal questions, including, for example, whether Defendants required bartenders to remit tips to a tip pool from which proceeds were shared with other employees.

42. Plaintiff's claims are typical of the claims of the Rule 23 Class, satisfying CR 23.01(c). Defendants' violation of the minimum wage, overtime wage, and other requirements of the KWHHA was not the result of any Plaintiff-specific circumstances. Rather, it arose from Defendants' common pay policies and practices, which Defendants applied generally to all their bartenders, including Plaintiff. Thus, in advancing her own claims, Plaintiff will also be advancing the claims of the Rule 23 Class.

43. Plaintiff will fairly and adequately represent and protect the interests of the Rule 23 Class, satisfying CR 23.01(d). Plaintiff's interests are shared with the Rule 23 Class and Plaintiff has no interests that conflict with those of the Rule 23 Class. Furthermore, Plaintiff has retained competent counsel experienced in representing classes of employees against their employers related to their employer's failure to pay them properly under the law.

44. By failing to pay bartenders all required minimum and overtime wages pursuant to their common pay practices and policies, Defendants have created a scenario where questions of law and fact common to the Rule 23 Class predominate over any questions affecting only individual members. Thus, a class action is superior to other available methods for the fair and efficient adjudication of this matter. Plaintiff is entitled to pursue her claims as a class action, pursuant to CR 23.02(c).

V. CAUSES OF ACTION

COUNT I: VIOLATION OF THE MINIMUM WAGE REQUIREMENTS OF THE KWHHA

45. All previous paragraphs are incorporated as though fully set forth herein.

46. Plaintiff asserts this claim on behalf of herself and members of the Rule 23 Class, pursuant to CR 23.

47. Plaintiff and the Rule 23 Class are employees entitled to the KWHA's protections.

48. Defendants are employers covered by the KWHA.

49. The KWHA entitles employees to a minimum hourly wage of \$7.25 for every hour worked. KRS 337.275.

50. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to tipped employees, they forfeit the right to do so when certain requirements are not met. *See* KRS 337.010(2)(d), 337.275(2); 803 KAR 1:080 § 3.

51. The KWHA prohibits employers from requiring employees to participate in a tip pool in which they must remit all or a portion their tips for distribution among other employees (*i.e.*, mandatory tip pools). KRS 337.065.

52. Restaurants forfeit the tip credit when they require their tipped employees—such as Tony's bartenders—to share tips with any other restaurant employees. *See* KRS 337.275(2); 803 KAR 1:080 § 3.

53. By requiring Plaintiff and the Rule 23 Class to share tips with other employees, Defendants have forfeited their right to utilize the tip credit in satisfying their minimum wage obligations to Plaintiff and the Rule 23 Class.

54. Therefore, Defendants have violated the KWHA's minimum wage mandate by paying Plaintiff and the Rule 23 Class an hourly wage below \$7.25 for regular hours worked.

55. In violating the KWHA, Defendants have acted willfully and with reckless disregard of clearly applicable KWHA provisions.

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**COUNT II:
VIOLATION OF THE OVERTIME REQUIREMENTS OF THE KWHA**

56. All previous paragraphs are incorporated as though fully set forth herein.
57. Plaintiff asserts this claim on behalf of herself and members of the Rule 23 Class, pursuant to CR 23.
58. Plaintiff and the Rule 23 Class are employees entitled to the KWHA's protections.
59. Defendants are employers covered by the KWHA.
60. The KWHA requires that covered employees receive overtime compensation "not less than one and one-half times" their regular rate of pay for hours over 40 in a workweek. KRS 337.285.
61. The minimum hourly overtime rate of pay is \$10.88 per hour—*i.e.*, one and one-half times the full \$7.25 per hour statutory minimum overtime wage. *See* KRS 337.285.
62. Employers may take a tip credit and pay tipped employees a lower tipped minimum hourly rate for overtime hours as well, so long as employees receive at least \$10.88 per hour for every hour worked in excess of 40 in a workweek. *See* KRS 337.285; 803 KAR 1:080 § 3.
63. Defendants pay Plaintiff and the Rule 23 Class a lower tipped hourly rate and Defendants rely on their tips to meet the overtime requirements pursuant to the tip credit provision of the KWHA.
64. Plaintiff and the Rule 23 Class employed by Defendants have worked over 40 hours in a workweek paid at a lower tipped hourly rate.
65. While restaurants may utilize a tip credit to satisfy their overtime wage obligations to tipped employees, they forfeit the right to do so when certain requirements are not

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met. *See* KRS 337.010(2)(d), 337.285; 803 KAR 1:080 § 3.

