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

**PATRICK IMBARRATO and NICK PRAINO on  
behalf of themselves and all others similarly situated,**

**Plaintiffs,**

**-against-**

**BANTA MANAGEMENT SERVICES, INC., BANTA  
BWW MDT, LLC, BANTA NINE MALL, LLC,  
BANTA BWW ON, LLC, BANTA BWW NB, LLC,  
GEORGE E. BANTA, SR., and GEORGE E. BANTA,  
JR.,**

**Defendants.**

**No.**

**CLASS ACTION  
COMPLAINT**

Plaintiff Patrick Imbarrato and Nick Praino, individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves, and upon information and belief as to other matters, allege as follows:

**NATURE OF THE ACTION**

1. This lawsuit seeks to recover minimum wages, overtime pay and other wages for Plaintiffs and their similarly situated co-workers – servers, bussers, bartenders, and other “tipped workers” – who work or have worked at Banta Management Services, Inc., Banta BWW, MDT LLC, Banta Nine Mall, LLC, Banta BWW ON, LLC, Banta BWW NB, LLC, George E. Banta, Sr., and George E. Banta, Jr. (collectively “Buffalo Wild Wings” or “Defendants”).

2. Defendants are a hospitality group focused on real estate development and management.<sup>1</sup> Based out of Poughkeepsie, New York, Defendants, through Banta Management Services, Inc.,<sup>2</sup> control and operate a portfolio of companies including Super 8 Hotels, Howard Johnson Hotels, Holiday Inn Express Hotels, Uno's Pizzeria & Grill restaurants, and Buffalo Wild Wings restaurants.<sup>3</sup> The Banta family has operated these companies for three generations.<sup>4</sup>

3. Buffalo Wild Wings is a casual dining restaurant and sports bar franchise in the United States, Canada, Mexico and the Philippines. Defendants own and operate 3 Buffalo Wild Wing restaurants located at: 567 Rt. 211 E., Middletown, New York 10947; 1794 South Rd., Wappingers Falls, New York 12590; and 768 State Rte. 28, Oneonta, New York 13820.

4. At all times relevant, Defendants have maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including the ability to hire, fire, and discipline them.

5. At all times relevant, Defendants paid Plaintiffs and others similarly situated tipped workers at the "tipped" minimum wage rate, however, Defendants failed to meet the strict statutory requirements that would permit Buffalo Wild Wings to apply the reduced minimum wage to tipped workers.

6. Specifically, Defendants maintained a policy and practice whereby they failed to satisfy the strict statutory requirements under the FLSA and NYLL that would allow them to pay this reduced minimum wage (take a "tip credit").

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<sup>1</sup> <http://www.bantamanagement.com/index.html>

<sup>2</sup> Ex. A, Deposition of George Edward Banta, Jr. ("Banta Dep.") at 7:9-11.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; Ex. B, Declaration of George E. Banta Jr., ¶ 2.; Ex. A, Banta Dep. at 6:14-7:5.

7. Additionally, Defendants maintained a policy and practice whereby tipped workers were required to spend a substantial amount of time, 2 hours or more than 20%, performing non-tip producing side work *related* to the employee's tipped occupation.

8. Defendants also maintained a policy and practice whereby tipped workers were required to perform non-tip producing side work *unrelated* to the employee's tipped occupation. As these duties were unrelated to the tipped profession, tipped workers are engaged in a dual occupation while being compensated at the tip credit rate rather than the full minimum wage.

9. At Buffalo Wild Wings, tipped workers were required to perform side work duties that included but were not limited to: (1) cleaning the bathroom; (2) cleaning out sinks; (3) washing dishes; (4) portioning sauces into 3 oz containers; (5) breaking down the beverage station and cleaning it thoroughly; (6) rolling large amounts of silverware; (7) cleaning and breaking down the expeditor's line; (8) sweeping; (9) cleaning the POS station; (10) cleaning the patio; (11) washing walls; (12) rotating stock / condiments; (13) setting up the expeditors' line, fillings with ice and condiments; (14) setting up the beverage station; (15) making coffee and tea for the restaurant; and (16) stocking napkins, cups, wet naps, condiments, and paper boats.

10. Tipped workers were required by Defendants to perform side work at the beginning, during, and at the end of their shifts.

11. Defendants required tipped workers to perform most side work before the restaurant opened or after the restaurant closed and customers had left.

12. During these periods of time, tipped workers were compensated at the tipped minimum wage rate rather than the full minimum wage rate.

13. The duties that Defendants required tipped workers to perform are duties that are customarily assigned to “back-of-the-house” employees in other restaurants, who typically receive at least the full minimum wage rate.

14. The side work described above is not specific to particular customers, tables, or sections, but is performed in mass quantities for the entire shift or for future shifts.

15. Defendants’ timekeeping system was capable of tracking multiple job codes for different work assignments.

16. Throughout Plaintiffs’ employment, Defendants maintained a policy and practice whereby tipped workers were not paid spread-of-hours pay when the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

17. Defendants also failed to supply tipped workers with call-in pay when they were required to leave prior to working for 3 hours.

18. Plaintiffs bring this action on behalf of themselves and similarly situated current and former tipped workers who elect to opt in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiffs and others similarly situated of their lawfully earned wages.

19. Plaintiffs also bring this action on behalf of themselves and similarly situated current and former tipped workers in New York pursuant to Federal Rule of Civil Procedure 23 (“NY Rule 23”) to remedy violations of the New York Labor Law (“NYLL”) Article 6, §§ 190 *et*

*seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

## **THE PARTIES**

### **Plaintiffs**

#### **Patrick Imbarrato**

20. Patrick Imbarrato (“Imbarrato”) is an adult individual who is a resident of New York.

21. Imbarrato was employed by Defendants as a server at the Buffalo Wild Wings located at 567 Route 211 East, Middletown, New York 10941 from in or around August 2013 through the February 8, 2018.

22. Defendants owned and operated the Buffalo Wild Wings restaurant at which Imbarrato worked.

23. Imbarrato is a covered employee within the meaning of the FLSA and the NYLL.

24. A written consent form for Imbarrato is being filed with this Class Action Complaint.

#### **Nick Praino**

25. Nick Praino (“Praino”) is an adult individual who is a resident of Florida.

26. During his employment with Buffalo Wild Wings, Praino’s last name was Cahill.

27. Praino was employed by Defendants as a server and host at the Buffalo Wild Wings located at 567 Route 211 East, Middletown, New York 10941 from in or around May 2013 through November 2013 and from in or around December 2014 through February 2015.

28. Praino’s last name while employed with Defendants was Cahill.

29. Defendants owned and operated the Buffalo Wild Wings restaurant at which Praino worked.

30. Praino is a covered employee within the meaning of the FLSA and the NYLL.

31. A written consent form for Praino is being filed with this Class Action Complaint.

**Defendants**

32. Defendants Banta Management Services, Inc., Banta BWW MDT, LLC, Banta Nine Mall, LLC, Banta BWW ON, LLC, Banta BWW NB, LLC, George E. Banta, Sr., and George E. Banta, Jr., jointly employed Plaintiffs and similarly situated employees at all times relevant.

33. Each Defendant has had substantial control over Plaintiffs' and similarly situated employees' working conditions, and over the unlawful policies and practices alleged herein.

34. Defendants are part of a single integrated enterprise that has jointly employed Plaintiffs and similarly situated employees at all times relevant.

35. During all relevant times, Defendants have been Plaintiffs' employers within the meaning of the FLSA and the NYLL.

**Banta Management Services, Inc.**

36. Together with the other Defendants, Banta Management Services, Inc. ("Banta Management") owned and/or operated Buffalo Wild Wings restaurants during the relevant period.

37. Banta Management's principal executive office is located at 842 Main Street, Poughkeepsie, New York 12603.

38. Banta Management is a domestic corporation doing business in New York State.

39. At all relevant times, Banta Management maintained control, oversight, and

direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

40. Banta Management operates the Buffalo Wild Wings restaurants, and other businesses owned by Defendants.<sup>5</sup> Banta Management provides oversight and operational guidance to the Buffalo Wild Wings restaurants.<sup>6</sup>

41. Banta Management allowed employees to freely transfer between, or be shared by, the various Buffalo Wild Wings restaurants it operates without retraining such employees.

42. Banta Management applied the same employment policies, practices, and procedures to all tipped workers at its Buffalo Wild Wings restaurants, including policies, practices, and procedures with respect to payment of minimum wages, overtime pay, and other wages.

43. Upon information and belief, at all relevant times Banta Management had an annual gross volume of sales in excess of \$500,000.

44. Pursuant to NY BCL §630, Plaintiffs hereby demand Banta Management permit an examination of their records of shareholders under NY BCL §624 so that liability may be imposed on their respective top ten shareholders for unpaid wages.

**Banta BWW MDT, LLC**

45. Together with the other Defendants, Banta BWW MDT, LLC (“BWW MDT”) owned and/or operated Buffalo Wild Wings restaurants during the relevant period.

46. BWW MDT’s principal executive office is located at 842 Main Street, Poughkeepsie, New York 12603.

47. BWW MDT is a domestic corporation doing business in New York State.

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<sup>5</sup> Ex. A, Banta Dep., at 6:14-7:11.

<sup>6</sup> *Id.*

48. BWW MDT is a subsidiary of Banta Management.

49. At all relevant times, BWW MDT maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

50. BWW MDT allowed employees to freely transfer between, or be shared by, the various Buffalo Wild Wings restaurants it operates without retraining such employees.

51. BWW MDT applied the same employment policies, practices, and procedures to all tipped workers at its Buffalo Wild Wings restaurants, including policies, practices, and procedures with respect to payment of minimum wages, overtime pay, and other wages.

52. Upon information and belief, at all relevant times BWW MDT had an annual gross volume of sales in excess of \$500,000.

53. Pursuant to NY LLCL § 609, Plaintiffs intend to hold BWW MDT's top 10 members with the largest percentage of ownership jointly and severally liable for these unpaid wages.

**Banta Nine Mall, LLC**

54. Together with the other Defendants, Banta Nine Mall, LLC ("Nine Mall") owned and/or operated Buffalo Wild Wings restaurants during the relevant period.

55. Nine Mall's principal executive office is located at 842 Main Street, Poughkeepsie, New York 12603.

56. Nine Mall is a domestic corporation doing business in New York State.

57. Nine Mall is a subsidiary of Banta Management.

58. At all relevant times, Nine Mall maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.



59. Nine Mall allowed employees to freely transfer between, or be shared by, the various Buffalo Wild Wings restaurants it operates without retraining such employees.

60. Nine Mall applied the same employment policies, practices, and procedures to all tipped workers at its Buffalo Wild Wings restaurants, including policies, practices, and procedures with respect to payment of minimum wages, overtime pay, and other wages.

61. Upon information and belief, at all relevant times Nine Mall had an annual gross volume of sales in excess of \$500,000.

62. Pursuant to NY LLCL § 609, Plaintiffs intend to hold Nine Mall's top 10 members with the largest percentage of ownership jointly and severally liable for these unpaid wages.

**Banta BWW ON, LLC**

63. Together with the other Defendants, Banta BWW ON, LLC ("BWW ON") owned and/or operated Buffalo Wild Wings restaurants during the relevant period.

64. BWW ON's principal executive office is located at 842 Main Street, Poughkeepsie, New York 12603.

65. BWW ON is a domestic corporation doing business in New York State.

66. BWW ON is a subsidiary of Banta Management.

67. At all relevant times, BWW ON maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

68. BWW ON allowed employees to freely transfer between, or be shared by, the various Buffalo Wild Wings restaurants it operates without retraining such employees.

69. BWW ON applied the same employment policies, practices, and procedures to all tipped workers at its Buffalo Wild Wings restaurants, including policies, practices, and

procedures with respect to payment of minimum wages, overtime pay, and other wages.

70. Upon information and belief, at all relevant times BWW ON had an annual gross volume of sales in excess of \$500,000.

71. Pursuant to NY LLCL § 609, Plaintiffs intend to hold BWW ON's top 10 members with the largest percentage of ownership jointly and severally liable for these unpaid wages.

**Banta BWW NB, LLC**

72. Together with the other Defendants, Banta BWW NB, LLC ("BWW NB") owned and/or operated Buffalo Wild Wings restaurants during the relevant period.

73. BWW NB's principal executive office is located at 842 Main Street, Poughkeepsie, New York 12603.

74. BWW NB is a domestic corporation doing business in New York State.

75. BWW NB is a subsidiary of Banta Management.

76. At all relevant times, BWW NB maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

77. BWW NB allowed employees to freely transfer between, or be shared by, the various Buffalo Wild Wings restaurants it operates without retraining such employees.

78. BWW NB applied the same employment policies, practices, and procedures to all tipped workers at its Buffalo Wild Wings restaurants, including policies, practices, and procedures with respect to payment of minimum wages, overtime pay, and other wages.

79. Upon information and belief, at all relevant times BWW NB had an annual gross volume of sales in excess of \$500,000.

80. Pursuant to NY LLCL § 609, Plaintiffs intend to hold BWW NB's top 10

members with the largest percentage of ownership jointly and severally liable for these unpaid wages.

**Individual Defendants**

81. George E. Banta, Sr., and George E. Banta, Jr., (“Individual Defendants”), maintained control over, oversaw, and directed the operation of Buffalo Wild Wings, including its employment practices, during the relevant period.

82. Upon information and belief, the Individual Defendants manage and/or operate Buffalo Wild Wings.

83. During all times relevant, the Individual Defendants were “employers” under the FLSA and NYLL, and employed or jointly employed Plaintiffs and similarly situated employees.

84. Upon information and belief, throughout the relevant period, the Individual Defendants have had the power to control the operations and compensation practices at Buffalo Wild Wings.

**George E. Banta, Sr.**

85. Upon information and belief, George E. Banta, Sr. is a resident of the State of New York.

86. At all relevant times, George E. Banta, Sr. has been the founder and owner of Buffalo Wild Wings.

87. George E. Banta, Sr. is identified as a principal on the liquor license for BWW MDT, Nine Mall, and BWW ON.

88. George E. Banta, Sr. is identified as the CEO of Banta Management on the Corporate Filing with the NYS Department of State.

