IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

AMANDA DUREN, Plaintiff, v. INTERNATIONAL FOLLIES, INC., *d/b/a* CHEETAH, and JACK BRAGLIA, Defendants.	*	1:19-CV-01512-ELR

O R D E R

There are several matters pending before the Court. The Court's rulings and conclusions are set out below.

I. Background[1]

This case involves Plaintiff Amanda Duren's claims against Defendants International Follies, Inc., d/b/a Cheetah ("The Cheetah"), and Jack Braglia for their alleged violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* See generally Compl. [Doc. 1]. Defendants operate an adult entertainment club located in Atlanta, Georgia, known as The Cheetah. See Defs.' Statement of

[1] All facts noted herein are undisputed unless otherwise indicated.

Material Facts ¶¶ 1, 17 [Doc. 118-4] ("Defs.' SOMF"). Defendant Braglia is, and was at the time of Plaintiff's employment, the general manager of The Cheetah. See id. ¶ 17. Plaintiff is a former employee of The Cheetah who worked as an adult entertainer/dancer from April 4, 2016 through October 29, 2017, and subsequently from January 2, 2018 through August 20, 2018. See id. ¶¶ 2–4.

According to Defendants' written tip policy, The Cheetah pays its entertainers the minimum wage of $7.25 per hour by paying a cash wage of $2.13 per hour and applying a tip credit of $5.12 per hour. See id. ¶ 20. Additionally, pursuant to the terms of the written tip policy, Plaintiff would contribute 10% of her total tips to floormen and disc jockeys as part of a tip-pooling arrangement. See id. ¶¶ 20–21. Defendants contend this was the only mandatory tip-sharing arrangement required by The Cheetah. See id. ¶¶ 20–22.

However, Plaintiff disputes Defendants' characterization of The Cheetah's tip policy and claims she was required to participate in an invalid tip pool. See Pl.'s Resp. to Defs.' Statement of Material Facts ¶¶ 20–22 [Doc. 150-3] ("Pl.'s Resp. to Defs.' SOMF"). Specifically, Plaintiff contends the tip pool was invalid because she had to share her tips with other staff beyond those included in the written tip policy, such as mangers and "house moms," who received a portion of each dancer's tips at the end of every shift. See id. ¶¶ 21–22.

Moreover, beyond those payments, Plaintiff asserts she was required to pay additional uncompensated fees—"unlawful deductions"—which caused her wages to drop below minimum wage. See Pl.'s Statement of Additional Material Facts ¶¶ 44–69 [Doc. 150-2] ("Pl.'s SOMF"). For example, Plaintiff alleges she had to pay for: (1) her own mandatory adult entertainment work permit (as required by the City of Atlanta), [2] (2) VIP referral fees to floormen, (3) and a $3 parking fee every time she worked at the club. See id. ¶¶ 46, 58, 61; see also Pl.'s Resp. to Defs.' SOMF ¶¶ 21–22. Plaintiff also maintains that in order to comply with Defendants' strict appearance policy, she was "required to pay the expense of hair and makeup herself[.]" See Pl.'s SOMF ¶ 54. Plaintiff asserts that she paid these costs and fees out of her tips and wages, and that these additional fees caused her wages to drop below the minimum wage. See id.

Additionally, all adult entertainers were subject to The Cheetah's "waiting policy," which required entertainers to engage in check-out procedures and wait until all customers had departed the premises before the entertainers were permitted to leave. See Defs.' SOMF ¶¶ 60–70. Plaintiff asserts that she typically waited at least thirty (30) minutes every time her shift ended—time for which she was not compensated. See Pl.'s Resp. to Defs.' SOMF ¶¶ 65–66.

[2] The City of Atlanta requires adult entertainers to maintain a city-issued permit from the Atlanta Bureau of Police Services Permit Department. See Defs.' SOMF ¶ 76.

Based on these allegations, Plaintiff accuses Defendants of violating the FLSA by failing to pay the minimum wage, failing to pay overtime wages, taking "kickbacks" in the form of unlawful deductions, and by requiring her to participate in an invalid tip pool. See generally Compl. Thus, Plaintiff brings three (3) Counts against Defendants: Count I—Minimum Wage Claim (Violation of 29 U.S.C. § 206); Count II—Overtime Wage Claim (Violation of 29 U.S.C. § 207); Count III—Unlawful Taking of Tips (Violation of 29 U.S.C. § 203). See id.

However, Defendants deny any wrongdoing and seek summary judgment on all Counts. [See Doc. 118-1]. First, Defendants stress that Plaintiff's overtime wage claim is not recoverable primarily because she seeks compensation for non-compensable postliminary activities. [See id.] Additionally, Defendants argue that The Cheetah's tip policy is valid, and thus, Plaintiff's minimum wage claim fails. Finally, Defendants contend that none of Plaintiff's claims for other payments are recoverable pursuant to the FLSA. [See id.]

In addition, Defendants have also filed objections, by which they contend Plaintiff improperly relied on (1) her own declaration and (2) depositions taken in other cases as part of her response to Defendants' motion for summary judgment. [Docs. 153, 154]. Having been fully briefed, these matters are now ripe for the Court's review.

II. Defendants' Objection to Depositions Used in Prior Matters [Doc. 153]

As a preliminary matter, the Court begins by addressing Defendants' objections in turn, beginning with "Defendants' Renewed Notice of Objection to Depositions Taken in Other Matters [Docs. 94-5 through 94-6]."[3] [Doc. 153]. By their first objection, Defendants move to strike the deposition testimony of Jack Braglia (July 25, 2017) and Robert ("Bob") Johnson (April 4, 2017), taken in prior cases (Valente I and Valente II, together "the Valente Lawsuits") that Plaintiff now proffers as evidence in opposition to Defendants' motion for summary judgment.[4] [See id.] Defendants assert that Plaintiff's reliance on the deposition testimony from the Valente Lawsuits is improper and that these depositions constitute inadmissible hearsay. [See id.] (citing FED. R. CIV. P. 32).