66. The KWHA prohibits employers from requiring employees to participate in a tip pool in which they must remit all or a portion their tips for distribution among other employees (*i.e.*, mandatory tip pools). KRS 337.065.

67. Restaurants forfeit the tip credit when they require their tipped employees—such as Tony’s bartenders—to share tips with the employer or any other restaurant employees. *See* KRS 337.275(2); 803 KAR 1:080 § 3.

68. By requiring Plaintiff and the Rule 23 Class to share tips with other employees, Defendants have forfeited their right to utilize the tip credit in satisfying their overtime wage obligations to Plaintiff and the Rule 23 Class.

69. Therefore, Defendants have violated the KWHA’s overtime wage mandate by paying Plaintiff and the Rule 23 Class an hourly wage below \$10.88 for overtime hours worked.

70. In violating the KWHA, Defendants have acted willfully and with reckless disregard of clearly applicable KWHA provisions.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of herself and all others similarly situated:

- A. An order permitting this litigation to proceed as a class action pursuant to the KWHA and CR 23;
- B. Prompt notice of this litigation, pursuant to CR 23, to the Rule 23 Class;
- C. A finding that Defendants have violated the KWHA;
- D. A finding that Defendants’ KWHA violations are willful and not in good faith;
- E. A judgment against Defendants and in favor of Plaintiff and all similarly situated

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employees for compensation for all unpaid and underpaid wages that Defendants have failed and refused to pay in violation of the KWHHA;

F. Prejudgment and post-judgment interest to the fullest extent permitted under the law;

G. Liquidated damages to the fullest extent permitted under the KWHHA;

H. Litigation costs, expenses, and Plaintiff's attorneys' fees to the fullest extent permitted under the KWHHA and the Kentucky Rules of Civil Procedure; and,

I. Such other and further relief as this Court deems just and proper in equity and under the law.

VII. JURY DEMAND

Plaintiff demands a jury as to all claims so triable.

Date: May 23, 2023

Respectfully submitted,

/s/ Jerome P. Prather
JEROME P. PRATHER (KBA #91397)
J. CONNER NICELY (KBA #99596)
Garmer & Prather, PLLC
141 North Broadway
Lexington, KY 40507
Telephone: (859) 254-9351
Facsimile: (859) 233-9769

DAVID W. GARRISON (KY Bar No. 98258)
JOSHUA A. FRANK (TN Bar No. 33294) *
BARRETT JOHNSTON MARTIN & GARRISON, LLC
Philips Plaza
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: (615) 244-2202
Facsimile: (615) 252-3798
dgarrison@barrettjohnston.com
jfrank@barrettjohnston.com

* *Pro Hac Vice* to be applied for

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GARETH BENJAMIN, On)
Behalf of Himself and)
All Others Similarly)
Situated,)
) CLASS AND COLLECTIVE ACTION
Plaintiff,)
) CASE NO. 1:22-CV-00166-TSB
vs.)
) JUDGE TIMOTHY S. BLACK
)
DJGN LLC d/b/a TONY'S) JURY DEMAND
STEAKS & SEAFOOD,)
)
Defendant.)

Transcript of Recording

Transcribed by: Emily R. Wyer, Public Notary
BERES & ASSOCIATES
Licensed Stenographic Court Reporters
Post Office Box 190461
Nashville, Tennessee 37219-0461
(615)742-2550

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GARETH BENJAMIN, On)	
Behalf of Himself and)	
All Others Similarly)	
Situated,)	
)	CLASS AND COLLECTIVE ACTION
Plaintiff,)	
)	CASE NO. 1:22-CV-00166-TSB
vs.)	
)	JUDGE TIMOTHY S. BLACK
)	
DJGN LLC d/b/a TONY'S)	JURY DEMAND
STEAKS & SEAFOOD,)	
)	
Defendant.)	

Transcript of Recording

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BERES & ASSOCIATES
Licensed Stenographic Court Reporters
Post Office Box 190461
Nashville, Tennessee 37219-0461
(615) 742-2550

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1 MALE SPEAKER 1: Listen, I don't know if
2 anybody here has heard. If you haven't, you will
3 find out. If you have, then I'll just expand on it.

4 The restaurant in Kentucky -- okay? --
5 has just been hit with a class action lawsuit.

6 Not what you guys are thinking about or
7 is in your heads and so on. But allow me a few
8 minutes to just explain, okay?

