

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

**ORDER  
GRANTING PLAINTIFFS’  
MOTION FOR CONDITIONAL  
CLASS CERTIFICATION  
AND  
TO AUTHORIZE NOTICE TO  
PUTATIVE CLASS MEMBERS**

This matter comes before this Court on Plaintiffs’ Consent Motion for Conditional Class Certification and to Authorize Notice to Putative Class Members (“Consent Motion”), pursuant to section 16(b) of the Fair Labor Standards Act 29 U.S.C § 201 et. seq. (“FLSA”). The Court having reviewed the record, **IT IS ORDERED:**

Plaintiffs’ Consent Motion is GRANTED and this action is CONDITIONALLY CERTIFIED, pursuant to 29 U.S.C. § 216(b), as a class of all current and former employees of Mellow Mushroom at anytime from September 4, 2011 to present who were paid a direct rate less than the statutory minimum wage of seven and 25/100 dollars (\$7.25) per hour and who either contributed money to a tip pool or received money from a tip pool (“Putative Class”). The form “Notice of Collective (Class) Action Lawsuit” (“Notice”) and “Consent to Join Lawsuit” (“Consent Form”) for individuals in Putative Class shall be the four-page form **Exh. 1**. A text message, sent via cell phone, if necessary, shall be the form **Exh. 2**.

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Defendants shall provide their counsel, who will forward to the Third-Party Administrator, Simpluris, Inc. (“TPA”),<sup>1</sup> within five (5) business days of the filing of this Order, in electronic format if available, for all members of the Putative Class,<sup>2</sup> the following information:

1. Names;
2. All known mailing addresses;
3. All known telephone numbers;<sup>3</sup>
4. Telephone number listed in employee file; and
5. Last known email address.

The TPA shall complete the following:

1. Within ten (10) business days of this Order, mail, via first class U.S. mail, a copy of the Notice and Consent, **Exh. 1**, to all members of the Putative Class using all known mailing addresses. The envelope shall have this information only for the Return Address:

Class Action Lawsuit  
Elmqvist v Mellow Mushroom  
Important Notice of Your Legal Rights  
PLEASE OPEN & READ  
P.O. Box 26170  
Santa Ana, CA 92799

TPA shall enclose, with the Notice, a self-addressed, postage-paid envelope using the name and mailing address of Plaintiffs’ counsel. **Exh. 1, No. 6**, for both the address and return address. Within seven (7) business days of this Order, TPA shall email counsel for

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<sup>1</sup> Defendants shall pay all fees and costs of the TPA.

<sup>2</sup> Defendants need not provide this information for any individual who has already filed an Opt-In in this action.

<sup>3</sup> This includes number(s) in employee file and all numbers that have been gathered by Defendants for scheduling purposes or any other reasons during or after employment.

the Parties an example of both envelopes – the one containing the Notice and the return envelope. Counsel for the Parties are to ensure that these envelopes are correct.

2. Within ten (10) business days of this Order, email, to all members of the Putative Class with an email address, a copy of the Notice and Consent, **Exh. 1**;

3. If the TPA receives mail, from Number 1 above, returned in any form as undeliverable to the Putative Class member, then the TPA shall, within twenty-four (24) hours, send the Cell Phone Text Message, **Exh. 2**, to all telephone numbers of the Putative Class member to whom the undeliverable mail was addressed.<sup>4</sup>

4. If the TPA receives any contact from a member of the Putative Class requesting a copy of the notice, the TPA shall use its best efforts to send **Exh. 1**, via both email and U.S. mail to the addresses given to the TPA by the Putative Class member. If the Putative Class member asks any questions about the lawsuit or his or her legal rights, the TPA shall give the Putative Class member the Plaintiffs' attorney's name and full contact information, **Exh. 1, No. 6**.

5. Within sixty-five (65) days of the filing of the Order, TPA shall send the identical report, via email, to counsel for the Parties, showing all activity of TPA in this action. This shall include, but not be limited to, a list of all Putative Class members and whether TPA mailed, emailed, and sent a text message, along with indication of which, if any, of these methods were undeliverable to each Putative Class member. It also should include a log of all telephone calls received from any Putative Class member, along with

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<sup>4</sup> Plaintiffs contend that there is a high probability that U.S. mail will never be returned as undeliverable, but also never was received by the Putative Class member. If, after the forty-five (45) day notice period has expired, Plaintiffs can prove this has occurred, this Court will consider what corrective action, if any, is needed.

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what subsequent action, if any, TPA took.

At the same time and in the same manners of counsel for Defendants providing the information to TPA, the same shall be provided to the attorney of record for Plaintiffs only. Counsel for Plaintiffs have agreed, (1) that Plaintiffs' counsel will not share with or provide to any individual Plaintiffs, whether they are the named plaintiff or an opt-in plaintiff, the provided information and (2) that neither Plaintiffs nor their counsel, employees of counsel and family members of counsel, nor anyone acting on their behalf will use this information to initiate any contact with any of the Putative Members until the forty-five (45) day notice period has concluded.

**IT IS SO ORDERED.**

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

FLORENCE, SC

May 7, 2015