

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

James Leslie and Jason Klumb, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

Cunningham Restaurant Group LLC, an
Indiana corporation,

Defendant.

CASE NO. 1:19-cv-221

JUDGE TIMOTHY S. BLACK

ORDER

**ORDER AND STIPULATION REGARDING CONDITIONAL CERTIFICATION OF
COLLECTIVE ACTION AND ISSUANCE OF COURT AUTHORIZED NOTICE**

WHEREAS, on March 26, 2019, Plaintiff James Leslie commenced a putative collective action case under the Fair Labor Standards Act (FLSA);

WHEREAS, on June 11, 2019, Plaintiffs James Leslie and Jason Klumb (collectively “Plaintiffs”) filed a First Amended Collective Action Complaint amending the putative collective action to include (1) current or former salaried managers (below General Manager) paid by Cunningham Restaurant Group LLC (“CRG”) as overtime exempt (including Assistant Managers, Executive Chefs, and Sous Chefs) (for ease of reference, referred to herein as “RMs”); and (2) current or former sous chefs or equivalent reporting level back of house position, however variously titled;

WHEREAS, the parties have reached agreement regarding the scope of collective action conditional certification and issuance of notice, subject to the Court’s ruling regarding the dissemination of the notice, and seek the Court’s ruling approving issuance of notice and conditional certification;

THE PARTIES HEREBY STIPULATE THAT:

1. This case should be conditionally certified as a collective action for purposes of sending notice of this lawsuit pursuant to 29 U.S.C. § 216(b) to all individuals who meet the following qualifications:

(1) Any current or former salaried manager (below General Manager) paid by Cunningham Restaurant Group (“CRG”) as overtime exempt (including Assistant Managers, Executive Chefs, and Sous Chefs, or other positions variously titled) (for ease of reference, referred to herein as “RMs”) while completing their salaried management training period who was hired or worked during any part of their training period for those positions and was paid by CRG as overtime exempt on a pay date on or after August 7, 2016; and (2) any current or former salary-paid Sous Chef or equivalent reporting level back of house position, however variously titled, who was paid by CRG as overtime exempt on a pay date on or after August 7, 2016.

2. The individuals to whom Notice is sent shall be referred to as the “Collective Action Members.”

3. The parties agree to the Notice and Consent Form appended hereto as Exhibit A.

4. Within ten (10) days of an Order entering or adopting this Stipulation, Defendant will provide Plaintiffs’ counsel with a computer-readable list containing all Collective Action Members’ names, last known mailing addresses, last known personal email addresses, dates in relevant positions, and work locations. Prior to sending the Notice, the third party administrator (“TPA”) (selected and retained by Plaintiffs at their initial expense, without prejudice to seeking reimbursement) shall run the list of Collective Action Members through the U.S. Postal Service’s National Change of Address database (“NCOA”), and perform skip tracing searches using public and proprietary electronic resources which collect data from various sources such as utility records, property tax records, motor vehicle registration records (where allowed) and credit bureaus. Defendant shall deliver to the TPA the full social security numbers and last known telephone numbers for any Collective Action Member within three business days of the TPA providing notice

to the parties that (i) it has been unable to locate a current address for that Collective Action Member using skip-tracing methods or (ii) it has received notification that the Notice documents were undeliverable. The TPA shall promptly perform skip tracing and reissue the Notice documents. The TPA may call any Collective Action Member after their Notice was returned as undeliverable to only confirm their current mailing address.

5. Within twenty (20) days of the Court's approval of the 216(b) Notice and Consent Form, the approved Notice and Consent Form shall be sent to the members of the approved Collective, via First Class Mail (with enclosed self-addressed, stamped return envelope) and email by the TPA. The envelope for mailings shall include the TPA's mailing address, state "Court-Authorized Notice of Rights Included" and the lawsuit's caption and case number. The subject line for email distribution of Notice shall state "Court-Authorized Notice of Rights" and the lawsuit's caption and case number, and the body of the email will mirror the contents of the Notice.

6. The Collective Action Members shall have 60 days from the initial issuance of the Notice to join this action, by submitting their Consent to the TPA for filing in the action. Plaintiffs reserve the right to move the Court for additional time for a Collective Action Member to submit their Consent to the TPA if the mailing to the Collective Action Member was returned as undeliverable.