Contrary to Defendants' objection, the Court finds the prior depositions at issue are admissible pursuant to Federal Rule of Civil Procedure 32(a)(8). Rule 32(a)(8) provides that a party may use prior deposition testimony if it involves "the

[3] The Court notes that in Mays v. Washington, Defendants also filed two (2) similar objections to the ones they filed in this case. See 1:19-CV-01152-ELR, [Docs. 68, 69]. However, in Mays, Plaintiff did not respond to Defendants' objections. Thus, pursuant to the Local Rules, the Court treated Defendants' objections as unopposed and did not consider certain paragraphs from Plaintiff's declaration nor the objected-to depositions in resolving Defendants' motion for summary judgment in that case. See LR 7.1(B), NDGa. ("Failure to file a response shall indicate that there is no opposition[.]"). However, in this case, Plaintiff has filed responses opposing Defendants' objections. [See Docs. 156, 157]. Thus, the Court addresses the merits of the Parties' arguments regarding Defendants' objections.

[4] See Valente, et al. v. International Follies, Inc. d/b/a The Cheetah, 1:15-cv-02477-ELR ("Valente I"); see also Valente v. International Follies, Inc. d/b/a The Cheetah, 1:16-cv-01138-ELR ("Valente II").

same subject matter between the same parties, or their representatives or successors in interest[.]" See FED. R. CIV. P. 32(a)(8). Additionally, "[a] deposition previously taken may also be used as allowed by the Federal Rules of Evidence." See id.

In the matter at hand, the Parties dispute the "same subject matter" and "same parties" requirements of Rule 32(a)(8). [See generally Docs. 153, 157, 159]. Specifically, Defendants contend that the Valente Lawsuits involve different claims and different parties and thus, Plaintiff may not use "the deposition of non-parties in the Valente Lawsuits against Defendants in this matter[.]" [See Doc. 153 at 3]. In response, Plaintiff contends that the Eleventh Circuit generally treats depositions taken in other matters as admissible. [See Doc. 157 at 3–4] (citing Nippon Credit Bank, Ltd. V. Matthews, 291 F.3d 738, 751 (11th Cir. 2002)).

The Court agrees with Plaintiff and finds that the proffered deposition testimony is admissible pursuant to Federal Rule of Civil Procedure 32(a)(8). The latter provision of Rule 32(a)(8) permits "a deposition previously taken" to "be used as allowed by the Federal Rules of Evidence." See FED. R. CIV. P. 32(a)(8). Federal Rule of Evidence 801(d)(2) provides that an admission by a party-opponent is not hearsay, including statements "offered against an opposing party and . . . was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." See FED. R. EVID. 801(d)(2)(D).

Thus, pursuant to Rule 801(d)(2)(D), the depositions of Braglia and Johnson are admissible as admissions by a party opponent. See id. Both these deponents were employed by The Cheetah at the time of their prior depositions and gave testimony on "matter[s] within the scope of that relationship[.]" See id. Accordingly, their prior deposition testimony is not hearsay under Rule 801(d)(2)(D), and therefore, admissible. See FED. R. CIV. P. 32(a)(8).

However, Defendants contend that the Deposition of Bob Johnson taken on April 4, 2017, constitutes inadmissible hearsay and falls outside the exception for admissions by a party opponent. [See Doc. 153 at 8–10]. Specifically, Defendants argue that although Johnson is an employee of The Cheetah, "he was not (and is not) its agent." [See id. at 9]. Further, Defendants maintain that Johnson "was testifying in his individual capacity (not a representative capacity) during his deposition in the Valente [II] Lawsuit, and, as such, was not speaking within the scope of [his employment] relationship." [See id.] (internal marks and citation omitted).

The Court finds Defendants' arguments to be unpersuasive. First, the Court notes with that regards to Rule 801(d)(2)(D), "it is no longer necessary to show that an employee or agent declarant possesses speaking authority, tested by the usual standards of agency law, before a statement can be admitted against the principal." See Wilkinson v. Carnival Cruise Lines, Inc., 920 F.2d 1560, 1565 (11th Cir. 1991). "Instead, it is necessary that the content of the declarant's statement concern a matter

within the scope of his employment or agency." See City of Tuscaloosa v. Harcros Chems., 158 F.3d 548, 558 n.10 (11th Cir. 1998).

In this case, it is undisputed that Johnson was an employee of The Cheetah during his prior deposition. [See Doc. 153 at 9]. The Court also finds that Johnson was clearly speaking on a matter within the scope of his employment during his 2017 deposition. See generally April 4, 2017 Dep. of Robert Johnson at 16:10–18 ("April 4, 2017 Johnson Dep.") [Doc. 94-5] (noting that the deposition concerned The Cheetah's policies on sexual harassment). Thus, the Court finds that the 2017 deposition of Johnson is not hearsay pursuant to Rule 801(d)(2)(D) and is otherwise admissible. See Wilkinson, 920 F.2d at 1565 ("Nothing in Rule 801(d)(2)(D) prevents the out-of-court statements of . . . employees from coming into evidence as non-hearsay admissions of a party-opponent in appropriate factual scenarios."). Because the 2017 deposition of Johnson is admissible testimony, the Court overrules Defendants' objection on this basis.

III. Defendants' Objection to Plaintiff's Declarations [Doc. 154]

Next, the Court turns to "Defendants' Renewed Notice of Objection to Declaration of Amanda Duren [Doc. 94-2]." [Doc. 154]. By their second objection, Defendants protest Plaintiff's use of her own Declaration in support of her response in opposition to Defendants' motion for summary judgment. [See id. at 1]; see also Decl. of Amanda Duren ("Duren Decl.") [Doc. 94-2]. According to Defendants,

Plaintiff's Declaration is improper because Plaintiff attempts to use it "to create issues of fact where none exist." [See Doc. 154 at 2] (citing Kimemiah v. Sun Valley Tech Sols., Inc., No. 1:13-CV-04156-ELR, 2016 WL 7438018, at *2 (N.D. Ga. Jan. 8, 2016). The Court first sets out the relevant legal standard before addressing the Parties' arguments.

A. Legal Standard

Rule 56 provides that a party may use an affidavit or declaration in support of or in opposition to a motion for summary judgment. See FED. R. CIV. P. 56(c)(4). Rule 56 requires that such an affidavit or declaration must (1) be made on personal knowledge; (2) set out facts that would be admissible in evidence; and (3) show that the affiant or declarant is competent to testify on the matters stated. See id.