9 In Kentucky, unlike Indiana and Ohio --
10 okay? -- the laws regarding sharing a tip -- okay?
11 -- the law regarding sharing a tip is -- was
12 written back in 1996 without the consideration of
13 fine dining restaurants and how they do things,
14 okay?

15 It was, basically, written in Kentucky
16 that, basically, says owners are not allowed to
17 mandate the distribution of tips, okay?

18 The word "mandate" is the word that,
19 basically, these trolling attorneys, not even from
20 Kentucky, from Nashville, Tennessee -- okay? -- are
21 using in order to file that class action against
22 us.

23 Eddie Merlot's was part of that class
24 action as well based on -- and Eddie Merlot's had
25 their employees basically sign a piece of paper

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1 every time they were hired: Please understand that
2 sharing of tips is completely voluntary.

3 They checked it, they signed it, and
4 Eddie Merlot's still got sued or still got --

5 MALE SPEAKER 2: Pulled in.

6 MALE SPEAKER 1: -- pulled in, okay?
7 Unfortunately, what happens when this happens with
8 these ambulance chasers and things like that --
9 that's what I call them -- okay? -- is the only
10 people that lose are the people that are going to
11 sign onto the lawsuit. They're not going to get
12 anything. But the attorneys -- okay? -- are going
13 to get something; all right? If we settle. That's
14 if we settle, okay?

15 (Cell phone interruption.)

16 The -- because on the cash-out sheet --
17 okay? -- we had the word mandatory on it -- okay? --
18 that's what they're focusing on, okay? And they
19 cannot -- they cannot -- okay? -- they cannot
20 distinguish between -- okay? -- us making sure that
21 cash tips -- okay? -- because it's your
22 responsibility to report your tips, okay? So we
23 thought we were doing something okay by -- because
24 we have to fill out the paperwork for your payroll
25 for you; right? But that's -- I guess we're not,

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1 okay?

2 So servers are jumping on this, et cetera,
3 et cetera. Basically, the other thing that the law
4 says is that because -- the other thing that the law
5 says is, But servers can enter into an agreement
6 amongst themselves as far as tip sharing is
7 concerned, okay?

8 Well, then how is the employer supposed to
9 correct the situation if a busboy sees you making
10 \$500 on one table, and throughout the whole night
11 you're only tipping him 50 bucks, right? So if an
12 SA complains that the server is not tipping out, we
13 can't do anything about it.

14 So me being Italian -- okay? -- having
15 uzis at my side, fucking shotguns in my trunk, and
16 everything else, I asked a fucking question. I
17 said, Who's the server? All the attorneys could not
18 answer that fucking question. I go, You have an SA
19 that brings waters, bread, buses, and everything
20 else. You have a service bartender who makes the
21 drinks, et cetera, cashes out, et cetera, et cetera.
22 You have a server that most of them, all they do is
23 take a fucking order. And then you have a food
24 runner if the server is busy at another table who
25 can actually put the food down because we keep a

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1 system. Who's the server? They can't answer that.
2 So I said, Isn't the service a collective thing?

3 Yeah. We understand that, but we don't
4 know if a judge will. So, again, going through --
5 (Unintelligible.)

6 -- okay? But I'm fighting it, okay.
7 Because that's just who I am, okay? I just -- I
8 don't care what it fucking costs me unless all my
9 attorneys tell me, you know, settle it. I'm
10 fighting it.

11 And the reason I'm fighting it is for this
12 reason and this reason only: In Lexington, you have
13 the Jeff Ruby's restaurant and you have Merlot's.
14 Jeff Ruby's --

15 (Unintelligible.)

16 -- Merlot's is the --

17 (Unintelligible.)

18 -- in Lexington. You know what they are
19 doing now? They are collecting your fucking tips
20 every single night -- okay? -- and writing you a
21 check two weeks later taking out your taxes and,
22 basically, paying you on an hourly. I don't want to
23 fucking do that. I want you to make the money that
24 you make. I want you to take it home. I want you
25 to spend it the way you want to fucking spend it.

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1 And I don't give a shit because I don't want to be
2 your payroll company. Does that make sense? That's
3 the main reason why I'm fighting, okay?

4 And I think it's a good fight -- okay? --
5 and I promise that as I go along, I will update
6 everybody during pre-meals as to how this thing is
7 going. But I want everybody here to know the
8 company A, is very strong. B, I'm very fucking
9 connected -- okay? -- I've got great people behind
10 me, okay? And C -- okay? -- the worst thing that
11 can happen to our company -- okay? -- is that all of
12 a sudden because these people are suing, which
13 happened at Eddie Merlot's, they get audited.