89. George E. Banta, Sr. has an office at 842 Main Street, Poughkeepsie, New York

12603.

90. George E. Banta, Sr. has an ownership interest in Banta Management.<sup>7</sup>

91. At all relevant times, George E. Banta, Sr. has had power over personnel decisions at Buffalo Wild Wings, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.<sup>8</sup>

92. At all relevant time, George E. Banta, Sr. has had power over payroll decisions at Buffalo Wild Wings, including the power to retain time and/or wage records.

93. At all relevant times, George E. Banta, Sr. is actively involved in managing the day to day operations of Buffalo Wild Wings.

94. At all times relevant, George E. Banta, Sr. has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

95. At all relevant times, George E. Banta, Sr. has had the power to transfer the assets and/or liabilities of Buffalo Wild Wings.

96. At all relevant times, George E. Banta, Sr. has had the power to enter into contracts on behalf of Buffalo Wild Wings.

97. At all relevant time, George E. Banta, Sr. has had the power to close, shut down, and/or sell Buffalo Wild Wings restaurants.

98. George E. Banta, Sr. is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

**George E. Banta, Jr.**

99. Upon information and belief, Defendant George E. Banta, Jr. is a resident of the

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<sup>7</sup> Ex. A, Banta Dep., at 9:22-25.

<sup>8</sup> *Id.*, at 12:14-20.

State of New York.

100. George E. Banta, Jr. has identified himself as the Vice President of Banta Management.<sup>9</sup>

101. At all relevant times, George E. Banta, Jr. has had power over personnel decisions at Buffalo Wild Wings, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.<sup>10</sup>

102. At all relevant time, George E. Banta, Jr. has had power over payroll decisions at Buffalo Wild Wings, including the power to retain time and/or wage records.

103. At all relevant times, George E. Banta, Jr. is actively involved in managing the day to day operations of Buffalo Wild Wings.

104. George E. Banta, Jr. has testified that he “own[s] and operate[s] restaurants and hotels.”<sup>11</sup>

105. At all times relevant, George E. Banta, Jr. has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

106. At all relevant times, George E. Banta, Jr. has had the power to transfer the assets and/or liabilities of Buffalo Wild Wings.

107. At all relevant times, George E. Banta, Jr. has had the power to enter into contracts on behalf of Buffalo Wild Wings.

108. At all relevant time, George E. Banta, Jr. has had the power to close, shut down, and/or sell Buffalo Wild Wings dealerships.

109. George E. Banta, Jr. is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly

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<sup>9</sup> *Id.* at 6:13-20.

<sup>10</sup> Ex. B, Declaration of George E. Banta Jr.

<sup>11</sup> Ex. A, Banta Dep., at 6:13-20.

situated employees.

### **JURISDICTION AND VENUE**

110. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1337, and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

111. This Court also has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

112. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(1) because Defendants' nucleus of operations are in the district.

### **COLLECTIVE ACTION ALLEGATIONS**

113. Plaintiffs bring the First and Second Causes of Action, FLSA claims, on behalf of themselves and all similarly situated current and former tipped workers employed at Buffalo Wild Wings restaurants owned, operated, and/or controlled by Defendants who elect to opt-in to this action (the "FLSA Collective Members") between October 3, 2013 and the present.<sup>12</sup>

114. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and the FLSA Collective.

115. Consistent with Defendants' policy and pattern or practice, Plaintiffs and the FLSA Collective were not paid the full minimum wage rate for all hours worked up to 40 per workweek and premium overtime compensation for all hours worked beyond 40 per workweek.

116. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

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<sup>12</sup> The period covered by the FLSA Collective is extended due to a pre-litigation tolling agreement entered into by the parties on July 28, 2016 and terminated April 9, 2018. Ex. C, Tolling Agreement.

117. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective.

**NEW YORK CLASS ACTION ALLEGATIONS**

118. Plaintiffs bring the Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action, NYLL claims, pursuant to Rule 23, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as tipped workers and similar employees at the Buffalo Wild Wings restaurants in New York operated by Defendants between October 3, 2010<sup>13</sup> and the date of final judgment in this matter (the “NY Rule 23 Class”).

119. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

120. There are more than fifty Rule 23 Class Members.

121. Plaintiffs’ claims are typical of those claims that could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class Member in separate actions.

122. Plaintiffs and the Rule 23 Class Members have all been injured in that they have been uncompensated or under-compensated due to Defendants’ common policies, practices, and patterns of conduct. Defendants’ corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

123. Plaintiffs are able to fairly and adequately protect the interests of the Rule 23 Class Members and have no interests antagonistic to the Rule 23 Class Members.

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<sup>13</sup> *Id.*

124. Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

125. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender.

126. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiffs and the Rule 23 Class Members individually and include, but are not limited to, the following:

- (a) whether Defendants failed to pay Plaintiffs and the Rule 23 Class full minimum wages for all of the hours they worked up to 40 hours per workweek;
- (b) whether Defendants correctly compensated Plaintiffs and the Rule 23 Class at time and one half the full minimum wage for hours worked in excess of 40 per workweek;
- (c) whether Defendants failed to pay Plaintiffs and the Rule 23 Class call-in pay as required by the NYLL;
- (d) whether Defendants failed to pay Plaintiffs and the Rule 23 Class spread-of-hours as required by the NYLL;
- (e) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper annual wage notices, as required by the NYLL; and
- (f) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with accurate statements with every payment of wages, as required by the NYLL.



**PLAINTIFFS' FACTUAL ALLEGATIONS**

127. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiffs, individually, as follows:

**Patrick Imbarrato**

128. During his employment, Imbarrato generally works the following scheduled hours unless he misses time for vacation, sick days, or holidays:

- Approximately 5 to 6 shifts per week, lasting from approximately 5 p.m. or 6 p.m. until 12 a.m. through 3 a.m. On occasion, Imbarrato worked up to approximately 42.25 hours in a workweek. For example, on May 6, 2016, Plaintiff's paystub reflected 2.52 hours of overtime.

129. Throughout his employment, Defendants applied a tip credit towards the minimum wage rate paid to Imbarrato for work performed as a server. Defendants failed to notify Imbarrato of the tip credit provisions of the FLSA or NYLL.

130. Defendants have suffered or permitted Imbarrato to perform non-tip producing side work for more than 20% and/or 2 hours on a consistent basis, including pre-shift side work, running side work, and closing side work. These duties included, but are not limited to: (1) cleaning out sinks; (2) washing dishes; (3) portioning sauces into 3 oz containers; (4) breaking down the beverage station and cleaning it thoroughly; (5) rolling large amounts of silverware; (6) cleaning and breaking down the expeditor's line; (7) sweeping; (8) cleaning the POS station; (9) washing walls; (10) rotating stock / condiments; and (11) stocking napkins, cups, wet naps, condiments, and paper boats.

131. When Imbarrato worked over 40 hours in a workweek, Defendants failed to calculate his overtime rate at 1.5 times the full minimum wage rate.

132. Defendants did not pay Imbarrato spread-of-hours pay for all of the times that he worked 10 hours or more in a workday.

133. Defendants did not provide Imbarrato with call-in pay as required by the NYLL when he worked less than 3 hours in a shift.

134. Defendants failed to furnish Imbarrato with proper annual wage notices, as required by the NYLL.

135. Defendants failed to furnish Imbarrato with proper wage statements, listing the rates paid, gross wages, and the claimed tip allowance, as required by the NYLL.

**Nick Parino**

136. Throughout his employment, Defendants applied a tip credit towards the minimum wage rate paid to Parino for work performed as a server and host. Defendants failed to notify Parino of the tip credit provisions of the FLSA and NYLL.

137. Defendants have suffered or permitted Parino to perform non-tip producing side work for more than 20% and/or 2 hours on a consistent basis, including pre-shift side work, running side work, and closing side work. These duties included, but are not limited to: (1) cleaning out sinks; (2) washing dishes; (3) portioning sauces into 3 oz containers; (4) breaking down the beverage station and cleaning it thoroughly; (5) rolling large amounts of silverware; (6) cleaning and breaking down the expeditor's line; (7) sweeping; (8) cleaning the POS station; (9) washing walls; (10) rotating stock / condiments; and (11) stocking napkins, cups, wet naps, condiments, and paper boats.

138. Defendants did not pay Parino spread-of-hours pay for all of the times that he worked 10 hours or more in a workday.

139. Defendants did not provide Parino with call-in pay as required by the NYLL when he worked less than 3 hours in a shift.

140. Defendants failed to furnish Parino with proper annual wage notices, as required by the NYLL.

141. Defendants failed to furnish Parino with proper wage statements, listing the rates paid, gross wages, and the claimed tip allowance, as required by the NYLL.

**FIRST CAUSE OF ACTION**  
**Fair Labor Standards Act – Minimum Wages**  
**(Brought on behalf of Plaintiffs and the FLSA Collective)**

142. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

143. At all times relevant, Plaintiffs and the FLSA Collective were employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*, and/or they were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*

144. Defendants were not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants failed to inform Plaintiffs and FLSA Collective Members of the provisions of subsection 203(m) of the FLSA.

145. Defendants have not been eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants required Plaintiffs and the FLSA Collective to perform duties that are unrelated to their tip-producing work. During these periods, Defendants have compensated Plaintiffs and the FLSA Collective at the tipped minimum wage rate rather than the full hourly minimum wage rate as required by 29 U.S.C. §§ 201 *et seq.*

146. Defendants have not been eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants required Plaintiffs and the FLSA Collective to perform a substantial amount of non-tip producing “side work” in excess of 20% of their time at work. During these periods, Defendants have compensated Plaintiffs and the FLSA Collective at the tipped minimum wage rather than the full hourly minimum wage rate as required by 29 U.S.C. §§ 201 *et seq.*

147. As a result of Defendants’ willful violations of the FLSA, Plaintiff and the FLSA Collective have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, attorneys’ fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

### **SECOND CAUSE OF ACTION**

#### **Fair Labor Standards Act – Overtime Wages**

**(Brought on behalf of Plaintiff Imbarrato and the FLSA Collective)**

148. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

149. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the FLSA Collective.

150. Defendants failed to pay Plaintiff and the FLSA Collective the premium overtime wages to which they were entitled under the FLSA – at a rate of 1.5 times the full minimum wage rate – for all hours worked beyond 40 per workweek.

151. As a result of Defendants’ willful violations of the FLSA, Plaintiff and the FLSA Collective have suffered damages by being denied overtime compensation in amounts to be

determined at trial, and are entitled to recovery of such amounts, liquidated damages, attorneys' fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

**THIRD CAUSE OF ACTION**  
**New York Labor Law – Minimum Wage**  
**(Brought on behalf of Plaintiffs and the NY Rule 23 Class)**

152. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

153. At all times relevant, Plaintiffs and the Rule 23 Class have been employees of Defendants, and Defendants have been employers of Plaintiffs and the Rule 23 Class within the meaning of the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

154. Defendants have failed to pay Plaintiffs and the Rule 23 Class the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

155. Pursuant to the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, Defendants have been required to pay Plaintiff and the Rule 23 Class the full minimum wage at a rate of (a) \$7.25 per hour for all hours worked from July 28, 2010 through December 30, 2013; (b) \$8.00 per hour for all hours worked from December 31, 2013 through December 30, 2014; (c) \$8.75 per hour for all hours worked from December 31, 2014 through December 30, 2015; and (d) \$9.00 per hour for all hours worked from December 31, 2015 through December 30, 2016; (e) \$9.70 per hour for all hours worked from December 31, 2016 through December 30, 2017; and (f) \$10.40 per hour for all hours worked from December 31, 2017 through the present.

156. Prior to January 1, 2011, Defendants failed to furnish with every payment of wages to Plaintiffs and the members of the NY Rule 23 Class a statement listing hours worked,

rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the NY Rule 23 Class were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

157. Since January 1, 2011, Defendants have failed to notify Plaintiffs and the Rule 23 Class of the tip credit in writing as required by the NYLL and the supporting New York State Department of Labor Regulations.

158. Defendants also required Plaintiffs and the Rule 23 Class to perform a substantial amount of non-tipped “side work” in excess of 2 hours or more, or 20% of their work time. During these periods, Plaintiffs and the Rule 23 Class were engaged in a non-tipped occupation.

159. Due to Defendants’ violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys’ fees and costs, and pre-judgment and post-judgment interest.

**FOURTH CAUSE OF ACTION**  
**New York Labor Law – Unpaid Overtime**  
**(Brought on behalf of Plaintiff Imbarrato and the NY Rule 23 Class)**

160. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

161. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiffs and the Rule 23 Class.

162. Defendants failed to pay Plaintiffs and the Rule 23 Class the premium overtime wages to which they were entitled under the NYLL and the supporting New York State Department of Labor Regulations – at a rate of 1.5 times the full minimum wage rate – for all

hours worked beyond 40 per workweek.

163. Due to Defendants' violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

**FIFTH CAUSE OF ACTION**

**New York Labor Law– Call-in Pay Violation**

**(Brought on behalf of Plaintiffs and the members of the NY Rule 23 Class)**

164. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

165. During regularly scheduled shifts, Plaintiffs and the members of the Rule 23 Class who reported for duty, whether or not assigned to actual work, were permitted to leave by request or permission of Defendants, and were not compensated for: (1) at least three hours for one shift or the number of hours in the regularly scheduled shift, whichever is less; (2) at least six hours for two shifts totaling six hours or less, or the number of hours in the regularly scheduled shift, whichever is less; and (3) at least eight hours for three shifts totaling eight hours or less or the number of hours in the regularly scheduled shift, whichever is less, as required by 12 N.Y.C.R.R. Part 137 and Part 146.

166. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants up to three hours of wages calculated at their regular or overtime rate of pay, whichever is applicable, as provided for by 12 N.Y.C.R.R. Part 137 and Part 146, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

**SIXTH CAUSE OF ACTION**

**New York Labor Law – Spread-of-Hours Pay  
(Brought on behalf of Plaintiffs and the NY Rule 23 Class)**

167. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

168. Defendants have failed to pay Plaintiffs and the members of the NY Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

169. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

**SIXTH CAUSE OF ACTION**

**New York Labor Law – Failure to Provide Proper Annual Wage Notices  
(Brought on behalf of Plaintiffs and the Rule 23 Class)**

170. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

171. Defendants have failed to furnish Plaintiffs and the Rule 23 Class with proper annual wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as"



names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

172. Due to Defendants' violations of NYLL, Article 6, § 195(1), Plaintiffs and the Rule 23 Class are entitled to statutory penalties of fifty dollars each workday that Defendants failed to provide Plaintiffs and the Rule 23 Class with annual wage notices, or a total of five thousand dollars each, and reasonable attorneys' fees and costs, as provided for by NYLL, Article 6, § 198(1-b).

**EIGHTH CAUSE OF ACTION**

**New York Labor Law – Failure to Provide Accurate Wage Statements  
(Brought on behalf of Plaintiffs and the Rule 23 Class)**

173. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

174. Defendants failed to supply Plaintiffs and the Rule 23 Class with an accurate statement of wages with every payment of wages as required by NYLL, Article 6, § 195(3), listing: dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

175. Due to Defendants' violations of NYLL, Article 6, § 195(3), Plaintiffs and the Rule 23 Class are entitled to statutory penalties of two hundred fifty dollars for each workday that Defendants failed to provide them with accurate wage statements, or a total of five thousand dollars each, and reasonable attorneys' fees and costs, as provided for by NYLL, Article 6, § 198

(1-d).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually, and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all tipped workers who are presently, or have at any time during the three years from October 3, 2010, up through and including the date of this Court's issuance of court-supervised notice, worked at the Buffalo Wild Wings restaurants in New York. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid minimum wages, unpaid overtime compensation and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiffs as representatives of the Rule 23 Class and counsel of record as Class Counsel;

E. Unpaid minimum wages, unpaid overtime compensation, spread-of-hours pay, call-in pay and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

F. Statutory penalties of fifty dollars for each workday that Defendants failed to provide Plaintiffs and the Rule 23 Class with proper annual wage notices, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

G. Statutory penalties of two hundred fifty dollars for each workday that Defendants

failed to provide Plaintiffs and the Rule 23 Class with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

- H. Prejudgment and post-judgment interest;
- I. Reasonable attorneys' fees and costs of the action; and
- J. Such other relief as this Court shall deem just and proper.

Dated: New York, New York  
June 15, 2018

Respectfully submitted,

/s/ Brian S. Schaffer  
Brian S. Schaffer

**FITAPELLI & SCHAFFER, LLP**

Brian S. Schaffer  
Frank J. Mazzaferro  
28 Liberty Street  
New York, NY 10005  
Telephone: (212) 300-0375

**WERMAN SALAS P.C.**

Douglas M. Werman, *pro hac vice forthcoming*  
77 W. Washington, Suite 1402  
Chicago, IL 60602  
(312) 419-1008

*Attorneys for Plaintiffs and  
the Putative Classes*

FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against Buffalo Wild Wings 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).

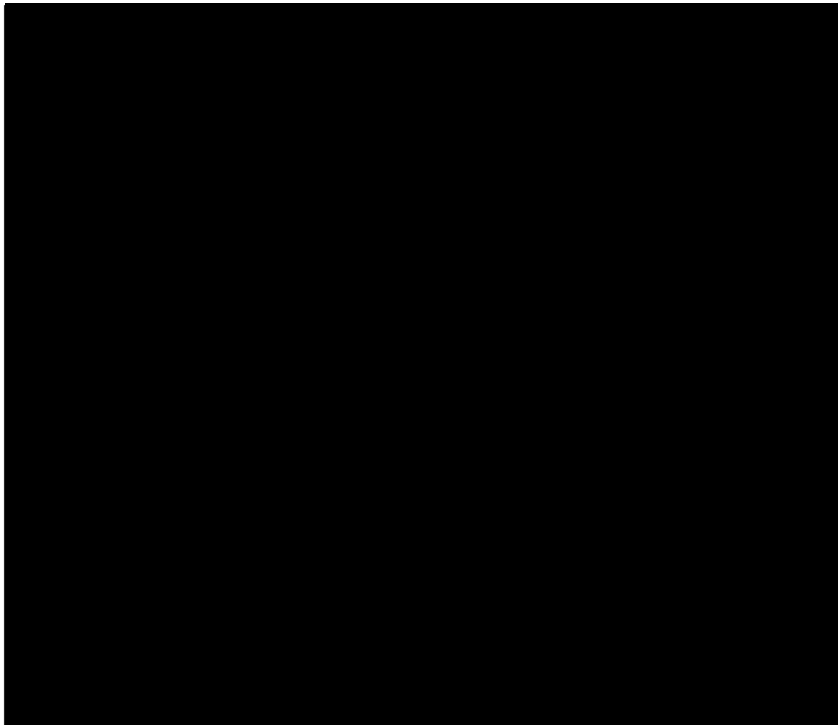
2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP and WERMAN SALAS P.C. ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 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.

Nicholas J. Cahill  
Nicholas J. Cahill, Jun 3, 2018

\_\_\_\_\_  
Signature

Nicholas J Cahill (Praino)

\_\_\_\_\_  
Full Legal Name (Print)



FAIR LABOR STANDARDS ACT CONSENT

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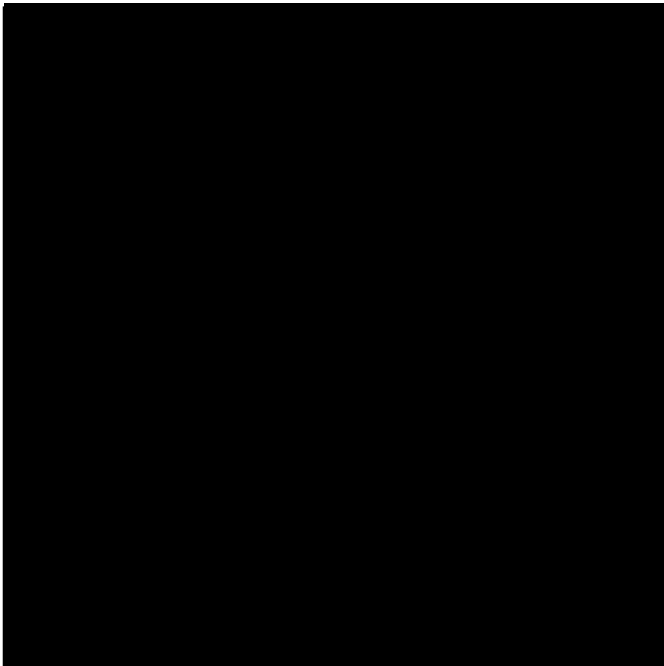
2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP & WERMAN SALAS P.C. ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 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.

  
Patrick Imbarrato (May 24, 2016)

Signature

Patrick Imbarrato

Full Legal Name (Print)



# **EXHIBIT A**

COMPU-TRAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THOMAS P. O'CONNOR,

Plaintiff,

-against-

Civ. 14-06237  
(VB)

BEEKMAN ARMS-DELAMATER INN, INC.,  
BANTA MANAGEMENT SERVICES, INC.,  
CYNTHIA PHILLIPS, Individually,  
GEORGE E. BANTA, JR., Individually,  
and GEORGE E. BANTA, SR., Individually,

Defendants.

-----X

42 Catharine Street  
Poughkeepsie, New York  
April 20, 2015  
9:30 a.m.

EXAMINATION BEFORE TRIAL OF GEORGE EDWARD  
BANTA, JR., a Defendant in the above-captioned  
matter, held pursuant to Court Order at the  
above time and place, before a Notary Public of  
the State of New York.

Nina Purcell, RPR  
Shorthand Reporter

A P P E A R A N C E S :

LAW OFFICES OF DRITA NICAJ  
Attorneys for Plaintiff  
42 Catharine Street  
Poughkeepsie, New York 12601  
BY: DRITA NICAJ, ESQ.

THOMAS, DROHAN, WAXMAN,  
PETIGROW & MAYLE, LLP  
Attorneys for Defendants  
2517 Route 52  
Hopewell Junction, New York 12533  
BY: LAURA WONG-PAN, ESQ.  
LWONG-PAN@TDWPM.COM

ALSO PRESENT: Thomas P. O'Connor

o0o



1  
2 IT IS HEREBY STIPULATED AND AGREED,  
3 by and between the attorneys for the respective  
4 parties hereto that objections to any question,  
5 except as to form, are reserved for the trial of  
6 this action.  
7  
8  
9  
10

11 IT IS FURTHER STIPULATED AND AGREED  
12 that this deposition may be sworn to by any  
13 Notary Public other the Notary Public before  
14 whom this examination was begun.  
15  
16  
17  
18

19 IT IS FURTHER STIPULATED AND AGREED  
20 that the filing and certification of the  
21 original of this deposition are waived.  
22  
23  
24  
25

1  
2 G E O R G E E D W A R D B A N T A, J R.,  
3 having been duly sworn by Nina Purcell,  
4 a Notary Public within and for the State  
5 of New York, was examined and testified  
6 as follows:

7 o0o

8  
9 EXAMINATION BY MS. NICAJ:

10 Q. State your name and address for the  
11 record, please.

12 A. George Edward Banta, Jr., 13 Bancroft  
13 Road, Poughkeepsie, New York 12601.

14 Q. Good morning, Mr. Banta. My name is  
15 Drita Nicaj. I represent the plaintiff in this  
16 action, Thomas O'Connor. I'll be asking you a  
17 series of questions today. I'm looking for  
18 truthful and responsive answers. Okay?

19 A. Yes.

20 Q. All your responses need to be verbal.  
21 That is, the court reporter can't take nods of  
22 the head, mm-hmm or hm-hmms.

23 Do you understand that?

24 A. Yes.

25 Q. If at any time you don't understand a

1                   *George Edward Banta, Jr.*

2           question, haven't heard the question, want the  
3           question read back, let me know.   Okay?

4                   A.     Sure.

5                   Q.     During the course of the deposition,  
6           you may know what I'm about to ask.   What I  
7           would ask you to do, however, is let me finish  
8           first asking the question and then you can  
9           respond.   Is that fair?

10                  A.     Yes.

11                  Q.     Similarly, if I interrupt you during  
12           the course of your answering, let me know.   I  
13           may believe that you're done with the response  
14           and you haven't fully responded.   Okay?

15                  A.     Okay.

16                  Q.     If during the course of the  
17           deposition you want to take a break, you can do  
18           so.   But what I would ask you to do first is  
19           answer any pending questions fully first and  
20           then you can take your break.   Okay?

21                  A.     Sure.

22                  Q.     During the course of your deposition,  
23           you may realize that you need to either add,  
24           change or otherwise supplement an earlier  
25           response.   Let me know.   I'll be happy to give

1                   *George Edward Banta, Jr.*

2           you an opportunity to do that as well. Okay?

3           A.     Sure.

4           Q.     Is there anything I've said so far  
5           that you do not understand?

6           A.     No.

7           Q.     Is it fair to assume that if you've  
8           responded to a question, you have understood it?

9           A.     Sure.

10          Q.     Where are you employed?

11          A.     Banta Management.

12          Q.     What is the full name of Banta  
13          Management?

14          A.     Good question. Banta Management  
15          Services.

16          Q.     And what is your title or role there?

17          A.     I -- we own and operate restaurants  
18          and hotels.

19          Q.     Do you have a title?

20          A.     Not technically. I'm vice president.

21          Q.     And you say we own restaurants and  
22          hotels.

23                   Does that mean individually or Banta  
24          Management does?

25          A.     It's a family business.

1                   *George Edward Banta, Jr.*

2                   Q.     And Banta Management Services  
3 provides what to those respective hotels and  
4 restaurants?

5                   A.     Oversight and operational guidance.

6                   Q.     How many individuals are employed at  
7 Banta Management Services?

8                   A.     I would say there's ten or eleven.

9                   Q.     And how many companies does Banta  
10 Management Services oversee and guide?

11                  A.     23, 24.

12                  Q.     And are these restaurants and hotels,  
13 are they separate entities in terms of  
14 corporations?

15                  A.     Yes.

16                  Q.     Typically, do the employees of these  
17 corporations work at different locations?

18                  A.     Yes.

19                  Q.     Is one of the hotels Banta Management  
20 oversees Beekman Arms-Delamater?

21                  A.     Yes.

22                  Q.     In 2012, how many employees were  
23 employed at Beekman Arms-Delamater?

24                         MS. WONG-PAN: Objection.

25                         Cumulatively or at any given time?

1                   *George Edward Banta, Jr.*

2                   Q.     Approximately how many employees were  
3                   employed during the 2012 year in Delamater?

4                   MS. WONG-PAN:  Objection.

5                   You can answer.

6                   A.     40 to 50 people, probably.

7                   Q.     Was one of those individuals Cynthia  
8                   Phillips?

9                   A.     Yes.

10                  Q.     And what was her title or position in  
11                  2012?

12                  A.     General manager.

13                  Q.     Was Ms. Phillips' responsibilities  
14                  limited to the Beekman Arms?

15                  A.     Yes.

16                  Q.     She didn't have any responsibilities  
17                  at any other properties owned by -- or overseen  
18                  by Banta Management Services?

19                  A.     No.

20                  Q.     Village Inn?

21                  A.     Oh, yes, the Village Inn.

22                  Q.     And that's a separate company; is  
23                  that correct?

24                  A.     Yes.

25                  Q.     Was Cynthia Phillips' salary paid by

*George Edward Banta, Jr.*

Beekman Arms or Village Inn?