Recognizing that parties might try to avoid summary judgment by using affidavits to create issues of fact where none exist, the Eleventh Circuit permits district courts to disregard an affidavit as a "sham" if it directly contradicts earlier deposition testimony in a manner that cannot be explained. See Van T. Junkins & Assoc., Inc. v. U.S. Indus., Inc., 736 F.2d 656, 657–58 (11th Cir. 1984). The "sham affidavit rule" applies only in limited circumstances: not "[e]very discrepancy contained in an affidavit" can justify "a district court's refusal to give credence to such evidence." See Tippens v. Celotex Corp., 805 F.2d 949, 953 (11th Cir. 1986) (internal quotations omitted). Thus, the Court must be careful to distinguish

"between discrepancies which create transparent shams and discrepancies which create an issue of credibility or go to the weight of the evidence." See id. at 953. However, "when a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony." See Liebman v. Metro. Life Ins. Co., 708 F. App'x 979, 983 (11th Cir. 2017) (internal citations omitted).

B. Discussion

Having set forth the relevant legal standard, the Court now turns to the substance of Defendants' objections regarding Plaintiff's Declaration. In the matter at hand, Defendants take issue with eighteen (18) paragraphs of Plaintiff's Declaration. [See Doc. 154]. The Court addresses each paragraph in turn.

1. Paragraph 3

The Court begins with Defendants' objection to Paragraph 3 of Plaintiff's Declaration, which contains statements regarding Defendants' alleged failure to pay overtime wages. [See id. at 4]. Specifically, Defendants object to the following statement by Plaintiff: "I was not paid for all hours worked at Cheetah. I was never paid for the time I spent waiting at Cheetah at the end of the shift until the premises and parking lot cleared of customers." See id.; see also Duren Decl. ¶ 3. Upon review, the Court finds that Plaintiff's statements regarding any "overtime wages"

or time spent waiting after her shift are irrelevant, as Plaintiff does not oppose Defendants' motion for summary judgment with respect to her overtime wage claim. [See Doc. 150 at 1 n.1]. Therefore, the Court strikes this statement in Paragraph 3 of Plaintiff's Declaration and disregards it.

2. Paragraph 6

Next, the Court turns to Defendants' objection to paragraph 6 of Plaintiff's Declaration, which states that "all entertainers are subject to a schedule." [See Doc. 154 at 5]; see also Duren Decl. ¶ 6. Defendants contend that Paragraph 6 is directly contradicted by Plaintiff's own deposition testimony that she did not work according to a set schedule. See Dep. of Amanda Duren at 15:23–16:23 ("Duren Dep.") [Doc. 119]. In fact, in her deposition, Plaintiff specifically testified that she was allowed to work whenever she wanted to work. See id. at 16:3–4. Plaintiff does not appear to dispute that this statement is contradictory to her Declaration and provides no explanation for that discrepancy. [See Doc. 156 at 5]. As noted above, the Court may disregard statements contained in a declaration if the statements directly contradict earlier deposition testimony in a manner that cannot be explained. See Liebman, 708 F. App'x at 983. Accordingly, the Court disregards and strikes the above statement with regards to Plaintiff's supposed work schedule. See Van T. Junkins, 736 F.2d at 657–58.

3. Paragraphs 7, 8, 9

Defendants further object to specific statements in Paragraphs 7, 8, and 9 of Plaintiff's Declaration. [See Doc. 154 at 5–10]. Specifically, Defendants object to Plaintiff's use of the words "supervised" and "managed" with respect to the work of Samantha Kim, Robert "Bob" Johnson, and The Cheetah's house moms, claiming these terms constitute improper legal conclusions regarding whether these individuals acted as employers, managers, and/or supervisors. [See id.; see also Doc. 160 at 4–6]. Defendants also object to Plaintiff's statements in Paragraphs 7 and 8 that both Kim and Johnson "rarely had direct interaction with customers." [See Doc. 154 at 7, 9–10].

First, with regards to the statements that Kim and Johnson "rarely had direct interaction with customers," the Court finds that Plaintiff's statements contradict her prior deposition testimony. Compare Duren Decl. ¶¶ 7–8, with Duren Dep. at 27:15–21 (discussing the interactions Kim had with customers), 126:6–9, 135:8–16 (discussing how Johnson would seat customers and direct entertainers to them), 127:15–19 (discussing the interactions Johnson had with customers). However, Plaintiff fails to explain the discrepancies between her Declaration and deposition testimony, nor does Plaintiff provide any explanation for her contradictory statements. Accordingly, the Court will strike and disregard those statements.

Second, with regards to any statements about the duties of house moms and Samantha Kim (specifically, whether they exercised control/supervisory authority over Plaintiff), for reasons explained further below, the Court finds those statements to be immaterial because Plaintiff has failed to establish that Kim and house moms were participants in The Cheetah's mandatory tip pool. See *infra* IV(B)(1). Accordingly, the Court sustains Defendants' objections to these statements, strikes the offending statements from Plaintiff's Declaration, and disregards them.

However, with regards to Plaintiff's statements in her Declaration that she was "supervised" by Bob Johnson, the Court disagrees with Defendants. The extent to which Bob Johnson had control over the entertainers is certainly relevant to whether he can be considered an employer pursuant to the FLSA, and thus, whether his participation invalidated Defendants' tip pool. See 29 U.S.C. § 203(d). Plaintiff clearly has personal knowledge about her interactions with Johnson from her years of working at The Cheetah. Thus, the Court overrules Defendants' objection and will consider Plaintiff's statements in her Declaration regarding Bob Johnson and his supposed supervisory role, to the extent that these statements do not contradict Plaintiff's previous deposition testimony. See Van T. Junkins, 736 F.2d at 657–58.

4. Paragraph 10

In addition, Defendants object to use of the word "kick-back" in Plaintiff's Paragraph 10,[5] claiming that it is false and contradictory to Plaintiff's previous deposition in this case. [See Doc. 154 at 10–12]. Plaintiff maintains that her Declaration statement is true, that it is not contradictory to her previous testimony, and that she had personal knowledge about the house moms' participation in the tip pool. [See Doc. 156 at 19].

Upon consideration, the Court disagrees with Plaintiff and finds that her previous testimony demonstrates she lacks personal knowledge about whether disc jockeys "kicked-back" a portion of their tips to house moms. During her deposition, Duren admitted that she did not know that disc jockeys were tipping house moms until after the disc jockeys were deposed in this case. See Duren Dep. at 37:8–19. Put another way, Duren admitted she had no actual personal knowledge about the disc jockeys tipping house moms. See id. Thus, Plaintiff's statement regarding "kick-backs" in Paragraph 10 of her Declaration is inadmissible. See FED. R. CIV. P. 56(c)(4) (noting that a declaration must be made on personal knowledge).

[5] The full sentence to which Defendants object states: "The disc jockey 'kicked-back' a portion of the tip pool to Cheetah's house moms." See Duren Decl. ¶ 10.

5. Paragraphs 11, 12, 13, 14, and 18

The Court next turns to Defendants' objections to Paragraphs 11–14 (regarding The Cheetah's purported appearance policy and hair/make-up payments) and Paragraph 18 (regarding Plaintiff's payment to secure a City of Atlanta adult entertainer permit) in Plaintiff's Declaration. [See Doc. 154 at 12–14]. As further explained below (see *infra* IV(B)(3)), the Court finds that any allegations regarding "kickback" payments for hair/makeup stylists and adult entertainment permit fees are untimely raised because Plaintiff did not include them in her Complaint, and the time for amending the pleadings has passed. See FED. R. CIV. P. 15(a); see also Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004) ("A plaintiff may not amend her complaint through argument in a brief opposing summary judgment."). Thus, the Court strikes and disregards Paragraphs 11, 12, 13, 14, and 18 of Plaintiff's Declaration.

6. Paragraphs 15, 16

Next, the Court addresses Defendants' objections to Paragraphs 15 and 16 of Plaintiff's Declaration regarding The Cheetah's "waiting policy." [See Doc. 154 at 14]. As noted above, Plaintiff's statements in her Declaration regarding The Cheetah's purported waiting policy and any alleged overtime wages are no longer relevant because Plaintiff does not oppose Defendants' motion for summary judgment with respect to her Count II—Overtime Wage Claim (Violation of 29

U.S.C. § 207). [See Doc. 150 at 1 n.1]. Thus, the Court strikes these statements and will disregard them in deciding summary judgment.

7. Paragraph 20

Defendants object to the entirety of Paragraph 20 of Plaintiff's Declaration regarding the duties of house moms as immaterial. [See Doc. 154 at 15]. In support, Defendants argue Plaintiff testified during her deposition that she voluntarily tipped the house moms. [See id.] Plaintiff opposes Defendants' objection, asserting (1) that the "forced tip out scheme" at The Cheetah (whereby entertainers are "forced" to tip house moms) is illegal and (2) that her inferences and opinions as to the tipping of house moms are permissible and based on her personal knowledge. [See Doc. 156 at 30–33].

As an initial matter, the Court notes that Plaintiff is correct that forced tip out schemes are illegal pursuant to the FLSA; however, Plaintiff has failed to demonstrate that a forced tip out scheme was at play here. In fact, the evidence in the record demonstrates that tipping house moms was voluntary because they were not part of the mandatory tip policy. And, as further explained below, Plaintiff testified during her deposition that she tipped house moms to receive certain benefits. See Duren Dep. at 109:1–4.

Because the Court finds that Plaintiff fails to establish that the house moms were participants in the tip pool—and that tipping them was mandatory—the Court

agrees with Defendants that any statements about the duties of house moms are immaterial on summary judgment. See FED. R. EVID. 401(b). Accordingly, the Court disregards and strikes these statements from Plaintiff's Declaration.

8. Paragraph 21

Defendants also object to the following statement in Paragraph 21 of Plaintiff's Declaration: "Disc Jockeys at the Cheetah also had supervisory functions over entertainers . . . ." [See Doc. 154 at 16]. Specifically, Defendants claim that the statement is an impermissible legal conclusion, immaterial, and contradictory to Plaintiff's previous deposition testimony in this case. [See id.] In response, Plaintiff contends that her above statement is both based on personal knowledge and relevant to whether disc jockeys should be considered "employers" in this matter. [See Doc. 156 at 34–35]. However, Plaintiff fails to address Defendants' argument that Plaintiff's statement contradicts her earlier deposition testimony. [See id.] Again, because Plaintiff has failed to explain that contradiction, the Court will strike and disregard the offending statement from Paragraph 21. See Van T. Junkins, 736 F.2d at 657–58.

9. Paragraph 22, and 23

Additionally, Defendants object to Paragraphs 22 and 23 of Plaintiff's Declaration regarding disc jockey's interactions with customers (including taking song requests and receiving tips from customers). [See Doc. 154 at 16–17].

Defendants contend that Plaintiff lacks the personal knowledge to make such statements. [See id.] Plaintiff, on the other hand, maintains that her statements are "inferences and opinions based on specific facts." [See Doc. 156 at 35–37] (internal quotation marks and citation omitted). Upon consideration, the Court finds that Plaintiff's previous testimony demonstrates that she lacks personal knowledge about whether disc jockeys took song requests or received tips from customers. During her previous deposition, Plaintiff testified that disc jockeys talked to customers, emceed events at The Cheetah, but that she lacked knowledge "one way or the other" regarding whether waitresses or customers could give song requests to disc jockeys. See Duren Dep. at 136:10–138:20. Those contradictions have not been explained. Accordingly, the Court strikes and disregards Paragraphs 22 and 23.

10. Paragraph 24

Finally, Defendants object to Paragraph 24 of Plaintiff's Declaration, which states: "In my experience in the exotic entertainment industry, disc jockeys rarely receive tips directly from customers." [See Doc. 154 at 18]. Defendants contend that Plaintiff lacks personal knowledge about the "exotic entertainment industry." [See id.] However, the Court disagrees with Defendants. It is undisputed that Plaintiff worked for years as an adult entertainer at The Cheetah. See Defs.' SOMF ¶¶ 2–4. According to Plaintiff, her experiences at The Cheetah provided her with personal knowledge about the industry, and aside from their general objection,

Defendants have not pointed to any specific evidence that demonstrates otherwise. [See Docs. 154 at 18; 156 at 38]. Thus, the Court overrules Defendants' objection regarding Paragraph 24.