14 And trust me, I've gone through the
15 payroll records of some of the names on that list.
16 One person claimed \$88,000. No -- one person made
17 \$88,000. That's what he said he made. What he
18 claimed is 30. Imagine the IRS getting a fucking
19 hold of that. This guy will never make up -- will
20 never make up payments back to the IRS, will
21 probably spend time in jail. That's just on one
22 year. They go back five. Everybody understand?

23 Now, I don't mean to say this as a
24 threatening aspect of it -- okay? -- you cannot tell
25 me -- okay? -- that this guy needs the couple

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1 thousand dollars he's going to get from this lawsuit
2 if we settle. It might not get done because me.
3 I'm just me, okay?

4 So and then what it does -- the other
5 thing that it does is this forces restaurants like
6 us, for example, Brandon you had a good night last
7 night and waited on three tables, but you fucked
8 over a busboy and no busboy wants to work with you.
9 The bartender doesn't want to pour your drinks --
10 all right? -- and the food runner doesn't want to
11 run your food. I've got to go to Brandon and say,
12 Listen, you're waiting on a two-top tonight. That's
13 it.

14 It forces our industry, fine dining, not
15 to be able to work collectively anymore. Does that
16 makes sense?

17 Because in Lexington -- okay? -- if you
18 guys have a problem amongst yourselves, I can't get
19 involved. That's how the law was written. That's
20 why the question, Somebody tell me who the server is
21 and nobody's able to answer, okay?

22 So I don't want to collect your tips. I
23 don't want to pay you every two weeks. I don't want
24 to do any of that shit.

25 I had the meeting with Cincinnati on

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1 Friday. That's why I'm talking to you guys today.
2 I've been telling them the exact same thing. I
3 don't want to do any of that. I don't want to get
4 into your pocket -- okay? -- and so on. In
5 Lexington, it's -- it would save our ass, but if I
6 do it in Lexington, guess what? I've got to do it
7 everywhere else.

8 The other reason I'm fighting it is, we've
9 got another restaurant coming in Kentucky. I just
10 told them, I said, If shit doesn't change, I don't
11 know if I want to work in this state because it's
12 fucking stupid for me -- and I don't want to go
13 there collecting, you know -- I don't want you in my
14 pocket. I don't want to be in yours. It's that
15 freaking simple. It's just that simple, okay?

16 So what are we going to do? My fight is
17 to keep the system that we have in place, and I hope
18 everybody understands that. I think everybody likes
19 that system, okay? I'm not going to ask for a vote
20 or anything else, but I think everybody is agreeable
21 to the fact that, Hey, I'm going to take my own
22 money home every single night -- okay? -- and so on.

23 But here's what we found out through this
24 process -- okay? -- because you see when somebody
25 asked me to dig a grave once, I'm the kind of guy

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1 that went eight feet rather than six feet.

2 Well, why did you go eight feet?

3 Well, what if a big fucking murmur comes
4 around and it's only at six feet? The casket's
5 going to go up, so I went eight feet.

6 But it costs two more feet of rope and so
7 on and so forth. Okay?

8 I do things that way. I dig in, I dig in,
9 I dig in, I dig in. And what we found out in Ohio
10 and Indiana -- okay? -- and I'm going to fight it in
11 Kentucky, not in the next month or -- but I'm going
12 to fight it -- okay? -- is the fact that for the
13 past 12 years in Cincinnati and the past 4 years
14 here come September that we as a company were able
15 to collect the credit card fee portion that --
16 pertaining to your tips. In other words -- and if
17 you need me to repeat it, I'll repeat it -- you have
18 a \$200 check you present to the guest, okay? The
19 guest gives you a credit card, okay? You take it
20 back -- you take the thing back, puts a \$100 tip on
21 it, okay? So now the check is 300. You go in and
22 close it out. On that \$300, we pay anywhere from
23 three and a half to four and a half percent of the
24 fee. Everybody understand that?

25 MALE SPEAKER 2: Processing fee.

1 MALE SPEAKER 1: Processing fee, okay? We
2 went back months -- okay? -- and what we've been
3 paying -- and we, basically, averaged it out to
4 where it's anywhere from about 3.75 to about 4.25 of
5 the processing fee that we ran.

6 So I said to myself, We'll have to recoup
7 some of this -- okay? -- and I'm not going to go
8 back four years or twelve years. We're going to
9 start it tonight -- okay? -- but then you are also
10 getting a raise at the same time. So hear me
11 clearly, okay? I don't want to take money away from
12 you. You understand what I mean? I don't need that
13 3 percent from you. Does that make sense? We've
14 been paying it all along -- okay? -- et cetera, et
15 cetera. But we are going to start taking it out
16 effective tonight, and you will no longer be tipping
17 out the managers.

18 So you save the 2 percent on the credit
19 cards, and you save the 5 percent on all your cash.
20 That's your raise, okay? That's one way for me to
21 fight it. Everybody understand that? Okay?

22 Because now moving forward -- okay? --
23 when you have restaurants in different states and so
24 on and so forth and every state is different --
25 okay? -- so the rule in Kentucky -- okay? --

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1 basically is this: Well, we don't know if employers
2 can do that. We understand that Indiana, Ohio,
3 Georgia, North Carolina, Tennessee, everybody else
4 can do that, but we're the only ones that, no, we'll
5 wait and see until somebody brings a court case.

6 It's fucked up. I would not -- no wonder
7 there's a whole bunch of inbreds going on in the
8 western side of that state.

9 Sorry. Didn't mean to get -- but that's
10 what -- that's how messed -- that's how messed up
11 they are, okay? So on tonight's sheet, you will see
12 that the managers' tips -- okay? -- so I have to
13 talk to them -- okay? -- because they're obviously
14 losing, you know, compensation and so on. So we'll
15 have to talk. And with any of you managers that are
16 coming, it won't be -- it won't be any kind of an
17 issue, okay? But again, it's that collective thing
18 -- okay? -- because when I started this, I wanted
19 everybody to be part of a team that makes us
20 successful. And how many managers have you guys
21 worked for that don't give a shit? That don't get
22 you out of -- that don't get you out of the weeds.
23 You know what I mean? That don't guide you. That
24 don't say, Hey, you know, that -- that guy needs a
25 thing and so on and so forth. You understand what I

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1 mean?

2 So I'll take that but I'm going to -- I'll
3 take that hit, but I have to recoup some of that.
4 And that, basically -- and trust me the -- the 3
5 percent -- okay? -- it's only on your credit cards.
6 Everybody understand that? Okay? So if you have
7 \$500 in credit card charges -- okay? -- and you have
8 \$400 in cash, you can just tell the cash to go away.
9 You understand what I mean? If your charges on your
10 credit cards -- okay? -- are \$200 -- right -- it's
11 six dollars -- okay? -- to get -- to get -- to get
12 that back. And I think everybody should be okay
13 with that because now you are getting 2 percent more
14 on your credit cards and you get to keep all the
15 cash. You get to keep at least 5 percent of the
16 cash, okay?

17 So -- and -- and I guess the main reason
18 why I'm doing this and I do it for all three
19 companies -- unfortunately, I can't do it in
20 Kentucky until I get some more clarity, you know,
21 from -- okay? -- but the main reason this came about
22 is because I like to keep things the same throughout
23 the whole company. The only thing that's different
24 is the way the restaurants look -- okay? -- and so
25 on. Blending into their city, et cetera, et cetera.

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1 But I'm doing another restaurant in Kentucky in
2 about four or five months, okay? I need to jump on
3 this like white on rice and get my attorneys --
4 getting them involved and say, you know, this is --
5 this is what's happening. What are we going to do,
6 you know?

7 So that's all I have for you. Anybody
8 have any questions? Yes?

9 FEMALE SPEAKER 1: Not a question, but --

10 MALE SPEAKER 1: That does not affect
11 banquets.

12 FEMALE SPEAKER 1: Okay. Well --

13 MALE SPEAKER 1: So if you happen to work
14 a banquet -- okay? -- the reason that doesn't affect
15 banquets is because if you happen to work a banquet,
16 we charge a 20 percent service charge.

17 And get this. This is the other thing
18 that we found out, okay. In Kentucky, we can do it
19 in all three states, if I -- rather than changing
20 one word on your cash-out slip, the service charge
21 -- okay? -- I, as the employer, am legally bound to
22 collect that money in Kentucky. So that tip that
23 the guest leaves you can literally come to me, and
24 then I can distribute it to everybody the way I
25 wanted to. It's fucked up just by changing gratuity

1 to service charge. It's fucked up.

2 Do I want to do that? No. I can't wait
3 to meet with the staff in Lexington on Saturday,
4 especially when I say that to them. I go in -- but
5 this is what these restaurants are doing. You go to
6 a restaurant that's collecting the tips, you'll see
7 a thing called service charge -- okay? -- and that's
8 what allows them to collect all the tips.