A. Beekman Arms.

Q. And did she ever manage rental properties owned --

A. Yes.

Q. And what is the name of that company?

A. I'd have to check. There's apartments. I believe it's owned by Village Inn as well. Village Inn Properties or whatever.

MS. WONG-PAN: Don't guess.

A. I'd have to get the exact entity name.

Q. Did employees employed at the Beekman Arms also work in Village Inn on occasion?

A. Yes.

Q. When was Beekman Arms acquired?

A. 2002.

Q. Who acquired it?

A. It was bought by an entity Beekman Arms-Delamater Properties.

Q. And who has ownership -- who had ownership interest in that company?

A. My mother, my father, my uncle. I believe, my sister and I.

*George Edward Banta, Jr.*

Q. And your uncle's name is...?

A. Jeremy Banta. He's deceased.

Q. And did there come a time there was any kind of transfer of ownership?

A. In 2000 -- he passed away in 2006. Yes, there's been a transfer of ownership.

Q. From his interests was transferred to whom?

A. My sister and I in a trust.

Q. And your sister's name is?

A. Jane Banta Fisher.

Q. Is she married?

A. Yes.

Q. Does her spouse participate in the management of Beekman Arms-Delamater?

A. Yes.

Q. And what is his name?

A. Richard Fisher.

Q. And what is his title?

A. We don't really have titles. Vice president.

Q. And what is he vice president of, Banta Management Services?

A. Yes.



1                   *George Edward Banta, Jr.*

2                   Q.     And does your sister Jane have any  
3                   management responsibilities at Banta  
4                   Management --

5                   A.     No.

6                   Q.     -- other than the ownership interests  
7                   in the Beekman Arms?

8                   A.     Say that again.

9                   Q.     Other than Beekman Arms ownership,  
10                  she has no other management responsibilities at  
11                  Banta Management?

12                  A.     No.

13                  Q.     You mentioned your mother.  
14                  What is her name?

15                  A.     Phebe Banta.

16                  Q.     And does she have any  
17                  responsibilities in Banta Management Services?

18                  A.     Yes.

19                  Q.     Can you describe that, please.

20                  A.     She visits properties.

21                  Q.     Other than visiting properties, any  
22                  other responsibilities?

23                  A.     No.

24                  Q.     When you say "she visits properties,"  
25                  for what purpose?

*George Edward Banta, Jr.*

A. Just to oversee and see about the condition of the facilities.

Q. What was Ms. Phillips' position immediately prior to her becoming general manager of the Beekman Arms?

A. She was reservations and group sales, I guess.

Q. And prior to that, had she had any management experience in the hotel industry?

A. I don't know offhand.

Q. Or service industry, restaurant?

A. I don't recall.

Q. And whose decision, to your knowledge, was it to promote her to general manager?

A. It was our collective.

Q. When you say "our collective," who?

A. My father, my mother and myself, Rich Fisher.

Q. And when she became general manager, did she receive any training?

A. I don't know. We had other managers, regional managers, stop in on occasion.

Q. Do you know for what purpose, if they

*George Edward Banta, Jr.*

MS. NICAJ: Withdrawn.

Q. Do you know whether Ms. Phillips had requested a handbook --

A. I don't know.

Q. -- during the time she was general manager?

A. I don't recall.

Q. What?

A. I don't recall.

Q. And the handbook you're referring to, is that the same for all the companies or is there something different for each company?

A. It's different for each company.

Q. And who prepared the handbook?

A. I don't recall offhand. Paychecks had a large part to do with the construction of it.

Q. Who?

A. Paychecks. They do consulting, HR stuff, for you.

Q. Did you ever interact with Paychecks about the handbook?

A. Not that I recall.

Q. Do you know who, if anyone, from

*George Edward Banta, Jr.*

Banta Management interacted with Paychecks about any handbook?

A. Our office manager at that point, Cathy Lo, would have been the one to direct Paychecks to consult with them on the handbook and then tailor it towards the Beekman Arms.

Q. As you sit here today, do you recall her doing so?

A. No.

Q. You mentioned Cathy Lo. When did she become employed at Banta Management?

A. 1980 or something like that.

Q. When did she leave?

A. 2008, 2009.

Q. When Cynthia Phillips became general manager, Ms. Lo had already been gone; is that correct?

A. I believe so, yes.

Q. Do you know who interacted with Ms. Phillips, if anyone, concerning the handbook?

A. Rebecca Berkowitz is now our office manager.

Q. Do you know if she, in fact,

*George Edward Banta, Jr.*

communicated with Ms. Phillips about the handbook?

A. Yes.

Q. How do you know that?

A. We had discussions with the previous general manager, Maria Schubert, about handbooks. And then when she left, we had further discussions with Cynthia.

Q. Who is the "we" you're referring to?

A. Myself, my father. Rebecca, I believe, was in on the conversations.

Q. So, all three of you were party to conversations you had with Cynthia Phillips.

Was this in person?

A. Yes.

Q. Where was this?

A. In Rhinebeck.

Q. When?

A. I don't know offhand.

Q. As you sit here today, was this before or after November of 2012?

A. I would have to think as soon as she was hired. I think it would be one of the first conversations we had.

*George Edward Banta, Jr.*

Plaintiff's Exhibit 12?

A. No.

Q. At the time that Cynthia Phillips became general manager, did you have an understanding -- were you aware that she had been in a personal intimate relationship with Tom O'Connor?

A. You hear rumors.

Q. How did you hear about that?

A. I don't know. Employees will say stuff, a lot of which doesn't -- doesn't impact me in terms of...

Q. What employees told you stuff?

A. I don't know. We hear stuff from employees all the time, whether it was a desk clerk or a server or the manager in the restaurant.

Q. As you sit here today, do you recall which employees, employee or employees you heard this through?

A. No.

Q. Did you ever discuss this with your mother, Phebe?

A. I don't know.

1                   *George Edward Banta, Jr.*

2                   Q.     Do you know whether Mrs. Banta, your  
3                   mother, ever asked Cynthia directly whether she  
4                   had a personal relationship -- personal intimate  
5                   relationship with Tom O'Connor?

6                   A.     I have no idea.

7                   MS. WONG-PAN:  Objection.

8                   Q.     Did you ever communicate this with  
9                   Keith?

10                  A.     Not that I recall.

11                  Q.     Do you know who Keith is?

12                  A.     Keith Van Tassell?

13                  Q.     Yes.

14                  A.     He's our regional operator of our  
15                  Buffalo Wild Wings.

16                  Q.     Did you ever communicate with him  
17                  about that?

18                  A.     Not that I recall.

19                  Q.     Previous to him -- this is the  
20                  Buffalo Wild Wings on Route 9; correct?

21                  A.     Yes.

22                  Q.     He was the general manager at the  
23                  restaurant at Beekman Arms; is that correct?

24                  A.     For a time being, yes.

25                  Q.     Did you ever have any communications

1                    *George Edward Banta, Jr.*

2            with him while he was general manager at the  
3            Beekman Arms about whether -- the fact that Tom  
4            O'Connor and Cynthia Phillips had an intimate  
5            personal relationship?

6            A.        I don't know. I don't recall.

7            Q.        Was Cynthia Phillips interviewed for  
8            the position of general manager?

9            A.        I don't know.

10                    *(Interruption at the door followed by*  
11                    *an off-the-record discussion)*

12                    THE WITNESS: What was the  
13                    question?

14                    MS. NICAJ: I don't even remember,  
15                    so I'll have the court reporter read it  
16                    back, okay.

17                    *(Record read)*

18            Q.        Was any other person interviewed for  
19            that position?

20            A.        I don't believe so.

21            Q.        So, Cynthia Phillips, in addition to  
22            her being a general manager for Beekman Arms-  
23            Delamater, she was also -- she performed  
24            functions for the Village Inn?

25            A.        Yes.



1                   *George Edward Banta, Jr.*

2                   Q.     What is the name of that entity?

3                   A.     Village Inn Properties, I think.

4                   Q.     And the rental properties, you  
5 believe, are owned also by the Village Inn?

6                   MS. WONG-PAN:  Objection to form.

7                   I mean objection.  It misstates the  
8 record.

9                   A.     I don't know which entity owns them,  
10 whether it's Beekman Arms or it's Village Inn.

11                  Q.     Who paid Ms. Phillips at the time?

12                  A.     I believe she was paid by Beekman  
13 Arms.

14                  Q.     How many employees were at the  
15 Village Inn in 2012?

16                  A.     Five, seven, I would say.

17                  Q.     Prior to March of 2012, did you ever  
18 communicate with Tom O'Connor for any reason?

19                  A.     Sure.  I would see Tom at the  
20 property.

21                  Q.     So, the answer is yes?

22                  A.     Yes.

23                  Q.     Did you ever have any communications  
24 concerning any performance issues you had with  
25 him?

1                    *George Edward Banta, Jr.*

2                    A.        Not that I recall.

3                    Q.        Did he ever express any concerns to  
4                    you of any issues that arose at the Beekman  
5                    Arms?

6                    A.        Not that I recall offhand.

7                    Q.        In March of 2012, did there come a  
8                    time that you learned there was an issue  
9                    concerning Tom O'Connor and someone by the name  
10                  of Jose Reid?

11                  A.        Yes.

12                  Q.        How did you come to learn that?

13                  A.        I don't recall.

14                  Q.        Do you know whether Mr. O'Connor  
15                  called you or your father, someone else at Banta  
16                  Management about that?

17                  A.        I don't know.

18                  Q.        Did you communicate with Cynthia  
19                  Phillips about that?

20                  A.        I'm sure we discussed it.    Yes.

21                  Q.        As you sit here today, do you recall  
22                  doing so?

23                  A.        No, not offhand.

24                  Q.        Do you recall meeting with Tom  
25                  O'Connor on or around March 19, 2012 concerning

*George Edward Banta, Jr.*

Jose Reid?

A. I don't recall offhand.

Q. Do you recall meeting with him in the presence of your father, George -- you said senior; right?

A. Yes.

Q. And is it Richard Fisher?

A. Yes.

Q. At a meeting in 2012?

A. That could be.

Q. As you sit here today, you have no memory of it?

A. I don't recall offhand.

Q. I'm going to show you an email and see if it refreshes your memory.

*(Whereupon, Plaintiff's Exhibit 13 1-page 12/15/12 Email marked for identification.)*

*(Witness peruses exhibit)*

Q. Do you recall seeing that document?

A. No, I don't.

Q. Does seeing that document refresh your memory as to whether you recall meeting with Mr. O'Connor on the 19th?

1                    *George Edward Banta, Jr.*

2                    A.        Not offhand.

3                    Q.        Do you recall learning through any  
4 source that Tom O'Connor went to the police  
5 concerning Jose Reid?

6                    A.        I don't -- not that I recall.

7                    Q.        Do you recall learning that from him?

8                    A.        No.

9                    Q.        Do you recall learning that from  
10 Cynthia Phillips?

11                   A.        That he'd gone to the police?

12                   Q.        Yes.

13                   A.        No, I don't recall.

14                   *(Document handed to the court reporter)*

15                   *(Whereupon, Plaintiff's Exhibit 14*  
16 *2-page 7/28/14 Email marked for*  
17 *identification.)*

18                   MS. WONG-PAN: Can he have a chance  
19 to read this.

20                   MS. NICAJ: Of course. Please  
21 review that and when you're done, let me  
22 know.

23                   *(Witness peruses exhibit)*

24                   A.        Okay.

25                   Q.        Does that refresh your memory at all?

1                   *George Edward Banta, Jr.*

2                   A.     I don't know if I've seen that email  
3                   before.

4                   Q.     I understand. But that's not my  
5                   question.

6                   You indicated you didn't recall  
7                   whether you met with Tom O'Connor concerning an  
8                   issue with Jose.

9                   Now, looking at Plaintiff's  
10                  Exhibit 14, I'm asking you whether that  
11                  refreshes your memory.

12                  A.     No.

13                  Q.     Do you know -- you indicated there  
14                  was a Rebecca at Banta Management; is that  
15                  right?

16                  A.     Yes.

17                  Q.     And her last name is...?

18                  A.     Berkowitz.

19                  Q.     And did you ever speak to Rebecca  
20                  from Banta Management concerning Tom O'Connor  
21                  leaving any voice mails?

22                  A.     Not that I recall.

23                  Q.     Do you recall ever learning that Jose  
24                  Reid had threatened physical violence against  
25                  Mr. O'Connor?

1                   *George Edward Banta, Jr.*

2                   MS. WONG-PAN: Objection to form.

3                   You can answer.

4                   A.     I heard they didn't get along.

5                   Q.     I'm not asking that. Do you ever  
6 recall learning through any source that Jose  
7 Reid had threatened physical violence?

8                   MS. WONG-PAN: Objection.

9                   A.     Not that I recall.

10                  Q.     Did Cynthia Phillips ever forward you  
11 any emails that Tom O'Connor sent to her  
12 concerning Jose Reid?

13                  A.     Not that I recall.

14                  Q.     As you sit here today, you have no  
15 recollection of meeting with Tom O'Connor  
16 concerning Jose Reid?

17                  A.     We -- my life is one big meeting  
18 after the next. I don't recall.

19                  Q.     I'm not asking that. I'm asking, do  
20 you recall?

21                  A.     No.

22                  Q.     Do you recall ever meeting with Tom  
23 O'Connor concerning Cynthia Phillips in March of  
24 2012?

25                  A.     Not that I recall.

*George Edward Banta, Jr.*

Q. Any documents you can use to refresh your memory? Do you have any documents out there that would refresh your memory?

A. No.

Q. I'm going to show you what has been previously marked as Plaintiff's Exhibit 5 for identification. Please take a look. I'm going to direct your attention to the last page specifically. It's an email that's dated Monday, March 12, 2012, 12:25 a.m.

Do you see that?

A. Yup.

Q. Once you're done reading it, let me know.

A. Okay.

Q. Did you ever learn through any source that Tom O'Connor had expressed his concern that Cynthia Phillips was engaging in retaliation for exercising his right to call the police after being threatened, and complained to management after being bullied and personally being insulted in front of the general manager? The only reason that he thought this was because of bias as a result of their previously dating?

1                   *George Edward Banta, Jr.*

2                   MS. WONG-PAN: Objection.

3                   A.       I don't recall that.

4                   Q.       I'll rephrase it.

5                   I'm going to direct your attention to  
6 the last page of that document. Can you turn to  
7 it, please.

8                   A.       Sure.

9                   Q.       Towards the middle of the email,  
10 "what just happened here," read that to  
11 yourself.

12                  A.       Yup.

13                  Q.       Read the whole capped information  
14 there. Did you ever learn that information  
15 through any source?

16                  A.       Not that I recall.

17                  Q.       Are there any documents you could use  
18 to refresh your memory?

19                  A.       No.

20                  Q.       Do you recall ever meeting with Tom  
21 O'Connor to discuss any issues he had with  
22 Cynthia Phillips in March of 2012?

23                  A.       Not specifically, no.

24                  Q.       Well, generally do you recall meeting  
25 with him?



1                   *George Edward Banta, Jr.*

2                   A.     Right, yes. I've met with Tom two or  
3 three times at least over the course...

4                   Q.     Concerning Cynthia Phillips?

5                   A.     I don't recall the topics.

6                   Q.     As you sit here today, do you recall  
7 meeting with Tom O'Connor concerning Cynthia  
8 Phillips in March of 2012?

9                   A.     Not that I recall.

10                  Q.     Do you recall your father asking Tom  
11 O'Connor any questions concerning his  
12 interactions with Ms. Phillips?

13                  A.     I don't know. I don't -- I don't  
14 recall.

15                  Q.     As you sit here today, was an  
16 investigation ever conducted into looking into  
17 Thomas O'Connor's concerns in March of 2012?

18                  A.     Not that I recall.

19                  Q.     As you sit here today, any documents  
20 you can use to refresh your memory?

21                  A.     No.

22                  Q.     Did you ever talk to Rebecca about  
23 Tom O'Connor?

24                  A.     Yes.

25                  Q.     When?

1                   *George Edward Banta, Jr.*

2                   A.     I don't know.

3                   Q.     What was the discussion about?

4                   A.     I don't know.

5                   Q.     You recall communicating with Rebecca  
6 about Tom O'Connor; you just don't know what it  
7 was for and what the topic was?

8                   A.     I don't recall the topics, no.

9                   Q.     Do you recall speaking to your father  
10 about Thomas O'Connor?

11                  A.     Sure.

12                  Q.     What was said?

13                  A.     I don't know. Over the years.

14                  Q.     Do you know who Maureen Kangas is?

15                  A.     A former employee, maybe. I don't...

16                  Q.     Do you know whether she's the general  
17 manager at the Poughkeepsie Grand Hotel?

18                  A.     It could be.

19                  Q.     As you sit here today, do you know  
20 whether she is or not?

21                  A.     My father, I believe, has a  
22 relationship with her. I don't know.

23                  Q.     Your father has a relationship? What  
24 kind of relationship does your father have with  
25 Ms. Kangas?

1                                    *George Edward Banta, Jr.*

2                    A.        She's in the business, hotels.

3                    Q.        You're in the business of hotels.  
4        But you said you don't have a relationship with  
5        her.

6                    A.        That's right.

7                    Q.        But you know your father has a  
8        relationship with her?

9                    A.        Yup.

10                  Q.        What is the nature of the  
11        relationship?

12                  A.        I don't know the -- they talk shop.

13                  Q.        How do you know?

14                  A.        I don't. He would talk to many  
15        general managers across New York State.

16                  Q.        I'm asking how do you know that they  
17        talk shop? Were you present for that?

18                  A.        Not that I recall.

19                  Q.        Have you been in the presence of  
20        Maureen Kangas while your father was there, too?

21                  A.        No.

22                  Q.        Have you and your dad discussed  
23        Maureen Kangas?

24                  A.        Not that I recall.

25                  Q.        Do you know whether Ms. Kangas was

1                   *George Edward Banta, Jr.*

2           ever an employee of any of the corporations that  
3           Banta Management oversees?

4           A.     I want to say yes, but I'm not sure.  
5           I don't know specifically.

6           Q.     As you sit here today, you don't know  
7           offhand whether she was or not?

8           A.     No.

9           Q.     What, if anything, did you do by way  
10          of preparing to come here today?

11          A.     I discussed -- I met with my  
12          attorney.

13          Q.     Without getting into the details of  
14          what was said, when did you meet with her?

15          A.     Several times over the past however  
16          many months this...

17          Q.     In preparation specifically for  
18          today's deposition.

19          A.     Oh.

20                   MS. WONG-PAN: I'm going to just  
21           instruct, direct the witness, Mr. Banta,  
22           not to talk about the substance of our  
23           conversations.

24                   MS. NICAJ: Right.

25          A.     Last week.

1                   *George Edward Banta, Jr.*

2                   Q.     And on how many occasions did you  
3 meet with her last week?

4                   A.     Once.

5                   Q.     Where last week did you meet with  
6 her?

7                   A.     Her office.

8                   Q.     How long was the meeting?

9                   A.     An hour, hour and a half.

10                  Q.     In the presence of whom?

11                  A.     My father, Cynthia Phillips.

12                  Q.     So, all three of you were present?

13                  A.     Yes.

14                  Q.     Did you review any documents?

15                  MS. WONG-PAN: I'm directing him  
16 not to answer any more questions.

17                  MS. NICAJ: The reviewing of the  
18 documents is certainly permissible to know  
19 how he prepared. That's not a -- I'm not  
20 asking attorney/client communications.  
21 I'm asking did he review any documents.

22                  MS. WONG-PAN: That's fine.

23 Documents that are not attorney/client  
24 privileged, if any, you can answer.

25                  MS. NICAJ: Well, I'm certainly

*George Edward Banta, Jr.*

entitled to know how he prepared today. I  
will reserve whether I -- I think I'm  
entitled to know what documents.

Q. Did you review any documents?

A. Yes.

Q. What documents?

A. A variety of documents.

Q. What documents were those?

A. There was pictures of cell phones and  
emails.

Q. Emails between who and who?

A. Emails that Tom and I had exchanged.  
Emails between Tom and Cynthia.

Q. Okay. Anything else?

A. I -- that's about it as far as I  
recall.

Q. Did you ever learn through any source  
that Tom O'Connor had called the police  
concerning an incident at the Beekman Arms  
involving Jose Reid?

A. Not that I recall.

Q. Any documents you can use to refresh  
your memory?

A. No.

1                   *George Edward Banta, Jr.*

2                   Q.     You don't have any recollection  
3                   concerning a meeting he had with you, your  
4                   father and Rich Fishman on March 19, 2012?

5                   MS. WONG-PAN:  Objection; asked and  
6                   answered.  His name is Fisher.

7                   Q.     Fisher.

8                   A.     No.

9                   Q.     Any documents you can use to refresh  
10                  your memory?

11                  A.     No.

12                  MS. WONG-PAN:  Objection; asked and  
13                  answered.

14                  Q.     You say you have no recollection.  
15                          Do you recall any notes concerning  
16                  any meetings that you may have had with  
17                  Mr. O'Connor?

18                  A.     No.

19                  Q.     Where do you maintain offices?

20                  A.     842 Main Street.

21                  Q.     Where is that?

22                  A.     Poughkeepsie.

23                  Q.     And is that the Pizzeria Uno, where  
24                  the Pizzeria Uno is located?

25                  A.     Yes.  Where the Chicago Bar and Grill

*George Edward Banta, Jr.*

there was issues between the two of them.

Q. When did she alert you?

A. I don't know. I don't recall.

Q. What did she say?

A. That she had been assaulted and -- in her house by Tom.

Q. She had been assaulted? Were there criminal charges?

A. Not that I recall.

Q. In her house by Tom. Now, you learned since then that Tom denied doing so; right?

MS. WONG-PAN: Objection.

Q. Did you learn that Tom denied doing -- assaulting Cynthia in her house?

A. I didn't realize he had denied it.

Q. You were in communication with Tom by email, weren't you?

A. Yup.

Q. And he emailed you his version of the events; is that right?

A. Yup.

Q. And you didn't realize he was denying assaulting Cynthia?



1                   *George Edward Banta, Jr.*

2           A.       I didn't realize he was denying  
3           assaulting. I thought he clearly admitted that  
4           he was in Cynthia's house.

5           Q.       Well, did you have an understanding  
6           that he had previously gone to Cynthia's house?

7           A.       I hadn't thought about that.

8           Q.       You understood, you said there were  
9           rumors that they had a personal intimate  
10          relationship. You were aware of that; right?

11          A.       Yup.

12          Q.       Did you confirm with Cynthia whether  
13          they had, in fact, had a personal intimate  
14          relationship?

15          A.       I don't recall.

16          Q.       Who performed the investigation?

17                   MS. WONG-PAN: Objection.

18          A.       Myself, my father.

19          Q.       You and your father. What did you do  
20          by way of investigating?

21          A.       Interviewed relevant parties.

22          Q.       When you say "relevant parties," you  
23          interviewed them, who did you interview?

24          A.       I talked -- I communicated with Tom  
25          via email. I sat down with Cynthia.

*George Edward Banta, Jr.*

Q. You sat down with Cynthia, but you communicated -- did you interview Tom O'Connor?

A. No, not sitting down face to face.

Q. Why not?

MS. WONG-PAN: Objection.

You can answer.

A. I thought our communications through emails was adequate.

Q. So, in terms of when you say you interviewed the relevant parties, you mentioned Tom O'Connor and Cynthia Phillips, but you didn't interview Tom O'Connor, did you?

A. I guess not.

MS. WONG-PAN: Objection.

Q. Anyone else you interviewed?

A. I don't know. There was other communications to some other employees. I don't know if there was interviews.

Q. As you sit here today, did you interview anyone other than speaking to Cynthia Phillips?

A. I don't recall. Casey may have been one person we talked to.

Q. As you sit here today, did you, in

*George Edward Banta, Jr.*

fact, speak to Casey about Tom O'Connor and  
Cynthia Phillips?

A. I don't recall.

Q. You said you may have spoken to  
Cynthia. Did you speak to Cynthia?

A. Oh, yeah, absolutely.

Q. Did you take any notes?

A. I don't think so.

Q. Why not?

MS. WONG-PAN: Objection.

You can answer.

A. I didn't -- I didn't feel I needed to.

Q. How did you come by way of  
investigating the incident between Tom O'Connor  
and Cynthia Phillips?

MS. WONG-PAN: Objection.

A. How did we come about?

Q. I'm asking you, not we. I'm asking  
how did you come to investigate the incident  
between Cynthia Phillips and Tom O'Connor?

MS. WONG-PAN: Objection. Do you  
understand the question?

A. I'm not sure. We interviewed  
Cynthia. We communicated via email.

1                   *George Edward Banta, Jr.*

2                   Q.       You said "We interviewed Cynthia."  
3       Who is the "we" you're referring to?

4                   A.       My father and I.

5                   Q.       He was there when you interviewed  
6       Cynthia?

7                   A.       I think so.

8                   Q.       I'm not asking what you think. I'm  
9       asking what is. Was he there?

10                  A.       I don't know.

11                  Q.       So, when you say "we," what do you  
12       mean by "we"?

13                  A.       This whole investigation we treated  
14       very seriously, and we had discussions about how  
15       we proceeded. We consulted our attorneys  
16       throughout the investigation.

17                  Q.       Who is the "we" that interviewed  
18       Cynthia Phillips? You said we interviewed her.

19                         As you sit here today, who  
20       interviewed Ms. Phillips?

21                  A.       I know I was present. I don't know  
22       if my dad was there or not. I don't recall.

23                  Q.       Did you reduce what you asked her and  
24       what she said in writing?

25                  A.       Did I reduce what she said in writing?

*George Edward Banta, Jr.*

Q. Yes.

A. Not that I recall.

Q. Did you ask her any written questions that you had drafted prior?

A. I don't think so.

Q. How did you come to learn that there was any incident between Tom O'Connor and Cynthia Phillips?

A. From Cynthia, and there was an order of protection, documentation from her psychiatrist or...

Q. When did you receive that documentation from her psychiatrist? When did you see that?

A. After she -- after she had been -- for the order of protection, I believe. I don't remember the exact dates but...

Q. When was the first time you ever saw any documentation from her psychiatrist?

A. I don't recall.

Q. You realize there was a point in time that Tom O'Connor filed a division of human rights complaint against Ms. Phillips, right, and against your company; right?

*George Edward Banta, Jr.*

A. I guess. Sure.

Q. Not you guess. You realize that;  
right?

A. Yes.

Q. Did you ever submit that  
documentation from the psychiatrist to the  
division of human rights as you put it?

A. I don't recall.

Q. Did you ask Ms. Phillips whether she  
had an intimate personal relationship with Tom  
O'Connor during your interview with her as you  
say?

A. Yes.

Q. You asked her about that.

And what did she say?

A. She said they had dated.

Q. When did she tell you they had dated?

A. I don't know the exact date.

Q. I'm going to break this interview --  
the investigation down.

When you first learned there was an  
incident between Tom O'Connor and Cynthia  
Phillips, was this in person, by telephone or in  
some other way?

1                    *George Edward Banta, Jr.*

2                    A.        I believe it was in person.

3                    Q.        Where were you?

4                    A.        In the Beekman Arms.

5                    Q.        And was anyone else present?

6                    A.        I don't recall. My father may have  
7 been with me, or it may have just been me. I  
8 don't remember.

9                    Q.        You don't remember.

10                    And what happened?

11                    A.        Cynthia had told me about the  
12 incident at her house.

13                    Q.        Where were you specifically in the  
14 Beekman Arms?

15                    A.        In her office, in the general  
16 manager's office.

17                    Q.        Was anyone outside the office?

18                    A.        I don't know. There's a reservation  
19 desk out there.

20                    Q.        Who was the reservationist at that  
21 time?

22                    A.        I don't know.

23                    Q.        Was it Andrea Choinsky?

24                    A.        I don't know.

25                    Q.        And you just happened to be in her

1                   *George Edward Banta, Jr.*

2           office that day?