7. Consent forms shall be submitted to the TPA, which will promptly provide all Consents to Plaintiffs' counsel for filing with the Court. Consent forms may be submitted to the TPA by mail, email, facsimile, or by submission of electronically signed Consent forms directly via an online portal maintained by the TPA on its case-specific notice website.

8. Thirty (30) days after the initial issuance of the Notice to join this action, the TPA will re-send the notice in the same manner as the initial issuance to any Collective Action Member who has not submitted their Consent.

9. The parties' agreement to the scope of a collective action by stipulation does not preclude any modification sought by any party, and Defendant expressly reserves all rights to request decertification and preserves all defenses.

Dated: October 2, 2019
By: s/ Bethany A. Hilbert

Bethany A. Hilbert
C. Andrew Head
Head Law Firm, LLC
4422 N. Ravenswood Ave.
Chicago, IL 60640
Attorneys for Plaintiffs

Dated: October 2, 2019
By: s/ Matthew R. Byrne
Katharine C. Weber
Matthew R. Byrne
JACKSON LEWIS P.C.
PNC Center, 26th Floor
201 E. Fifth Street
Cincinnati, OH 45202

Attorneys for Defendant

SO ORDERED this 3rd day of October, 2019

/s/ Timothy S. Black
Hon. Timothy S. Black

EXHIBIT A

Leslie v. Cunningham Restaurant Group LLC
Case No. 1:19-CV-221 (S.D. Ohio)

COURT-AUTHORIZED NOTICE
(THIS IS NOT AN ADVERTISEMENT FROM A LAWYER)

If you are or were employed at any Cunningham Restaurant Group LLC restaurant working as a salary-paid Assistant Manager, Executive Chef, Chef, or Sous Chef paid by Cunningham Restaurant Group LLC as overtime exempt at any time since August 7, 2016, please read this Notice.

- Cunningham Restaurant Group (“CRG”) employs the following salaried managers (below General Manager) paid by CRG as overtime exempt at its restaurants: Assistant Managers, Executive Chefs, Chefs, and Sous Chefs. For ease of reference, throughout this notice all of these restaurant manager positions will be referred to as “RMs.”

Plaintiffs James Leslie and Jason Klumb are both former employees of CRG. Plaintiff Leslie worked as a salaried Assistant Manager paid by CRG as overtime exempt, including during training to be Assistant Manager. Plaintiff Klumb worked as a salaried Sous Chef paid by CRG as overtime exempt during training and at all times thereafter. In this lawsuit, Plaintiffs Leslie and Klumb claim that during the period the RMs were initially being trained to be RMs, they were misclassified as exempt and therefore should have received overtime compensation for all hours worked over 40 in a week (referred to by Plaintiffs as “Managers in Training,” but regardless of whether they ever had that official job title). In addition, Plaintiffs Leslie and Klumb claim that all Sous Chefs were incorrectly classified as exempt during the entire time RMs they worked and therefore they should have received overtime compensation for all hours worked over 40 in a week during the entire time they worked as Sous Chefs, not limited to their training periods. As a RM, even though you were paid a salary and may have believed salary-paid employees were not entitled to overtime, you may join this case. If you join this lawsuit, and the court determines that the case should proceed as a collective action, and Plaintiffs prevail, you may be entitled to overtime wages and other damages.