IV. Motion for Summary Judgment [Doc. 118]

Having resolved Defendants' evidentiary objections, the Court now turns its attention to the merits of their motion for summary judgment. By their motion, Defendants advance three (3) primary arguments. [See generally Doc. 118-1]. First, Defendants assert that Plaintiff's minimum wage and overtime wage claims are not recoverable because she seeks compensation for non-compensable postliminary activities. [See id.] Second, Defendants argue that The Cheetah's tip policy is valid because no employers or managers participated in the tip pool. [See id.] Third, Defendants claim that none of Plaintiff's claims for other payments are recoverable pursuant to the FLSA because those alleged other payments were either voluntarily made by Plaintiff or because she has failed to articulate how those alleged other payments benefited The Cheetah. [See id.] The Court first sets out the relevant legal standard before turning to the substance of Defendants' motion.

A. Legal Standard

The Court may grant summary judgment only if the record shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See FED. R. CIV. P. 56(a). A factual dispute is genuine if there

is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is material if resolving the factual issue might change the suit's outcome pursuant to the governing law. See id. The motion should be granted only if no rational fact finder could return a verdict in favor of the non-moving party. See id. at 249.

When ruling on a motion for summary judgment, the Court must view all the evidence in the record in the light most favorable to the non-moving party and resolve all factual disputes in the non-moving party's favor. See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). The moving party need not positively disprove the opponent's case; rather, the moving party must establish the lack of evidentiary support for the non-moving party's position. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If the moving party meets this initial burden, to survive summary judgment, the non-moving party must then present competent evidence beyond the pleadings to show that there is a genuine issue for trial. See id. at 324–26. The essential question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." See Anderson, 477 U.S. at 251–52.

B. Discussion

Having set forth the relevant legal standard, the Court turns to Defendants' motion. In her Complaint, Plaintiff brings three (3) claims against Defendants: Count I—Minimum Wage Claim (Violation of 29 U.S.C. § 206); Count II—Overtime Wage Claim (Violation of 29 U.S.C. § 207); Count III—Unlawful Taking of Tips (Violation of 29 U.S.C. § 203). See Compl. Defendants argue that the undisputed facts of this case foreclose Plaintiff's claims for three (3) reasons: (1) Plaintiff cannot recover overtime wages for any postliminary time, (2) Plaintiff cannot prevail on her claim for alleged violations of the FLSA's tip credit provisions, and (3) Plaintiff cannot recover any of her "miscellaneous alleged payments" because they are non-compensable. [See generally Doc. 118-1]. Thus, Defendants contend that they are entitled to summary judgment. [See id.] The Court discusses each Count in turn.

1. Plaintiff's Count I—Minimum Wage Claim

First, the Court begins with Plaintiff's claim regarding FLSA's tip credit policy as it relates to the minimum wage requirement. Plaintiff contends that Defendants' tip credit policy was invalid for three (3) reasons. First, Plaintiff claims that the mandatory tip pool was invalid because she was required to participate in a tip pool with The Cheetah's "night manager" (Bob Johnson), "day manager" (Samantha Kim), house moms, floormen, and disc jockeys. [See Doc. 150 at 10–

18]. Second, Plaintiff alleges that two (2) tip policies—a written tip policy and an unwritten but equally mandatory tip policy—were both unlawfully enforced at The Cheetah in violation of the FLSA. [See id. at 2]. Finally, Plaintiff claims she was required to participate in forced tip-outs and fees, which caused her wages to fall below $2.13 per hour. [See id. at 18–25]. However, in their motion for summary judgment, Defendants argue the contrary—that The Cheetah's tip credit policy is valid and no unlawful tipping occurred. [Doc. 118-1]. The Court first sets out the legal framework regarding FLSA tip credits before turning to an assessment of the Parties' arguments.

a. Legal Framework

As noted above, the FLSA requires employers to pay employees a minimum wage of $7.25 per hour. See 29 U.S.C. § 206(a)(1). Recognizing that many employees earn income through tips, the "tip credit" provision of the FLSA allows employers to incorporate employees' tips into their wage calculation to satisfy the minimum wage requirement, provided that certain conditions are met. See 29 U.S.C. § 203(m)(2)(A). The statute sets forth two (2) requirements for employers who avail themselves of the tip credit policy:

> [t]he additional amount on account of tips may not exceed the value of the tips actually received by an employee. The [tip credit] shall not apply with respect to any tipped employee unless [1] such employee has been informed by the employer of the provisions of this subsection, and [2] all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit

> the pooling of tips among employees who customarily and regularly receive tips.

See id. In other words, for a tip credit policy to be valid: (1) the employer must give employees notice of the tip credit policy, and (2) employees must retain all tips received—except where the employer requires the employees to participate in tip-pooling to redistribute a portion of their tips to other employees who "customarily and regularly receive tips." See id.

Prior to March 23, 2018, only employers were prohibited from participating in a tip pool. Cf. Kubiak v. S.W. Cowboy, Inc., 164 F. Supp. 3d 1344, 1361–62 (M.D. Fla. 2016) ("[S]ection 203(m) effectively prohibits any arrangement or agreement between an employer and employee whereby any portion of the employee's tips becomes the property of the employer."). However, after March 23, 2018, 29 U.S.C. § 203(m) was modified to prohibit managers and supervisors from participating in a tip pool. See 29 U.S.C. § 203(m)(B) ("An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips regardless of whether or not the employer takes a tip credit.") (effective March 23, 2018); see also Miller v. Garibaldi's Inc., No. CV414-007, 2018 WL 1567856, at *4 (S.D. Ga. Mar. 30, 2018).

b. Analysis

The Court now turns to an assessment of the Parties' arguments. As mentioned above, for a tip credit policy to be valid: (1) the employer must give employees notice of the tip credit policy, and (2) employees must retain all tips received—except where the employer requires the employees to participate in tip pooling to redistribute a portion of their tips to other employees who "customarily and regularly receive tips." See 29 U.S.C. § 203(m)(2)(A). Here, Plaintiff argues that Defendants violated the second condition of 29 U.S.C. § 203(m)(2)(A) because she was forced to participate in a tip pool with Bob Johnson (alleged night manager), Samantha Kim (alleged day manager), house moms, floormen, and disc jockeys, all of whom Plaintiff contends exercised supervisory and managerial authority over her and other entertainers. [See Doc. 150 at 10–18].