3                   MS. WONG-PAN:  Objection.

4                   A.       I don't know what I -- I'm at the  
5           Beekman Arms several times a week.

6                   Q.       And what did Ms. Phillips say to you?

7                   A.       That she'd been assaulted and  
8           physically harmed.

9                   Q.       Did she say when prior to this  
10          meeting she had been assaulted?

11                  A.       It had been -- it was recent to the  
12          meeting, maybe a day or two or...

13                  Q.       A day or two.  Okay.

14                  A.       Prior to our discussion.

15                  Q.       As you sit here today, did you make  
16          note of that --

17                  A.       No.

18                  Q.       -- what she was telling you?  Why  
19          not?

20                  A.       I didn't -- I didn't need to.

21                  Q.       You don't need to?  Why don't you  
22          feel the need to document things of that nature  
23          when told?

24                   MS. WONG-PAN:  Objection.  We're  
25           becoming argumentative.



1                   *George Edward Banta, Jr.*

2                   Q.     I'm asking.

3                   A.     I don't document very much on my day-  
4                   to-day ongoing.

5                   Q.     She said she was assaulted by whom?

6                   A.     Tom O'Connor.

7                   Q.     What did she say by way of the  
8                   assault? What did she say happened?

9                   A.     That he had hurt her shoulder or  
10                  right arm or something and that he had squeezed  
11                  her neck.

12                  Q.     He had squeezed her neck? Did you  
13                  see any bruises on her neck?

14                  A.     I don't recall. I think there was --  
15                  there was bruising, and she went to the doctor.

16                  MS. WONG-PAN: Did you see any  
17                  bruises?

18                  THE WITNESS: I don't recall.

19                  Q.     Did you see any photographs to  
20                  confirm bruising?

21                  A.     I don't recall.

22                  Q.     Did you ask her for photographs?

23                  A.     I don't recall.

24                  Q.     You don't recall asking her for  
25                  photographs?

1                   *George Edward Banta, Jr.*

2                   A.       I don't remember the exact questions  
3                   that were asked or the conversation.

4                   Q.       Well, is it fair to say you wanted  
5                   Tom O'Connor -- you specifically asked him in  
6                   writing to provide you certain information; is  
7                   that right?

8                   A.       Yes.

9                   Q.       Did you do that in writing with  
10                  Cynthia Phillips?

11                  A.       Not in writing.

12                  Q.       Why not? Why not in writing? Why  
13                  did you ask him in writing, but not Ms. Phillips  
14                  in writing?

15                  A.       I don't know. I wasn't directed by  
16                  my attorney to do so.

17                  Q.       You were directed to ask Tom O'Connor  
18                  in writing, but not Cynthia Phillips in writing?  
19                  Is that what you're saying?

20                  MS. WONG-PAN: I direct the witness  
21                  not to discuss attorney/client  
22                  conversations.

23                  Q.       Who was your attorney at the time?

24                  A.       I forget the -- what's his name, the  
25                  attorney --

1                   *George Edward Banta, Jr.*

2                   MS. WONG-PAN: If you don't  
3                   remember, I can't answer for you.

4                   A. I don't remember.

5                   Q. Going back to your meeting with  
6                   Ms. Phillips, did you ask her for any statements  
7                   in writing?

8                   A. I don't recall.

9                   Q. Do you know why you wouldn't have  
10                  asked her for any statements in writing she had?

11                  A. Because we spoke verbally.

12                  Q. So, you spoke verbally. You didn't  
13                  take any notes.

14                  A. Yes.

15                  Q. No documentation as to what was said  
16                  by you or her in these verbal communications; is  
17                  that fair to say?

18                  A. Not that I recall.

19                  Q. At this meeting with Cynthia, did she  
20                  tell you she saw a doctor?

21                  A. Yes.

22                  Q. At this meeting, at this first  
23                  meeting with her, she said she saw a doctor; is  
24                  that right?

25                  A. I believe so, yes.

*George Edward Banta, Jr.*

Q. And what did she say, what kind of doctor did she see?

A. A psychiatrist and an orthopedist.

Q. This first meeting, she said she saw a psychiatrist and an orthopedist.

What did she say the psychiatrist said to her at this first meeting?

MS. WONG-PAN: Objection; compound question.

MS. NICAJ: Withdrawn.

Q. At this meeting you said she said to you she saw an orthopedist and a psychiatrist. What did she say the psychiatrist said -- what she said to the psychiatrist?

MS. WONG-PAN: Objection; compound question. I'm not so sure he said --

MS. NICAJ: Withdrawn.

Q. What did she say she said to the psychiatrist?

A. I don't know what she said to the psychiatrist. But I assume it was regarding the incident that took place.

Q. And what did she say the psychiatrist said to her?

*George Edward Banta, Jr.*

A. The only thing I remember, I recall the psychiatrist at some point, she received a letter giving her -- asking for her to take a mental leave from work.

Q. I'm interested in that meeting. I'm limiting myself, you understand this. Is that right?

A. Sure.

Q. I'm limiting myself to what was said at that meeting.

So what did she say the psychiatrist said to her at this initial meeting in which she told you about this assault?

A. I don't recall.

Q. What did she say she said to the orthopedist at this meeting?

A. I don't recall.

Q. When she saw the orthopedist, what did she say the orthopedist said to her at this meeting?

A. I don't know.

Q. This first meeting with her, that's what I'm concerned with. I'm going to break down each communication.

1                   *George Edward Banta, Jr.*

2                   A.     Okay. I don't recall.

3                   Q.     As you sit here today, do you know  
4                   what orthopedist she saw when you first went to  
5                   her -- when she first spoke to you about this?

6                   MS. WONG-PAN: Objection to form.

7                   A.     Do I know the doctor? Yes, he's a  
8                   friend of mine, actually.

9                   Q.     He's a friend of yours? And his name  
10                  is...?

11                  A.     Bill Colman.

12                  Q.     Bill...?

13                  A.     Colman, C-o-l-m-a-n.

14                  Q.     Do you know how she came to see this  
15                  orthopedist? Was this your referral?

16                  A.     No.

17                  Q.     And you understood she went to  
18                  Dr. Colman at this first meeting; is that right?

19                  A.     I guess. I believe so, yeah.

20                  Q.     Well, it's based on what she said to  
21                  you. That's all I'm concerned with. And you  
22                  said that she said she went to see an  
23                  orthopedist at this first meeting with her, and  
24                  she saw a psychiatrist --

25                  A.     Yes.

1                   *George Edward Banta, Jr.*

2                   Q.     -- at this first meeting?

3                   And did she tell you what Dr. Colman  
4     diagnosed her with at this first meeting with  
5     her?

6                   A.     I don't recall.

7                   Q.     Did you see any forms or letters at  
8     this first meeting with her?

9                   A.     I don't recall.

10                  Q.     What else was said by you or her  
11     during this first meeting?

12                  A.     I don't recall.

13                  Q.     What, if anything, did you do after  
14     this first meeting with respect to what she told  
15     you?

16                  A.     I don't recall. I'm sure we  
17     immediately had conversations with my father,  
18     Rich, and Rebecca, our office manager.

19                  Q.     As you sit here today, do you recall  
20     doing so?

21                  A.     No.

22                  Q.     During this time was Mr. O'Connor  
23     part of a lawsuit concerning lost -- with the  
24     Department of Labor concerning wages he was  
25     owed?

1                    *George Edward Banta, Jr.*

2                    A.        I think that had been resolved.

3                    Q.        It had been already resolved as of  
4                    the time Ms. Phillips came to you? Is that what  
5                    you're saying?

6                    A.        Yup.

7                    Q.        When you say it had been resolved, as  
8                    of when was it resolved prior?

9                    A.        2011.

10                  Q.        It was resolved in 2011, the year  
11                  before?

12                  A.        I think so.

13                  Q.        When you say you think so, do you  
14                  know?

15                  A.        I'd have to get the exact dates.

16                  Q.        As you sit here today, do you know  
17                  when it was resolved?

18                  A.        No.

19                  Q.        As you sit here today, do you recall  
20                  communicating with your father right after your  
21                  meeting with Ms. Phillips?

22                                MS. WONG-PAN: Objection; asked and  
23                                answered.

24                                You can answer.

25                  A.        I don't recall, no.



1                   *George Edward Banta, Jr.*

2                   Q.     As you sit here today, do you recall  
3 speaking to Mr. Fisher about your meeting with  
4 Ms. Phillips?

5                   MS. WONG-PAN:   Objection.

6                   A.     I don't recall.

7                   Q.     Do you recall what happened next as  
8 you sit here today that you do recall?

9                   A.     What happened next?

10                  Q.     In connection with what she told you,  
11 Ms. Phillips.

12                  A.     No, I don't recall.

13                  Q.     You don't know, you don't remember  
14 what was done?

15                         Did you keep a log of what actions  
16 you were taking with respect to what she told  
17 you?

18                  A.     No.

19                  Q.     Did you ever ask Ms. Phillips whether  
20 she had ever given Tom O'Connor the keys before?

21                  A.     No, I don't recall.

22                  Q.     Did you ever ask Ms. Phillips whether  
23 she hid keys and had told him where the location  
24 of the keys were to her house?

25                  A.     I don't recall.

*George Edward Banta, Jr.*

Q. Did you ever ask her whether she had previously permitted Mr. O'Connor to come in the house for any purpose?

A. I don't recall.

Q. Did you ever speak to anyone other than Ms. Phillips about interactions Ms. Phillips and Mr. O'Connor had?

A. Not that I recall.

Q. Is there a reason why not?

A. Why I don't know? No, I don't know why I don't recall.

Q. Is there a reason why you wouldn't have spoken to any other employees about their observations?

MS. WONG-PAN: Objection. He said he doesn't recall.

MS. NICAJ: Don't state what his testimony is, counselor, okay.

MS. WONG-PAN: Listen, I'm putting my objection on the record. You're asking the questions over and over.

MS. NICAJ: No.

MS. WONG-PAN: I have -- all right. I'm going to limit talking objections, but

*George Edward Banta, Jr.*

I'm entitled to put the basis of the objection on the record. And the basis is asked and answered. Go ahead.

Q. Did you ever speak to any employee about what, if anything, they observed about Tom O'Connor and Cynthia Phillips?

A. I'm sure I spoke to employees. I don't recall the specific conversations.

Q. I'm asking about the interactions. I'm limiting the questions to -- I'm sure you have spoken to employees. That's a fair statement. But did you ever speak to employees about their observations concerning Tom O'Connor and Cynthia Phillips?

A. Yes.

Q. You did. Who?

A. I don't recall.

Q. Did you ever reduce that to writing?

A. No.

Q. Why?

A. Why did I need to? Why would I need to?

Q. You had Ms. -- you made sure Mr. O'Connor's statements were reduced to

*George Edward Banta, Jr.*

writing. Isn't that fair to say?

MS. WONG-PAN: No. Objection.

A. That's our method of communication.  
I don't require him to put things in writing.

Q. Why didn't you call him?

A. We did speak on the phone at some  
point.

Q. Okay. In all your communications  
with Mr. O'Connor, you had -- you wanted him to  
email you concerning these facts. Yes?

A. Yes.

Q. Why didn't you ask him, "let's talk"?

MS. WONG-PAN: Objection.

A. I don't --

MS. WONG-PAN: Misstatement.

A. I don't know. We were communicating  
via email. That's how we communicated.

Q. Did you ever call him to ask him the  
questions that you wanted answered?

A. I don't know.

Q. When did you first communicate with  
Mr. O'Connor for any reason after Cynthia  
Phillips communicated with you?

A. I don't recall. Soon after.

1                   *George Edward Banta, Jr.*

2                   Q.     When you say "soon after," that day?

3                   A.     I don't recall.

4                   Q.     How many days lapsed? You don't have  
5 any idea?

6                   A.     It was -- it could have been hours.  
7 It could have been days.

8                   MS. WONG-PAN: Why don't you show  
9 him the emails?

10                  MS. NICAJ: Counsel, when you want  
11 to take a deposition, you can do so. But  
12 please stop telling me what to do, okay.

13                  MS. WONG-PAN: Fine. Go ahead.  
14 Run your deposition.

15                  Q.     Incidentally, did you make any  
16 statements to the division of human rights?  
17 Were you interviewed by them?

18                  A.     Interviewed by them?

19                  Q.     Yes, by telephone or in person.

20                  A.     I don't recall for -- regarding this  
21 incident?

22                  Q.     Yes.

23                  A.     I don't think so.

24                  Q.     You were never interviewed by  
25 telephone or anything like that?

1                   George Edward Banta, Jr.

2                   A.     I don't recall.

3                   MS. NICAJ: Okay. Can you mark  
4                   this.

5                   *(Whereupon, Plaintiff's Exhibit 15*  
6                   *1-page 3/13/14 Email marked for*  
7                   *identification.)*

8                   *(Witness peruses exhibit)*

9                   A.     Okay.

10                  Q.     Do you recall seeing that document?

11                  A.     Yes.

12                  Q.     When did you see that document?

13                  A.     Either Thursday, March 13th or  
14                  Friday, March 14th.

15                  Q.     Well, are you saying you saw this  
16                  March 13, 2014, sir?

17                  A.     It was sent to Rebecca.

18                  Q.     Look at one, the original message.

19                  A.     Oh, I'm sorry. October 31st or the  
20                  day thereafter.

21                  Q.     2012, do you see that?

22                  A.     Yup.

23                  Q.     It says 6:27 a.m. Is that a yes?

24                  A.     Yes, that's what it says.

25                  Q.     Did you or she respond to that email?

1                    *George Edward Banta, Jr.*

2                    A.        I don't recall.

3                    *(Document handed to court reporter)*

4                    *(Whereupon, Plaintiff's Exhibit 16*  
5                    *1-page 3/13/14 Email marked for*  
6                    *identification.)*

7                    *(Witness peruses exhibit)*

8                    Q.        Do you see that?

9                    A.        Yup.

10                  Q.        Who is R Fisher, because you copy --  
11                  this is an email, original message email from  
12                  you to Tom O'Connor. Do you see that?

13                  A.        Yup.

14                  Q.        You copied a number of individuals:  
15                  Rebecca Berkowitz?

16                  A.        Yup.

17                  Q.        Rich Fisher is your brother-in-law?

18                  A.        Yup.

19                  Q.        Phebe is your mother?

20                  A.        Yup.

21                  Q.        Did you have communications with  
22                  these individuals at the time -- as of the time  
23                  you sent this email concerning --

24                  A.        Yes.

25                  Q.        Hold on. I'm not finished with my

*George Edward Banta, Jr.*

question.

Did you have communications with these individuals concerning Tom O'Connor and Cynthia Phillips?

A. Yes.

Q. When?

A. We talked to our attorney, and we had a meeting about this before we sent this email.

Q. With whom did you have a meeting about this?

A. Rich, my father, Rebecca, and we were on the phone with -- I believe it was Jim Drohan.

Q. What about your mother?

A. She probably was not at that meeting.

Q. Is there a reason why you copied her then?

A. My father and she share an email.

Q. And where was this meeting?

A. At our office.

Q. In whose office?

A. My office in 842 Main Street.

Q. And what day did it take place?

A. Thursday, November 1st.



1                    *George Edward Banta, Jr.*

2                    Q.        The meeting between you, Rebecca,  
3                    Rich Fisher and your father?

4                    MS. WONG-PAN:    And the attorney.

5                    A.        And the attorney, yes.

6                    Q.        And the attorney was who?

7                    A.        I believe it was Jim Drohan.

8                    Q.        Jim...?

9                    A.        Drohan.

10                  Q.        And that is a partner at  
11                  Ms. Wong-Pan's law firm?

12                  A.        Yes.

13                  Q.        How long was that meeting?

14                  A.        I don't know.

15                  *(Document handed to court reporter)*

16                  *(Whereupon, Plaintiff's Exhibit 17*  
17                  *2-page 3/13/14 Email marked for*  
18                  *identification.)*

19                  *(Witness peruses exhibit)*

20                  Q.        To your knowledge, was Mr. O'Connor  
21                  ever charged criminally with any assault on  
22                  Ms. Phillips?

23                  A.        I don't know.    Specifically, I don't.  
24                  There was an order of protection.

25                  Q.        I understand.    Was he ever charged

*George Edward Banta, Jr.*

criminally? That's from family court. Was he ever charged criminally with any assault on Ms. Phillips?

A. I don't know.

Q. Did you ever ask her?

A. I don't know if she decided to press charges or not.

Q. I'm not asking "decided to press."

Did you ever ask her whether there were any criminal charges against Mr. O'Connor?

A. I know she was contemplating it. That's as far as I...

Q. Did you ask her, "Are there criminal charges against Mr. O'Connor?"

A. I asked her if she's going to press charges.

Q. And when did you do that? When did you ask her?

A. I don't remember the specifics. Probably when we first -- when she first brought it to my attention; he assaulted her.

Q. I'm not interested in probably.

As you sit here today, when did you ask Ms. Phillips whether she was contemplating

1                    *George Edward Banta, Jr.*

2            criminal charges?

3            A.        I don't know.

4            Q.        Do you know whether she actually did  
5            go to the Hyde Park Police Department?

6            A.        I don't know.

7            Q.        Did she ever tell you she went there?

8            A.        I don't recall.

9            Q.        Do you recall seeing Plaintiff's  
10           Exhibit 17?

11           A.        Yes.

12           Q.        And did you reply to that?

13           A.        Yes.

14           MS. WONG-PAN: Have you had a  
15           chance to review it?

16           *(Witness peruses exhibit)*

17           A.        Yup.

18           Q.        You reviewed it?

19           A.        Yes.

20           *(Document handed to court reporter)*

21           *(Whereupon, Plaintiff's Exhibit 18*

22           *2-page 3/13/14 Email marked for*  
23           *identification.)*

24           Q.        I'm going to show you what's marked  
25           as Plaintiff's Exhibit 18.

1                   George Edward Banta, Jr.

2                   A.     Okay.

3                   Q.     Do you recall --

4                   A.     Yup.

5                   *(Document handed to court reporter)*

6                   *(Whereupon, Plaintiff's Exhibit 19*

7                   *3-page 3/13/14 Email marked for*

8                   *identification.)*

9                   Q.     I'm going to show you what's marked  
10                  as Plaintiff's Exhibit 19.

11                  Do you see that?

12                  A.     Yes.

13                  Q.     Do you recognize that document?

14                  A.     Yes.

15                  Q.     It's an email from Tom O'Connor dated  
16                  November 7, 2012 at 3:23 p.m.?

17                  A.     Yup.

18                  MS. WONG-PAN: I'd like to --

19                  MS. NICAJ: It's --

20                  MS. WONG-PAN: I would like him to  
21                  review it, if you have questions about it.

22                  MS. NICAJ: Sure.

23                  A.     Okay.

24                  Q.     Do you see that?

25                  A.     Yup.

1                   *George Edward Banta, Jr.*

2                   Q.     What, if anything, did you do when  
3     you received Tom O'Connor's emails?

4                   A.     We examined them and we discussed...

5                   Q.     Who is "we"?

6                   A.     My father and myself, Richard Fisher.

7                   Q.     When did you collectively examine  
8     Plaintiff's Exhibit 19?

9                   A.     Probably November 8th, Thursday.

10                  Q.     Probably. As you sit here today, do  
11     you recall doing so?

12                  A.     I don't recall. But this came in  
13     November 7th, so I'm sure we discussed it the  
14     next morning.

15                  Q.     I'm not interested in what you assume  
16     or probably. I'm interested in what you  
17     remember. Is that fair?

18                  A.     Yup.

19                  Q.     I instruct -- don't make assumptions,  
20     don't assume. If you don't know, you let me  
21     know. Okay?

22                  A.     Okay.

23                  Q.     As you sit here today, do you recall  
24     having any communications with either your  
25     father or Richard Fisher concerning Plaintiff's

*George Edward Banta, Jr.*

Exhibit 19?

A. Yes.

Q. When do you recall having communications with them?

A. I don't recall the exact date.

Q. Where were you and where were they?

A. We were in our office at 842 Main Street.

Q. Oh, incidentally, did you forward these emails to Richard Fisher?

A. Probably.

MS. NICAJ: I'm going to call for the production of all forwarded emails from Mr. George Banta, Jr. to Richard Fisher.

Q. You indicated that your mom's email, your dad used that same email address; is that correct?

A. Yes.

Q. Did you forward the emails to her email address?

A. I don't recall.

Q. You don't recall.

MS. WONG-PAN: You put your demand

1                   *George Edward Banta, Jr.*

2                   in writing and we'll certainly respond to  
3                   it.

4                   MS. NICAJ: Sure. I call for  
5                   production of all emails to and from the  
6                   named parties concerning Tom O'Connor and  
7                   Cynthia Phillips.

8                   -DOCUMENT/DATA REQUESTED:\_\_\_\_\_

9                   Q.       When you said you forwarded this to  
10                  Richard Fisher, did you have a discussion with  
11                  him?

12                  MS. WONG-PAN: Objection.

13                  Misstatement.

14                  Q.       Did you forward this to Mr. Fisher?

15                  A.       I may have. I know I forwarded it to  
16                  our attorney.

17                  Q.       I'm not asking your attorney. I'm  
18                  asking specifically, did you forward this to  
19                  Richard Fisher?

20                  A.       I don't recall.

21                  Q.       Did you ever ask Cynthia Phillips for  
22                  copies of her text messages?

23                  A.       That was part of the investigation,  
24                  yes.

25                  Q.       You asked for her copies. Did she

1                   *George Edward Banta, Jr.*

2           send you copies of her text messages?

3           A.       I don't recall.

4           Q.       Did you ever receive any photographs  
5           of her text messages to and from Mr. O'Connor?

6           A.       I saw --

7                   MS. WONG-PAN: From Cynthia?

8                   MS. NICAJ: Yes.

9           A.       I saw them on her phone. I don't  
10          know if I have copies of it.

11          Q.       When you say you saw them, when did  
12          you see them on her phone?

13          A.       When we did our investigation, we sat  
14          down with Cynthia and interviewed her and asked  
15          her --

16          Q.       Who is the "we" that sat down with  
17          Cynthia, that you keep on saying "we."

18                   I'm interested in, who is the "we"  
19          you're referring to?

20          A.       I believe it was my dad and I.

21          Q.       You sat with Cynthia when?

22          A.       At some point during this... these  
23          communications.

24          Q.       When did you sit with her at some  
25          point during these communications? Was this at



1                    *George Edward Banta, Jr.*

2           Pizzeria Uno or at the Beekman Arms or something  
3           else?

4                    MS. WONG-PAN: This is a where or  
5           when question?

6                    MS. NICAJ: When.

7                    A. Somewhere in the beginning part of  
8           November, it looks like.

9                    Q. When you say it looks like, where is  
10           that referred to, that sitting down? You're  
11           looking at Plaintiff's Exhibit 19 and saying it  
12           looks like we met somewhere in the beginning of  
13           November.

14                   A. That's right.

15                   Q. You're looking at Exhibit 19. Why  
16           does it look, based on you looking at  
17           Exhibit 19, that you met with her sometime in  
18           early November?

19                   A. Because when we gathered information  
20           from Tom, we gathered information from Cynthia.

21                   Q. Did you ever get any hard copies of  
22           the information you gathered from Cynthia?

23                   A. I don't recall.

24                   Q. As you sit here today, do you recall  
25           getting any hard copies of anything from Cynthia

1                   *George Edward Banta, Jr.*

2           Phillips at that time?

3                   A.     I recall seeing a letter from her  
4           psychiatrist, I believe.

5                   Q.     You indicated that you saw something  
6           at that first meeting with Cynthia Phillips; is  
7           that right?

8                   MS. WONG-PAN:  Objection.

9                   Q.     Right?

10                  A.     I don't know if it was the first  
11           meeting or the second meeting.

12                  Q.     Well, you testified extensively about  
13           your first meeting with her, and she showed you  
14           a letter from her psychiatrist.

15                   Do you recall testifying here today  
16           about that?

17                  A.     Yes.

18                  MS. WONG-PAN:  Objection.  It's a  
19           misstatement, but the record will be  
20           clear.

21                  MS. NICAJ:  The record is what it  
22           is.

23                  MS. WONG-PAN:  The record is what  
24           it is.  That's true.

25                  MS. NICAJ:  You know --

*George Edward Banta, Jr.*

MS. WONG-PAN: The record is what  
it is.

MS. NICAJ: Absolutely, Counselor.

Q. Did you speak to her psychiatrist?

A. No.

Q. When you say you saw something  
from -- what did you see by way of text  
messages?

A. From her phone?

Q. Yes.

A. I don't recall.

Q. Did you take any photographs of it?

A. No.

Q. You see here Tom writes to you what  
text messages he received from Cynthia Phillips;  
is that right?

A. Yup.

*(Document handed to court reporter)*

*(Whereupon, Plaintiff's Exhibit 20  
4-page 3/13/14 Email marked for  
identification.)*

Q. Did you ever ask Cynthia to print out  
text messages or emails that she had concerning  
Tom O'Connor?

*George Edward Banta, Jr.*

A. I don't recall.

Q. Is there a reason why not, why you wouldn't have?

A. I wouldn't know. I don't -- no, I don't know why.

Q. I'm going to show you what's marked Plaintiff's Exhibit 20.

A. Yup.

Q. Do you see that?

A. Yup.

Q. It says, "Our investigation is ongoing. If you could please email over a printout of these text messages or any emails that might be relevant to this situation by tomorrow afternoon, it would be greatly appreciated." Do you see that?

A. Yup.

Q. You requested that he print out the text messages and any emails; is that right?

A. Yup.

Q. And did you do the same for Cynthia Phillips?

A. I saw them myself.

Q. I'm asking, did you ask for a

*George Edward Banta, Jr.*

print -- you saw the emails and text messages or  
one or --

A. The text messages on Cynthia's phone.

Q. Did you ask her for printouts of  
emails?

A. I don't recall.

Q. And you said you saw them yourself.  
What text messages did you see?

A. Some of the ones that Tom had sent  
over, and I forget what other ones.

Q. Which ones did you see?

A. I don't know. There was many  
conversations between the two --

Q. Which ones did you see?

MS. WONG-PAN: Let him finish  
answering.

Q. I apologize. As I said, I don't mean  
to interrupt you. I do apologize if I  
interrupted you.

A. Sure.

Q. Are you done with your response?

A. Yes.

Q. As you sit here today, do you recall  
any specific text messages you recall seeing

1                   *George Edward Banta, Jr.*

2           from Cynthia Phillips?

3           A.     No, I don't recall.

4           Q.     Did you ever ask her to print them  
5           out for you?

6           A.     I don't recall.

7           Q.     How long had she had that particular  
8           phone that she showed you?

9           A.     I have no idea.

10          Q.     Did you photograph any of those text  
11          messages?

12          A.     I don't recall.

13          Q.     Is there a reason why you would have  
14          asked Tom O'Connor for printouts of his when he  
15          had already relayed to you in a previous email  
16          what some of them were?

17          A.     Why would I ask him to print them  
18          out?

19          Q.     Yes, yes, when he told you what it  
20          said.

21          A.     We were communicating via email.

22          Q.     Well, he had already told you in  
23          writing by email what they said, but you asked  
24          for printouts of those.

25                   So I'm asking, why would you have

George Edward Banta, Jr.

asked him if he already confirmed what they were?

A. Verification.

MS. WONG-PAN: Objection to form.

You can answer.

A. Verification.

Q. Did you ask for verification by Cynthia Phillips in having her print out emails?

A. I was looking at her phone. I didn't need verification.

Q. Emails.

MS. WONG-PAN: Let him answer.