9 MALE SPEAKER 3: But then wouldn't you pay
10 tax on that though? Like the owner, the company?

11 MALE SPEAKER 1: No, we're distributing --
12 we're paying tax on the portion that we're all
13 distributing back. We pay for it now. The tips
14 that you claim, we pay tax on.

15 MALE SPEAKER 3: Payroll taxes.

16 MALE SPEAKER 1: The payroll taxes.

17 MALE SPEAKER 3: Okay.

18 MALE SPEAKER 1: Does that make sense?

19 MALE SPEAKER 3: Uh-huh.

20 MALE SPEAKER 1: So when we would collect
21 it -- okay? -- when we would collect it and
22 distribute it to all of you based on an hourly wage,
23 taxes would come out of your part and we would have
24 to make up the FICA and all that other bullshit that
25 the government takes from us. And I don't want to

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1 do that. I don't want to do that, okay? I don't
2 want to go anywhere near that. I want business as
3 freaking usual. You keep your own freaking money.
4 I keep whatever money I want. Don't bother me with
5 my money. I'm not going to bother you with your
6 money. It's as simple as that. It's as simple as
7 that, and that's why I'm going to fight.

8 So I'm having this meeting now, okay?
9 Just A, it gives me time to keep you updated as we
10 go along, okay? Usually these kind of things take
11 months to start really developing, you know, gaining
12 steam. From the perspective of putting together a
13 plan -- a plan of action -- okay? -- we're at the
14 beginning stages right now so I've probably said
15 more than I should have, but I don't give a shit and
16 so on. Okay? So but I expect -- and I'm going to
17 meet with the managers -- I expect them to support
18 you the same way they've supported you in the past.
19 Nothing changes, okay? Nothing changes.

20 FEMALE SPEAKER 1: This isn't anything
21 new. Other restaurants do this. I've worked for
22 places that do it. The difference is it's on the
23 checkout and then -- you know what I mean? Is there
24 some way it can just be on our close out thing where
25 it's automatically pulled just like it tracks the

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1 charges? You see what I mean? And then you don't
2 have to write it down, change it on your report.
3 It's right on your check out, and it's based on the
4 tip or the charge card tips and it's anywhere
5 from --

6 (Overlapping speech.)

7 FEMALE SPEAKER 1: On your whole -- no,
8 when you're running checkouts -- put everything on,
9 yeah --

10 MALE SPEAKER 3: You mean to have Aloha on
11 the end of the checkout tell you what the 3 percent
12 is?

13 FEMALE SPEAKER 1: No. It's a line, and
14 y'all just keep it --

15 MALE SPEAKER 1: We have it.

16 FEMALE SPEAKER 1: -- six bucks, five
17 bucks, whatever. Okay.

18 MALE SPEAKER 1: We changed the sheet.

19 FEMALE SPEAKER 1: Not the sheet -- the
20 computer --

21 MALE SPEAKER 3: You're talking about when
22 we get our checkout, and it prints off on the
23 computer?

24 FEMALE SPEAKER 1: -- yes, you know how it
25 lists all of our charge tips --



1 MALE SPEAKER 3: Yeah, yeah.
2 FEMALE SPEAKER 1: -- at the top, there
3 would be a fee. A processing fee. That's where I
4 ran across it before. Hyde Park does it.
5 MALE SPEAKER 1: Yeah. But I'm not -- I'm
6 not going to charge the processing fee. I can't do
7 -- we can't do -- I don't know how they do it, okay?
8 I can't charge the processing fee that the credit
9 card companies are charging me. And the reason it
10 goes between three and a half to four and a half
11 percent or some --
12 (Overlapping speech.)
13 You've got different cards. You've got
14 European cards. You've got Japanese cards. You've
15 got fucking Zimbabwe cards.
16 (Overlapping speech.)
17 All that kind of stuff.
18 FEMALE SPEAKER 1: It's individualized.
19 Yeah.
20 MALE SPEAKER 1: You understand what I
21 mean? What I want to do is just 3 percent.
22 FEMALE SPEAKER 1: Okay. I see what
23 you're saying.
24 MALE SPEAKER 1: So take whatever your
25 credit card charges is times 3 percent. That's what