The Cheetah's written tip policy for dancers stated:

> [y]ou are required to contribute 10% of your total tips to floor managers and disc jockeys (collectively) as part of a tip-pooling arrangement. No other mandatory tipping is required. With the exception of any lawful contributions to a tip pool that you may be required to make, the applicable law requires that you be allowed to retain all of your remaining tips. Management will not retain any of your tips.

See Defs.' SOMF ¶ 20. Although the tip policy stated that "management will not retain any of your tips," as noted above, Plaintiff contends she was forced to share her tips with Bob Johnson (purported night manager), Samantha Kim (purported day shift manager), house moms, floormen, and disc jockeys, all of whom she claims

exercised supervisory/managerial authority over her and acted as "employers" within the definition of the FLSA. [See Doc. 150 at 10–17]. Thus, Plaintiff argues The Cheetah's tip pool was invalid.

The Court will first address the validity of The Cheetah's tip credit policy in light of how the tip pool operated with regards to the floormen and disc jockeys before turning to the Parties' arguments regarding house moms, Samantha Kim, and Bob Johnson.

i. Floormen and disc jockeys

Pursuant to The Cheetah's written tip policy, adult entertainers had to share 10% of their tips with floormen and disc jockeys. See Defs.' SOMF ¶ 20. Defendants contend that floormen and disc jockeys were valid members of the tip pool and thus, they are entitled to summary judgment on this issue. [See Doc. 118-1 at 13–17]. However, Plaintiff maintains the participation of floormen and disc jockeys in the tip pool was improper because floormen and disc jockeys were not "regularly and customarily tipped" employees, as required by the FLSA. [See Doc. 150 at 15–18].

However, the Court finds the evidence in the record demonstrates that floormen and disc jockeys were "regularly and customarily tipped" employees. According to 29 C.F.R. § 531.50(d), "tipped employee" is defined as an employee "engaged in an occupation in which he or she customarily and regularly receives

more than $30 a month in tips." Here, the Court finds the record evidence demonstrates The Cheetah's disc jockeys and floormen customarily and regularly received more than $30 a month in tips. See, e.g., Dep. of Jerold Armstrong at 14:1–10 ("Armstrong Dep.") [Doc. 126]; Dep. of Ousborn James Carter at 27:8–17, 42:13–43:15 ("Carter Dep.") [Doc. 127]; Dep. of Timothy Rhodes at 10:12–18 ("Rhodes Dep.") [Doc. 128]; Deposition of Thomas M. Ponish at 14:6–24 [Doc. 130]; Dep. of Guy C. Robinson at 10:11–14, 14:25–15:1 [Doc. 131]; Dep. of Jackie D. Smith at 5:24–7:16 [Doc. 132]; Dep. of Lee J. Tatum at 10:21–22:6 [Doc. 133]; Dep. of Robert A. Wunsch, III at 12:17–13:8, 15:13–17 [Doc. 134]. Thus, even viewing the evidence in the light most favorable to the non-moving Party (Plaintiff), the Court finds that the disc jockeys and floormen were customarily and regularly tipped employees.[6] Therefore, the Court finds that Defendants are entitled to summary judgment on this point.

[6] Additionally, Plaintiff appears to make the argument that floormen and disc jockeys exercise supervisory authority over The Cheetah's adult entertainers, and thus, are "employers" pursuant to the FLSA. [See Doc. 150 at 16]. In support, Plaintiff cites to her own deposition testimony as evidence. [See id.]; see also Duren Dep. at 124–135. However, upon review, the Court finds that Plaintiff's deposition testimony listed the duties of floormen and disc jockeys, but does not support her claim that floormen and disc jockeys were "employers" as defined by the FLSA. See Duren Dep. at 124–135. To the contrary, the Court finds ample evidence in the record that shows disc jockeys and floormen did not exercise supervisory authority over Plaintiff, such that they were her employer as defined by the FLSA. See Armstrong Dep. at 7:4–15; Carter Dep. at 12:5–13:2; Rhodes Dep. at 8:3–20; Duren Decl. ¶¶ 7–9.

ii. Samantha Kim and house moms

Next, the Court turns to the Parties' arguments regarding tips given to Samantha Kim (purported day shift manager) and other house moms. Defendants argue that they are entitled to summary judgment on this point because Samantha Kim and other house moms were not included in the mandatory tip pool. [See Docs. 118-1 at 22–23; 151 at 9–10]. They provide further evidence that any tips Kim or other house moms received were voluntarily shared. [See id.]; see also Kubiak, 164 F. Supp. 3d at 1355 (stating that "a tipped employee may voluntarily choose to share tips with an otherwise ineligible employee so long as that tip-sharing is done without coercion by the employer").

While Plaintiff contends in her brief that tips to house moms, including Kim, were mandatory, the Court finds that the evidence in the record contradicts Plaintiff's assertion. In fact, the evidence in the record demonstrates that house moms and Kim were not included in The Cheetah's mandatory tip policy, and that house moms were even vocally upset they were excluded from the policy. See, e.g., Duren Dep. at 109:1–14; Dep. of Samantha Kim at 19:19–20:19, 22:6–13 [Doc. 122]; Dep. of Jovanna Gibbs-Arnold Dep. at 53:20–21, 98:15–22 [Doc. 144]; Dep. of Crystal Crittendon at 70:4–25 [Doc. 145]; Dep. of Shaleah Daye at 52:1–3 [Doc. 146]. Because Plaintiff fails to show house moms and Kim were included in the

mandatory tip pool (and that her sharing of tips was mandatory), the Court finds that Defendants are entitled to summary judgment on this point.

iii. Bob Johnson

Next, the Court turns to the Parties' arguments regarding Bob Johnson. The gravamen of the dispute in this case is whether, during the relevant time period, Johnson served as a "manager/employer" or as merely as a floorman. [See generally Docs. 131, 161, 162]. The FLSA broadly defines "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . ." See 29 U.S.C. § 203(d). "Whether an individual falls within this definition does not depend on technical or isolated factors but rather on the circumstances of the whole activity." Perez v. Sanford-Orlando Kennel Club, Inc., 515 F.3d 1150, 1159 (11th Cir. 2008) (internal quotes and citation omitted).

In determining whether an individual is an employer under the FLSA, the court must examine the facts "in light of the 'economic reality' of the relationship between the parties." See Villarreal v. Woodman, 113 F.3d 202, 205 (11th Cir. 1997) (quoting Goldberg v. Whitaker House Co-op, Inc., 366 U.S. 28, 33, 81 S. Ct. 933, 6 L. Ed. 2d 100 (1961)). The Eleventh Circuit provides several factors to consider under the economic-reality test in determining whether a person is an employer pursuant to the FLSA: whether the alleged employer (1) had the power to hire and fire employees, (2) supervised and controlled employee work schedules or

conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. See id.

Here, Defendants argue that although Johnson was called a "night manager," he did not qualify as a manager or employer according to the FLSA definitions. [See Docs. 118-1 at 17–22; 151 at 3–9]. Specifically, Defendants argue that an employee is only a manager or supervisor for the purposes of 29 U.S.C. § 203(m) where he is "[c]ompensated on a salary basis pursuant to [a set rate]." [See 118-1 at 21] (citing 29 C.F.R. § 541.100(a)). Defendants present evidence that until June or July 2018, Johnson was paid an hourly wage and was not a salaried employee. [See id.] They claim that once Johnson began receiving a salary, he stopped participating in the tip pool. [See id.] Additionally, Defendants contend that Johnson was not an employer because "he never held 'substantial (or any) control'" over The Cheetah's FLSA obligations. [See id. at 19]. Specifically, he did not "exercise substantial control over the terms and conditions of other employees, he could not independently hire [or] fire employees, he did not set schedules, and did not maintain employments records or determine the rate and method of employee's compensation." [See id.] (alterations adopted and internal citation omitted).

In response, Plaintiff argues that Johnson wielded enough control to qualify him as an employer and manager. [See Doc. 150 at 12–13]. For example, Plaintiff proffers that (1) Johnson has been called the "night manager" since 2007, (2)

Johnson is one of the most senior employees at The Cheetah, (3) Johnson had the power to discipline entertainers, (4) and entertainers would come to Johnson to address problems with customers, house moms, or floormen. See Pl.'s SOMF ¶¶ 5–19; see also April 4, 2017 Johnson Dep. at 10:21–12:24; August 12, 2019 Dep. of Holly Wood at 12:2–3 [Doc. 137]; De Leon-Granados v. Eller & Sons Trees, Inc., 581 F. Supp. 2d 1295, 1303 (N.D. Ga. 2008) ("Supreme Court precedent holds that there may be several simultaneous employers of any individual worker.") (citing Falk v. Brennan, 414 U.S. 190, 195 (1973)).

Based on the above, the Court finds that there is a genuine issue of material fact as to the amount of control Johnson possessed over Plaintiff. Because the legal determination of whether Johnson was a manager or employer depends on genuine issues of material fact, summary judgment on this issue is inappropriate. See Miller, 2018 WL 1567856, at *4 (denying summary judgment when there was a genuine issue of material fact as to the amount of control "Managers on Duty" exercised over other employees). As a result, the Court denies Defendants' Motion for Summary Judgment with respect to this aspect of Plaintiff's Count I.

2. Plaintiff's Count II—Overtime Wage Claim

Next, the Court turns to Plaintiff's Count II overtime wage claim regarding her post-shift activities. See Compl. ¶¶ 139–147. In her Complaint, Plaintiff alleges that Defendants failed to pay her earned overtime wages for the time she spent

waiting to leave after her shift pursuant to The Cheetah's "waiting policy." See id. ¶¶ 144–147, 166. Defendants disagree and move for summary judgment on Plaintiff's overtime wage claim, contending that they are not required to compensate Plaintiff for any postliminary activities pursuant to binding precedent, including any time Plaintiff spent on post-shift check-out procedures and waiting for customers to leave. [See Doc. 118-1 at 6–10]. In her response, Plaintiff notes that she does not oppose Defendants' motion with respect to postliminary time. [See Doc. 150 at 1 n.1].

However, an unopposed motion for summary judgment does not mean the moving party automatically prevails because this Court is still required to consider the merits of Defendants' motion with regards to this claim. See United States v. 5800 SW 74th Ave., 363 F.3d 1099, 1101 (11th Cir. 2004) ("the district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion"). Thus, the Court examines whether Plaintiff is entitled to overtime wages for her post-shift activities.

The FLSA requires an employer to compensate any employee who works in excess of forty (40) hours per week at an overtime rate (typically, one and one-half times the employee's regular pay rate). See Allen v. Bd. of Pub. Educ. for Bibb Cnty., 495 F.3d 1306, 1314 (11th Cir. 2007) (citing 29 U.S.C. § 207(a)(1)).

However, pursuant to the Portal-to-Portal Act of 1947, employers are exempt from liability for failure to compensate an employee for:

> (2) activities which are preliminary to or postliminary to [the employee's] principal activity or activities,
>
> which occur either prior to the time of any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

See 29 U.S.C. § 254(a). Here, the term "principal activity or activities" includes "all activities that are an 'integral and indispensable part of the principal activities.'" See Llorca v. Sheriff, Collier Cnty., 893 F.3d 1319, 1323 (11th Cir. 2018) (quoting Steiner v. Mitchell, 350 U.S. 247, 256 (1956)). Thus, "preliminary and postliminary activities are compensable only if they are *both* an integral *and* indispensable part of the principal activities." See id. at 1324 (emphasis in original) (internal citations omitted).

The Eleventh Circuit has explained that "indispensable is not synonymous with integral." See id. at 1323 (internal marks and citation omitted). "The fact that certain preshift [and postshift] activities are *necessary* for employees to engage in their principal activities does not mean that those [] activities are '*integral and indispensable*' to a principal activity . . . ." Bonilla v. Baker Concrete Constr., Inc., 487 F.3d 1340, 1344 (11th Cir. 2007) (emphasis added) (internal marks and citation omitted). Therefore, "[a]n activity is integral and indispensable to an employee's principal activities if the activity is an intrinsic element of those activities and one

with which the employee cannot dispense if [s]he is to perform the activities." See Meeks v. Pasco Cty., 688 F. App'x 714, 717 (11th Cir. 2017) (internal marks and citation omitted).

