

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CHRISTOPHER ELMQUIST, on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
FLO-PIE, INC. d/b/a)
MELLOW MUSHROOM;)
D-SHROOM, INC. d/b/a)
MELLOW MUSHROOM;)
JOHN DOE, individually; and)
MATT DUKE, individually,)
)
Defendants.)
)
_____)

C/A: 4:14-CV-3548-RBH

**RULE 16(a)(1)
ORDER**

Plaintiff, Christopher Elmquist (“Elmquist”), on behalf of himself and all others similarly situated, and all of the filed Opt-Ins to date (all jointly “Plaintiffs”) and Defendants Flo-Pie, Inc. d/b/a Mellow Mushroom (“Flo-Pie”); D-Shroom, Inc. d/b/a Mellow Mushroom (“D-Shroom”) (collectively “Mellow Mushroom”); John Doe (“Doe”); and Matt Duke (“Duke”) (Mellow Mushroom; Doe; and Duke collectively “Defendants”) have jointly moved for an Order, pursuant to FRCP 16(a)(1), to stipulate to certain issues in an effort to streamline this action. Plaintiffs and Defendants have negotiated a compromise in which each is giving up certain rights, but each believes it is best for them in proceeding with this action. Thus,

IT IS ORDERED:

1. Plaintiffs will dismiss, with prejudice, their Third Cause of Action alleging violation of the South Carolina Payment of Wages Act.
2. In exchange for this dismissal, Defendants consent that Plaintiffs have, under their

current first cause of action alleging violations of the FLSA, as an available remedy to them, the ability to recover all tips he or she contributed to the Tip Pool. This remedy is outlined in Fact Sheet #15 from the Wage & Hour Division of the U.S. Department of Labor. This remedy is in addition to all other remedies available to Plaintiffs under the FLSA.

3. For the damages recovered for the tips contributed to the Tip Pool in section 2 above, and only for these damages, Plaintiffs will allow the Court to reduce these damages to a maximum of two (2) years. For all other damages, Plaintiffs retain the right to seek damages, if proven according to the FLSA, for three (3) years.

4. Defendants do not concede that Plaintiffs are entitled to Liquidated Damages; however, Plaintiffs expressly retain the right to seek Liquidated Damages for all damages, including the tips contributed to the Tip Pool.

5. Neither this motion nor any of its content will be admissible to the jury.

IT IS SO ORDERED.

FLORENCE, SC

March 23, 2015

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge