

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**NOTICE OF MOTION FOR COURT-AUTHORIZED NOTICE PURSUANT TO  
SECTION 216(b) OF THE FAIR LABOR STANDARDS ACT**

For the reasons set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b) ("Memorandum of Law") and the exhibits attached hereto, Plaintiffs respectfully request that the Court enter an Order:

(1) Authorizing notice to the proposed collective of all current and former servers, bartenders, and tipped workers who were employed at restaurants and bars owned, operated, and/or controlled by OTG Management, LLC in airports nationwide between September 5, 2016 and the present ("Collective Members");

(2) Ordering Defendant to produce, within 14 days after the Court issues an order granting this motion, a computer-readable list of the Collective Members' names, last known addresses, telephone numbers, email addresses, dates of employment, and during the notice process, the last four digits of the Social Security numbers of those Collective Members whose notices are returned undeliverable;

(3) Authorizing Plaintiffs to distribute to potential Collective Members Plaintiffs' proposed Notice and Consent to Join form (attached to the Memorandum of Law as Exhibit 11),

and Reminder (attached to the Memorandum of Law as Exhibit 12) in accordance with the notice plan described in Plaintiffs' Memorandum of Law; and

(4) Ordering such further relief as the Court deems just and proper.

Dated: New York, NY  
March 5, 2020

Respectfully submitted,

By:

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 5, 2020, the foregoing was filed electronically through the ECF system, is available for viewing and downloading from the ECF system, and will be sent electronically to the registered participants identified on the Notice of Electronic Filings.

/s/ Molly A. Brooks  
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR  
COURT-AUTHORIZED NOTICE PURSUANT TO  
SECTION 216(b) OF THE FAIR LABOR STANDARDS ACT**

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## **PRELIMINARY STATEMENT**

Plaintiffs Dafinis Filho, Raquel Ernest, and Chantel Lynch, on behalf of themselves and all others similarly situated, allege that OTG Management, LLC (“OTG Management”) unlawfully denies its airport restaurant workers – servers, bartenders, and other tipped workers (collectively “Tipped Workers”) – the proper minimum wage and overtime pay, in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”).

Through this motion, Plaintiffs seek to protect their rights and the rights of similarly-situated Tipped Workers in the nine U.S.-based airports where OTG Management owns and runs restaurants by issuing Court-approved notice and allowing potential opt-ins to join this action to recover unpaid wages. Plaintiffs exceed their low burden on this motion. Plaintiffs show – through their own declarations, the declarations of other Hourly Workers, and OTG Management’s own corporate documents – that Tipped Workers are subject to the same unlawful practices. Plaintiffs respectfully request that the Court grant conditional certification and authorize notice to collective members so that they may protect their rights.

## **PROCEDURAL HISTORY**

Plaintiffs filed their Complaint on September 5, 2019, alleging, in part, that OTG Management willfully failed to pay Tipped Workers nationwide proper minimum wages and overtime compensation in violation of the FLSA and state wage laws. ECF No. 1. Defendant OTG Management answered on November 8, 2019.<sup>1</sup> On January 23, 2020, Plaintiffs requested a pre-motion conference in anticipation of filing a motion for conditional certification and issuance of Court-authorized notice pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b). ECF

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<sup>1</sup> ECF No. 7.

No. 15. The Court declined to hold a conference and ordered a briefing schedule for this motion.  
ECF No. 19. The Parties have not exchanged any formal discovery.

### **STATEMENT OF FACTS**

#### **I. OTG Management Centrally Controls Tipped Workers at Its Locations.**

OTG Management is a privately-owned company that owns and operates restaurants and bars in major airport terminals across the United States, including (1) Newark Liberty Airport in Newark, New Jersey; (2) LaGuardia Airport and (3) John F. Kennedy Airport in New York, New York; (4) O'Hare International Airport in Chicago, Illinois; (5) Minneapolis-Saint Paul International Airport in Minneapolis, Minnesota; (6) George Bush Intercontinental Airport in Houston, Texas; (7) Philadelphia International Airport in Philadelphia, Pennsylvania; (8) Ronald Regan Washington National Airport in Arlington, Virginia; and (9) Orlando International Airport in Orlando, Florida.<sup>2</sup> Collectively, the Named Plaintiffs and declarants worked at two different airports and more than 17 bars and restaurants owned and operated by OTG.<sup>3</sup>

Claiming to “reinvent the airport experience,” OTG Management seeks to integrate technology and design into the airport hospitality experience at all of its U.S. locations.<sup>4</sup> OTG Management’s CEO, Rick Blatstein, describes the company’s “crew members” as “family” and claims that “crew members are the secret sauce to our company,” because they enable it “to deliver amazing experiences.”<sup>5</sup>

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<sup>2</sup> ECF No. 1 (Class and Collective Action Complaint) 1 ¶ 1.

<sup>3</sup> See Ex. 1, Declaration of Dafinis Filho (“Filho Decl.”) ¶ 2; Ex. 2, Declaration of Raquel Ernest (“Ernest Decl.”) ¶¶ 2, 40; Ex. 3, Declaration of Chantel Lynch (“Lynch Decl.”) ¶ 2; Ex.4, Declaration of Sangeeta Thompson (“Thompson Decl.”) ¶ 3; Ex. 5, Declaration of Nazmul Hussain (“Hussain Decl.”) ¶ 2. Unless otherwise indicated, the exhibits referenced herein are attached to this memorandum of law.

<sup>4</sup> *Id.* ¶ 2; OTG, <https://www.otgexp.com/> (last visited March 5, 2020).

<sup>5</sup> OTGexp, *OTG Vision / Rick Blatstein, CEO*, Vimeo (July 31, 2018) at 0:52-1:43, <https://vimeo.com/282516004>.

OTG Management maintains control over its airport hospitality locations nationwide to ensure uniformity and enforces common policies and practices with respect to job duties, scheduling, and compensation. OTG Management oversees hiring through a centralized process, and candidates follow a uniform process for screening, interviewing, and onboarding.<sup>6</sup> OTG Management also has centralized compensation and compliance functions,<sup>7</sup> and a centralized human resources department.<sup>8</sup> OTG Management provides standardized training for employees on orientation, onboarding, safety, quality assurance, hospitality and service, food, beverage, and products to ensure consistency throughout its locations.<sup>9</sup> OTG provides further training for its managers to carry out their supervisory roles in accordance with common corporate policies.<sup>10</sup>

OTG Management also uses standardized job descriptions to ensure that Tipped Workers share the same job duties and responsibilities regardless of the airport or hospitality location where they work.<sup>11</sup> For example, OTG Management pays all bartenders on an hourly basis and requires them to perform substantially the same duties, including: “[m]ix[ing] ingredients for all drinks, including cocktails, to OTG specifications;” “[i]nput[ing] all food and drink orders into the computer;” “[m]aintain[ing] a clean and orderly bar as well as cash register”; and “[a]id[ing]

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<sup>6</sup> See *Careers*, OTG, <https://www.otgexp.com/careers> (last visited March 5, 2020) (centralized job website describing the “[o]nboarding [t]imeline” for all applicants, i.e., “Review, Interview, Days of Discovery, Final Interview, Offer, and Badging”).

<sup>7</sup> See Ex. 6, Director of Payroll, Job Description (New York-based payroll director is responsible for nationwide payroll, operations and ensuring compliance with the FLSA and state law).

<sup>8</sup> Ex. 7, Director of Human Resources, Job Description.

<sup>9</sup> See Ex. 8, Learning and Development Manager, LGA Airport, Job Description (Learning and Development Manager “ensur[es] that training is consistently and effectively delivered”).

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., Exs. 9-10, (boilerplate job descriptions for server and bartender positions); see also OTG Job Search, OTG, <https://usr57.dayforcehcm.com/CandidatePortal/en-US/otg> (last visited March 5, 2020) (centralized job search portal for crew positions).

in moving and installing kegs of beer, CO2 tanks and soda mixes.”<sup>12</sup> Likewise, OTG Management pays its servers on an hourly basis and requires them to perform substantially similar tasks including: “[a]ssisting guests in entering all orders into the iPad/computer system”; “[p]reparing hot and cold drinks and mixed non-alcoholic drinks”; and “[a]ssisting other servers as needed and clearing tables and keeping a spotless working environment.”<sup>13</sup>

In addition, OTG Management subjects all employees to similar scheduling and time-tracking practices. In order to accomplish the cleaning, maintenance, and food preparation “side work” needed to keep its hospitality locations running smoothly, OTG Management requires Tipped Workers to arrive at least 15 minutes to an hour prior to the start of customer service and to stay at work at least one hour after the restaurant or bar closes, and sometimes several hours after the last customer has been served.<sup>14</sup> OTG Management required its employees to “clock-in” using a centralized employee portal.<sup>15</sup>

OTG enforces uniform policies, practices, and procedures across all its hospitality locations and permits employees to freely transfer between, or be shared by, various OTG restaurants without retraining them.<sup>16</sup>

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<sup>12</sup> See Ex. 9 (Bartender job descriptions for Newark, JFK, LaGuardia, DC-Reagan, Minneapolis, and Houston airports).

<sup>13</sup> See Ex. 10 (Server job descriptions for JFK, Newark, DC-Reagan, Houston, Minneapolis, and Philadelphia airports).

<sup>14</sup> ECF No. 1 (Class and Collective Action Complaint) at 18 ¶ 26, at 21 ¶ 46, at 29 ¶ 83, at 30 ¶ 92. Ex. 1, Filho Decl. ¶ 17 (required to arrive approximately 1 hour before opening as a server); Ex. 2, Ernest Decl. ¶ 16 (required to arrive approximately 1 hour before opening); Ex. 3, Lynch Decl. ¶ 16 (required to arrive approximately 15 minutes before opening); Ex. 4, Thompson Decl. ¶ 17 (required to arrive 4 hours before opening); Ex. 5, Hussain Decl. ¶ 16 (required to arrive approximately 30 minutes before opening).

<sup>15</sup> Ex. 1, Filho Decl. ¶ 4; Ex. 2, Ernest Decl. ¶ 4; Ex. 3, Lynch Decl. ¶ 4; Ex. 4, Thompson Decl. ¶ 5; Ex. 5, Hussain Decl. ¶ 4.

<sup>16</sup> ECF No. 1 at 5 ¶¶ 28-29. Ex. 1, Filho Decl. ¶¶ 2, 40, 42 (was subject to the same policies at EONO, Abruzzo Steakhouse, Vanguard, Proof, Wanderlust, Saison, and Happy Clam, among other restaurants in EWR); Ex. 2, Ernest Decl. ¶¶ 2, 38 (was subject to the same policies at

## **II. OTG Management Failed to Provide Appropriate Notice of the Tip Credit Provisions of the FLSA.**

OTG Management pays all its Tipped Workers less than the full statutory minimum hourly wage by taking advantage of the federal “tip credit” that is only available to employers who satisfy specific criteria.<sup>17</sup> To be entitled to the tip credit, OTG Management must provide Tipped Workers with the following information: (1) the amount of cash wage OTG Management is paying Tipped Workers; (2) the additional amount claimed by OTG Management as a tip credit, which cannot exceed \$5.12; (3) that the tip credit claimed by OTG Management cannot exceed the amount of tips actually received by the Tipped Worker; (4) that all tips received by Tipped Workers are to be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (5) that the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.<sup>18</sup> OTG failed to provide a notice in compliance with the FLSA’s requirements.<sup>19</sup>

## **III. OTG Management Requires Tipped Workers to Perform Extensive Amounts of Non-Tipped Work.**

Every shift, Defendant requires its servers and bartenders to perform non-tipped work.<sup>20</sup>

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NYSB, Drinks, and O’Neil’s, among other restaurants in JFK); Ex. 3, Lynch Decl. ¶¶ 2, 29, 30, 32 (was subject to the same policies at Horizon and a satellite bar by Gate 6 of Terminal 4, among other restaurants in JFK); Ex.4, Thompson Decl.¶¶ 39,40 (was subject to the same policies at CBGB, Flora Café, Nonna’s, Happy Clam, SURF, Tacquila, and Wanderlust Burger Bar); Ex. 5, Hussain Decl. ¶¶ 2, 29, 30 (was subject to the same policies at Voyage and Wine Bar in LGA).

<sup>17</sup> ECF No. 1 at 17 ¶ 18, at 20 ¶ 43, at 26 ¶ 68, at 30 ¶ 90; Ex. 1, Filho Decl. ¶¶ 7, 14; Ex. 2 Ernest Decl. ¶¶ 7, 14; Ex. 3, Lynch Decl. ¶¶ 7, 14; Ex. 4 Thompson Decl.¶¶ 7, 15; Ex. 5, Hussain Decl. ¶¶ 7, 14; *see also*, 29 U.S.C. § 203(m).

<sup>18</sup> *See* Wage and Hour Division, U.S. Dep’t of Labor, Fact Sheet #15: Tipped Employees Under the FLSA (2018) (“DOL Fact Sheet #15”), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs15.pdf> ([last visited March 5, 2020](#)).

<sup>19</sup> Ex. 1, Filho Decl. ¶¶ 8, 9; Ex. 2, Ernest Decl. ¶¶ 8,9; Ex. 3, Lynch Decl. ¶¶ 8,9; Ex. 4, Thompson Decl. ¶¶ 9,10; Ex. 5, Hussain Decl. ¶¶ 8,9.

<sup>20</sup> Ex. 1, Filho Decl. ¶¶ 10-26, 28; Ex. 2, Ernest Decl. ¶¶ 10-26, 29; Ex. 3, Lynch Decl. ¶¶



Plaintiffs and Opt-In Plaintiffs regularly spend at least 25 percent of their time engaged in non-tipped work.<sup>21</sup> Defendant requires Tipped Workers to perform opening duties before its restaurants are open, shift-change or closing duties at the end of a shift, occasional cleaning duties, and other ongoing duties in between serving customers. Defendant’s management verifies that servers and bartenders complete their non-tipped work each shift and disciplines employees who fail to do so. OTG Management required some Plaintiffs and other Tipped Workers to attend pre-shift meetings, for which they received the sub-minimum wage.<sup>22</sup>

**A. Opening Duties**

Tipped Workers assigned to “open” OTG Management restaurants to prepare for customers must arrive before the restaurant opens to perform “opening duties.”<sup>23</sup>

Opening duties include: obtaining fruits, snacks, drinks, and dressings from other OTG restaurants in the terminal and bringing them back to the restaurant; cutting fruit and vegetables for drink garnishes,; setting up the expeditor station with condiments and toppings; filling compartments on the bar with drink garnishes; pouring dressings into containers and placing them in the refrigerator; placing sauce bottles on the bar; filling ramekins with ketchup; pouring juices and milk into carafes and placing them at the bar; retrieving ice from another restaurant in the terminal and filling the ice bin for the bar; receiving the morning deliveries, unpacking the boxes, and stocking the refrigerator and shelves; screwing nozzles into soda machines; removing stoppers from beer taps; placing pourers on liquor bottles; changing keg and soda machines; brewing coffee, stocking the coffee station; retrieving items from basement and stocking them in

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10-24; Ex. 4, Thompson Decl. ¶¶ 11-19, 22-24; Ex. 5, Hussain Decl. ¶¶ 10-25, 31.

<sup>21</sup> Ex. 1, Filho Decl. ¶ 26; Ex. 2, Ernest Decl. ¶ 24; Ex. 3, Lynch Decl. ¶ 24; Ex. 4, Thompson Decl. ¶ 24; Ex. 5, Hussain Decl. ¶ 24.

<sup>22</sup> Ex. 1, Filho Decl. ¶ 41; Ex. 3, Lynch Decl. ¶ 33; Ex. 5, Hussain Decl. ¶ 30.

<sup>23</sup> Ex. 1, Filho Decl. ¶ 17; Ex. 2, Ernest Decl. ¶ 16; Ex. 3, Lynch Decl. ¶ 16; Ex. 4, Thompson Decl. ¶ 17; Ex. 5, Hussain Decl. ¶ 16.

the restaurant's refrigerator; creating bouquets for tables; setting tables or server stations with cutlery, napkins, water glasses, coffee, tea, mugs, bottles of sparkling and flat water, salt, and pepper; placing bottles of water in the refrigerator; unplugging iPads from a charging cart, placing them at each seat, programming them for each seat number, and locking them to a cable; wiping tablets on which customers input their orders; wiping computers behind the bars; filling sugar caddies and placing them on the bar and tables; polishing glassware and coffee mugs and placing them on the shelves behind the bar; polishing forks and placing them in the silverware tray; filling a bucket with sanitizer solution and soap and water; placing trash bags into trash cans; wiping down chairs, bar tops, and tables; washing dishes and bartending tools; emptying and draining the dishwasher; sweeping floors; turning on lights and televisions; unrolling mats and placing them behind the bar; and placing pastries into the pastry display.<sup>24</sup>

#### **B. Shift Change Duties**

When the shifts change, OTG requires Tipped Workers to perform certain shift change duties, including: washing, polishing, and restocking dishes, glassware, and utensils; rolling silverware; wiping tables, bar countertops, and chairs; wiping iPads; sweeping under tables and behind bars; pulling booths away from the wall and cleaning the booths; resetting tables with plastic mats, utensils, cups, napkins, salt, pepper, and flowers; restocking table caddies with menus, salt, sugar, and pepper and placing them on tables; folding linen napkins; brewing coffee, restocking the coffee station with filters, and bringing coffee and milk carafes to the kitchen; putting coffee mugs, sugar caddies, and spoons away in a station cart or cabinet; restocking milk and sugar; cutting bread and placing it in a basket; obtaining fruits, snacks, drinks, and dressings from other restaurants in the terminal and bringing them back to the restaurant; cutting fruit for

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<sup>24</sup> Ex. 1, Filho Decl. ¶¶ 16, 17; Ex. 2, Ernest Decl. ¶ 16; Ex. 3, Lynch Decl. ¶ 16; Ex. 4, Thompson Decl. ¶ 17; Ex. 5, Hussain Decl. ¶ 16.

drink garnishes and fruit salad; pouring dressings into containers and placing them in the refrigerator or at the expeditor station; taking syrups, butters, jelly, cream cheese from the expeditor station to the back of the house; stocking the expeditor station with dressings and toppings; restocking pastries; stocking a server station with water glasses, silverware trays, table turners, napkins, and utensils; filling bottles with olive oil and placing at server station; filling ramekins with ketchup, mayonnaise, and mustard; filling salt and pepper shakers; cleaning bread station; cleaning out the refrigerator; changing the sanitizer solution in the sanitizer sink; filling the bar refrigerator with ice; retrieving beers, wines, and juices from one part of the terminal to the bar and restocking the refrigerator with beverage; restocking liquor bottles and wine bottles; placing pourers on liquor bottles; changing keg and soda machines; and making simple syrup.<sup>25</sup>

### **C. Closing Duties**

At the end of an evening shift, servers and bartenders are required to perform “closing,” which included: sweeping and mopping the floor; wiping iPads; unlocking iPads and plugging them into charging cart; removing placemats, napkins, forks, glasses, menus, and flowers from countertops and tables; removing flowers from bar top and placing them into refrigerator; wiping down the bar top, barstools, countertops, and chairs; placing chairs on the top of the bars and tables; using aluminum cleaner on footrest at bar; washing and stocking dishes, glassware, and silverware; rolling silverware; taking out the trash; wiping down garbage pails and the wall behind the garbage pails; cleaning the dishwasher; pouring bleach down the drain; emptying sanitizer buckers; emptying and cleaning the ice bin, including melting the ice; taking inventory of liquor, wine, and beer, wiping bottles, and wrapping liquor and plastic bottles in plastic; removing pourers from wine and liquor bottles and placing them in sanitizer and soap; restocking

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<sup>25</sup> Ex. 1, Filho Decl. ¶¶ 18, 19, 20; Ex. 2, Ernest Decl. ¶¶ 17-19; Ex. 3, Lynch Decl. ¶¶ 17-19; Ex. 4, Thompson Decl. ¶ 18; Ex. 5, Hussain Decl. ¶¶ 17-19.

wine, liquor, and beer bottles; moving the mats from behind the bar; removing nozzles from soda dispensers and placing them in sanitizer and soap; emptying coffee carafes and cleaning out espresso coffee machine; washing milk out of cannisters; stocking silverware tray with forks, napkins, and knives; storing and labeling fruit garnishes and throwing away expired fruit; obtaining items for drink garnishes from another restaurant in the terminal for the next day's preparation; retrieving the caddies with ketchup and mustard from the table and placing them in the cabinet behind the bar; throwing away pastries and cleaning the pastry display; turning off and wiping down the television; and pulling booths away from walls and cleaning the booths.<sup>26</sup>

#### **D. Cleaning Duties**

In addition to opening, shift change, and closing duties, Defendant's Tipped Workers are also assigned cleaning duties based on shift and day of week. These duties include: wiping down walls, shelves, barstools, and table and chair legs; cleaning the footrests at the bar with aluminum cleaner; deck brushing the floor; cleaning the drains behind the bar; mopping; cleaning behind the refrigerators; cleaning the garbage can; cleaning between booths; removing gum from tables; cleaning windows; dusting light fixtures; cleaning the salt and pepper shakers; cleaning underneath the sinks; cleaning behind and underneath the refrigerator and storage spaces; dusting the cupboards and televisions; cleaning the storage containers; refilling the salt and pepper shakers; and cleaning the booths.<sup>27</sup>

#### **E. Additional Duties Between Serving Customers**

Aside from completing opening, shift change, closing, and cleaning duties, Tipped Workers must complete additional non-tipped work while serving customers. For example:

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<sup>26</sup> Ex. 1, Filho Decl. ¶¶ 21-22; Ex. 2, Ernest Decl. ¶ 20; Ex. 3, Lynch Decl. ¶ 20; Ex. 4, Thompson Decl. ¶ 19; Ex. 5, Hussain Decl. ¶ 20.

<sup>27</sup> Ex. 1, Filho Decl. ¶¶ 21-22; Ex. 2, Ernest Decl. ¶ 23; Ex. 3, Lynch Decl. ¶ 23; Ex. 4, Thompson Decl. ¶ 23; Ex. 5, Hussain Decl. ¶ 23.

sweeping and moping the floor; wiping tables and countertops; washing glasses and forks; polishing glasses and forks; resetting the seats at the bar with knives, forks, napkins, and water glasses; obtaining napkins, table turners, straws, stirrers, juices, wine, and beer from another location in the terminal and bringing them to the bar to restock the server station, bar, and refrigerator; cutting garnishes for drinks; refilling the ice bin; taking inventory of liquor; retrieving liquor from other restaurants in the terminal; restocking liquor; changing the beer kegs; changing the soda for the soda machine; brewing tea and coffee; taking out the trash; delivering prizes from the CIBO market to customers who won games played on the iPad; restocking the pastry display; and cooking pretzels.<sup>28</sup>

#### **IV. OTG Management Failed to Compensate Tipped Workers for All Hours.**

Due to OTG Management's strict constraints on the number of overtime hours employees were permitted to work, Tipped Workers were regularly required to perform work off-the-clock at OTG Management locations.<sup>29</sup> For example, OTG Management's managers clocked Plaintiffs Filho and Ernest and other Tipped Workers out for breaks that they did not take.<sup>30</sup> Managers also punched Plaintiffs and other Tipped Workers out after their scheduled shift was over even when managers required Plaintiffs and other Tipped Workers to continue working to reduce the recorded number of hours worked.<sup>31</sup>

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<sup>28</sup> Ex. 1, Filho Decl. ¶¶ 24-25; Ex. 2, Ernest Decl. ¶¶ 22; Ex. 3, Lynch Decl. ¶¶ 22; Ex. 4, Thompson Decl. ¶ 22; Ex. 5, Hussain Decl. ¶¶ 22.

<sup>29</sup> ECF No. 1 at 18 ¶ 31, at 19 ¶¶ 35, 36, at 24 ¶ 58, at 28 ¶ 79, at 29 ¶ 81, at 35 ¶ 112, at 38 ¶ 7, at 41 ¶ 28; Ex. 1, Filho Decl. ¶¶ 28-36; Ex. 2, Ernest Decl. ¶¶ 26-34; Ex. 4, Thompson Decl. ¶ 26.

<sup>30</sup> ECF No. 1 at 18 ¶ 32, at 24 ¶ 59, at 29 ¶ 80; Ex. 1, Filho Decl. ¶¶ 35-36; Ex. 2, Ernest Decl. ¶¶ 28, 33; Ex. 4, Thompson Decl. ¶ 28.

<sup>31</sup> ECF No. 1 at 19 ¶ 33, at 29 ¶ 81; Ex. 1, Filho Decl. ¶ 31; Ex. 2, Ernest Decl. ¶ 29; Ex. 4, Thompson Decl. ¶ 29.

## **V. OTG Management Denied Tipped Workers Overtime Compensation.**

As OTG Management does not satisfy the requirements by which it can avail itself of the tip credit, any overtime paid to Tipped Workers was at the improper rate and should have been at a rate calculated at one-and-one-half the full statutory minimum wage in accordance with the FLSA. Moreover, when a Tipped Worker worked more than 40 hours per week as the result of off-the-clock work that OTG Management knew of and required, OTG Management did not compensate the Tipped Worker for their overtime.<sup>32</sup>

### **NATURE OF THE CLAIMS**

#### **I. OTG Management Cannot Take a Tip Credit Against the Minimum Wage Because It Failed to Provide Tipped Workers with Proper Notice.**

OTG Management failed to provide Tipped Workers with the necessary tip notice that would have allowed OTG to avail itself of the tip credit. *Supra* Statement of Facts, Part III. The tip notice requirement is “strictly construed” and requires the employer to take affirmative steps, such as “providing employees with a copy of § 203(m) and informing them that their tips will be used as a credit against the minimum wage as permitted by law.” *Velez v. 111 Atlas Rest. Corp.*, No. 14 Civ. 6956, 2016 WL 9307471, at \*6 (E.D.N.Y. Aug. 11, 2016) (quoting *He v. Home on 8th Corp.*, No. 09 Civ. 5630, 2014 WL 3974670, at \*5 (S.D.N.Y. Aug. 13, 2014)).

If OTG Management cannot show that it made the proper disclosures, it must pay Plaintiffs and other Tipped Workers the full minimum wage. *See Inclan v. New York Hosp. Grp., Inc.*, 95 F. Supp. 3d 490, 497 (S.D.N.Y. 2015) (where employer cannot demonstrate

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<sup>32</sup> ECF No. 1 at 7 ¶ 41; at 9 ¶ 55; at 10 ¶ 58; at 28 ¶ 79; at 35 ¶ 112; at 38 ¶ 7; at 41 ¶ 28; at 43 ¶¶ 34, 35; Ex. 1, Filho Decl. ¶¶ 32-34; Ex. 2, Ernest Decl. ¶¶ 7, 30-32; Ex. 4, Thompson Decl. ¶ 30-32.

affirmative notice, “then no tip credit can be taken and the employer is liable for the full minimum-wage” (quoting *Reich v. Chez Robert, Inc.*, 28 F.3d 401, 403 (3d Cir. 1994))).

## **II. OTG Management Cannot Take a Tip Credit Against the Minimum Wage When It Requires Tipped Workers to Perform Substantial Amounts of Non-Tipped Work.**

OTG Management violated the FLSA’s requirement that an employer may take the tip credit “only for hours worked by [an] employee in an occupation in which [he] qualifies as a ‘tipped employee.’” 29 C.F.R. § 531.59(b); *see supra* Statement of Facts, Part III. If the employer requires a tipped worker to “*spend a substantial amount of time (in excess of 20 percent) performing general preparation work or maintenance, no tip credit may be taken for the time spent in such duties.*” *Driver v. AppleIllinois, LLC*, 890 F. Supp. 2d 1008, 1012 (N.D. Ill. 2012) (quoting U.S. Dep’t. of Labor, Field Operations Handbook ch. 30d00(e) (Rev. 563) (Dec. 9, 1988), [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH\\_Ch30.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch30.pdf)); *see also Flood v. Carlson Rests. Inc.*, 94 F. Supp. 3d 572, 582 (S.D.N.Y. 2015) (same, citing cases and DOL Fact Sheet #15); *Mendez v. Int’l Food House Inc.*, No. 13 Civ. 2651, 2014 WL 4276418, at \*3 (S.D.N.Y. Aug. 28, 2014) (“[T]ipped employees who spend . . . more than twenty percent of their workweeks[] engaged in related but non-tip-producing work must be paid the full minimum wage for the time spent performing the non-tipped work.” (quoting *Chhab v. Darden Restaurants, Inc.*, No. 11 Civ. 8345, 2013 WL 5308004 at \*3 (Sept. 20, 2013))).

Where certain duties in question are “unrelated” to the tip producing work (a “dual job”), the time spent on these duties can never be paid at the tip credit minimum wage, irrespective of the amount of time that the server spends doing the work. *See* 29 C.F.R. § 531.56(e); *see also Hart v. Crab Addison, Inc.*, No. 13 Civ. 6458, 2014 WL 5465480, at \*5 (W.D.N.Y. Oct 28, 2014); *Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014) (if tipped workers perform non-tipped duties that are “unrelated to their tipped duties . . . , such as, in the case of

restaurant servers, washing dishes, preparing food, mopping the floor, or cleaning bathrooms, they are entitled to the full minimum wage for the time they spend at that work”). Examples of duties that are unrelated to tipped work include preparing food, laying tables, cleaning up, and preparing the restaurant for business. *Driver*, 890 F. Supp. 2d at 1031-32 (citing *Dole v. Bishop*, 740 F. Supp. 1221, 1228 (S.D. Miss. 1990)). OTG required its Tipped Workers to complete substantial side work and perform dual jobs while paying them a sub-minimum wage in violation of the FLSA. *Supra* Statement of Facts, Part III, IV.

### **III. OTG Management Required Off-the-Clock Work and Failed to Pay the Proper Overtime Rate.**

OTG Management also violated the FLSA by requiring Tipped Workers to work off-the-clock. It was aware that Tipped Workers’ time records did not accurately reflect all the hours they worked.<sup>33</sup> OTG Management has not compensated Tipped Workers for all of the hours that they worked over 40 in a workweek.<sup>34</sup> Because OTG Management could not properly avail itself of the tipped minimum wage, it should have paid Tipped Workers at 1.5 times the full minimum wage for every hour worked over 40 in a workweek. *See* 29 U.S.C. § 207(a)(1).

## **ARGUMENT**

### **I. Conditional Certification of the Nationwide FLSA Collective is Appropriate Here.**

The FLSA authorizes aggrieved employees to bring a collective action “on behalf of themselves and other employees similarly situated.” 29 U.S.C. § 216(b). In furtherance of the FLSA’s “broad remedial purpose,” courts have the authority to notify potential opt-in plaintiffs

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<sup>33</sup> *See supra* Statement of Facts, Part V; *see also Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 614 (S.D.N.Y. 2012) (noting conditional certification of collective where “Defendant knew of and encouraged” employees’ off-the-clock work).

<sup>34</sup> *See supra* Statement of Facts, Part V.



that they may join an existing action early in the proceedings. *Braunstein v. E. Photographic Labs., Inc.*, 600 F.2d 335, 336 (2d Cir. 1978) (per curiam); *see also Myers v. Hertz Corp.*, 624 F.3d 537, 554 (2d Cir. 2010) (“[D]istrict courts ‘have discretion, in appropriate cases, to implement [§ 216(b)] . . . by facilitating notice to potential plaintiffs’ of the pendency of the action and of their opportunity to opt-in as represented plaintiffs” (alteration in original) (quoting *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989))).

Collective actions provide workers an opportunity to “lower individual costs to vindicate rights by pooling resources,” and enable the “efficient resolution in one proceeding of common issues of law and fact.” *Hoffmann-La Roche Inc.*, 493 U.S. at 170. Here, notice will advance the parties’ and the Court’s interest in an efficient and fair resolution by providing a single forum in which determine OTG Management’s liability for the tip credit, “side work” and off-the-clock policies alleged herein.

## **II. Expeditious Notice Is Necessary to Protect the Rights of Employees.**

For the intended benefits of the collective action to accrue, workers must receive “accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate.” *See Cuzco v. Orion Builders, Inc.*, 477 F. Supp. 2d 628, 635 (S.D.N.Y. 2007) (quoting *Hoffman-La Roche*, 493 U.S. at 170). The FLSA statute of limitations continues to run until an employee files a consent form to opt in to the suit. 29 U.S.C. § 216(b); *Lynch v. United Servs. Auto. Ass’n*, 491 F. Supp. 2d 357, 367 (S.D.N.Y. 2007). Therefore, it is critical that similarly-situated employees are afforded notice and an opportunity to opt-in as soon as possible, before their claims are reduced or extinguished by the passage of time. *Pippins v. KPMG LLP*, No. 11 Civ. 0377, 2012 WL 19379, at \*5 (S.D.N.Y. Jan. 3, 2012); *Ruggles v. WellPoint, Inc.*, 591 F. Supp. 2d 150, 161 n.12 (N.D.N.Y. 2008). Timely notice advances the FLSA’s “broad remedial purpose.” *Braunstein*, 600 F.2d at 336.

### **III. Plaintiffs Exceed the Low Burden for Issuing Notice.**

#### **A. Plaintiffs' Burden is Minimal.**

At this first step of the collective certification process – the “notice stage” – a plaintiff “must show only that ‘his [or her] position is similar, not identical, to the positions held by the putative class members.’” *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 546-47 (6th Cir. 2006) (quoting *Pritchard v. Dent Wizard Int’l*, 210 F.R.D. 438, 443 (N.D. Ill. 1982)). The Second Circuit has endorsed a two-step approach to certifying a collective action. *Myers*, 624 F.3d at 554-555. The first step requires district courts to make “an initial determination to send notice to potential opt-in plaintiffs who may be ‘similarly situated’ to the named plaintiffs with respect to whether a FLSA violation has occurred.” *Id.* at 555 (citation omitted). Once the district court has made its initial determination, it “may facilitate notice to other potential similarly-situated employees to inform them of the opportunity to opt-in.” *Jeong Woo Kim v. 511 E. 5th St., LLC*, 985 F. Supp. 2d 439, 445 (S.D.N.Y. 2013); *see also Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317, 322 (S.D.N.Y. 2007) (“It is well settled that courts may authorize notice when the Plaintiff has demonstrated that he and potential plaintiffs are similarly situated.”).

At this preliminary stage, plaintiffs need only “make a ‘modest factual showing’ that they and potential opt-in plaintiffs ‘together were victims of a common policy or plan that violated the law.’” *Myers*, 624 F.3d at 555 (quoting *Hoffman v. Sbarro, Inc.*, 982 F. Supp. 249, 261 (S.D.N.Y. 1997)). Courts find that plaintiffs meet this standard “where [they have] offered ‘substantial allegations of a factual nexus between named plaintiffs and potential opt-in plaintiffs with regard to their employer’s alleged FLSA violation.’” *Indergit. v. Rite Aid Corp.*, Nos. 08

Civ. 9361, 08 Civ. 11364, 2010 WL 2465488, at \*3 (S.D.N.Y. June 16, 2010) (*Davis v. Abercrombie & Fitch Co.*, No. 08 Civ. 9078, 2008 WL 4702840, at \*9 (S.D.N.Y. Dec. 21, 2004)); *see also Valerio v. RNC Indus., LLC*, 314 F.R.D. 61, 66 (E.D.N.Y. 2016) (“At the initial certification stage, courts do not require proof of an actual FLSA violation, ‘but rather that a factual nexus exists between the plaintiff’s situation and the situation of other potential plaintiffs.’” (quoting *Sobczack v. AWL Indus., Inc.*, 540 F. Supp. 2d 354, 362 (E.D.N.Y. 2007)) and citing cases); *see also Myers*, 624 F.3d at 555 (requiring merely a modest showing that will allow the Court to “determine *whether* ‘similarly situated’ plaintiffs do in fact exist”). The standard of proof is “low,” and can be satisfied based on the pleadings and affidavits. *See Hamadou v. Hess Corp.*, 915 F. Supp. 2d 651, 661 (S.D.N.Y. 2013); *see also Valerio*, 314 F.R.D. at 66. Where “defendants admit that the actions challenged by plaintiffs reflect a company-wide policy, it may be appropriate to find plaintiffs similarly situated based solely on plaintiffs’ substantial allegations, without the need for additional evidence.” *Hamadou*, 915 F. Supp. 2d at 661.

Purported factual differences between Plaintiffs and other Tipped Workers do not preclude conditional certification. *Hallissey v. Am. Online, Inc.*, No. 99 Civ. 3785, 2008 WL 465112, at \*2 (S.D.N.Y. Feb. 19, 2008) (providing that “that employees worked a variety of different jobs in a number of different departments at different locations [does not] preclude class treatment” under the FLSA); *see also Cano v. Four M Food Corp.*, No. 08 Civ. 3005, 2009 WL 5710143, at \*7 (E.D.N.Y. Feb. 3, 2009) (citing cases); *Parks v. Dick’s Sporting Goods, Inc.*, No. 05 civ. 6590, 2007 WL 913927, at \*3-4 (W.D.N.Y. Mar. 23, 2007). The relevant issue is not whether Plaintiffs’ duties were identical to that of all the other Tipped Workers, but rather

whether Plaintiffs are “similarly situated to other [Tipped Workers] with respect to the claimed violation of the FLSA.” *Indergit v. Rite Aid Corp.*, 2010 WL 2465488, at \*8.

**B. Plaintiffs Present Ample Evidence to Show Tipped Workers Are Similarly Situated.**

Plaintiffs present evidence with this motion –the declarations of Plaintiffs and other Tipped Workers and OTG’s job descriptions– which exceeds a “modest factual showing” that there are similarly situated employees subjected to the same alleged FLSA violations. *Myers*, 624 F.3d at 555 (quoting *Hoffman v. Sbarro, Inc.*, 982 F. Supp. 249, 261 (S.D.N.Y. 1997)).

Plaintiffs and other Tipped Workers received the same hourly wages (the tipped minimum wage rate), and were subjected to uniform corporate guidelines, dual job and “side work” requirements, and time keeping procedures, did not receive required notices, and were required to work off-the-clock. *See supra* Statement of Facts, Part I, III, V, VI; *see also Morris v. Lettire Const., Corp.*, 896 F. Supp. 2d 265, 270-71 (S.D.N.Y. 2012) (“record support[ed] a reasonable inference that plaintiffs’ experiences reflected a company-wide policy” where plaintiffs alleged that: (1) they received the same compensation no matter where they worked; (2) defendants’ centrally operated and controlled all of its job sites; and (3) defendants’ applied a company-wide compensation policy).

Plaintiffs need not show the existence of a facially unlawful formal policy in order to meet their burden. Rather, Plaintiffs’ evidence of a “*de facto*” policy, which in practice resulted in a pattern of FLSA violations, will suffice. *See Flood v. Carlson Restaurants Inc.*, No. 14 Civ. 2740, 2015 WL 260436, at \*1 (S.D.N.Y. Jan. 20, 2015) (certifying a nationwide class of Tipped Workers alleging *de facto* policy of tip credit and off-the-clock violations); *Chhab*, 2013

WL 5308004, at \*10 (granting nationwide certification on plaintiffs' 20 percent claim despite no formal written side work policy prior to 2011); *Hernandez v. Bare Burger Dio Inc.*, No. 12 Civ. 7794, 2013 WL 3199292, at \*1, \*3-4 (S.D.N.Y. June 25, 2013) (granting conditional certification where plaintiff alleged a minimum wage violation based on defendant's use of the tip credit in violation of the 20 percent rule).

Plaintiffs' evidentiary submission is more than sufficient to meet their "low" burden at this initial stage. See *Romero v. La Revise Assocs., L.L.C.*, 968 F. Supp. 2d 639, 645-46 (S.D.N.Y. 2013) (conditionally certifying collective raising tip credit violations based on plaintiff's sole declaration); *Hernandez*, 2013 WL 3199292, at \*3-4 (plaintiff's declaration as to tip credit and overtime violations was sufficient to warrant conditional certification); *Khamsiri v. George & Frank's Japanese Noodle Rest. Inc.*, No. 12 Civ. 265, 2012 WL 1981507, at \*1 (S.D.N.Y. June 1, 2012) (approving conditional certification based on single plaintiff's affidavit stating that she and other non-exempt employees employed by defendants in tipped positions were paid less than the minimum wage and not paid overtime); *Capsolas v. Pasta Res., Inc.*, No. 10 Civ. 5595, 2011 WL 1770827, \*3-4, \*6 (S.D.N.Y. May 9, 2011) (authorizing notice where plaintiffs alleged a policy that the restaurant deducted and retained a portion of their tips); *Gjurovich v. Emmanuel's Marketplace, Inc.*, 282 F. Supp. 2d 91, 95-96 (S.D.N.Y. 2003) (plaintiff established propriety of collective action notice by, *inter alia*, submitting a declaration naming employees who were similarly situated); see also *Cano v. Four M Food Corp.*, No. 08 Civ. 3005, 2009 WL 5710143, at \*5 (E.D.N.Y. Feb. 3, 2009) (affidavits of named plaintiffs and two opt-ins were sufficient to conditionally certify class); *Bowens v. Atlantic Maintenance Corp.*, 546 F.Supp.2d 55, 82-83 (E.D.N.Y. 2008) (certifying class based on sole plaintiff's declaration, and collecting cases); *Patton v. Thomson Corp.*, 364 F. Supp. 2d 263, 267 (E.D.N.Y.

2005) (plaintiff's allegations and job description were sufficient to meet standard for conditional certification).

#### **IV. A Nationwide Collective of Tipped Workers Is Appropriate.**

Through OTG Management's centralized control over individual OTG Management locations, the same policies and practices affect all Tipped Workers nationwide. OTG Management's Tipped Workers undergo similar training and are subject to standardized policies and practices with respect to the tip credit, compensation, and other terms and conditions of their employment. *See supra* Statement of Facts, Part I. Plaintiffs' declarations describe substantially similar violations of the FLSA. Plaintiffs and other Tipped Workers attest that they spent more than 20 percent of their working time engaged in similar non-tipped side work and are subject to similar time reporting practices at the 17 restaurants where they worked, collectively. Plaintiffs' evidence meets the minimal burden of showing that Tipped Workers at all OTG Management may be similarly situated.

Courts in this circuit regularly find named plaintiffs to be similarly situated to employees at locations where they did not work when plaintiffs demonstrate widespread or pervasive application of the same unlawful policies or practices. *See Grant v. Warner Music Group Corp.*, No. 13 Civ. 4449, 2014 WL 1918602 (S.D.N.Y. May 13, 2014) (granting conditional certification to interns nationwide who were subject to defendant's nationwide policy); *Puglisi v. TD Bank, N.A.*, No. 13 Civ. 0637, 2014 WL 702185 (S.D.N.Y. Feb. 25, 2014) (permitting conditional certification to bank employees nationwide where plaintiffs provided evidence to show that assistant managers nationwide had similar non-managerial duties); *Chhab*, 2013 WL 5308004 (conditional certification granted to servers and bartenders across 47 Capital Grille

restaurants nationwide); *Guttentag v. Ruby Tuesday, Inc.*, No. 12 Civ. 3041, 2013 WL 2602521 (S.D.N.Y. June 11, 2013) (granting nationwide collective certification to tipped employees who were required to work off-the-clock); *Capsolas*, 2011 WL 1770827 (authorizing notice to all of defendants' restaurants, including those where plaintiffs had not worked, because the restaurants shared a common ownership).

**V. The Court Should Approve Plaintiffs' Proposed Notice.**

**A. The Proposed Notice Is Fair and Accurate.**

The Court should authorize Plaintiffs' proposed Notice,<sup>35</sup> to be sent to all current and former Tipped Workers employed by OTG Management nationwide since September 5, 2016 ("Collective Members"). The Notice is "accurate" and "informative" and is consistent with the model notices published by the Federal Judicial Center.<sup>36</sup> *See Hoffmann-La Roche*, 493 U.S. at 172. District courts have discretion to implement the collective action provision of the FLSA "by facilitating notice to potential plaintiffs" of the pendency of the action and of their opportunity to join it. *Myers*, 624 F.3d at 554 (quoting *Hoffmann-LaRoche*, 493 U.S. at 169). The Notice achieves the proper goals: "to make as many potential plaintiffs as possible aware of this action and their right to opt in without devolving into a fishing expedition or imposing undue burdens on the defendants." *See Morris*, 896 F. Supp. 2d at 273.

**B. The Court Should Order Defendants to Produce Putative Collective Members' Contact Information.**

To facilitate sending notice of the pendency of this lawsuit to Putative Collective Members with, Plaintiffs require discovery of the names and contact information for those

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<sup>35</sup> Ex. 11 ("Notice"),

<sup>36</sup> Federal Judicial Center, *Illustrative Forms of Class Action Notices: Overview*, <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction> (last visited March 5, 2020 ).

individuals. “It is now commonplace in this Circuit to require the provision of personal contact information to class counsel for the purposes of notifying a class of a collective action and enabling class counsel to obtain relevant discovery.” *In re Deloitte & Touche, LLP Overtime Litig.*, No. 11 Civ. 2461, 2012 WL 340114, at \*1 (S.D.N.Y. Jan. 17, 2012), at \*1.

Plaintiffs respectfully request that the Court direct OTG Management to produce a computer-readable list of the names, last known addresses, telephone numbers, e-mail addresses, work locations, and dates of employment for all collective members, and the last four digits of Social Security numbers for those collective members whose notices are returned undeliverable. This information is necessary to effectuate the goals of FLSA notice – to “make as many potential plaintiffs as possible aware of this action and their right to opt in[.]” *Enriquez v. Cherry Hill Mkt. Corp.*, No. 10 Civ. 5616, 2012 WL 440691, at \*2 (E.D.N.Y. Feb. 10, 2012); *see also Shear v. Food Scope Am., Inc.*, 297 F.R.D. 114, 130 (S.D.N.Y. 2014) (requiring defendants to produce names, last known addresses, alternative addresses, known telephone numbers, known e-mail addresses, social security numbers (where applicable), dates of employment and job titles); *Hamadou* 915 F. Supp.2d at \*669 (S.D.N.Y. Jan. 16, 2013) (requiring production of “all potential collective action members’ names, last known mailing addresses, last known telephone numbers, work locations, e-mail addresses, dates of employment, dates of birth, and last four digits of the individuals’ Social Security numbers.”); *Pippins*, 2012 WL 19379, at \*14 (“given the reality of communications today, . . . the provision of email addresses and email notice in addition to notice by first class mail is entirely appropriate.”).

Plaintiffs respectfully request that the above requested information be produced for the period of September 5, 2016 to the present. The three-year period before the filing of the complaint is the appropriate period for sending notice. The FLSA permits a three-year statute of



limitations to remedy willful violations of the Act. *See* 29 U.S.C. § 255(a). While OTG Management may argue that their violations were not willful and that notice covering a two-year period is appropriate, this argument is premature. “Where willfulness is disputed, the court applies the three-year statute of limitations for purposes of certifying a representative action.” *Hamadou*, 915 F. Supp. 2d at 668; *Guzelgurgeli v. Prime Time Specials Inc.*, 883 F. Supp. 2d 340, 356-57 (E.D.N.Y. 2012).

**C. The Court Should Approve Plaintiffs’ Proposed Distribution Process, Including a Reminder Notice.**

The Notice should be sent by U.S. mail and e-mail, and Facebook, and Collective Members be permitted to view the Notice and submit consent to join forms via a website in addition to mail and e-mail. *See Atkinson v. TeleTech Holdings, Inc.*, No. 14 Civ. 253, 2015 WL 853234, at \*5 (S.D. Ohio Feb. 26, 2015) (service of notice by mail and electronic means “increases the likelihood that all potential opt-in plaintiffs will receive notice of the lawsuit, and of their opportunity to participate.”); *see also Beltran v. InterExchange, Inc.*, No. 14 Civ. 3074, 2017 WL 4418684, at \*6 (D. Colo. Apr. 28, 2017) (approving plaintiffs’ request to distribute collective action notice via “mail, email, publication, and other electronic means, including social media platforms like Facebook”); *Varghese v. JP Morgan Chase & Co.*, No. 14 Civ. 1718, 2016 WL 4718413, at \*9 (S.D.N.Y. Sept. 9, 2016) (“The same logic supports dissemination of notice via website.” (quoting *Mark v. Gawker Media LLC*, No. 13 Civ. 4347, 2014 WL 5557489, at \*3 (S.D.N.Y. Nov. 3, 2014) (“*Gawker Media LLC*”)) (authorizing notice via “two stand-alone websites that will give potential plaintiffs the ability to download and submit the consent form electronically”)); *Schear*, 297 F.R.D. 114 at 129 (granting request to publish internet website where collective members may “submit a consent to join form electronically”); *Gawker Media LLC*, 2014 WL 5557489, at \*5 (approving use of

social media to facilitate notice); *Greene v. C.B. Holding Corp.*, No. 10 Civ. 1094, 2010 WL 3516566, at \*5 (E.D.N.Y. Aug. 12, 2010) (notice “shall be posted on a publicly available website by plaintiffs’ counsel”).

Additionally, Plaintiff requests that the proposed Notice be included in current Tipped Workers pay envelopes, a practice that courts in this Circuits and others have endorsed. *See Alvarez v. Schnipper Restaurants LLC*, No. 16 Civ. 5779, 2017 WL 6375793, at \*6 (S.D.N.Y. Dec. 12, 2017) (instructing parties to discuss “best methods” of providing notice, including by “enclosing notice within a pay envelope”); *Tapia-Castrejon v. Sahara E. Rest. Corp.*, No. 14 Civ. 8080, 2015 WL 5022654, at \*3 (S.D.N.Y. Aug. 18, 2015) (same); *Crosby v. Stage Stores, Inc.*, 348 F. Supp. 3d 742, 751 (M.D. Tenn. 2018) (approving “dissemination of Notice in the manner requested by Plaintiffs” including enclosure with putative collective members’ “regularly scheduled paychecks”); *Thomas v. Acopia, LLC*, No. 14 Civ. 0974, 2015 WL 13667053, at \*4 (M.D. Tenn. Mar. 23, 2015) (ordering that notice be enclosed with putative class members’ paychecks as this will maximize notice and defendant failed to articulate any resulting prejudice); *Nunes v. Chicago Imp., Inc.*, No. 09 Civ. 7168, 2010 WL 1197532, at \*3 (N.D. Ill. Mar. 22, 2010) (same); *see also Carrillo v. Schneider Logistics, Inc.*, No. 11 Civ. 8557, 2012 WL 556309, at \*13 (C.D. Cal. Jan. 31, 2012), *aff’d*, 501 F. App’x 713 (9th Cir. 2012) (same, and rejecting arguments to the contrary “in light of the potential for efficiently and effectively reaching similarly situated workers” (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 356 n. 22, 98 (1978))).

Plaintiff proposes a 60-day notice period, which is consistent with notice periods in FLSA actions in this Circuit and affords potential plaintiffs adequate opportunity to join the suit. *See Islam v. LX Ave. Bagels, Inc.*, No. 18 Civ. 4895, 2019 WL 5198667, at \*8 (S.D.N.Y. Sept.

30, 2019) (approving a 60-day notice period); *Kucher v. Domino's Pizza, Inc.*, No. 16 Civ. 2492, 2017 WL 2987216, at \*3 (S.D.N.Y. May 22, 2017) (same); *Gawker Media LLC*, 2014 WL 5557489, at \*1 (approving a 60-day notice period and noting that “courts in this district have coalesced around a standard 60–day notice period”).

The Court should also order Plaintiffs to send a reminder postcard to all Collective Members half-way through the notice period.<sup>37</sup> A reminder mailing promotes the FLSA’s broad remedial purpose and the goals of court-authorized notice. *See Morris*, 896 F. Supp. 2d at 274-75. It is well-documented that people often disregard collective action notices. *See* Andrew C. Brunsdon, *Hybrid Class Actions, Dual Certification, and Wage Law Enforcement in the Federal Courts*, 29 Berkeley J. Emp. & Lab. L. 269, 295 (2008). Courts regularly authorize reminder mailings to increase the chance that workers will be informed of their rights. OTG Management has no reason to oppose a reminder postcard other than that it may increase the participation rate, which is contrary to the remedial goals of the FLSA. *See Morris*, 896 F. Supp. at 275 (“Given that notice under the FLSA is intended to inform as many potential plaintiffs as possible of the collective action and their right to opt-in, we find that a reminder notice is appropriate.”); *see also Brown v. AvalonBay Communities, Inc.*, No. 17 Civ. 6897, 2019 WL 1507901, at \*13 (E.D.N.Y. Mar. 29, 2019) (“The weight of caselaw in the Second Circuit has in recent years moved towards approval of reminder notices in light of the remedial purpose of the FLSA.”). Plaintiffs will bear the cost of the reminder postcard mailing, and it will not change the end of the notice period.

The Court should authorize notice to all Putative Collective Members regardless of whether a putative collective member has signed an arbitration agreement. *Lijun Geng v. Shu*

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<sup>37</sup> Ex. 12 (Proposed Reminder Letter).

*Han Ju Rest. II Corp.*, No. 18 Civ. 12220, 2019 WL 4493429, at \*8 (S.D.N.Y. Sept. 9, 2019) (“District courts in the Second Circuit have tended to . . . send[] notice to potential collective members even if they may be subject to arbitration agreements.”); *Romero*, 968 F. Supp. 2d at 647 (“[T]he existence of differences between potential plaintiffs as to the arbitrability of their claims should not act as a bar to the collective action analysis.”); *Crosby*, 348 F. Supp. 3d at 752 (holding that employees who signed arbitration agreements “should still be provided notice and an opportunity to opt-in, as determining whether [defendant’s] arbitration program precludes a putative class member from joining the action is inappropriate at the class certification stage”). The determination of whether a putative collective member is subject to an arbitration agreement requires a “merits-based” “adjudicat[ion of] the validity of the arbitration agreement[.],” which is inappropriate at the “first stage of the conditional collective action approval process.” *Id.*

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant their Motion for Conditional Certification and Court-Authorized Notice Pursuant to Section 216(b) of the FLSA in its entirety.

Dated: March 5, 2020  
New York, New York

By: /s/ Molly A. Brooks  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST, and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR COURT-  
AUTHORIZED NOTICE PURSUANT TO SECTION 216(b) OF THE  
FAIR LABOR STANDARDS ACT**

This matter comes before the Court on Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b) ("Plaintiffs' Motion"). Having considered Plaintiffs' Motion and supporting Memorandum and exhibits, and Defendant's Opposition thereto, the Court hereby **GRANTS** Plaintiffs' Motion and **ORDERS** as follows:

1. The Court conditionally certifies this action as a collective action pursuant to 29 U.S.C. § 216(b), consisting of all current and former servers, bartenders, and tipped workers who were employed at restaurants and bars owned, operated, and/or controlled by OTG Management, LLC in airports nationwide between September 5, 2016 and the present ("Collective Members").

2. Within 14 days of this Court's Order, Defendant shall produce a computer-readable list of Collective Members' names, last known addresses, telephone numbers, email addresses, and dates employed by Defendant for the period of September 5, 2016 to the present.

3. Plaintiffs are authorized to distribute the proposed Notice and Consent to Join Form, attached as Exhibit 1 to Plaintiffs' Motion, by U.S. mail and e-mail, Facebook, and via a website and the Reminder Postcard, attached as Exhibit 2 to Plaintiffs' Motion, halfway through the notice period through the same channels.

4. Defendant shall include the proposed Notice in current Collective Members' pay envelopes.

5. Defendant shall post the proposed Notice in a conspicuous location at each of its OTG Management restaurants.

6. Defendant shall produce the last four digits of the Social Security numbers of those Collective Members whose notices are returned undeliverable.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Andrew L. Carter  
United States District Judge

# **Exhibit 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**DECLARATION OF DAFINIS FILHO**

I, Dafinis Filho, under penalty of perjury, affirm and state as follows:

1. I am a Plaintiff in the above-captioned case, and I submit this declaration in support of Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b).
2. From in or around November 2014 until approximately February 2017, OTG Management, LLC ("OTG" or "Defendant") employed me as a server, bartender, and training captain at its restaurants and bars, including EONO, Abruzzo Steakhouse, Vanguard, and Proof at Newark Liberty International Airport in Newark, New Jersey.
3. In addition to my work as a server, bartender, and training captain, OTG often required me to perform the job duties of a dishwasher and janitor.
4. I "clocked in" and "clocked out" using my employee-id on a centralized time-keeping system.
5. At the restaurants and bars where I worked, customers inputted their orders on iPads.
6. Throughout the course of my employment at OTG, I worked between approximately 32 to 40 hours a week.



**My Compensation**

7. Throughout the course of my employment, including when I was a training captain, OTG paid me at a “tipped” minimum wage rate, which was less than the full minimum wage rate.

**OTG Did Not Provide Me with a Notice of the Tip Credit**

8. Throughout the course of my employment, OTG did not explain to me that I was being paid less than the full minimum wage because I was receiving tips, or that my tips would be used as a credit against the minimum wage that OTG was required to pay me.

9. Throughout the course of my employment, OTG never provided me with nor showed me a copy or a summary of any laws, rules, or regulations regarding the tip credit and minimum wages.

**My Non-Tip Producing Work**

10. At the start, during, and at the end of my shifts OTG required that I, and other tipped workers, spend a substantial amount of time performing work that did not involve customer interaction and did not generate tips (“Unrelated Duties”).

11. My Unrelated Duties were not typically specific to a particular customer and were often performed in mass quantities for the entire shift or future shift.

12. When I performed Unrelated Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

13. In addition, during my shifts, OTG required that I, and other tipped workers, spend a substantial amount of time performing work that was related to my work serving customers but did not generate tips (“Related Duties”).

14. When I performed Related Duties, OTG compensated other tipped workers and

me at the tipped minimum wage rate rather than the full minimum wage rate.

15. I, and other tipped workers, spent in excess of 2 hours of our time at work during a typical 6 or 8-hour shift performing non-tip producing side work or other non-tipped work that was unrelated to my work as a bartender or server (together, “Non-Tipped Work”).

16. When I worked opening shifts as a bartender, OTG required me to perform Non-Tipped Work, including but not limited to: cutting fruit and vegetables for drink garnishes such as lemons, limes, oranges, celery, jalapenos, and mint leaves; filling fruit compartments on the bar with drink garnishes such as onions, olives, cherries, bleu cheese, bacon strips, and grilled shrimp; pouring juices and milk into carafes and placing them at the bar; retrieving ice from another restaurant in the terminal and filling the ice bin for the bar; placing hot sauce and steak sauce bottles on the bar; filling ramekins with ketchup; receiving the morning delivery of beer, wine, and liquor unpacking the boxes, and stocking the refrigerator and shelves; placing bottles of water in the refrigerator; polishing glassware and placing them on the shelves behind the bar; polishing forks and placing them in the silverware tray; filling sugar caddies and placing them on the bar; brewing coffee at another restaurant in the terminal; stocking the coffee station with coffee, coffee mugs, tea kettles, sugar caddies, and spoons; setting tables for 15 seats at the bar with knives, forks, napkins, and water glasses; wiping tablets in which customers input their orders; and filling a bucket with sanitizer solution. I spent approximately 2 hours completing these tasks during a typical 6 to 8-hour shift.

17. When I worked opening shifts as a server, OTG required me to arrive at the restaurant or bar approximately one hour before opening to perform Non-Tipped Work, including but not limited to: unplugging iPads from a charging cart, placing them at each seat, programming them for each seat number, and locking them to a cable; brewing coffee at another

restaurant in the terminal and bringing the coffee back to the restaurant; retrieving milk, cream, and juices from basement and stocking them in the restaurant's refrigerator; polishing glassware and coffee mugs; polishing forks and placing them in the silverware tray; filling sugar caddies and placing them on the tables; setting tables with knives, forks, napkins, water glasses, coffee mugs, salt, pepper, and flowers; filling ramekins with ketchup; and stocking the coffee station with coffee, coffee mugs, tea kettles, sugar caddies, and spoons. I spent approximately 2 hours completing these tasks during a typical 6 to 8-hour opening shift.

18. Before the end of my morning bartender shifts, for approximately 20 minutes, OTG required me to perform Non-Tipped Work for the shift change, including but not limited to: bringing coffee and milk carafes to the kitchen; putting coffee mugs, sugar caddies, and spoons away in a station cart or cabinet; stocking a server station with water glasses, silverware trays, table turners, and napkins; filling ramekins with ketchup, mayonnaise, and mustard; setting seats at the bar with knives, forks, napkins, water glasses, salt, pepper, and flowers; wiping down the bar countertop; wiping down iPads; and sweeping floors.

19. Before the end of my morning server shifts, for approximately 30 minutes, OTG required me to perform Non-Tipped Work for the shift change, including but not limited to: bringing coffee and milk carafes to the kitchen; putting coffee mugs, sugar caddies, and spoons away in a station cart or cabinet; cutting bread and placing it in a basket; stocking a server station with water glasses, silverware trays, table turners, and napkins; filling bottles with olive oil and placing at server station; filling ramekins with ketchup, mayonnaise, and mustard; setting tables with knives, forks, napkins, water glasses, salt, pepper, and flowers; wiping down tables; wiping down iPads; and sweeping floors.

20. Before the end of my mid-shifts as a server, for approximately 40 to 45 minutes,

OTG Management required me to Non-Tipped Work for the shift change, including but not limited to: washing, polishing, and restocking glassware and forks, restocking knives in silverware tray; wiping tables; wiping iPads; filling salt and pepper; sweeping under tables; cleaning the bread station; and folding linen napkins.

21. When I worked evening bartender shifts as a closer, OTG Management required me to perform Non-Tipped Work prior to closing, including but not limited to: sweeping the floor; moping the floor; wiping iPads; unlocking iPads and plugging them into charging cart; taking out the trash; washing glassware and silverware; wiping the bar top and barstools; using aluminum cleaner on footrest at bar; cleaning the dishwasher; emptying sanitizer buckers; melting ice; emptying and cleaning the ice bin; taking inventory of liquor, wine, and beer; wiping liquor and wine bottles and wrapping them in plastic; putting liquor, wine, and beer away in the refrigerator and on the shelves; cleaning out the espresso coffee machine; cleaning the sink; removing flowers from the bar top and placing them into refrigerator; and stocking the silverware tray with forks, napkins, and knives. As a bartender, every evening I performed required deep cleaning Non-Tipped Work that varied including but not limited to: wiping down walls, shelves, and barstools; cleaning the footrests at the bar with aluminum cleaner; deck brushing the floor; cleaning the drains behind the bar; cleaning behind the refrigerators; and cleaning the garbage can. I spent approximately 1.5 hours to 2 hours completing these closing tasks during a typical 6 to 10-hour shift.

22. When I worked evening server shifts as a closer, OTG required me to perform Non-Tipped Work prior to closing, including but not limited to: sweeping the floor; moping the floor; wiping iPads; unlocking iPads and plugging them into charging cart; taking out the trash; washing glassware and silverware; wiping tables, countertops, chairs, and barstools; and

removing flowers from tables and placing them into refrigerator. As a server every evening I performed required deep cleaning Non-Tipped Work that varied including but not limited to: cleaning between booths; wiping table and chair legs; deck brushing; removing gum from tables; cleaning windows; dusting light fixtures; and cleaning the salt and pepper shakers. I spent approximately 1.5 hours completing these closing tasks.

23. When I worked closing shifts, OTG also required me to stay until the departure of the last flight in the terminal, even when I did not have any customers. I typically worked for 2 to 3 hours during which time I often had no customers.

24. During bartending shifts, OTG required me to perform Non-Tipped Work in between serving customers, for approximately 25 to 30 minutes, including but not limited to: washing glasses and forks; polishing glasses and forks; resetting the seats at the bar with knives, forks, napkins, and water glasses; retrieving liquor from other restaurants in the terminal; restocking liquor; refilling the ice bin; taking out the trash; changing the beer kegs; brewing tea and coffee; changing the soda for the soda machine; cleaning the bar tops; and replenishing straws.

25. During serving shifts, OTG required me to perform Non-Tipped Work in between serving customers, for approximately 30 to 40 minutes, including but not limited to: polishing glasses and forks; folding napkins; resetting the tables with knives, forks, napkins, and water glasses; refilling the ice bin at the bar; brewing tea and coffee; sweeping floors in my section; and cutting bread.

26. As a result, during the course of my employment at OTG, I typically spent approximately 25 to 45 percent of my working time performing Non-Tipped Work.

27. Throughout the course of my employment, OTG did not keep track of the time I

spent performing Non-Tipped Work.

**Work Performed Off-the-Clock**

28. OTG maintains a policy whereby tipped employees worked off-the-clock. When performing work off-the-clock, I, and other tipped workers, often were engaged in Non-Tipped Work.

29. Throughout the course of my employment, OTG frequently required me to perform work off-the-clock without compensation.

30. For example, OTG often clocked me out for breaks and lunches I did not take.

31. On occasion, OTG adjusted my time records to show that I stopped working at the conclusion of my scheduled shift, even though I worked past that time. For example, when I worked the mid-shift and was scheduled to leave at 8:00 p.m., managers, including Sarah Zuckerberg, adjusted my time records to show that I stopped working at 8:00 p.m. even though my manager required me to work until 8:30 p.m.

32. Managers were aware that I worked off-the-clock and that my punch in/punch out reports did not accurately reflect all of the hours that I worked.

33. OTG compensated me only for the time I punched in.

34. When I received my paycheck at the end of a pay period, it did not accurately reflect the number of hours I worked at OTG for that pay period.

35. I observed that managers regularly clocked out other servers and bartenders while requiring them to work through their breaks and lunches. For example, managers Sarah Zuckerberg, Rodrigo Silva, Luana Machado, Joseph (last name unknown) adjusted the time records of me and other bartenders to show that we clocked out during our breaks, while still requiring us to work through our breaks.

36. I have spoken about the policy and practice to adjust time records with other tipped workers, including Rashida (last name unknown), a bartender at Proof; Chris Morgan, bartender and server at Proof; Jamie Sapima, a server and bartender at Abruzzo; and Caroline Brum, a server at Abruzzo, among others.

**Wage Statements and Records**

37. Throughout the course of my employment, OTG did not keep accurate records of my wages or tips earned, or of the hours that I worked.

38. Throughout the course of my employment, OTG did not provide me accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance, or accurate annual notices.

**Other Tipped Hourly Employees Are Subjected to the Same Policies and Procedures**

39. There are hundreds of other tipped workers working at OTG's locations in airports across North America. I know this because OTG brought in training managers from other locations around the country to train us, and they would tell us about the numbers of tipped workers at their locations.

40. In addition to working at EONO, Abruzzo Steakhouse, Vanguard, and Proof, I worked at several other OTG-owned bars and restaurants at EWR, including Wanderlust, Saizon, Happy Clam, and other OTG restaurants and bars whose names I cannot recall. Each location had the same policies and practices described above.

41. I observed that OTG required the other bartenders and servers to follow the same rules and procedures that I was required to follow. For example, I attended daily pre-shift meetings in which the general or restaurant manager on duty, including Iris (last name unknown), Efhraim (last name unknown), Melissa (last name unknown), Jonathan (last name

unknown), Lewis (last name unknown), Joseph (last name unknown), and Sarah Zuckerberg, assigned running side work to tipped works according to the section in which they worked. OTG paid me the tipped minimum wage for the time I spent attending these meetings.

42. OTG maintains a policy that allows employees to work at multiple locations, or to transfer between locations without re-training.

43. I know that several OTG Tipped Workers including Natalia Loia, a server and bartender at an OTG restaurant whose name I cannot recall; Christina Flores, a server at Happy Clam; Ashley Acasie, a server and bartender at Surf; and Natalia Rodriguez, a server at CBGB were subject to the same policies and practices described above.

44. I believe all tipped workers employed by OTG should receive notice of this lawsuit and receive an opportunity to join the case.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

3/2/2020

Date

DocuSigned by:

Dafinis Filho

Q3A7Z7AFCC59487...

Dafinis Filho



# **Exhibit 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**DECLARATION OF RAQUEL ERNEST**

I, Raquel Ernest, under penalty of perjury, affirm and state as follows:

1. I am a Plaintiff in the above-captioned case, and I submit this declaration in support of Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b).

2. From in or around June 2013 until May 2018, OTG Management, LLC ("OTG" or "Defendant") employed me as a server and bartender at its restaurants and bars, including those branded New York Sports Bar ("NYSB"), Drinks, and O'Neil's, among others located at John F. Kennedy International Airport ("JFK") in Queens, New York.

3. In addition to my work as a server and bartender, OTG often required me to perform the job duties of a dishwasher and janitor.

4. I "clocked in" and "clocked out" for my shifts using my employee-id on a centralized time-keeping system.

5. Throughout the course of my employment at OTG, I worked between approximately 30 to 44 hours a week.

**My Compensation**

6. Throughout the course of my employment, OTG paid me at a “tipped” minimum wage rate, which was less than the full minimum wage rate.

7. Throughout the course of my employment, OTG did not pay me an overtime premium for hours worked in excess of 40 per workweek.

**OTG Did Not Provide Me with a Notice of the Tip Credit**

8. Throughout the course of my employment, OTG did not explain to me that I was being paid less than the full minimum wage because I was receiving tips, or that my tips would be used as a credit against the minimum wage that OTG was required to pay me.

9. Throughout the course of my employment, OTG never provided me with nor showed me a copy or a summary of any laws, rules, or regulations regarding the tip credit and minimum wages.

**My Non-Tip Producing Work**

10. At the start, during, and at the end of my shifts OTG required that I, and other tipped workers, spend a substantial amount of time performing work that did not involve customer interaction and did not generate tips (“Unrelated Duties”).

11. My Unrelated Duties were not typically specific to a particular customer and were often performed in mass quantities for the entire shift or future shift.

12. When I performed Unrelated Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

13. In addition, during my shifts, OTG required that I, and other tipped workers, spend a substantial amount of time performing work that was related to my work serving customers but did not generate tips (“Related Duties”).

14. When I performed Related Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

15. I, and other tipped workers, spent in excess of 2 hours of our time at work during a typical 7 or 8 1/2-hour shift performing non-tip producing side work or other non-tipped work that was unrelated to my work as a bartender or server (together, "Non-Tipped Work").

16. When I worked opening shifts, OTG required me to arrive at the restaurant or bar approximately 1 hour before opening to perform Non-Tipped Work, including but not limited to: refilling the ice for the bar; unrolling the mats and placing them behind the bar; turning on the lights and televisions; placing ketchup, mustard, salt, pepper, bottles of sparkling and flat water, and a sugar caddy on each table; removing stoppers from beer taps; pouring dressings into bottles and placing them on ice at the expeditor station; setting up the expeditor station with syrups, butters, jelly, cream cheese, lettuce, tomatoes; brewing the coffee; setting tables with knives, forks, napkins, and paper placemats; wiping the computers behind the bars; filling a bucket with sanitizer solution; screwing nozzles into the soda machines; retrieving ice and delivering it to different restaurants and bars; cutting lemons, limes, oranges, and cucumbers and preparing olives and jalapeños for drink garnishes; placing bags into trash cans; restocking the server station with napkins, silverware, tea bags, and table turners; and restocking the refrigerator with beers. I spent approximately 1 hour completing these tasks during a typical 7-hour shift.

17. Before the end my morning bartender shifts, for approximately 5 1/2 hours, OTG required me to perform Non-Tipped Work, including but not limited to: cleaning out the refrigerator; restocking the coffee station with filters; brewing coffee; taking syrups, butters, jelly, and cream cheese from the expeditor station to the back of the house; stocking the expeditor station with dressings, lettuce, tomatoes, jalapeños, salsa, and guacamole; pouring

chips into a container at the expeditor station; pouring dressings into bottles and placing them on ice at the expeditor station; retrieving beers, wines, and juices from one part of the terminal to the bar and restocking the refrigerator with beers, wine, and juices; restocking liquor bottles and wine bottles; washing silverware and glasses by hand; and changing the sanitizer solution in the sanitizer sink. I spent approximately 1 hour completing these tasks during a typical 7-hour shift.

18. When I worked mid-shifts, OTG required me to perform Non-Tipped Work at the start of my shift including, but not limited to: gathering and restocking beer bottles, beer kegs, wines bottles, and liquor bottles and cutting lemons, limes, and other fruits for drink garnishes. I spent 45 to 60 minutes on these duties when working at Drinks or O'Neil's because I had to gather the items for restocking from NYSB. I spent approximately 30 minutes on these duties when working at NYSB.

19. Before the end of my mid-shifts, for approximately 50 to 60 minutes, OTG required me to perform Non-Tipped Work, including but not limited to: sweeping; reorganizing; restocking the refrigerator; washing silverware; rolling silverware; and wiping the bar top.

20. When I worked closing shifts as a bartender, OTG required me to perform Non-Tipped Work after closing, including but not limited to: moving the mats from behind the bar; sweeping and moping the floors; wiping the chairs, tables, and bar top; placing the chairs on the top of the bars and tables; pouring bleach down the drain; wiping the garbage pails and the wall behind the garbage pails; handwashing silverware and glasses; rolling silverware; retrieving the caddies with ketchup and mustard from the table and placing them in the cabinet behind the bar; taking inventory of the liquor and beers; wiping the liquor bottles; breaking down the soda machine and cleaning the nozzles; draining and cleaning the ice bin; and placing stoppers in the beer taps. I spent approximately 1 hour completing these closing tasks during a typical 9 1/2- to

12-hour shift.

21. When I worked closing shifts, OTG also required me to stay until the departure of the last flight in the terminal, even when I did not have any customers. I typically stayed 1 hour, during which time I often had no customers.

22. During my bartending shifts, OTG required me to perform Non-Tipped Work in between serving customers, for approximately 5 hours, including but not limited to: cutting garnishes for drinks; changing the beer kegs; brewing tea and coffee; changing the soda for the soda machine; cleaning the bar tops; obtaining napkins, table turners, straws, stirrers, juices, liquor, wine, and beer from another location in the terminal and bringing them to the bar to restock the server station, bar, and refrigerator; and washing glasses and silverware.

23. As a bartender, I was also required to perform deep cleaning Non-Tipped Work that varied, approximately 3 times a month, occasionally in preparation for inspections, including but not limited to: cleaning the booths; removing gum from tables; cleaning walls; cleaning the garbage can; cleaning windows; dusting light fixtures; cleaning drains; cleaning the refrigerator; cleaning the mats behind the bar; and scrubbing the drain with bleach.

24. As a result, during the course of my employment at OTG, I typically spent approximately 65 to 70 percent of my working time performing Non-Tipped Work.

25. Throughout my employment, OTG did not keep track of the time I spent performing Non-Tipped Work.

**Work Performed Off-the-Clock / Overtime**

26. OTG maintains a policy whereby tipped employees work off-the-clock. When performing work off-the-clock, I, and other tipped workers, often were engaged in Non-Tipped Work.

27. Throughout the course of my employment, OTG frequently required me to perform work off-the-clock without compensation.

28. For example, OTG often clocked me out for breaks and lunches I did not take.

29. OTG also often clocked me out when my scheduled shift was over, while at the same time requiring me to continue performing non-tipped side work, off-the-clock. For example, when I worked as a closer, my managers punched me out at the conclusion of my scheduled shift so that the additional hours I spent performing side work were off-the-clock.

30. Managers were aware that I worked off-the-clock and that my punch in/punch out reports did not accurately reflect all of the hours that I worked.

31. OTG compensated me only for the time I punched in.

32. When I received my paycheck at the end of a pay period, it did not accurately reflect all of hours I worked at OTG for that pay period.

33. I observed that managers regularly clocked out other servers and bartenders while requiring them to work through their breaks and lunches. For example, Patrick Ruiz, a terminal director, and Sanita [last name unknown], a manager, directed me and other bartenders to clock out, but still required us to work through our breaks. If we did not clock out, the adjusted the time record to make it appear that we had clocked out. I know this because I looked at my time records.

34. I have spoken about this policy and practice with other tipped workers, including Maggie [last name unknown], Euradisis [last name unknown], Sernelle Bob, and Kimarley Grant. In particular, I recall meeting with Euradisis, a bartender; Sernelle, a server; a food runner [name unknown]; at least three HR representatives, including Star [last name unknown]; Patrick Ruiz, terminal director; and Dennis [last name unknown], the head of the union.

**Wage Statements and Records**

35. Throughout the course of my employment, OTG did not keep accurate records of my wages or tips earned, or of the hours that I worked.

36. Throughout the course of my employment, OTG did not provide me accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance, or accurate annual notices.

**Other Tipped Hourly Employees Are Subjected to the Same Policies and Procedures**

37. There are hundreds of other tipped workers working at OTG's locations in ten airports across North America. I know this because I attended trainings required by OTG's corporate office in which the trainers discussed the fact that OTG operated restaurants in other airports around the country.

38. I was subject to the same policies and practices described above at NYSB, Drinks, and O'Neil's.

39. I observed that OTG required the other bartenders and servers to follow the same rules and procedures that I was required to follow. For example, I worked alongside other bartenders and servers while at NYSB, Drinks, and O'Neil's, including Maggie [last name unknown], Euradisis [last name unknown], Sernelle Bob, and Kimarley Grant, and they were required to do the same work as me.

40. I spoke with other tipped workers employed by OTG who OTG required to follow the same rules and procedures that I was required to follow, including but not limited to Gahari Chen, a server in Terminal 5; Chantel Lynch, a bartender in Terminal 5; Lynette [last name unknown], a server in Terminal 5; and Yana [last name unknown], a server in Terminal 5.

41. I believe all tipped workers employed by OTG should receive notice of this



lawsuit and receive an opportunity to join the case.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

1/13/2020

\_\_\_\_\_  
Date

DocuSigned by:  
*Raquel Ernest*  
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\_\_\_\_\_  
Raquel Ernest

# **Exhibit 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**DECLARATION OF CHANTEL LYNCH**

I, Chantel Lynch, under penalty of perjury, affirm and state as follows:

1. I am a Plaintiff in the above-captioned case, and I submit this declaration in support of Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b).
2. From in or around December 2015 until May 2017, OTG Management, LLC ("OTG" or "Defendant") employed me as a bartender at its restaurants and bars, including Horizon, a satellite bar by Gate 6 of Terminal 4, and other satellite bars at John F. Kennedy International Airport ("JFK") in Queens, New York.
3. In addition to my work as a bartender, OTG often required me to perform the job duties of a dishwasher and janitor.
4. I "clocked in" and "clocked out" for my shifts using my employee-id on a centralized time-keeping system.
5. At the restaurants and bars where I worked, customers inputted their orders on iPads.
6. Throughout the course of my employment at OTG, I worked between approximately 20 to 33 hours a week.

**My Compensation**

7. Throughout the course of my employment, OTG paid me at a “tipped” minimum wage rate, which was less than the full minimum wage rate.

**OTG Did Not Provide Me with a Notice of the Tip Credit**

8. Throughout the course of my employment, OTG did not explain to me that I was being paid less than the full minimum wage because I was receiving tips, or that my tips would be used as a credit against the minimum wage that OTG was required to pay me.

9. Throughout the course of my employment, OTG never provided me with nor showed me a copy or a summary of any laws, rules, or regulations regarding the tip credit and minimum wages.

**My Non-Tip Producing Work**

10. At the start, during, and at the end of my shifts OTG required that I, and other tipped workers, spend a substantial amount of time performing work that did not involve customer interaction and did not generate tips (“Unrelated Duties”).

11. My Unrelated Duties were not typically specific to a particular customer and were often performed in mass quantities for the entire shift or future shift.

12. When I performed Unrelated Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

13. In addition, during my shifts, OTG required that I, and other tipped workers, spend a substantial amount of time performing work that was related to my work serving customers but did not generate tips (“Related Duties”).

14. When I performed Related Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

15. I, and other tipped workers, spent in excess of 2 hours of our time at work during a typical 5 to 8-hour shift performing non-tip producing side work or other non-tipped work that was unrelated to my work as a bartender (together, “Non-Tipped Work”).

16. When I worked opening shifts, OTG required me to arrive at the restaurant or bar approximately 15 minutes before opening to perform Non-Tipped Work, including but not limited to: wiping down chairs, bar tops, and tables; creating bouquets for tables; setting tables; restocking table caddies; washing dishes by hand; sweeping floors; filling the bar refrigerator with ice; obtaining fruits, snacks, drinks, and dressings from other OTG restaurants in the terminal and bringing them back to the restaurant; setting up the liquor display; filling up sinks and buckets with sanitizer solution and soap and water; screwing nozzles into soda machines; cutting up fruits for drink garnishes and fruit salads; turning on televisions; removing stoppers from beer taps; placing pourers on liquor bottles; changing keg and soda machines; pouring dressings into containers and placing them in the refrigerator; brewing coffee; pouring milk into canisters; placing pastries into the pastry display; and restocking beer, utensil containers, and napkins behind the bar. I spent approximately 1 1/2 hours on these opening duties during a typical 5 1/2-hour shift.

17. Before the end of my morning shifts, for approximately 1 hour, OTG required me to perform Non-Tipped Work, including but not limited to: cutting fruits for drink garnishes; washing dishes, utensils, and glasses; restocking pastries; sweeping behind and around the bar; wiping countertops; and restocking milk, sugar, silverware, and glasses.

18. When I worked 4- to 6-hour mid-shifts, OTG required me to perform Non-Tipped Work at the start of my shift including, but not limited to: wiping down chairs, bar tops, and tables; re-setting tables with plastic mats, utensils, cups, and napkins; restocking table caddies

with menus, salt, sugar, and pepper and placing them on tables; sweeping the floors; filling the bar refrigerator with ice; obtaining fruits, snacks, drinks, and dressings from other restaurants in the terminal and bringing them back to the restaurant; re-setting the liquor display; filling up sinks and buckets with sanitizer solution and soap and water; cutting up fruits for drink garnishes and fruit salads; placing pourers on liquor bottles; changing keg and soda machines; pouring dressings into containers and placing them in the refrigerator; placing pastries into the pastry display; emptying coffee carafes; washing milk out of cannisters; restocking beer in the refrigerator; restocking utensil containers in the cupboards; and restocking napkins behind the bar. I spent approximately 60 to 90 minutes on these duties.

19. Before the end of my mid-shifts, for approximately 45 to 60 minutes, OTG required me to perform Non-Tipped Work, including but not limited to: washing dishes, utensils, and glasses; sweeping behind and around the bar; wiping the countertops and chair and table legs; pulling booths away from the wall and cleaning the booths; restocking pastries in the display; and cutting up fruit for drink garnishes.

20. When I worked closing shifts, OTG required me to perform Non-Tipped Work, including but not limited to: removing placemats, napkins, forks, glasses, menus, and flowers from countertops and tables; storing and labeling fruit garnishes and drinks; throwing away expired fruit; washing dishes, utensils, and glasses; removing nozzles from soda dispensers and placing them in sanitizer and soap; removing pourers from wine and liquor bottles and placing them in sanitizer and soap; emptying an ice cooler; throwing away pastries and cleaning the pastry display; sweeping behind and around the bar; wiping down the countertops; stocking shelves with glassware; taking inventory of liquor bottles, taking bottles down from the shelves, stocking them in cages, and transporting the cages to another location in the terminal; emptying

coffee carafes; washing milk out of cannisters; turning off and wiping down the television; wiping chair and table legs; and pulling booths away from walls and cleaning the booths. I spent approximately 1 1/2 hours completing these closing tasks during a typical 8-hour shift

21. When I worked closing shifts, OTG also required me to stay until the departure of the last flight in the terminal, even when I did not have any customers. I typically stayed 2 to 3 hours, during which time I often had no customers.

22. OTG required me to perform Non-Tipped Work in between serving customers, for approximately one hour, including but not limited to: delivering prizes from the CIBO market to customers who won games played on the iPad; wiping tables and countertops; resetting tables with placemats, menus, utensils, and glassware; washing dishes; restocking the pastry display; and sweeping.

23. I was also required to perform deep cleaning Non-Tipped Work on a weekly basis that varied, including but not limited to: cleaning out the refrigerator every Sunday; cleaning underneath the sinks; cleaning behind the refrigerator and storage spaces; scraping gum from underneath the tables; dusting the cupboards and televisions; cleaning the storage containers twice weekly; and refilling the salt and pepper shakers weekly.

24. As a result, during the course of my employment at OTG, I typically spent approximately 30 to 65 percent of my working time performing non-tipped duties.

25. Throughout the course of my employment, OTG did not keep track of the time I spent performing Non-Tipped Work.

### **Wage Statements and Records**

26. Throughout the course of my employment, OTG did not keep accurate records of my wages or tips earned, or of the hours that I worked.

27. Throughout the course of my employment, OTG did not provide me accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance, or accurate annual notices.

**Other Tipped Hourly Employees Are Subjected to the Same Policies and Procedures**

28. There are hundreds of other tipped workers working at OTG's locations in airports across North America. I know this because an OTG manager, Timothy [last name unknown], told me about restaurants and bars operated by OTG at other airports when I was seeking to transfer.

29. When I inquired about transferring to another OTG location in Florida, OTG manager Timothy [last name unknown], did not tell me that I would require additional training.

30. Besides working at Horizon, I worked at several other OTG-owned bars and restaurants at JFK, including a satellite bar Gate 6 in Terminal 4, among others and was subject to the same policies and practices described above.

31. I observed that OTG required other bartenders and servers to follow the same rules and procedures that I was required to follow. For example, bartenders and servers were not permitted to leave at the end of their shifts until they cleaned their sections by, for example, sweeping floors, wiping countertops, resetting tables, rolling silverware, and cutting garnishes among other tasks.

32. I know from my conversations with several co-workers who worked as bartenders at multiple OTG locations, including JoAnne [last name unknown] and Andre [last name unknown] who both worked at Horizon and Gate 6 among other OTG restaurants, that my co-workers who worked at other OTG locations were subject to the same policies and practices described above.



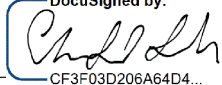
33. Supervisors at OTG, including Timothy [last name unknown], also held pre-shift meetings with bartenders and servers in which he told us to clean under and behind the coffee station and to take it apart during cleaning; to empty, clean, and restock the refrigerators; sweep floors, check dishwashers for dishes; stock liquor bottles on the shelves, turn off TVs, among other non-tipped work. OTG paid me the tipped minimum wage for the time I spent attending these meetings.

34. I believe all tipped workers employed by OTG should receive notice of this lawsuit and receive an opportunity to join the case.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

3/2/2020

Date

DocuSigned by:  


CF3F03D206A64D4...  
Chantel Lynch

# **Exhibit 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**DECLARATION OF SANGEETA THOMPSON**

I, Sangeeta Thompson, under penalty of perjury, affirm and state as follows:

1. I filed a consent to join the putative collective action on March 4, 2020.
2. I submit this declaration in support of Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b).
3. From in or around January 2016 until June 28, 2017, OTG Management, LLC ("OTG" or "Defendant") employed me as a bartender and server at its restaurants and bars, CBGB Lounge ("CBGB"), Flora Cafe, Nonna's Meatball Café ("Nonna's"), Happy Clam, SURF, Tacquila, and Wanderlust Burger Bar, among others, at Newark Liberty International Airport in Newark, New Jersey.
4. In addition to my work as a server and bartender, OTG often required me to perform the job duties of a dishwasher and janitor.
5. I "clocked in" and "clocked out" for my shifts using my employee-id on a centralized time-keeping system.
6. Throughout the course of my employment at OTG, I worked between approximately 30 to 43 hours a week.

**My Compensation**

7. Throughout the course of my employment, OTG paid me at a “tipped” minimum wage rate, which was less than the full minimum wage rate.

8. Throughout the course of my employment, OTG did not pay me an overtime premium for hours worked in excess of 40 per workweek.

**OTG Did Not Provide Me with a Notice of the Tip Credit**

9. Throughout the course of my employment, OTG did not explain to me that I was being paid less than the full minimum wage because I was receiving tips, or that my tips would be used as a credit against the minimum wage that OTG was required to pay me.

10. Throughout the course of my employment, OTG never provided me with nor showed me a copy or a summary of any laws, rules, or regulations regarding the tip credit and minimum wages.

**My Non-Tip Producing Work**

11. At the start, during, and at the end of my shifts OTG required that I, and other tipped workers, spend a substantial amount of time performing work that did not involve customer interaction and did not generate tips (“Unrelated Duties”).

12. My Unrelated Duties were not typically specific to a particular customer and were often performed in mass quantities for the entire shift or future shift.

13. When I performed Unrelated Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

14. In addition, during my shifts, OTG required that I, and other tipped workers, spend a substantial amount of time performing work that was related to my work serving customers but did not generate tips (“Related Duties”).

15. When I performed Related Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

16. I, and other tipped workers, spent in excess of 2 1/2 to 4 hours of our time at work during a typical 10 to 12-hour shift performing non-tip producing side work or other non-tipped work that was unrelated to my work as a bartender or server (together, "Non-Tipped Work").

17. When I worked opening shifts, OTG required me to arrive at bar approximately 4 hours before opening the bar to perform Non-Tipped Work, including but not limited to: getting ice for the bar; unrolling the mats and placing them behind the bar; turning on the lights and televisions; placing ketchup, mustard, salt, pepper, bottles of sparkling and flat water, and a sugar caddy on the bar; removing stoppers from beer taps; brewing the coffee; setting the bar with knives, forks, napkins, and paper placemats; wiping the computers behind the bars; filling a bucket with sanitizer solution; screwing nozzles into the soda machines; retrieving ice and delivering it to different restaurants and bars; cutting lemons, limes, oranges, celery and cucumbers and preparing olives and cherries for drink garnishes; placing bags into trash cans; restocking the and bar server station with napkins, silverware, tea bags, and table turners; and restocking the refrigerator with beers. I spent approximately 4 hours completing these tasks during a typical 10 to 12-hour shift.

18. Before the end my morning bartender shifts, for approximately 2 to 3 hours, OTG required me to perform Non-Tipped Work, including but not limited to: refilling the ice for the bar; cutting lemons, limes, oranges, celery and cucumbers and preparing olives and cherries for drink garnishes; cleaning out the refrigerator; retrieving beers, wines, and juices from one part of the terminal and restocking the refrigerator; restocking liquor bottles and wine bottles; washing silverware and glasses by hand; changing the sanitizer solution in the sanitizer sink; and going

down the “cage” in the basement to obtain supplies such as table turners, napkins, and straws. I spent approximately 2 to 3 hours completing these tasks during a typical 10 to 12-hour shift.

19. When I worked closing shifts, OTG required me to perform Non-Tipped Work after closing, including but not limited to: moving the mats from behind the bar; sweeping and moping the floors; wiping the chairs, tables, and bar top; placing the chairs on the top of the bars and tables; pouring cleaning solution and hot water down the drain; wiping the garbage pails and the wall behind the garbage pails; handwashing silverware and glasses; rolling silverware; retrieving the caddies with ketchup and mustard from the table and placing them in the cabinet behind the bar; taking inventory of the liquor and beers; replace empty beer kegs; taking empty beer kegs to Saison (another restaurant); wiping the liquor bottles; breaking down the soda machine and cleaning the nozzles; wrapping the soda nozzles, beer taps, and sink fixtures in saran wrap; draining and cleaning the ice bin; and placing stoppers in the beer taps. I spent approximately 2 hours completing these closing tasks during a typical 10 to 12-hour shift.

20. When I worked closing shifts, OTG also required me to stay until the departure of the last flight in the terminal, even when I did not have any customers. I typically stayed 1 to 2 hours, during which time I often had no customers.

21. When I worked opening shifts, OTG required me to come in at 8:00 a.m. even though I was not permitted to serve alcohol until noon under New Jersey law. During this time, I did not have any customers and did not receive the regular minimum wage.

22. During my bartending shifts, OTG required me to perform Non-Tipped Work in between serving customers, for approximately 2 hours, including but not limited to: cutting garnishes for drinks; changing the beer kegs; brewing tea and coffee; changing the soda for the soda machine; cleaning the bar tops; obtaining napkins, table turners, straws, stirrers, juices,

liquor, wine, soda and beer from another location in the terminal and bringing them to the bar to restock the bar, server station, and refrigerator; washing glasses and silverware, and training new bartenders.

23. As a bartender, I was also required to perform deep cleaning Non-Tipped Work that varied, approximately once a week, including but not limited to: cleaning the booths; removing gum from the bar; cleaning walls; deep-cleaning the garbage can; cleaning windows and mirrors; dusting light fixtures; cleaning drains; removing everything in the refrigerators and wiping them down; cleaning the mats behind the bar; and soaking liquor pourers. In addition, approximately once a month, I was required to dust liquor bottles used for display and the glass shelves on which they sat.

24. As a result, during the course of my employment at OTG, I typically spent approximately 33 to 70 percent of my working time performing Non-Tipped Work.

25. Throughout my employment, OTG did not keep track of the time I spent performing Non-Tipped Work.

**Work Performed Off-the-Clock / Overtime**

26. OTG maintains a policy whereby tipped employees work off-the-clock. When performing work off-the-clock, I, and other tipped workers, often were engaged in Non-Tipped Work.

27. Throughout the course of my employment, OTG frequently required me to perform work off-the-clock without compensation.

28. For example, OTG often clocked me out for breaks and lunches I did not take.

29. OTG also often clocked me out when my scheduled shift was over, while at the same time requiring me to continue performing non-tipped side work, off-the-clock. For

example, when I worked as a closer, my managers punched me out at the conclusion of my scheduled shift so that the additional 45 minutes to an hour I spent performing side work was off-the-clock.

30. Managers were aware that I worked off-the-clock and that my punch in/punch out reports did not accurately reflect all of the hours that I worked.

31. OTG compensated me only for the time I punched in.

32. When I received my paycheck at the end of a pay period, it did not accurately reflect all of hours I worked at OTG for that pay period.

33. I observed that managers regularly required servers and bartenders to work after they clocked out. For example, Jenna G. (last name unknown), a manager, required me and other bartenders and servers to clean dishes after we had clocked out. I know this because I looked at my time records.

34. In addition, Tara Simon, a manager, directed me and other bartenders to clock out, but still required us to work through our breaks.

35. I have spoken about this policy and practice with other tipped workers, including Chris (last name unknown), a bartender at Tequila; Ritchie Rodriguez, a bartender at Nona; Pedro (last name unknown) a bartender at Tequila; Aljon (last name unknown), a bartender at a Saison; Emily Sandburg, a server at CBGB; Thuanny (last name unknown), a server at CBGB and Tequila; and Vanessa Garcia, a bartender at CBGB.

**Wage Statements and Records**

36. Throughout the course of my employment, OTG did not keep accurate records of my wages or tips earned, or of the hours that I worked.

37. Throughout the course of my employment, OTG did not provide me accurate



statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance, or accurate annual notices.

**Other Tipped Hourly Employees Are Subjected to the Same Policies and Procedures**

38. There are hundreds of other tipped workers working at OTG's locations in ten airports across North America. I know this because I attended trainings required by OTG's corporate office in which the trainers discussed the fact that OTG operated restaurants in other airports around the country and employed hundreds of other tipped workers.

39. I was subject to the same policies and practices described above at CBGB, Flora Cafe, Nonna's, Happy Clam, SURF, Tacquila, and Wanderlust Burger Bar.

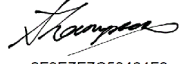
40. I observed that OTG required the other bartenders and servers to follow the same rules and procedures that I was required to follow. For example, I worked alongside other bartenders and servers while at CBGB, Flora Cafe, Nonna's, Happy Clam, SURF, Tacquila, and Wanderlust Burger Bar, including Richard Rodriguez, a bartender at Nona; Pedro DeAraujo, a bartender at Tequila; Aljon (last name unknown), a bartender at Saison; Emily Sandburg, a server at CBGB; Thuanny DeAraujo, a server at CBGB and Tequila; and Vanessa Garcia, a bartender at CBGB; Moses Tapia a bartender at CBGB; Andrew (last name unknown), a server at CBGB, Nonna's, and Flora Café; Joel Delgado, a server at CBGB; Tathayanna Alvarez, a server at CBGB and Nonna's; Joseph H-Alvarez, a server at Nonna's; Crystal Rodriguez, a bartender at CBGB; Melina Gaspin, a bartender at Nonna's; Nancy Franklin, a bartender at Nonna's; Corinne Little, a bartender at Nonna's; Pablo Alvarado, a server at CBGB; Renan (last name unknown), a server at CBGB; Jenn Castillo, a server and bartender at CBGB; Tonowa Stevenson, a server and bartender at CBGB; Kiki, a server at CBGB; Kenneth Jankowsky, a bartender CBGB; Josey (last name unknown), a bartender CBGB; Greg Butler, a bartender at

CBGB and Nonna's and they were required to do the same work as me.

41. I spoke with other tipped workers employed by OTG who OTG required to follow the same rules and procedures that I was required to follow, including but not limited to all the individuals listed in Paragraph 39.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

3/5/2020  
\_\_\_\_\_  
Date

DocuSigned by:  
  
2F3E7E7C58464F9...  
\_\_\_\_\_  
Sangeeta Thompson

# **Exhibit 5**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**DECLARATION OF NAZMUL HUSSAIN**

I, Nazmul Hussain, under penalty of perjury, affirm and state as follows:

1. I submit this declaration in support of Plaintiffs' Motion for Court-Authorized Notice Pursuant to 29 U.S.C. § 216(b).

2. From in or around January 2014 until approximately March 2015, OTG Management, LLC ("OTG" or "Defendant") employed me as a server at its restaurants and bars, including Voyage and Wine Bar in Terminal C at LaGuardia Airport in Queens, New York.

3. In addition to my work as a server and bartender, OTG often required me to perform the job duties of a dishwasher and janitor.

4. I "clocked in" and "clocked out" using my employee-id on a centralized time-keeping system using a card and a pin code or a timekeeping machine.

5. At the restaurants and bars where I worked, customers inputted their orders on iPads.

6. Throughout the course of my employment at OTG, I worked between approximately 32 to 40 hours a week.

**My Compensation**

7. Throughout the course of my employment, OTG paid me at a “tipped” minimum wage rate, which was less than the full minimum wage rate.

**OTG Did Not Provide Me with a Notice of the Tip Credit**

8. Throughout the course of my employment, OTG did not explain to me that I was being paid less than the full minimum wage because I was receiving tips, or that my tips would be used as a credit against the minimum wage that OTG was required to pay me.

9. Throughout the course of my employment, OTG never provided me with nor showed me a copy or a summary of any laws, rules, or regulations regarding the tip credit and minimum wages.

**My Non-Tip Producing Work**

10. At the start, during, and at the end of my shifts OTG required that I, and other tipped workers, spend a substantial amount of time performing work that did not involve customer interaction and did not generate tips (“Unrelated Duties”).

11. My Unrelated Duties were not typically specific to a particular customer and were often performed in mass quantities for the entire shift or future shift.

12. When I performed Unrelated Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

13. In addition, during my shifts, OTG required that I, and other tipped workers, spend a substantial amount of time performing work that was related to my work serving customers but did not generate tips (“Related Duties”).

14. When I performed Related Duties, OTG compensated other tipped workers and me at the tipped minimum wage rate rather than the full minimum wage rate.

15. I, and other tipped workers, spent in excess of 2 hours of our time at work during a typical 8-hour shift performing non-tip producing side work or other non-tipped work that was unrelated to my work as a bartender or server (together, “Non-Tipped Work”).

16. When I worked opening shifts, OTG required me to arrive at the restaurant or bar approximately 30 minutes before opening to perform Non-Tipped Work, including but not limited to: gathering ice from another restaurant in the terminal; filling the bar refrigerator with ice; restocking beer, wine, and liquor bottles; taking inventory of alcohol; cutting garnishes for drinks, including lemons and limes and placing them on the bar; wiping chairs, bar tops, and tables; setting each seat at the tables with napkins, knives, forks, and glass; washing knives and bartending tools left from the night before; washing dishes, glasses, and silverware left from the night before by hand and using the dishwasher; emptying and draining the dishwasher from the night before; gathering printer paper for the cash register; brewing coffee; creating bouquets for tables; restocking table caddies with salt and pepper grinders; sweeping floors; obtaining fruits, snacks ordered by customers on iPads, drinks, milk, and condiments, dressings from other OTG restaurants in the terminal and bringing them back to the restaurant; filling up sinks with sanitizer solution; cutting up fruits for drink garnishes and fruit salads; turning on televisions; removing saran wrap from soda machine nozzles; placing pourers on liquor bottles; changing soda machines; brewing coffee; making iced coffee; pouring milk into cannisters; placing pastries into the pastry display; and placing utensils, containers, and napkins behind the bar. I spent approximately 30 minutes completing these tasks during a typical 8-hour shift.

17. Before the end of my morning shifts, for approximately 30 to 60 minutes, OTG required me to perform Non-Tipped Work, including but not limited to: cutting up fruits including lemons and limes for drink garnishes; refilling salt and pepper grinders; washing dishes, utensils,

and glasses; restocking pastries; sweeping around the tables; wiping down the countertops; restocking milk, sugar, silverware, and glasses; wiping tables and chairs; and making simple syrup.

18. When I worked mid-shifts, OTG required me to perform Non-Work at the start of my shift including, but not limited to: wiping chairs, bar tops, and tables; re-setting tables with forks, knives, glasses, and napkins; restocking table caddies with salt and pepper grinders; sweeping the floors; filling the bar refrigerator with ice; obtaining fruits, snacks, drinks, milk and dressings from other restaurants in the terminal and bringing them back to the restaurant; re-setting the liquor display; filling up sinks with sanitizer solution; cutting up fruits for drink garnishes and fruit salads; placing pourers on new liquor bottles; changing soda machines; placing pastries into the pastry display; emptying coffee carafes; brewing coffee; washing milk out of cannisters and refilling with milk; restocking beer in the refrigerator; and restocking utensils and napkins. I spent approximately 30 minutes on these duties.

19. Before the end of my mid-shifts, for approximately 30 minutes, OTG required me to perform Non-Tipped Work, including but not limited to: wiping chairs, bar tops, and tables; re-setting tables with forks, knives, glasses, and napkins; restocking table caddies with salt and pepper grinders; sweeping the floors; filling the bar refrigerator with ice; obtaining fruits, snacks, drinks, milk, and dressings from other restaurants in the terminal and bringing them back to the restaurant; re-setting the liquor display; filling up sinks with sanitizer solution; cutting up fruits for drink garnishes and fruit salads; placing pourers on new liquor bottles; changing soda machines; placing pastries into the pastry display; emptying coffee carafes brewing coffee; washing milk out of cannisters and refilling with milk; restocking beer in the refrigerator; and restocking utensils and napkins.

20. When I worked closing shifts, OTG required me to perform Non-Tipped Work,

including but not limited to: turning off the television; sweeping and mopping the floor; wrapping and labelling trays of garnishes such as lemons, limes, cherries, mint, strawberries, and olives and placing them in the refrigerator; putting covers on pourers on liquor bottles; wiping down tables and chairs; setting tables; restocking wine, liquor, and beer bottles from the cage located in the beverage stockroom; obtaining items such as lemons, limes, mint, strawberries, olives, and napkins from another restaurant in the terminal for the next day's preparation; emptying and draining the ice bin; emptying the sink with sanitizer solution; cleaning glasses, dishes, silverware by hand and with the dishwasher; stocking shelves with glassware; setting tables with napkins, forks, knives, and glasses; wiping iPads; restocking table caddies with salt and pepper grinders; placing saran wrap on soda machine nozzles; throwing out leftover coffee; and washing the coffee containers and milk cannisters. I spent approximately 35 to 60 minutes completing these closing tasks during a typical 8-hour shift.

21. When I worked closing shifts, OTG also required me to stay until the departure of the last flight in the terminal, even when I did not have any customers. I typically stayed 1 hour, during which time I often had no customers.

22. OTG required me to perform Non-Tipped Work in between serving customers, for approximately 2 hours, including but not limited to: gathering ice from other restaurants in the terminal; sweeping and mopping floors; restocking liquor, wine, and beer bottles; restocking soda; wiping tables; washing dishes, glasses, and silverware; cooking pretzels; taking inventory of liquor bottles; delivering shopping items to customers ordered from the giftshops on the iPad; wiping iPads; resetting tables and the bar with placemats, utensils, glassware, and napkins; washing dishes, glassware, and silverware; brewing coffee; obtaining milk and other dressing and from another restaurant in the terminal.



23. Every day OTG required me to perform deep cleaning Non-Tipped Work that varied, including but not limited to: setting up the liquor display; dusting wine bottles; wiping walls; cleaning behind, underneath, and inside the refrigerator; picking up broken glass and scrapping gum from underneath the tables.

24. As a result, during the course of my employment at OTG, I typically spent approximately 30 to 60 percent of my working time performing Non-Tipped Work.

25. Throughout the course of my employment, OTG did not keep track of the time I spent performing Non-Tipped Work.

**Wage Statements and Records**

26. Throughout the course of my employment, OTG did not keep accurate records of my wages or tips earned, or of the hours that I worked.

27. Throughout the course of my employment, OTG did not provide me accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance, or accurate annual notices.

**Other Tipped Hourly Employees Are Subjected to the Same Policies and Procedures**

28. There are hundreds of other tipped workers working at OTG's locations airports across North America. I know this because at orientation a manager told me that OTG stands for "on the go service" and that they operate restaurants, bars, stores, and gift shops out of ten airports.

29. I was subject to the same policies and practices at Voyage and Wine Bar.

30. I spoke with other tipped workers employed by OTG who OTG required to follow the same rules and procedures that I was required to follow, including but not limited to Daniel Aronzo, a server and bartender at Voyage; Emjay Justin, a server and bartender at Cotto, Victory Grill, and Voyage; Juan Pablo, a server and bartender at Voyage and Cotto; Stacy [last name

unknown] server and bartender at Voyage; Sean Collins, server and bartender at Voyage; Jessica Torres a server and bartender at Voyage; Fidel [last name unknown] a bartender and server at Wine Bar; Jonathan [last name unknown] server and bartender at Wine Bar; and Norbu [last name unknown] a server and bartender at Voyage. For example, Martin D. [last name unknown] a general manager of Cotto, Voyage, and Wine Bar held meetings with tipped workers including me in which he directed us to sweep the floors, wipe the wine bar, clean the tables, wipe the iPads, turn off the televisions, and mop the floor at night. OTG paid me the tipped minimum wage for the time I spent attending these meetings.

31. I observed managers using a checklist to ensure that I my co-workers and I completed Non-Tipped Work.

32. I believe all tipped workers employed by OTG should receive notice of this lawsuit and receive an opportunity to join the case.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

3/2/2020  
\_\_\_\_\_  
Date

DocuSigned by:  
*Nazmul Hussain*  
51750A44C436400...  
\_\_\_\_\_  
Nazmul Hussain

# **Exhibit 6**

Director Of Payroll in Washington, DC



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## Director Of Payroll

OTG Management · New York, New York

4 months ago · 74 applicants



See who OTG Management has hired for this role

No longer accepting applications

Posted by:

Janet Simonelli

### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

Join OTG as the **Director of Payroll** now and drive a new type of hospitality experience at our Park Avenue South Headquarters. Discover career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry. We transform airport experiences. **You drive it.**

### Position Summary:

Directs the operations of the organization's payroll function. Job Duties: Oversees activities of a team of payroll clerks or analysts that input payroll data and prepare weekly payroll checks. Ensures that personnel or tax law changes are captured, that overtime or bonus payments are accurately distributed, and that timesheets are submitted and retained appropriately. Ensures compliance with payroll laws and regulations at the state, federal, international level. Selects 3rd party payroll processors and serves as the company liaison. Leads and directs the work of other employees and has responsibility for personnel actions including hiring, performance management, and termination. Contributes to strategic planning, direction, and goal setting for the department or function in collaboration with senior management. Establishes departmental policies, practices, and procedures that have a significant impact on the organization.



### Director Of Payroll

OTG Management · New York, New York

- responsible for managing the terminal (pre and curbside) payroll operations
- Provides support on integration projects as needed

- Understands payroll strategies and delivers recommendations for improving payroll process
- Champions payroll-related projects
- Leads and supports all projects and initiatives directed by management
- Monitors and ensures updated statutory regulations with CBA compliance in the timekeeping system
- Reviews payroll preview reports during weekly and bi-weekly payroll prepared by Payroll Processors
- Manages/approves quarterly and year-end tax process including tax adjustments, W2 issuance, etc.
- Approves appropriate payments of deducted amounts to the payees and approves all manual checks
- Develops and maintains strong working relationships with outside vendors
- Ensures compilation and preparation of payroll data for various reporting functions such as 401k, health insurance, etc.
- Prepares monthly invoices for payment pertaining to active Collective Bargaining Agreements including pension, health & welfare, and union dues
- Audits and reconciles monthly benefits deductions to ensure correct payroll setup
- Serves as system coordinator for company's timekeeping system
- Ensures accurate compliance with FLSA and state wage requirements
- Interprets company policies and government regulations to properly impact payroll procedures and system processes
- Remains current on new legislation and regulatory ruling impact payroll
- Enforces adherence to requirements and advises management on required actions
- Remains current on new Collective Bargaining Agreements pertaining to payroll
- Provide guidance on various Federal, State, and Local legislations; stay current with US and international tax requirement
- Establish strong partnerships with key organizations, including: accounting, finance, and operations

### **QUALIFICATIONS AND EDUCATION REQUIREMENTS**

#### **Education:**

- Typically requires a bachelor's degree and at least 10 years of experience, including some prior management experience.

#### **Qualifications:**

##### **- MUST BE Certified Payroll Professional (CPP)**

Competencies: Ability to work as part of a team. Decision-making skills. Leadership skills. Customer/client orientation. Detail oriented. Ability to meet deadlines. Accounting skills.

- 10+ years of relevant experience in payroll, with a minimum of 2 years managing hospitality payroll
- 3 years of experience in multi-state payroll (multi-national organization is a plus)
- Proficiency in payroll and related system processes Ceridian Dayforce Preferred
- Experience managing and driving timekeeping system interface with payroll
- Proficiency with MS Excel, Outlook, Word, and Ceridian
- Experience in system implementation and/or migration
- Proven ability to manage multiple tasks, meet deadlines, and adapt to change in a fast paced environment
- Strong leader to support the needs of the business and support for payroll processors
- High attention to detail, works accurately and quickly



#### **Director Of Payroll**

OTG Management · New York, New York  
appropriately to inquiries from all levels

- Excellent interpersonal, verbal, and written communication skills

- Strong team player
- Has a positive attitude about work and providing service

Seniority level

**Director**

Employment type

**Full-time**

Job function

**Human Resources,  
Accounting/Auditing**

Industries

**Hospitality, Restaurants, Retail**

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# **Exhibit 7**

Director of Human Resources in Washington, DC



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### Director of Human Resources

OTG Management · Newark, New Jersey

5 months ago · 168 applicants



See who OTG Management has hired for this role

No longer accepting applications

Posted by:

Janet Simonelli

#### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

Join OTG as Director of Human Resources - Terminal now and drive a new type of hospitality experience at Newark Airport.

#### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. You drive it.

The Human Resources Director (HRD) is the keeper of the Company's employee-centric culture and is responsible for effectively improving compliance in human resources, payroll, and company policies and procedures. The HRD will partner with other members of senior management to instill property leadership, good business practice, and a profitable airport location. The HRD acts as a trusted advisor for handling and/or resolving workplace issues and coaching the company's managers and HR staff in the proper management of employee issues.

The Human Resources Director is a hands-on role and one that must be highly visible to crew members throughout the airport.

Duties include, but are not limited to, the following areas:

- Implements and coordinates HR compliance programs to audit and validate policies and documentation, including EEO, FLSA, state, and local payroll and reporting requirements, EMLA, OSHA, and CRA regulations, OTG employment



#### Director of Human Resources

OTG Management · Newark, New Jersey

- Conducts process reviews with members of terminal management and/or other departments to ensure consistency.



- Trains and ensures fair and effective recruiting and hiring practices
- Provides direct communication, coaching, and consultation to terminal management where needed to build and develop greater organizational capability.
- Recruiting a diverse pool of applicants that reflects the community's demographics which can best be delivered by building an effective community outreach program. Examples of this are as follows:
  - Community organizations and ethnic advocacy agencies
  - Local unemployment agencies/offices
  - Educational institutions (high schools, community colleges, etc.)
  - Collegiate hospitality schools
  - [www.otgexp.com/careers](http://www.otgexp.com/careers)
- Interviewing, Hiring and On-Boarding hourly and management employees
  - Background/drug/reference checks
  - New Hire Orientation
- Participates with senior management on labor management issues – i.e contract negotiations, training problem resolution and grievance administrations.
- Partnering with our Discovery Team to develop team members through e-learning and other various means.
- Collaborates with Corporate HRIS Manager on developing audit programs to improve data integrity in HRIS systems.
- Works with field payroll processors and corporate payroll to improve adherence to compliance requirements and to ensure a correct and on-time weekly payroll processing.
- Actively leading and supporting the various OTG team member programs, including, but not limited to, the following:
  - 15-day new hire check-ins
  - Core Values Team (co-chair with Terminal Director)
  - Performance Appraisals
  - Hangouts – plans and facilitates all employee communication & recognition meetings/events
- Directing the Talent Rewards Program, including, but not limited to, the following:
  - Health & welfare benefits
  - Compensation and bonus program
- Administering and enforcing the Company's HR Policies & Procedures
- Ensuring that the airport's HR function complies with all state and federal laws as well as regulations and court rulings which pertain to Human Resources by reviewing current management practices, implementing new procedures, and communicating any new requirements.
- Preparing Human Resources' annual budget and monthly forecasts
- Being responsible for Risk Management programs and Workers' Compensation benefits.
- Maintaining all airport personnel records and Human Resources files, ensuring confidentiality.
- Responsibility for pre-employment processing including Airport Badging program



**Director of Human Resources**

OTG Management · Newark, New Jersey

The ideal Human Resources Director (HRD) candidate will bring the following required, desired, and optional assets to the company:

- Bachelor's degree or equivalent education/experience required
- PHR or SPHR certification highly desired
- 5 years Human Resources experience required
- **Experience with 1,000+ employee base - REQUIRED**
- **Strong Labor relations experience - Union experience - REQUIRED**
- Knowledge of Federal & State laws pertaining to HR
- Strong employee relations experience
- Hospitality experience preferred
- Excellent written & verbal communication
- Strong analytical, problem solving & organization skills
- Ability to multitask in demanding environment
- Microsoft Office skills required
- Ceridian Dayforce experience desirable
- **Payroll knowledge REQUIRED**
- Bilingual a plus
- Must be very hands-on

#### Job Characteristics

Below are the salient job characteristics, summarized and categorized. The ideal Human Resources Director candidate should thrive in the environment described below.

- Pace and Variety of Activities
  - Variety of activities
  - Multiple projects occurring simultaneously
  - Multi-tasking
  - Sense of urgency for goal achievement
  - Fast-paced environment
- Focus
  - People/relationship focus
  - Team building
  - Inspire/motivate others and engage their commitment
- Decision-Making
  - Involve others in decision-making process
  - Cooperative and collaborative decision-making
  - Must assume responsibility for risk
- Communication & Collaboration
  - Extroverted, warm, enthusiastic, and empathetic
  - Stimulating communicator
  - Persuasive "selling" style
  - Collaborative approach
- Delegation & Leadership Style
  - Leadership based on ability to motivate others
  - Strong commitment to results
  - Delegate authority readily
  - Exhibit a flexible style



Director of Human Resources

OTG Management · Newark, New Jersey

Job function

Industries

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# **Exhibit 8**



## Job Search

Apply Now

### Learning and Development Manager - LGA Airport

LaGuardia Airport Entrance, Queens, NY, USA Req #5831

Date Posted: Tuesday, October 1, 2019

#### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

Join OTG as a Learning and Development Manager now and drive a new type of hospitality experience at our LaGuardia Airport location. Discover career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

#### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry. We transform airport experiences. **You drive it.**

#### Position Summary:

The Learning and Development Manager owns the airport training plan, ensuring that training is consistently and effectively delivered to support the learning and development needs of crewmembers, and in turn, overall performance of the terminal. Training courses and programs include orientation, onboarding, safety/quality assurance, hospitality/service, food, beverage and product, supervisor and manager onboarding and training and functional, on-the-job training. They are responsible for scheduling, tracking, monitoring and communication to terminal and corporate leadership to ensure learning needs are met. As a skilled facilitator themselves, the manager also oversees and coaches other trainers to ensure hourly crewmembers and management receive the right training at the right time. The Manager is part of the terminal leadership team, and as such is responsible for proactively communicating and partnering with the Terminal Director, Human Resources and Operations managers.

#### Responsibilities:

- Establish and execute regular schedule of core training programs for all crewmembers, including new hires.
- Responsible for training plan and delivery at new concept openings
- Ensure that terminal achieves and maintains compliance in all compliance programs, including Food Handlers, Alcohol Awareness, Fire and Life Safety, etc.
- Partner with HR team to ensure new crewmembers are scheduled for orientation, onboarding and new manager training
- Establish training plan for all new supervisors and managers to ensure proper onboarding and readiness in new role
- Partner with managers and training leads to onboard new managers, ensuring that feedback and coaching is occurring
- Communicate new training initiatives to terminal leadership and managers, partnering to ensure new initiatives are implemented successfully.
- Monitor effectiveness and coach trainers, deliver Train-the-Trainer for new programs
- Stay informed about company standards and communicate formally and informally to all levels
- Attend daily leadership stand-up meetings, bringing relevant updates and info to the leadership team that improve crewmember and customer experience
- Track, monitor and report on all training activities and provide weekly dashboard to corporate team and regularly update leaders on key training metrics to drive results
- Manage Discovery training budget and partner with Terminal leadership to ensure training investments are being made
- Schedule Sub-Tenant Training sessions, as applicable

#### Education:

- Associate Degree (required)
- Bachelors Degree (preferred)

**Qualifications:**

- 3 - 4 Years Experience in Hospitality Operations, Training or HR
- Demonstrated results creating a high-performance workplace through cultural leadership that sustains results
- Commitment to service of guests and all crewmembers
- High integrity, work ethic, passion and commitment to OTG values
- Ability to train, delegate, coach and develop peers, and crewmembers
- Excellent verbal and written communication skills
- Ability to clear OTG background checks as well as any requirements to obtain Airport badges



# **Exhibit 9**



## Job Search

[Apply Now](#)

### Bartender

Newark International Airport St, Newark, NJ 07114, USA; Newark Liberty International Airport, 3 Brewster Rd, Newark, New Jersey, United States of America Req #96

Date Posted: Wednesday, January 1, 2020

**Top performing bartenders can earn up to \$45 per hour!**

#### **YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

*Join OTG as a Bartender now, and drive a new type of hospitality experience at Newark Airport. Top performing bartenders can earn up to \$45 per hour!*

#### **WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### **WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### **Responsibilities:**

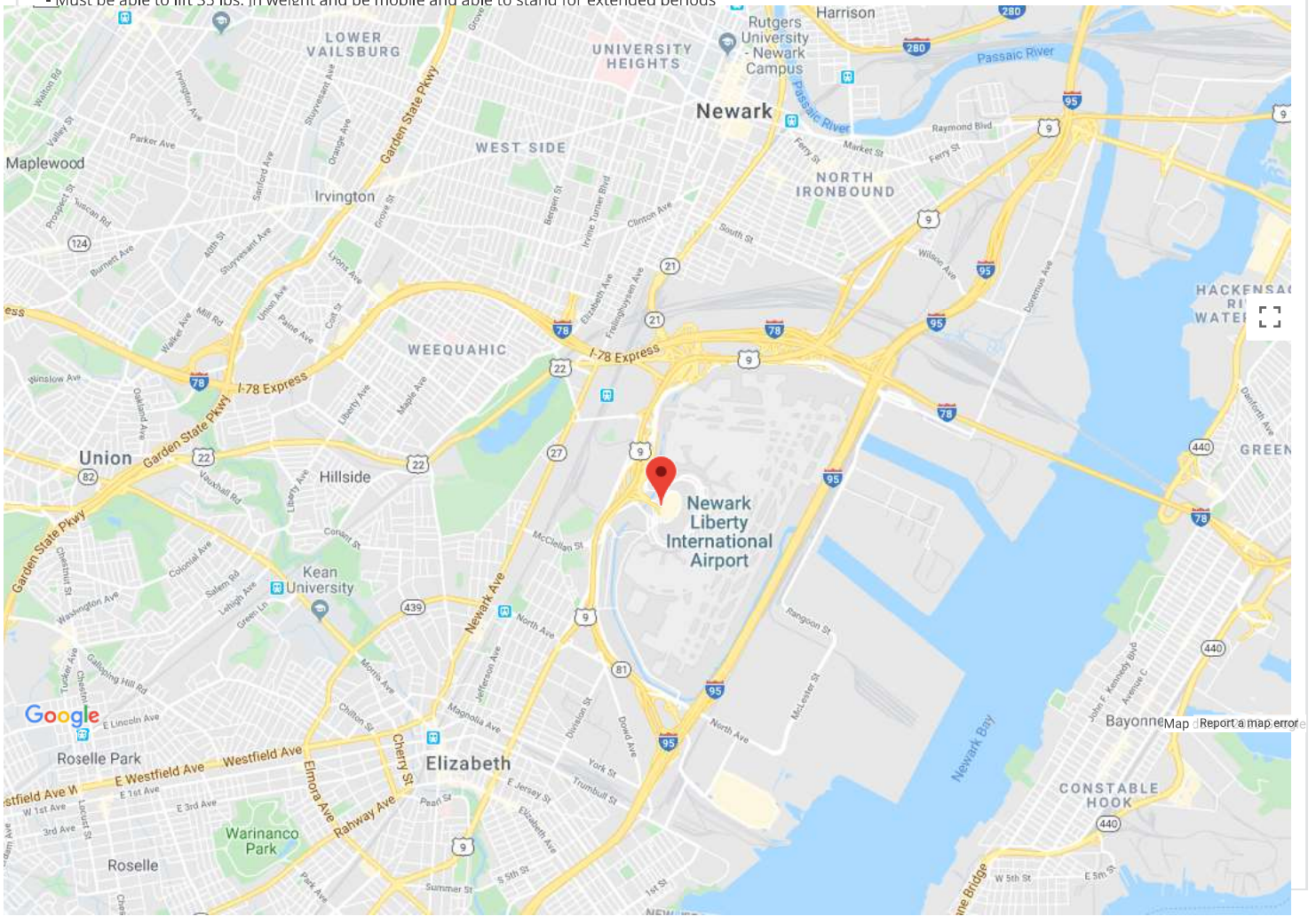
- Greet and acknowledge every guest
- Make recommendations to guests upon request
- Pour beer & wine
- Mix ingredients for all drinks, including cocktails, to OTG specifications
- Input all food and drink orders into the computer
- Adhere to OTG cash handling policies and procedures
- Serve food to customers seated in the restaurant and bar
- Maintain a clean and orderly bar as well as cash register
- Wash glassware, bar utensils, coffee cups, and saucers
- Mop and sweep premises as required
- Aid in moving and installing kegs of beer, CO2 tanks and soda mixes
- Monitor and report intoxicated guests to MOD

#### **QUALIFICATIONS AND EDUCATION**

- Must have extensive bartending skills, including cocktails and specialty drinks, plus strong product knowledge
- Must have pairing knowledge of beers and wines
- Must become TIPS certified within 90 days of employment



- Must be able to serve and prepare food
- Must be 18 years of age and be fully conversational in English
- Must be able to lift 35 lbs. in weight and be mobile and able to stand for extended periods





## Job Search

Apply Now

### Bartender

John F Kennedy International Airport, JFK Airport, Jamaica, New York, United States of America Req #149

Date Posted: Friday, January 3, 2020

**Our top performing bartenders earn \$51 per hour!**

#### **YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

*Join OTG as a Bartender now and drive a new type of hospitality experience at John F Kennedy International Airport. **Our top performing Bartenders earn \$51 per hour!** Discover career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.*

#### **WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### **WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around.** And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### **Responsibilities:**

- Greet and acknowledge every guest
- Make recommendations to guests upon request
- Pour beer & wine
- Mix ingredients for all drinks, including cocktails, to OTG specifications

- Input all food and drink orders into the computer
- Adhere to OTG cash handling policies and procedures
- Maintain a clean and orderly bar as well as cash register
- Aid in moving and installing kegs of beer, CO2 tanks and soda mixes
- Monitor and report intoxicated guests to MOD

**Qualifications and Requirements:**

- Must have extensive bartending skills, including cocktails and specialty drinks, plus strong product knowledge
- Must have pairing knowledge of beers and wines
- Must obtain NYC Food Handlers certification within 30 days of employment
- Must become ServSafe certified within 30 days of employment
- Must be able to serve and prepare food
- Must be 18 years of age
- Must be fully conversational in English
- Must be able to lift 35 lbs. in weight and be mobile and able to stand for extended periods
- Must be flexible as the position requires you to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions
- Must have a general proficiency with computers, with the ability to process information through the POS system

*OTG Management LLC* is an equal opportunity employer. All applicants will be considered for employment without attention to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran or disability status.

## Other details

Pay Type **Hourly**

Travel Required **No**

Required Education **High School**

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Job Search

Apply Now

### Bartender @ LaGuardia Airport

LaGuardia Airport, LaGuardia Airport, Flushing, New York, United States of America Req #1191

Date Posted: Tuesday, February 25, 2020

**YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

Join OTG as a **Bartender** now at LaGuardia Airport and drive a new type of hospitality. Explore career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

**WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

**WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. Our people drive our experiences, so we offer our crewmembers some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

**Position Summary:**

The OTG Bartender at one of our many fine dining options will have a critical role to play in our company's groundbreaking transformation of the airport experience. An OTG Bartender must be at the very top of their profession, with strong interpersonal skills, a sunny disposition and a positive outlook, all the while adhering to the OTG Core Steps of Service. They must ensure that each customer enjoys an outstanding OTG Experience by creating a warm and friendly environment that leaves the strongest impression on our guests.

**Responsibilities:**

- Greet and acknowledge every guest
- Make recommendations to guests upon request
- Pour beer and wine, mix ingredients for all drinks, including cocktails, to OTG specifications
- Input all food and drink orders into the computer
- Update bar tabs with all orders
- Maintain thorough knowledge of beer and wine inventory
- Serve food to customers seated in the restaurant and bar
- Create food and wine/beer pairing menus
- Fully stock bar at beginning of each shift
- Adhere to health and hygiene codes as mandated by OTG and state regulations
- Aid in moving and installing kegs of beer, CO2 tanks and soda mixes
- Monitor and report intoxicated guests to the manager on duty

**Qualifications and Requirements:**

- Previous experience as a bartender is required and basic barista skills
- Proficiency with cocktails, specialty drinks and product knowledge is required
- Must have pairing knowledge of beers and wines
- Must become TIPS certified
- Must be fully conversational in English
- Able to lift 35 lbs and be mobile and able to stand for extended periods of time
- Must be able to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions

OTG Management LLC is an equal opportunity employer. All applicants will be considered for employment without attention to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran or disability status.

Other details

Pay Type: Hourly

Google

LaGuardia Airport, LaGuardia Airport, Flushing, New York, United States of America

Apply Now



Map | Report a map error

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Job Search

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## Bartender - FOH

Ronald Reagan Washington National Airport, 2401 S. Smith Blvd, Arlington, Virginia, United States of America Req #6059

Date Posted: Monday, January 6, 2020

**Our top performing bartenders make \$31 per hour!**

### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

*Join OTG as a Bartender now and drive a new type of hospitality experience at Ronald Reagan Washington National Airport. Our top performing Bartenders can make up to \$31 per hour with TIPS!*

### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in **some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

### Responsibilities:

- Greet and acknowledge every guest
- Make recommendations to guests upon request
- Pour beer & wine
- Mix ingredients for all drinks, including cocktails, to OTG specifications

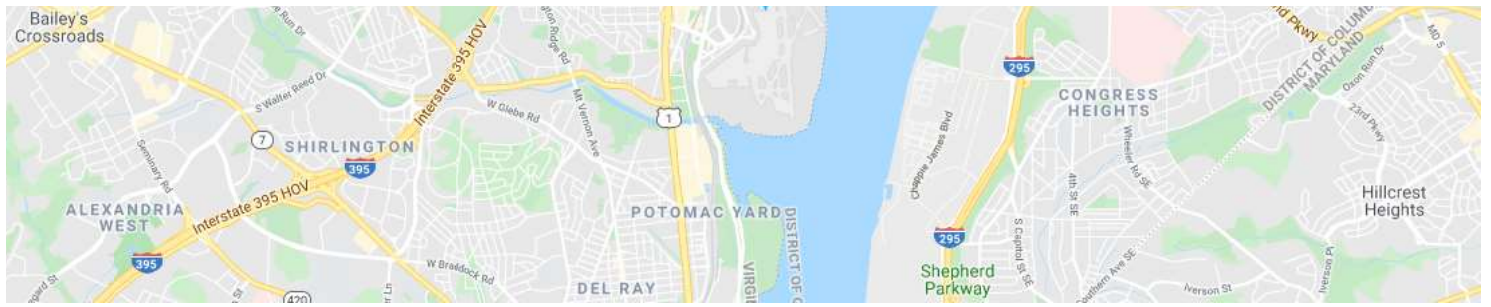
- Input all food and drink orders into the computer
- Adhere to OTG cash handling policies and procedures
- Maintain a clean and orderly bar as well as cash register
- Aid in moving and installing kegs of beer, CO2 tanks and soda mixes
- Monitor and report intoxicated guests to MOD

#### Qualifications and Requirements:

- Must have extensive bartending skills, including cocktails and specialty drinks, plus strong product knowledge
- Must have pairing knowledge of beers and wines
- Must become TIPS certified within 90 days of employment
- Must be able to serve and prepare food
- Must be 18 years of age
- Must be fully conversational in English
- Must be able to lift 35 lbs. in weight and be mobile and able to stand for extended periods
- Must be flexible as the position requires you to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions
- Must have a general proficiency with computers, with the ability to process information through the POS system

Apply Now on Line at [www.otgexp.com/careers](http://www.otgexp.com/careers)









[Job Search](#)

[Apply Now](#)

## BAR - FOH

Minneapolis-Saint Paul International Airport, 4300 Glumack Dr, St Paul, Minnesota, United States of America Req #83

Date Posted: Monday, October 24, 2016

**Our top performing bartenders earn \$41 per hour!**

### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

Join OTG as a Bartender now and drive a new type of hospitality experience at Minneapolis-Saint Paul International Airport. *Our top performing Bartenders make \$41 per hour with tips!*

### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

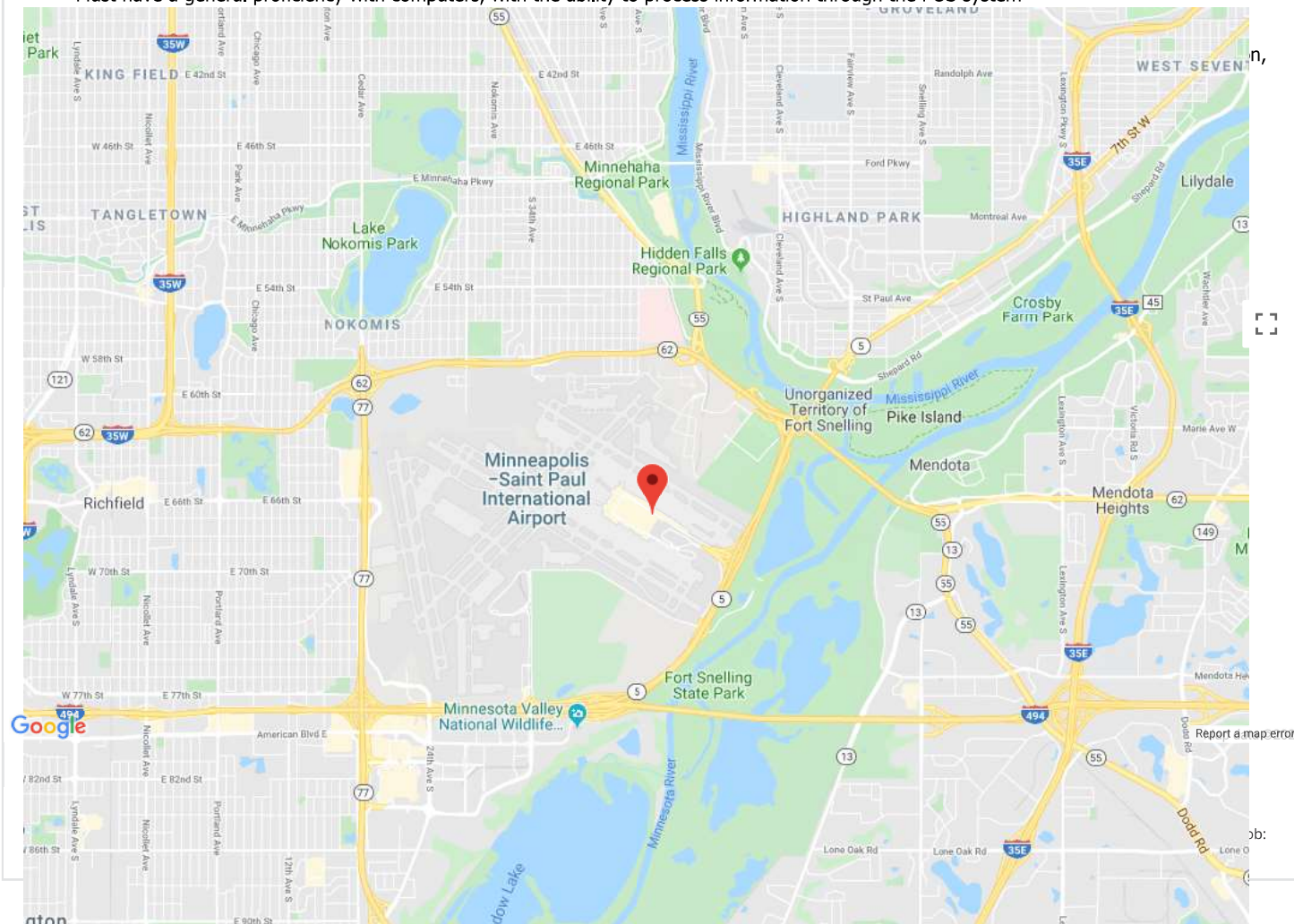
### Responsibilities:

- Greet and acknowledge every guest
- Make recommendations to guests upon request
- Pour beer & wine
- Mix ingredients for all drinks, including cocktails, to OTG specifications
- Input all food and drink orders into the computer
- Adhere to OTG cash handling policies and procedures
- Maintain a clean and orderly bar as well as cash register
- Aid in moving and installing kegs of beer, CO2 tanks and soda mixes
- Monitor and report intoxicated guests to MOD

### Qualifications and Requirements:

- Must have extensive bartending skills, including cocktails and specialty drinks, plus strong product knowledge
- Must have pairing knowledge of beers and wines
- Must become TIPS certified within 90 days of employment
- Must be able to serve and prepare food
- Must be 18 years of age

- Must be fully conversational in English
- Must be able to lift 35 lbs. in weight and be mobile and able to stand for extended periods
- Must be flexible as the position requires you to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions
- Must have a general proficiency with computers, with the ability to process information through the POS system





## Job Search

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### **Bartender @ George Bush Airport**

George Bush Airport, 2800 N TERMINAL Road, Houston, Texas, United States of America Req #7565

Date Posted: Monday, February 24, 2020

#### **YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

Join OTG as a Bartender now and drive a new type of hospitality. Explore career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

#### **WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### **WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. Our people drive our experiences, so we offer our crewmembers some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### **Position Summary:**

The OTG Bartender at one of our many fine dining options will have a critical role to play in our company's groundbreaking transformation of the airport experience. An OTG Bartender must be at the very top of their profession, with strong interpersonal skills, a sunny disposition and a positive outlook, all the while adhering to the OTG Core Steps of Service. They must ensure that each customer enjoys an outstanding OTG Experience by creating a warm and friendly environment that leaves the strongest impression on our guests.

#### **Responsibilities:**

- Greet and acknowledge every guest
- Make recommendations to guests upon request
- Pour beer and wine, mix ingredients for all drinks, including cocktails, to OTG specifications

- Input all food and drink orders into the computer
- Update bar tabs with all orders
- Maintain thorough knowledge of beer and wine inventory
- Serve food to customers seated in the restaurant and bar
- Create food and wine/beer pairing menus
- Fully stock bar at beginning of each shift
- Adhere to health and hygiene codes as mandated by OTG and state regulations
- Aid in moving and installing kegs of beer, CO2 tanks and soda mixes
- Monitor and report intoxicated guests to the manager on duty

**Qualifications and Requirements:**

- Previous experience as a bartender is required and basic barista skills
- Proficiency with cocktails, specialty drinks and product knowledge is required
- Must have pairing knowledge of beers and wines
- Must become TIPS certified
- Must be fully conversational in English
- Able to lift 35 lbs and be mobile and able to stand for extended periods of time
- Must be able to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions

*OTG Management LLC is an equal opportunity employer. All applicants will be considered for employment without attention to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran or disability status.*

## Other details

Pay Type Hourly

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# **Exhibit 10**



## Job Search

[Apply Now](#)

### Server @ JFK International Airport

John F Kennedy International Airport, JFK Airport, Jamaica, New York, United States of America Req #155

Date Posted: Thursday, February 13, 2020

#### **YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

Join OTG as **Server** now and drive a new type of hospitality experience at our John F. Kennedy International Airport location. Explore career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, and Healthcare.

#### **WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### **WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### **Responsibilities:**

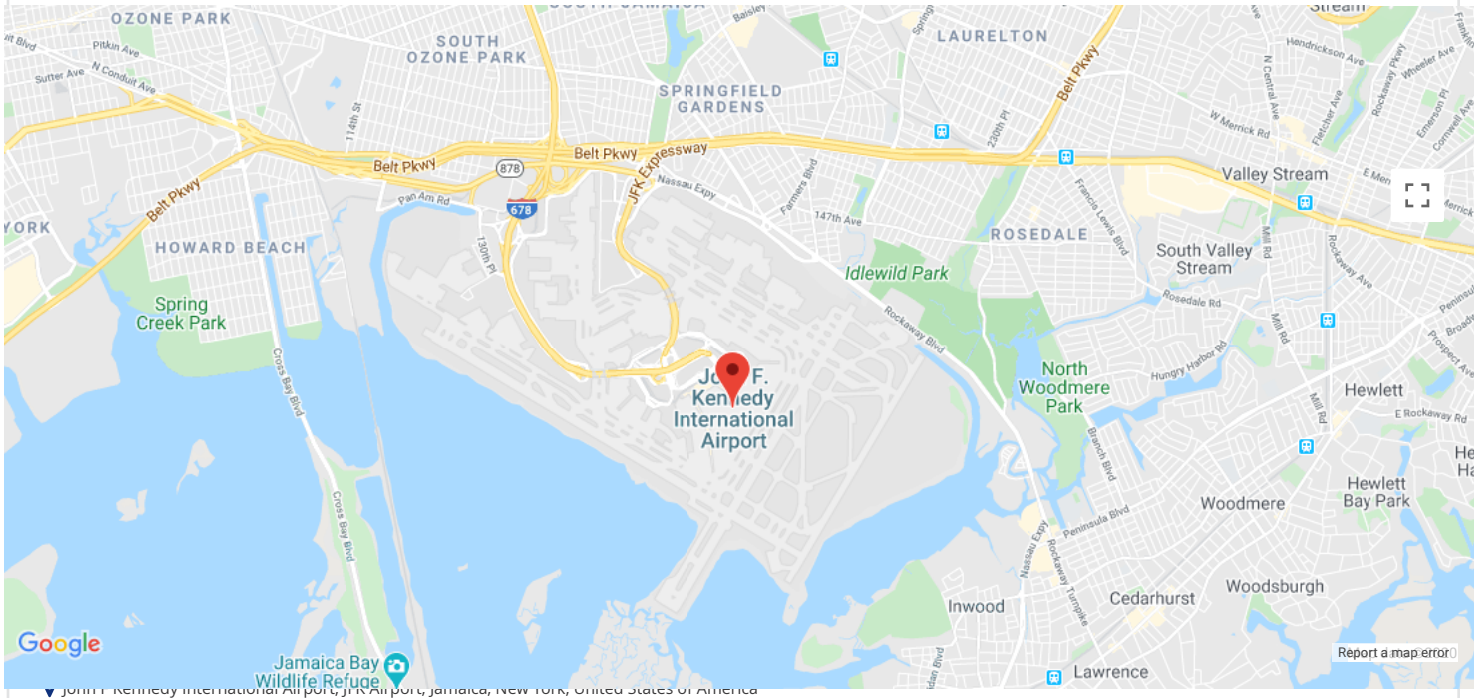
- Greeting guests quickly and pleasantly
- Delivering beverages and menus promptly
- Communicating all daily food and drink specials
- Demonstrating knowledge of menus and wine and beer selections
- Assisting guests in entering all orders into the ipad/computer system
- Offering up-selling opportunities to guests
- Preparing hot and cold drinks and mixed non-alcoholic drinks
- Demonstrating appropriate wine service techniques
- Assisting other servers as needed and clearing tables and keeping a spotless working environment

#### **Qualifications and Requirements:**

- Must be at least 18 years of age
- Fully conversational in English
- Must successfully obtain ServSafe Certification within 30 days of being hired
- Able to lift 35 lbs. in weight
- Must be able to work varied hours/days, including nights, weekends, holidays, and during inclement weather conditions
- Must complete required restaurant training and maintain thorough knowledge of your assigned restaurant food and beverage menus

- Must successfully obtain NYC Food Handlers Certification within 30 days of being hired

*OTG Management LLC is an equal opportunity employer. All applicants will be considered for employment without attention to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran or disability status.*



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## Job Search

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### Server @ Newark Airport!

Newark International Airport St, Newark, NJ 07114, USA Req #7002

Date Posted: Monday, February 24, 2020

#### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

Join OTG as a Server now and drive a new type of hospitality experience at our Flagship Operation at Newark Liberty International Airport. Explore career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

#### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### Position Summary

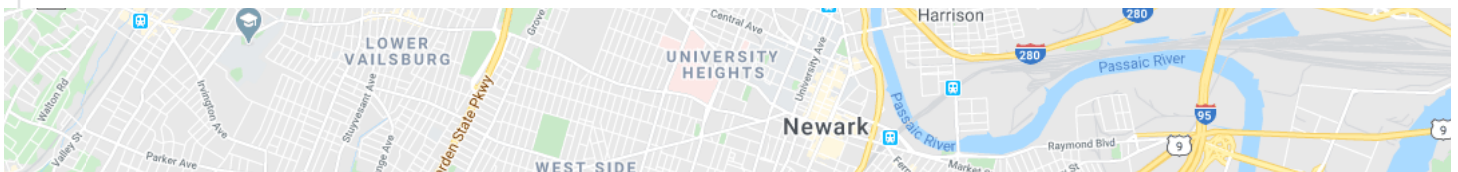
An OTG Server is the immediate connection between restaurant to customer. An OTG Server takes orders, answers questions about the menu and food, promotes and recommends food and drinks, takes payment, communicates orders with the kitchen staff, and helps with customer service and cleaning.

#### Responsibilities:

- Greeting guests quickly and pleasantly
- Delivering beverages and menus promptly
- Communicating all daily food and drink specials
- Demonstrating knowledge of menus and wine and beer selections
- Assisting guests in entering all orders into the iPad/computer system
- Offering up-selling opportunities to guests
- Preparing hot and cold drinks and mixed non-alcoholic drinks
- Demonstrating appropriate wine service techniques
- Assisting other servers as needed and clearing tables and keeping a spotless working environment

#### Qualifications and Requirements:

- Fully conversational in English
- **Must successfully obtain ServSafe Certification within 30 days of being hired**
- Able to lift 35 lbs.
- Must complete required restaurant training and maintain thorough knowledge of your assigned restaurant food and beverage menus
- Must be able to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions









## Job Search

[Apply Now](#)

### Server - FOH

Ronald Reagan Washington National Airport, 2401 S. Smith Blvd, Arlington, Virginia, United States of America Req #3440

Date Posted: Sunday, February 23, 2020

**Our top performing servers make \$32 per hour!**

#### **YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

*Join OTG as a Server now, and drive a new type of hospitality experience at the Washington Reagan Airport. Our top performing servers can make up to \$32 per hour with TIPS!*

#### **WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### **WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### **Responsibilities:**

- Greeting guests quickly and pleasantly
- Delivering beverages and menus promptly
- Communicating all daily food and drink specials
- Demonstrating knowledge of menus and wine and beer selections
- Assisting guests in entering all orders into the ipad/computer system
- Offering up-selling opportunities to guests
- Preparing hot and cold drinks and mixed non-alcoholic drinks
- Demonstrating appropriate wine service techniques
- Assisting other servers as needed and clearing tables and keeping a spotless working environment

#### **Qualifications and Requirements:**

- Must be at least 18 years of age
- Fully conversational in English
- Able to lift 35 lbs. in weight
- Must be able to work varied hours/days, including nights, weekends, holidays, and during inclement weather conditions

- Must complete required restaurant training and maintain thorough knowledge of your assigned restaurant food and beverage menus.



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## Job Search

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### Server @ Houston George Bush Airport

George Bush Airport, 2800 N TERMINAL Road, Houston, Texas, United States of America Req #7563

Date Posted: Monday, February 24, 2020

#### YOUR NEXT OPPORTUNITY IS NOW BOARDING:

Join OTG as a Server now and drive a new type of hospitality. Explore career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

#### WHAT IS OTG?

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### WHY OTG?

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. Our people drive our experiences, so we offer our crewmembers some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### Position Summary:

The OTG Server has a critical role to play in our company's groundbreaking transformation of the airport experience. The OTG Server must possess strong interpersonal skills, a sunny disposition, and a positive outlook, all the while adhering to the OTG Core Steps of Service. They must ensure that each customer enjoys an outstanding OTG experience by creating a warm and friendly environment that leaves the strongest of impressions on our guests.

#### Responsibilities:

- Greeting guests quickly and pleasantly
- Delivering beverages and menus promptly
- Communicating all daily food and drink specials
- Demonstrating knowledge of menus and wine and beer selections
- Assisting guests in entering all orders into the iPad/computer system
- Offering up-selling opportunities to guests

- Preparing hot and cold drinks and mixed non-alcoholic drinks
- Demonstrating appropriate wine service techniques
- Assisting other servers as needed and clearing tables and keeping a spotless working environment

**Qualifications and Requirements:**

- Fully conversational in English
- Must successfully obtain ServSafe Certification
- Able to lift 35 lbs.
- Must complete required restaurant training and maintain thorough knowledge of your assigned restaurant food and beverage menus
  
- Must be able to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions

*OTG Management LLC is an equal opportunity employer. All applicants will be considered for employment without attention to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran or disability status.*

## Other details

Pay Type Hourly

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Job Search

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Server - FOH

Minneapolis-Saint Paul International Airport, 4300 Glumack Dr, St Paul, Minnesota, United States of America Req #7594

Date Posted: Tuesday, February 25, 2020

YOUR NEXT OPPORTUNITY IS NOW BOARDING. Join OTG as a Server now and drive a new type of hospitality. Explore career opportunities in a unique hospitality environment with some of the industry's best compensation and benefits, including PTO, Healthcare and a competitive 401k match.

WHAT IS OTG? OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

WHY OTG? By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential in some of the most exciting hospitality environments around. Our people drive our experiences, so we offer our crewmembers some of the best compensation and benefits in the industry.

We transform airport experiences. You drive it.

Position Summary: The OTG Server has a critical role to play in our company's groundbreaking transformation of the airport experience. The OTG Server must possess strong interpersonal skills, a sunny disposition, and a positive outlook, all the while adhering to the OTG Core Steps of Service. They must ensure that each customer enjoys an outstanding OTG experience by creating a warm and trendy environment that leaves the strongest of impressions on our guests.

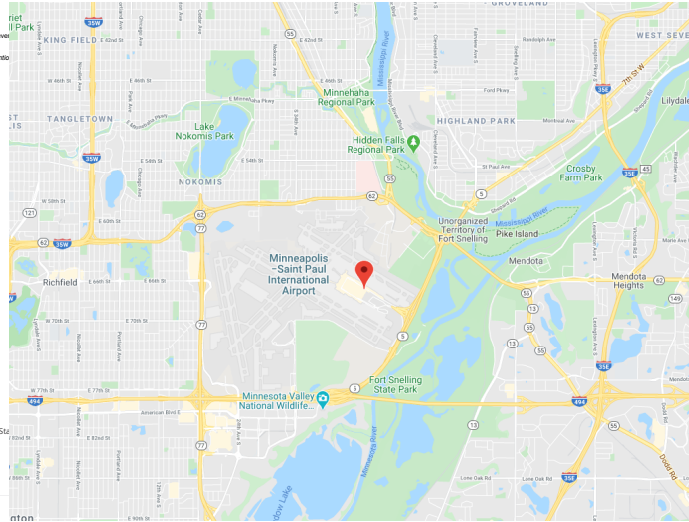
- Responsibilities:
- Greeting guests quickly and pleasantly
  - Delivering beverages and menus promptly
  - Communicating all daily food and drink specials
  - Demonstrating knowledge of menus and wine and beer selections
  - Assisting guests in entering all orders into the PMS/computer system
  - Offering up-selling opportunities to guests
  - Preparing hot and cold drinks and mixed non-alcoholic drinks
  - Demonstrating appropriate wine service techniques
  - Assisting other servers as needed and clearing tables and keeping a spotless working environment

- Qualifications and Requirements:
- Fully conversational in English
  - Must successfully obtain ServSafe Certification
  - 40hrs to 90-95 hrs.
  - Must complete required restaurant training and maintain thorough knowledge of your assigned restaurant food and beverage
  - Must be able to work varied hours/days, nights, weekends, holidays, and during inclement weather conditions

OTG Management LLC is an equal opportunity employer. All applicants will be considered for employment without attention to race, gender, or ethnicity.

Other details

Pay Type: Hourly



Google

Minneapolis-Saint Paul International Airport, 4300 Glumack Dr, St Paul, Minnesota, United States

Apply Now

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## Job Search

[Apply Now](#)

### Server - FOH

Philadelphia International Airport, 8800 Essington Ave, Philadelphia, Pennsylvania, United States of America Req #7355

Date Posted: Friday, February 14, 2020

**Our top performing servers earn \$50 per hour!**

#### **YOUR NEXT OPPORTUNITY IS NOW BOARDING:**

*Join OTG as a Server now, and drive a new type of hospitality experience at Philadelphia International Airport. Our top performing servers make \$50 per hour, this includes your tips!*

#### **WHAT IS OTG?**

OTG has revolutionized the hospitality industry by pushing the boundaries of excellence. With more than 300 in-terminal dining and retail locations across 10 airports, OTG and its 5,000+ Crewmembers serve millions of travelers each year.

#### **WHY OTG?**

By joining our team, you'll discover endless opportunities to explore, learn and realize your greatest potential **in some of the most exciting hospitality environments around**. And because our people drive our experiences, we offer some of the best compensation and benefits in the industry.

We transform airport experiences. **You drive it.**

#### **Responsibilities:**

- Greeting guests quickly and pleasantly
- Delivering beverages and menus promptly
- Communicating all daily food and drink specials
- Demonstrating knowledge of menus and wine and beer selections
- Assisting guests in entering all orders into the ipad/computer system
- Offering up-selling opportunities to guests
- Preparing hot and cold drinks and mixed non-alcoholic drinks
- Demonstrating appropriate wine service techniques
- Assisting other servers as needed and clearing tables and keeping a spotless working environment

#### **Qualifications and Requirements:**

- Must be at least 18 years of age
- Fully conversational in English
- Able to lift 35 lbs. in weight
- Must be able to work varied hours/days, including nights, weekends, holidays, and during inclement weather conditions



- Must complete required restaurant training and maintain thorough knowledge of your assigned restaurant food and beverage menus

*OTG Management LLC* is an equal opportunity employer. All applicants will be considered for employment without attention to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran or disability status.

All new crewmembers that will be handling food will be required to be certified (ServSafe or equivalent) within 30 days of hire. And all crewmembers who serve alcohol, as well as supervisors and managers will be required to be TIPS Alcohol Awareness (or equivalent) certified within 30 days of hire.

### Other details



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# **Exhibit 11**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST, and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**COURT-AUTHORIZED NOTICE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

*Filho et al. v. OTG Management, LLC, Case No. 19 Civ. 8287*

**If you worked at an OTG establishment as a server,  
bartender, or any other position in which you earned tips,  
between September 5, 2016 and the present,  
please read this notice.**

**A collective action lawsuit may affect your legal rights.**

*This is a court-authorized notice. This is not a solicitation from a lawyer.*

- Former Servers and Bartenders (“Plaintiffs”), filed this lawsuit on behalf of themselves and other current and former servers, bartenders, and tipped workers who were employed at restaurants and bars owned, operated, and/or controlled by OTG Management, LLC (“OTG”) in airports nationwide between September 5, 2016 and the present (collectively, Tipped Workers”) against OTG claiming that OTG violated federal law by failing to pay them the proper minimum wage and overtime for all hours worked over 40 in a workweek, as well as failed to pay tipped workers for all hours worked.
- The Court has not decided who is right and who is wrong. **Your legal rights may be affected, and you have a choice to make now:**

**QUESTIONS?  
CONTACT MOLLY BROOKS OR JALISE R. BURT  
AT OUTTEN & GOLDEN LLP  
OTGTIPPEDWORKERCASE@OUTTENGOLDEN.COM.  
(212) 245-1000 OR (877)-468-8836**

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

<b>ASK TO BE INCLUDED</b>	By signing and sending in the “Consent to Join” form included with this Notice, you will “opt in” and become part of this collective action lawsuit. If you choose to be included, you may be entitled to share in any monetary recovery that might come from a trial or a settlement in this lawsuit. You forfeit any rights to sue OTG separately based on the claims in this lawsuit.  <b><u>If you wish to be included, you must complete and return Consent to Join form at the end of this Notice by [date 60 days after mailing notice].</u></b>
<b>DO NOTHING</b>	If you do not sign and send in the Consent to Join form by [date 60 days after mailing notice], you will not join the collective action. This means that you forego the possibility of recovering back wages under federal law in this lawsuit, if those bringing the lawsuit are successful, and will not be bound by any judgment or settlement. You retain your right to sue OTG separately.

### 1. Why did I get this notice?

You are getting this notice because OTG’s records show that you are a current or former server, bartender, or tipped worker who was employed at restaurants and bars owned, operated, and/or controlled by OTG in airports nationwide between September 5, 2016 and the present.

### 2. What is this lawsuit about?

This lawsuit is about whether OTG properly paid tipped workers in accordance with the federal labor laws. In particular, this notice relates to claims that OTG violated federal law by failing to pay tipped workers the proper minimum wage by: (1) failing to provide proper notice of the tip credit minimum wage rate to tipped workers; (2) requiring tipped workers to spend a substantial amount of time performing non-tip producing work; and (3) failing to pay tipped workers for all hours worked due to work performed off-the-clock and premium overtime pay – at a rate 1.5 times their regular hourly rate – for hours worked in excess of 40 per workweek.

The lawsuit is known as *Filho, et al v. OTG Management, LLC*, Case No. 19 Civ. 8287, and is pending before the Honorable Andrew L. Carter in the United States District Court for the Southern District of New York.

### 3. What is a collective action and who is involved?

In a collective action, one or more individuals (called “Plaintiffs”) can bring a lawsuit on behalf of others who are “similarly situated” to them. All current or former Tipped Workers who join the case will be opt-in plaintiffs and become members of the “Collective.”

#### QUESTIONS?

CONTACT MOLLY A. BROOKS OR JALISE R. BURT  
AT OUTTEN & GOLDEN LLP  
OTGTIPPEDWORKERCASE@OUTTENGOLDEN.COM  
(212) 245-1000 OR (877)-468-8836

One Court will resolve the issues for the Collective.

#### **4. Why is this lawsuit a Collective Action?**

In a collective action lawsuit, one or more persons sue on behalf of other people who have similar claims under the FLSA. All Tipped Workers who decide to participate in the case must file the attached Consent to Sue form and become “opt-in plaintiffs.” OTG is the Defendant. One court resolves the issues for everyone who decides to join the case as opt-in plaintiffs.

#### **5. What is OTG’s position?**

OTG denies all of Plaintiffs’ claims. It maintains that it has fully complied with all of the federal and state wage and hour laws at issue, and that no current or former employees are legally entitled to any additional compensation.

#### **6. What are the Plaintiffs asking for?**

The Plaintiffs seek to recover minimum wages, overtime compensation, misappropriated tips, statutory penalties, and attorneys’ fees, and costs, for themselves and the members of the Collective. The Plaintiffs also seek declaratory relief and an injunction to prevent OTG from failing to properly pay Tipped Workers in the future.

#### **7. Can I join the collective?**

Yes, if you are a current or former server, bartender, or tipped worker who was employed at restaurants and bars owned, operated, and/or controlled by OTG Management in airports nationwide between September 5, 2016 and the present (“Tipped Workers”).

#### **8. What happens if I do nothing at all?**

If you do not choose to join this lawsuit, you will not be affected by any decision in this case, whether favorable or unfavorable. You will not be entitled to share in any amounts recovered by the Plaintiffs as part of the lawsuit. You also will be free to hire your own lawyer and file your own lawsuit. You should be aware that your time to bring federal wage and hour claims is limited by a two or three-year statute of limitations.

#### **9. What happens if I join the lawsuit?**

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable, and your Consent to Join form will be filed in the public record. You will also share in any settlement or judgment obtained by the Plaintiffs on behalf of the Collective. By joining this lawsuit, you agree to have the Plaintiffs act as your representative and make decisions on your behalf concerning the case, including approving any settlement, entering into an agreement with counsel regarding payment of attorneys’ fees and costs, and deciding all other matters pertaining to this lawsuit. Decisions made and agreements entered into by the Plaintiffs will be binding on you if you join the lawsuit. The final decision with respect to

#### **QUESTIONS?**

**CONTACT MOLLY A. BROOKS OR JALISE R. BURT  
AT OUTTEN & GOLDEN LLP  
OTGTIPPEDWORKERCASE@OUTTENGOLDEN.COM  
(212) 245-1000 OR (877)-468-8836**

attorneys' fees and costs rests with the Court, not the parties.

While this suit is pending, you may be asked to provide documents or information relating to your time as server, bartender, or tipped worker at OTG, which may include responding to written questions and requests for documents. You also may be asked to testify under oath at a deposition scheduled at your convenience, and you may have to testify under oath in court.

**10. Can OTG and/or my current employer retaliate against me if I join the lawsuit?**

No. It is a violation of federal law for your current employer or OTG to fire, discipline, or in any manner retaliate against you for taking part in this case.

**11. How do I ask the Court to include me in the case?**

Enclosed is a form called "Consent to Join." **If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Consent to Join form.** An addressed and postage-paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be mailed, faxed, or emailed to:

OTG Tipped Workers  
[insert Notice Administrator contact information]

**The signed Consent to Join form must be postmarked, emailed, or faxed by insert date 60 days from date of notice. Alternatively, you can electronically file a Consent to Join on or before insert date 60 days from date of notice by visiting insert notice website.**

**12. Do I have a lawyer in this case?**

If you choose to join this lawsuit, you will be represented by the attorneys who represent the Plaintiffs – Molly A. Brooks and Jalise R. Burt of Outten & Golden LLP, 685 Third Avenue, 25th Floor New York, NY 10017 (212) 245-1000, [www.outtengolden.com](http://www.outtengolden.com).

**13. Should I get my own lawyer?**

You do not need to hire your own lawyer because the Plaintiffs' attorneys will be working on your behalf. You may hire your own lawyer at your own expense.

**14. How will the lawyers be paid?**

You will not be required to pay any attorneys' fees or costs out of your own pocket. The Plaintiffs have entered into a contingency fee agreement with their attorneys. Under the agreement, if there is a settlement or if there is a trial and the Plaintiffs prevail, the attorneys will ask the Court to approve as their attorneys' fees the greater of: (a) one-third of the recovery, or (b) the "lodestar" amount, calculated by multiplying their reasonable hourly rates by the number of hours expended on the lawsuit. You can obtain a copy of the contingency fee agreement

**QUESTIONS?**

**CONTACT MOLLY A. BROOKS OR JALISE R. BURT  
AT OUTTEN & GOLDEN LLP  
OTGTIPPEDWORKERCASE@OUTTENGOLDEN.COM  
(212) 245-1000 OR (877)-468-8836**

executed by the Plaintiffs upon request.

**15. Questions?**

If you have any questions, please write, e-mail or call Plaintiffs' counsel at:

Molly A. Brooks  
Jalise R. Burt  
Outten & Golden LLP  
685 Third Ave 25th Floor  
New York, NY 10017  
(212) 245-1000  
OTGTippedWorkerCase@OuttenGolden.com

DATED: \_\_\_\_\_, 2020

**QUESTIONS?  
CONTACT MOLLY A. BROOKS OR JALISE R. BURT  
AT OUTTEN & GOLDEN LLP  
OTGTIPPEDWORKERCASE@OUTTENGOLDEN.COM  
(212) 245-1000 OR (877)-468-8836**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST, and  
CHANTEL LYNCH on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**-against-**

**OTG Management, LLC,**

**Defendant.**

Case No. 19-CV-8287  
(ALC) (SN)

**CONSENT TO JOIN**

1. I consent to be a party plaintiff in a lawsuit against OTG Management, LLC and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I designate Outten & Golden LLP (the "Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorneys' fees from any settlement or judgment in the amount of the greater of: (a) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (b) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

3. I also consent to join any separate or subsequent action to assert my claim against OTG Management, LLC and/or related entities or persons potentially liable.

\_\_\_\_\_  
Full Legal Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Maiden Name (or other names used)

\_\_\_\_\_  
Street Address\*

\_\_\_\_\_  
Email Address\*

\_\_\_\_\_  
City, State and Zip Code\*

\_\_\_\_\_  
Cell Phone Number\*

\_\_\_\_\_  
Home Telephone Number\*

\*This information will be redacted and will not be filed in the public record. This information will be used solely for Plaintiffs' Counsel to communicate with you.



# **Exhibit 12**

## **IMPORTANT REMINDER REGARDING THE OTG TIPPED WORKER CASE**

You should have received a Court-authorized Notice explaining your eligibility to participate in a collective action lawsuit against OTG on behalf of current and former servers, bartenders, and tipped workers who were employed at restaurants and bars owned, operated, and/or controlled by OTG Management, LLC in airports nationwide between September 5, 2016 and the present (“Collective Members”) who allege that OTG violated federal law by failing to pay them the proper minimum wage and overtime for all hours worked over 40 in a workweek, as well as failed to pay tipped workers for all hours worked.

**IMPORTANT: Our records indicate that you have not submitted a Consent Form in this matter. In order to participate in this collective action lawsuit and be eligible to collect unpaid wages, you must complete a Consent Form and return it via mail, fax, or email to:**

c/o Claims Administrator

Address: (to be inserted)

Fax: (to be inserted)

Email: (to be inserted)

**or file it electronically at [to be inserted], so that it is post-marked or received on or before [60 days from mailing of Notice].**

If you have any questions, please contact the settlement administrator [insert phone; insert email], or Plaintiffs’ counsel Outten & Golden LLP at (212) 245-1000 or [OTGTippedWorkerCase@OuttenGolden.com](mailto:OTGTippedWorkerCase@OuttenGolden.com).

OTG Tipped Worker Case  
Notice Administrator

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[postage]

[fname] [lname] [mailid]  
[address] [address2]  
[city], [state] [zip]