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1 you take off your tips.
2 FEMALE SPEAKER 1: Okay.
3 MALE SPEAKER 1: You put it on the sheet,
4 you give it to the bartender, same as before.
5 Nothing changes.
6 FEMALE SPEAKER 1: Okay.
7 MALE SPEAKER 1: Does that make sense?
8 FEMALE SPEAKER 1: Yeah, it does. Thank
9 you.
10 MALE SPEAKER 3: So the 3 percent is
11 replacing the 5 percent, so it's a 2 percent
12 increase?
13 MALE SPEAKER 1: So you get a 2 percent
14 increase on all your credit card tips, and you get a
15 5 percent increase on all your cash tips, okay? So
16 that's 7 percent; all right?
17 So let's say -- let's put some numbers to
18 it because that's the way I am. I like to dig.
19 What does that -- what does that mean? You've got
20 -- I don't know \$100,000. Let's say \$50,000 in
21 charge tips, right? You were tipping out -- you
22 were tipping out 5 percent, okay? So what is it?
23 FEMALE SPEAKER 1: 2500.
24 MALE SPEAKER 1: \$2500 -- okay? -- on
25 50,000. Okay? Now you're tipping out 1500. So

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1 that's a thousand-dollar raise there. You've got
2 \$20,000 in cash tips, right? You were tipping out
3 five times two, a thousand, right? Now you got
4 that.

5 MALE SPEAKER 4: Yeah, another thing from
6 the banquet just to make it be clear -- I know it is
7 straight I think, but sometimes I work in banquet as
8 well. It said, like, you have to tip the SA 10
9 percent, but we tip them 20 percent. The other 10
10 we give to him. So I don't know about that, like
11 why it said 10. It should be 20, no?

12 MALE SPEAKER 1: I don't know what --

13 MALE SPEAKER 4: I'm just saying because
14 it happens from, you know, misunderstanding with
15 somebody here who don't get it, and they try to
16 explain that she said 10 percent. We have to claim
17 10 percent, and the other 10, it comes from me. I
18 give it to you cash from my money. You know what
19 I'm saying?

20 MALE SPEAKER 1: Yeah. I --

21 MALE SPEAKER 4: Yeah.

22 MALE SPEAKER 1: Yeah. I don't know about
23 you guys do in banquets, but the reason this doesn't
24 apply to the banquets -- it's going to apply to the
25 bar staff, so we'll change it there. The reason it

1 doesn't apply to banquets is because there is a
2 service charge -- okay? -- and the servers already
3 keep 15 percent of that, okay. While the other 5
4 percent is distributed another way, okay? So I'm
5 not going to do that. You guys -- it just doesn't
6 apply to banquets, okay. Any other questions?

7 MALE SPEAKER 3: Is this affecting
8 Lexington's pay now? Their employees?

9 MALE SPEAKER 1: We -- I haven't changed
10 anything there.

11 MALE SPEAKER 3: Okay.

12 MALE SPEAKER 1: You know, the only thing
13 I've changed was the sheet and so on. And they have
14 to check a box now that says, Do you understand that
15 this is a voluntary tip sharing thing?

16 But tell me one fine dining restaurant
17 where you don't have a group of people -- tell me
18 one restaurant you worked at where you didn't have
19 to tip out all of the people that assisted you.

20 MALE SPEAKER 3: Never.

21 FEMALE SPEAKER 1: No, never.

22 MALE SPEAKER 1: Not at this level. But
23 that's what the law is. When I asked a question --

24 MALE SPEAKER 3: Even at Rock Bottom we
25 tipped out the bartenders, even --

1 MALE SPEAKER 1: Bill, when I asked a
2 fucking question to my attorneys based on what we do
3 in our restaurant, who's the server?

4 FEMALE SPEAKER 1: All of us.

5 MALE SPEAKER 1: And a fucking light bulb
6 went on top of their head.

7 You're right. Who is the server?

8 So you see? That's why I fight. That's
9 why I like to fight. I don't like to physically
10 fight.

11 (Overlapping speech.)

12 I just like to verbally fight.

13 MALE SPEAKER 3: Do your lawyers like
14 that?

15 MALE SPEAKER 5: Do you know the people in
16 the class action? Do you know the people in the
17 class action?

18 MALE SPEAKER 1: I don't know. It doesn't
19 matter. It doesn't matter because the way -- the
20 way it works, there's two types. So we don't know
21 which type they're going after, okay? So we -- like
22 I said, it's just the beginning. We don't -- I
23 don't have all the information, but I can't sit
24 still. I need to get in front of it -- okay? -- and
25 just move forward, okay? Move forward, okay?