Here, the Court finds that as a matter of law, Plaintiff is not entitled to receive compensation for her post-shift activities. Specifically, the Court finds that based on relevant case law, Plaintiff's actions in completing check-out procedures and waiting for customers to vacate the premises were not integral and indispensable to the principal activity she was employed to perform. See Integrity Staffing Sols., Inc. v. Busk, 574 U.S. 27, 37 (2014) ("an activity is integral and indispensable to the principal activities that an employee is employed to perform—and thus compensable under the FLSA—if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities"). Thus, the Court finds that Defendants are entitled to summary judgment on Plaintiff's Count II. See id. at 39 (Sotomayor, J., concurring) (explaining that 29 U.S.C. § 254(a) "distinguishes between activities that are essentially part of the ingress and egress process, on the one hand, and activities that constitute the actual 'work of consequence performed for an employer,' on the other hand").

3. Plaintiff's Count III—Unlawful Taking of Tips

Finally, the Court addresses Plaintiff's claim for Defendants' alleged unlawful taking of tips. [See Doc. 150 at 18–25]. Pursuant to the FLSA, employers must pay

employees their wages "finally and unconditionally," "free and clear" of any direct or indirect "kickbacks." See 29 C.F.R. § 531.35;[7] see also Arriaga v. Fla. Pac. Farms, L.L.C., 305 F.3d 1228, 1241 (11th Cir. 2002) ("The FLSA prevents improper deductions from reducing the wages of a worker below the minimum wage.").

Here, Plaintiff claims that various expenses she incurred in furtherance of her employment constituted fees that were either kicked back to the employer or paid for the employer's benefit. [See Doc. 150 at 22] (citing De Leon-Granados, 581 F. Supp. 2d at 1315 (explaining that "requiring employees to pay for expenses incurred for the benefit of the employer functions as a *de facto* wage deduction")). According to Plaintiff, these fees included payments for adult entertainment permits, parking fees, hair and makeup, and tips to house moms. [See id. at 25]. Plaintiff asserts that all these fees "were impermissible deductions pursuant to the FLSA." [See id. at 18–23].

As mentioned above, the Court finds that Plaintiff's unlawful deduction claims regarding City of Atlanta adult entertainment work permit fees, parking fees, and payments to makeup artists/hair stylists may not proceed because Plaintiff did not include these allegations in her Amended Complaint. See Compl. ¶¶ 124, 152–

[7] In relevant part, 29 C.F.R. § 531.35 states that "'wages' cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or 'free and clear.'" See 29 C.F.R. § 531.35. Additionally, "[t]he wage requirements of the [FLSA] will not be met where the employee 'kicks back' directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee." See id.

54. Instead, Plaintiff raised these allegations for the first time in her response to Defendants' motion for summary judgment. [See Doc. 150 at 18–25]; see also Hurlbert v. St. Mary's Health Care Sys., Inc., 439 F.3d 1286, 1297 (11th Cir. 2006) (requiring the plaintiff to amend the complaint before raising a claim at summary judgment); Gilmour, 382 F.3d at 1315 ("A plaintiff may not amend her complaint through argument in a brief opposing summary judgment."). Accordingly, the Court will not consider these purported fees in deciding summary judgment on Plaintiff's unlawful deduction claim.

Thus, the only remaining unlawful payment in dispute is Plaintiff's payments to house moms. As discussed above, the FLSA requires employers to pay employees their wages "finally and unconditionally," "free and clear" of any direct or indirect "kickbacks." See 29 C.F.R. § 531.35. "If an expense is determined to be primarily for the benefit of the employer, the employer must reimburse the employee during the workweek in which the expense arose." Arriaga, 305 F.3d at 1237. However, before this provision is even triggered, Plaintiff must prove that any payments or expenses were "required" and for the employer's benefit. See id.; see also Benton v. Deli Mgmt., 396 F. Supp. 3d 1261, 1270 (N.D. Ga. 2019) (noting that a "plain reading" of 29 C.F.R. § 531.35 shows that "requiring [the plaintiffs] to cover the costs of their vehicles that are used for [the defendant's] business constitute an illegal

kickback, insofar as they are required to cover the cost of these expenses, and that cost drives their wages below the FLSA minimum").

With regards to any alleged payments made to house moms, Plaintiff has not demonstrated that these "payments" were mandatory or "required" by Defendants or for the employer's benefit. See Pl.'s Resp. to Defs.' SOMF ¶¶ 51, 53. In fact, Plaintiff previously testified that her payments to house moms were given in order for her to receive personal benefits, including "to make sure that my work environment was better than some other girls['']." See Duren Dep. at 109:1–4; see also id. at 109:6–14 (describing the benefits Plaintiff received as a result of voluntarily tipping the house moms). Plaintiff does not address how any such payments constituted a "kick-back" for the benefit of her employer. [See Doc. 151 at 24–25]. Because Plaintiff fails to establish that any purported payments to house moms were required and that they were made for the employer's benefit, the Court finds that Defendants are entitled to summary judgment on Plaintiff's Count III.

V. Conclusion

For the aforementioned reasons, the Court **OVERRULES** "Defendants' Renewed Notice of Objection to Depositions Taken in Other Matters [Docs. 94-5 through 94-6]" [Doc. 153] and **OVERRULES IN PART AND SUSTAINS IN PART** "Defendants' Renewed Notice of Objection to Declaration of Amanda Duren [Doc. 94-2]." [Doc. 154].

Next, the Court **GRANTS IN PART AND DENIES IN PART** Defendants' "Renewed Motion for Summary Judgment on Liability." [Doc. 118]. Specifically, the Court **GRANTS** Defendants' motion with regards to Plaintiff's Count II—Overtime Wage Claim (Violation of 29 U.S.C. § 207) and Count III—Unlawful Taking of Tips (Violation of 29 U.S.C. § 203), and **DIRECTS** the Clerk to **ENTER JUDGMENT** in favor of Defendants on these claims. Additionally, the Court **GRANTS IN PART AND DENIES** Defendant's motion with regards to Plaintiff's remaining Count I—Minimum Wage Claim (Violation of 29 U.S.C. § 206). Specifically, the Court **GRANTS** summary judgment in favor of Defendants with respect to any allegations concerning floormen, disc jockeys, house moms, and Samantha Kim. However, the Court **DENIES** summary judgment with respect to any allegations concerning Bob Johnson.

SO ORDERED, this 12th day of July, 2021.

Eleanor L. Ross

Eleanor L. Ross
United States District Judge
Northern District of Georgia