- CRG denies that it has done anything wrong and intends to defend itself against this lawsuit. In particular, it maintains that it does not employ any employees with the title “Manager In Training,” rather, it employs various types of managers and provides training to those managers at the beginning of the employment relationship, with the length and level of training depending on experience and the type of management position being held. In addition, it maintains that all RMs were correctly classified as exempt from overtime compensation and were paid lawfully, even during the training period at the beginning of the employment relationship.
- The Court has allowed this Notice to be sent under the Fair Labor Standards Act (“FLSA”) to all persons who are or were employed as Sous Chefs or who worked during training for a RM position at any time from August 7, 2016 to the present.
- Although the Court has authorized this Notice, it has not yet decided whether CRG has complied with federal and state law or whether any RM is entitled to money or other relief.
- Your legal right to participate in the lawsuit is subject to the choice that you must now make.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
JOIN THE CASE	<p>If you would like to participate in this case and share in a monetary recovery, if any, that might come from a judgment or a settlement in this lawsuit, you must fully complete, sign and timely submit a Consent to Join Form no later than [a date 60 days from notice], to [the notice administrator].</p> <p><u>You may sign and submit the Consent to Join Form in the following ways:</u></p> <ol style="list-style-type: none"> (1) You may electronically sign and return the “Consent to Join” form, which can be accessed at [INSERT WEBSITE], and submitted no later than [DATE], or (2) You can complete the form included with this Notice and mail it in the enclosed addressed, postage paid envelope so that it is postmarked no later than [DATE], or (3) You complete and send the enclosed form by fax to [FAX], or email it to [EMAIL] so that the administrator receives it no later than [DATE]. <p>Filing the Consent to Join Form does not guarantee that you will ultimately be a participant in this lawsuit if the Court at a later date determines certain claims are time-barred.</p>
DO NOTHING	<p>By doing nothing, you give up the possibility of a monetary recovery that may come from a trial or settlement of the FLSA claims if those bringing the lawsuit are successful. You would not be bound by any judgment. You will, however, have the right to bring your own claims. If you do not join, the statute of limitations on your claim will continue to run and you may lose some or all of your rights if you do not act.</p>

I. Why Did I Get This Notice and What Is the Lawsuit About?

This Notice was sent to tell you of the existence of the lawsuit and inform you of your rights because, according to CRG’s records, you worked as a Sous Chef or were in training for a RM position during the relevant time period covered by this lawsuit. The choice to join or not to join this lawsuit is yours.

The Lawsuit. James Leslie and Jason Klumb brought a lawsuit entitled *Leslie v. Cunningham Restaurant Group LLC, Case No. 1:19-CV-221 (S.D. Ohio)*. In this lawsuit, Plaintiffs claim that they, and other RMs were misclassified as exempt from overtime during the initial period when they were being trained, and that they should have been paid overtime compensation under federal and state law for all weeks in which they worked more than 40 hours during the initial period they were being trained. Additionally, they claim that Sous Chefs were misclassified as exempt from overtime during the entire

period they worked as Sous Chefs and as a result they should have been paid overtime compensation under federal and state law in all weeks in which they worked more than 40 hours. Specifically, the lawsuit alleges that during the entire time the Sous Chefs were employed, and during the initial training period for all RMs, their primary duties did not involve substantial managerial discretion and did not differ substantially from those performed by hourly associates, including, among others, tasks such as manual labor and food, beverage, and customer service restaurant duties.

CRG denies the claims Plaintiffs are making and asserts that Plaintiffs and the other RMs, including the Sous Chefs were properly classified as exempt from overtime and were paid lawfully during the entire period of their employment.

II. How Do I Join & What Happens If I Do?

Enclosed is a "Consent to Join" form. If you want to participate in this lawsuit, you must read, sign, fill it out and return it. There are several ways to return it:

1. You may electronically sign and submit it directly online at [WEBSITE] by [60 days from date of mailing];
2. You can fax to the below number or email it to the below email address by [60 days from date of mailing]; or
3. You can mail it back in the enclosed addressed prepaid envelope, or in another envelope, so that it is postmarked by [60 days from date of mailing] to the following:

[mailing address]

[fax number]

[email address]

[phone number]

Should you lose or misplace the enclosed Consent to Join form, please contact [NOTICE ADMIN] at 1-XXX-XXX-XXXX. If you have questions, you may contact any of the Plaintiffs' lawyers listed below.

If you submit the enclosed Consent to Join Form by [60 days from mailing] the lawyers listed below will represent you at no out of pocket cost to you and work to obtain any unpaid overtime wages you may be owed. By joining this lawsuit asserting federal and state law claims, you designate the named Plaintiffs as your representatives, and to the fullest extent possible, you designate the named Plaintiffs and their counsel to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Plaintiffs relating to this lawsuit will bind you if you join the lawsuit.