1 And, basically, the change -- okay? -- is
2 to basically avoid any other claim.
3 (Unintelligible.)
4 Does that make sense? Okay? Any other
5 shit that can come down the pipe for --
6 (Unintelligible.)
7 -- okay? Any other questions?
8 I've got to go over there. You look
9 worried.
10 FEMALE SPEAKER 1: No. I'm just
11 listening.
12 (Overlapping speech.)
13 MALE SPEAKER 1: So thank you very much
14 for coming in. I know that some of you are off
15 today -- okay? -- and I appreciate it.
16 Ron will have the new sheet for you that's
17 basically replacing everything. So -- and at the
18 same time, I've got to say I just read -- I just
19 read the note that's saying I'm hopeful -- okay? --
20 that we may continue as I want to continue, okay?
21 That's really the only thing that I'm fighting for.
22 MALE SPEAKER 3: What does the action suit
23 suggest that we do instead of doing what we're
24 doing?
25 MALE SPEAKER 1: And the other thing,

1 we're doing everything legal.

2 (Overlapping speech.)

3 MALE SPEAKER 3: Okay. That makes sense.

4 MALE SPEAKER 1: And in Ohio we're doing
5 everything legal. We're doing everything legal in
6 Kentucky.

7 MALE SPEAKER 3: Yeah.

8 MALE SPEAKER 1: There's no server -- I
9 told my attorneys, I go, if you were to depose all
10 these servers that are on this suit and you were to
11 ask them a question, Have you worked at other
12 restaurants?

13 Yes.

14 Have you tipped out your -- and they'll
15 say yes.

16 MALE SPEAKER 3: Yeah, yeah.

17 MALE SPEAKER 1: So what the fuck is the
18 suit about?

19 MALE SPEAKER 4: Uh-huh. They want to
20 control probably -- that's what it is. They want to
21 control the amount of cash flow like they want to
22 control it.

23 MALE SPEAKER 1: It's just -- the way the
24 law is written is just stupid. So -- but,
25 unfortunately, there's nothing we can do about it

1 now, you know, and --

2 MALE SPEAKER 5: Finally can offer some --
3 you know, we're going to sue you because you're
4 doing it this way, we should do it this way. And
5 then say you should do it --

6 MALE SPEAKER 1: Well, there's two
7 things-- there's only two things that are going to
8 come out of this, okay. The attorneys suing us are
9 going to -- are going to have a good field day if we
10 settle and everything else, okay? And we have to
11 weigh -- we have to weigh those options, okay?

12 And definitely the other thing that's
13 coming out of it is that we are probably going to be
14 audited.

15 FEMALE SPEAKER 1: Yeah, for sure.

16 MALE SPEAKER 1: Because imagine -- okay?
17 -- now according to one -- well, the IRS doesn't
18 have time to -- the IRS when they see fucking
19 blood, they don't just want the blood. They want
20 the whole freaking animal. You understand what I
21 mean?

22 Will it hurt us if you guys underclaimed
23 your tips and so on and so forth? Yes. Just a
24 portion of the fight. It's not that much money for
25 us. But for everybody else -- okay? -- if you go

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1 back five years, and you leave an underclaimed --
2 sorry -- underclaimed 20,000, 30,000, 40 -- you're
3 never going to make that up. You're always going to
4 owe the IRS. And then you settle. Okay, I've got a
5 \$70,000 bill going to the IRS. You think they're
6 going to let you settle for 5,000? No. So how are
7 we going to come up with 30, 35, \$40,000? I like to
8 fight. Verbally. Not physically. Does that make
9 sense?

10 So it's going to cost -- I'm hoping that
11 it doesn't. We keep very good records as far as all
12 kinds of overtime and so on and so forth, but that's
13 what the IRS will go to us about. Does that make
14 sense? Okay. Did we pay overtime? You know, did
15 we do this? Did we do that? All that kind of
16 stuff. All right. And once that happens to us --
17 okay? --

18 FEMALE SPEAKER 1: Then it's the
19 individuals.

20 MALE SPEAKER 1: -- then it just trickles
21 because the only way they can find that out is -- is
22 look at each individual's records. I want to keep
23 that away from us, as much as I can. Okay?

24 But just remember, I'm the one that caused
25 it -- okay? -- you know, if it does come down the

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pipeline. All right. Anybody else? All right.
Congratulations on your raise.

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

I, Emily R. Wyer, Notary Public, with
offices in Franklin, Tennessee, hereby certify that
I transcribed the foregoing recording by machine
shorthand to the best of my skills and abilities.
I am not related to any of the parties named
herein, and have no interest, financial or
otherwise, in the outcome of the proceedings.

Emily R. Wyer
Notary Public State of Tennessee
My Notary Public Commission Expires: 7/16/25

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