If you submit the enclosed Consent to Join Form, the Court or a jury will determine your rights to any money, if any, and you will be bound by and share in any ruling, settlement or judgment in this lawsuit, whether it is favorable or unfavorable. As part of this process you may be required to participate in discovery by being deposed, answering written questions, and providing any written and electronic documents regarding pay, job duties, and hours of work you may have (if any). Filing the Consent to Join Form does not guarantee that you will ultimately be a participant in this lawsuit or recover any amount if the Court at a later date determines certain claims are time-barred or the case should not proceed as a collective action.

Plaintiffs are represented by:

HEAD LAW FIRM, LLC (lead counsel) 4422 N. Ravenswood Ave. Chicago, IL 60640 Tel: (404) 924-4151 bhilbert@headlawfirm.com www.headlawfirm.com	BRYANT LEGAL, LLC (local counsel) 1550 Old Henderson Road, Suite 126 Columbus, OH 43220 Tel: (614) 704-0546 dbryant@bryantlegalllc.com www.bryantlegalllc.com
--	--

By returning the Consent to Join form, you will join this lawsuit and these attorneys will represent you.

III. Will My Participation Cost Me Anything? How Will the Lawyers Get Paid?

The Plaintiffs' attorneys listed above will pay all the costs associated with this case and will only receive fees and reimbursement of costs if there is a settlement or judgment. If there is no recovery, they will get nothing and you will owe them nothing. Any contingent legal fees will be paid to the attorneys from any funds paid to satisfy a judgment or settlement of the case.

IV. And If I Do Not Join?

If you do not join, you will not be bound by any judgment issued or settlement approved by the Court in this case – whether it is favorable or unfavorable. You will not be entitled to share in the amounts recovered in this lawsuit, if any, but you will have the right to separately bring your own claims. If you do not join, the statute of limitations on your claim will continue to run and you may lose some or all of your rights if you do not act quickly.

V. Will My Participation Affect My Employment?

No. Federal law prohibits an employer from firing or in any way retaliating against you because you have joined this Lawsuit.

VI. How Can I Get More Information?

Additional information can be obtained from the Plaintiffs' attorneys at the above addresses and telephone numbers. You may also learn more about the claims in the Complaint and review relevant documents by contacting [NOTICE ADMIN] at 1-XXX-XXX-XXXX or going to the website: [WEBSITE]. No inquiries concerning this case should be directed to the Court, or to the Clerk of the Court.

The Notice has been authorized by the Court. This Notice is not an expression by the Court of any opinion concerning the alleged claims. This Notice simply informs you of the pendency of this litigation and your rights to join, or not join, the lawsuit.

**CONSENT TO JOIN COLLECTIVE ACTION
UNDER SECTION 16(b) OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 216(b).**

By signing and returning this consent form I consent to:

1. Be a party plaintiff in a lawsuit against Cunningham Restaurant Group (“Defendant”) in order to seek damages for alleged violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b) and, if applicable, under the supplemental state law claims.

2. Designate the Representative Plaintiffs as my agents to make decisions on my behalf concerning this overtime case against Defendant, including conducting this litigation, settlement negotiations, and all other matters pertaining to these claims against Defendant. I understand that if I file this Consent, I will be bound by the decisions made and agreements entered by the Representative Plaintiffs and Class Counsel.

3. I understand that the Representative Plaintiff has entered into a contingency fee agreement with Head Law Firm, LLC (“Class Counsel”), which applies to all plaintiffs who file this consent, and by filing this consent I agree to be bound by such contingency fee agreement. I understand that I may obtain a copy of the contingency fee agreement by requesting it from Class Counsel.

4. *I acknowledge that I will be bound by any judgment or any settlement reached between the Representative Plaintiffs and Defendant.* I understand that I will be entitled to share in any class recovery, but if no monetary judgment or settlement is obtained, I will receive nothing.

Full Legal Name (please PRINT clearly)

Signature

Date

All information you provide below is for use by the lawyers in this case, and will not be filed with the Court

Street Address (with apartment number, if applicable)

City, State, Zip Code

Home Phone Number

Cell Phone Number

Personal Email Address (we will use this as our primary method to contact you)

Emergency Contact Name
(in case we lose contact with you)

Emergency Contact Phone Number

If you have received a paper form of this notice and wish to electronically sign the Opt-In Consent form, please visit **[WEBSITE]** to obtain and electronically sign this form.