Q. You were looking at her phone.

What were you looking at on her phone, text messages?

A. Text messages.

Q. Did you ask her for printouts of emails?

A. I don't recall.

Q. Did you ask her whether she deleted any text messages from Tom O'Connor?

A. No, I don't recall.

Q. Did she ever deny sending Tom O'Connor text messages?

1                   George Edward Banta, Jr.

2                   A.     No.

3                   Q.     She never denied that?

4                   A.     No, she never denied that.

5                   *(Document handed to court reporter)*

6                   *(Whereupon, Plaintiff's Exhibit 21*

7                   *4-page 3/13/14 Email marked for*  
8                   *identification.)*

9                   MS. WONG-PAN: He needs -- have you  
10                  reviewed this document that's put in front  
11                  of you?

12                  *(Witness peruses exhibit)*

13                  A.     Okay.

14                  Q.     Do you see that?

15                  A.     Yup.

16                  Q.     Did you ever respond to  
17                  Mr. O'Connor's invitation to stop by your office  
18                  and personally show you the phone with the text  
19                  messages?

20                  A.     I don't recall.

21                  Q.     It states in the second sentence of  
22                  the email -- you do recall seeing this email; is  
23                  that right?

24                  A.     Yup.

25                  Q.     "If you like, I can stop by your



*George Edward Banta, Jr.*

office tomorrow morning, and you can read and confirm the accuracy of what I said. I could forward the later messages by phone, but I do not believe the initial source would be attached, the email about the threat of calling the police on me first. Extortion is printable." Do you see that?

A. Yup.

Q. Did you ever see the text message about threatening Tom O'Connor with extortion?

A. I don't recall.

Q. Did you ever meet with Mr. O'Connor so he could show you his phone personally?

A. I don't recall.

MS. NICAJ: Can you mark this.

*(Whereupon, Plaintiff's Exhibit 22  
4-page 3/13/14 Email marked for  
identification.)*

Q. Showing you what is Plaintiff's Exhibit 22, do you see that?

A. Yes.

Q. Do you recall that date, the incident?

A. Yes.

1                   *George Edward Banta, Jr.*

2                   Q.     Did you call the police?

3                   A.     I don't recall calling the police.

4                   Q.     Do you know whether you or your  
5 father called the police?

6                   A.     I don't know who called the police.

7                   Q.     Do you know whether Mr. O'Connor, in  
8 fact, was first present at that Pizzeria Uno  
9 before Ms. Phillips ever came?

10                  A.     I don't know who showed up first.

11                  Q.     Well, according to this email, he was  
12 there prior; right?

13                  A.     Okay.

14                  Q.     Yes?

15                         MS. WONG-PAN: That is according to  
16 the email, is that the question?

17                         MS. NICAJ: Yes.

18                  Q.     Did Cynthia Phillips ever call you to  
19 say, "I just got here and I see Mr. O'Connor's  
20 car -- he's not inside the car -- at the parking  
21 lot of Pizzeria Uno's"?

22                  A.     I forget the --

23                         MS. WONG-PAN: Objection,  
24 objection.

25                         You can answer.

1                   *George Edward Banta, Jr.*

2           A.       I forget how the communication came  
3 about between Cynthia and Tom, that Tom was  
4 there.

5           Q.       Well, not between Cynthia and Tom,  
6 between either Cynthia and you or Cynthia and  
7 your dad. Did she speak to you that day?

8           A.       She spoke to both my father and I,  
9 yes.

10          Q.       On the telephone?

11          A.       I don't know if we talked on the  
12 phone. I know we sat down in person.

13          Q.       I'm interested in, how did you learn  
14 that Cynthia Phillips was in the parking lot of  
15 Pizzeria Uno?

16          A.       Via phone, I guess.

17          Q.       Not you guess. How did you come to  
18 learn that?

19          A.       I don't know.

20                   MS. NICAJ: I think this may be a  
21 good time to take a break here.

22                   MS. WONG-PAN: Okay.

23                   *(Recess held from 11:16 a.m. to 11:26 a.m.)*

24                   *(Whereupon, Plaintiff's Exhibit 23*

25                   *5-page 3/13/14 Email marked for*

1                   George Edward Banta, Jr.

2                   *identification.*)

3           CONTINUED EXAMINATION BY MS. NICAJ:

4                   Q.     Showing you what's marked as  
5                   Plaintiff's Exhibit 23, do you see that  
6                   document?

7                   A.     Yup.

8                   Q.     What do you recognize it to be?

9                   A.     A request for information.

10                  Q.     Well, request for what information?

11                  A.     The amended order of protection and  
12                  additional text messages.

13                  Q.     You see here he's the one who  
14                  stated -- this is in the email below dated  
15                  November 16th -- that he had an amended order of  
16                  protection. And then you respond, "Amended  
17                  order of protection and the other additional  
18                  text messages." Do you see that?

19                  A.     Yup.

20                  Q.     How many text messages did you see  
21                  from Cynthia Phillips's phone?

22                  A.     I don't know. A bunch.

23                  Q.     Did you compare her phone at any  
24                  point with the text messages Mr. O'Connor told  
25                  you about?

1                    *George Edward Banta, Jr.*

2                    A.        I don't recall. I'm sure we did.

3                    Q.        When you say you're sure you did, as  
4                    you sit here today, do you recall doing so?

5                    A.        Nope.

6                    MS. NICAJ: Can you mark this.

7                    *(Whereupon, Plaintiff's Exhibit 24*  
8                    *5-page 3/13/14 Email marked for*  
9                    *identification.)*

10                  Q.        Do you recognize that document?

11                  A.        Yup.

12                  Q.        What do you recognize that to be?

13                  A.        Just another email from Tom.

14                  MS. NICAJ: Another one. *(Handing)*

15                  *(Whereupon, Plaintiff's Exhibit 25*  
16                  *6-page 3/13/14 Email marked for*  
17                  *identification.)*

18                  Q.        I'm going to show you what's marked  
19                  as Plaintiff's Exhibit 25 for identification.

20                  Do you recognize that document?

21                  A.        Yup.

22                  Q.        Do you recall receiving a fax from  
23                  Mr. O'Connor with the amended order of  
24                  protection?

25                  A.        I don't recall.

1                    *George Edward Banta, Jr.*

2                    Q.      Well, you never replied that you  
3                    hadn't received it; is that right?

4                    A.      I guess. Yeah.

5                    Q.      So, do you recall seeing a reference  
6                    to a thread of filing charges against him for  
7                    extortion made by Cynthia Phillips as referenced  
8                    in this email?

9                    A.      I don't recall that.

10                  Q.      You don't recall that? Did you ever  
11                  speak to Ms. Phillips about that?

12                  A.      I don't recall.

13                  Q.      As you sit here today, do you recall  
14                  ever asking her any questions about that?

15                  A.      I don't recall.

16                              *(Document handed to court reporter)*

17                              *(Whereupon, Plaintiff's Exhibit 26*  
18                              *9-page 3/13/14 Email with Attached Copies*  
19                              *of Text Messages marked for*  
20                              *identification.)*

21                  Q.      I show you what's marked as  
22                  Plaintiff's Exhibit 26.

23                  A.      Okay.

24                  Q.      Do you see that?

25                  A.      Yup.

1                   *George Edward Banta, Jr.*

2                   Q.     Take a look at the attached text  
3                   messages and pictures.

4                   A.     Okay.

5                   Q.     Did you ever ask Ms. Phillips about  
6                   the email messages Mr. O'Connor emailed you on  
7                   November 19, 2012?

8                   MS. WONG-PAN:  Objection.

9                   MS. NICAJ:  I'll withdraw.

10                  Q.     You received Plaintiff's Exhibit 26,  
11                  right --

12                  A.     Yup.

13                  Q.     -- on or around November 19, 2012; is  
14                  that right?

15                  A.     Yup.

16                  Q.     Did you ever ask Cynthia Phillips  
17                  about your receipt?

18                  MS. WONG-PAN:  Objection.

19                  MS. NICAJ:  Withdrawn.

20                  Q.     Did you ever ask Ms. Phillips about  
21                  what you had received?

22                  A.     Yes, it was part of our investigation.

23                  Q.     When did you do that?

24                  A.     Probably somewhere around  
25                  November 19th.

*George Edward Banta, Jr.*

Q. As you sit here today, where were you  
and where was she?

A. I don't recall.

Q. What did you ask her?

A. I don't recall.

Q. What did she say?

A. I don't recall.

Q. Who else was present?

A. I don't recall.

Q. Did you ask her about Plaintiff's  
Exhibit 25?

A. I don't recall.

Q. Did you ask her about Plaintiff's  
Exhibit 24?

A. I don't recall.

Q. Did you ever ask Tom O'Connor if he  
had any witnesses to exchanges between him and  
Cynthia Phillips?

A. I don't recall.

Q. Well, take a look at the emails that  
we've just marked here today, and you tell me if  
any of your emails requested witness information  
that Tom O'Connor would have had.

*(Documents handed)*



*George Edward Banta, Jr.*

A. Say that again.

Q. Well, looking at those documents, Plaintiff's Exhibits 23 through 26, if I'm not mistaken --

A. Yes.

Q. -- do you see any requests from you concerning witnesses that may have been -- may have observed he and Cynthia Phillips's interactions?

A. I don't see that.

Q. Did you ever request --

A. Not that I recall.

Q. Is there a reason why not?

A. Not that I know of.

Q. Did you ask Cynthia Phillips for witness -- statements from witnesses?

A. I don't recall asking her, no.

Q. Did you ever receive any kind of training concerning discrimination policies in the workplace?

A. Back in college, yes.

Q. That would have been what year?

A. I graduated from college in '96.

Q. And what was the course that you

*George Edward Banta, Jr.*

took?

A. There was a bunch of human resources classes I took.

Q. Well, what course specifically did you take that addressed discrimination policies in the workplace?

A. I don't recall.

Q. Do you recall anything of substance concerning those courses as it concerns discrimination policies?

A. I don't recall.

Q. You went to school for what?

A. Hotel and restaurant.

Q. Was it in Cornell?

A. Yes.

Q. And as you sit here today, you don't recall any specific courses relating to discrimination policies that you took in Cornell; is that correct?

A. No.

Q. On how many occasions did you communicate with Cynthia Phillips during the course of your investigation concerning Tom O'Connor?

*George Edward Banta, Jr.*

A. I don't know.

Q. More than five?

A. Probably.

Q. More than ten?

A. Could be.

Q. As you sit here today, do you recall documenting any of the times you communicated with Cynthia Phillips?

A. Not that I recall.

Q. Do you recall reducing anything she said to you or you said to her in writing during the course of your investigation?

A. Not that I recall.

Q. What was the result of your investigation?

A. It came down to the fact that there was an order of protection against Tom O'Connor, and he was not permitted to be within a certain space of Cynthia Phillips which precluded -- which, if he was at work, would have precluded Cynthia from acting as the general manager of the hotel.

Q. Well, there was an amended order of protection; is that right?

*George Edward Banta, Jr.*

A. A general manager of a hotel that we operate, whether it's a Super 8 or the Beekman Arms, find themselves at the property at all hours of the day, whether it's 3:00 in the morning or 2:00 in the afternoon.

Q. As you sit here today, do you recall a single instance in which Cynthia Phillips was required to go to the Beekman Arms in the middle of the night --

A. I'm sure --

Q. -- between 12:00 a.m. and 8:00 a.m.?

A. I'm sure she's worked the audit.

Q. I'm not saying in place of someone like Tom O'Connor. Did she ever have occasion to go to the Beekman Arms while she was general manager in response to an emergency between 12:00 midnight and 8:00 a.m. at the Beekman Arms?

A. I'm sure. I don't know the --

Q. As you sit here today, do you recall any specific incident?

A. No.

Q. Did you ever ask her?

A. I don't recall.

1                   **George Edward Banta, Jr.**

2                   Q.     Or did you ever ask Maria Schubert,  
3 her predecessor, if on any single occasion she  
4 went to the Beekman Arms from midnight to 8:00  
5 since 2005?

6                   A.     I don't recall.

7                   *(Document handed to court reporter)*

8                   *(Whereupon, Plaintiff's Exhibit 27*  
9 *1-page 3/13/14 Email marked for*  
10 *identification.)*

11                  Q.     Incidentally, I know you're looking  
12 at 27 here, but I'm going to ask you a question:  
13 Did Ms. Phillips ever offer to resign?

14                  A.     She has resigned.

15                  Q.     Prior to -- she resigned in March of  
16 2014. While this session was going on, after  
17 she reported the incident between her and Tom  
18 O'Connor, did she ever offer to resign?

19                  A.     Not that I'm aware of.

20                  Q.     Did she ever offer to resign to you?

21                  A.     Not that I recall.

22                  Q.     I'm going to direct your attention to  
23 the first sentence of the email from you to Tom  
24 O'Connor. It's dated November 30, 2012.

25                  A.     Yup.

1                   *George Edward Banta, Jr.*

2           Q.     Who is the "we" you're referring to?

3           A.     My father, myself, Richard Fisher,  
4     our management team.

5           Q.     Well, what other people in the  
6     management team are you referring to?

7           A.     Rebecca. Obviously, we were  
8     consulting an attorney at that point as well to  
9     make sure we were...

10          Q.     So, all of you participated in this  
11     investigation?

12          A.     Yeah.

13                 MS. NICAJ: I'm going to call for  
14     the deposition of Mr. Fisher as well as  
15     Rebecca -- is it Berkowitz?

16                 THE WITNESS: Yes.

17          Q.     What did Rebecca do by way of  
18     investigation?

19          A.     I don't recall offhand. She would  
20     have had the employee files.

21          Q.     I'm asking, what did she do based on  
22     your knowledge? You said, "We have concluded  
23     our investigation." So the "our" is Rebecca.

24                 What did she do in reference to the  
25     investigation?

*George Edward Banta, Jr.*

A. She was involved in the conversations we had.

Q. What did she do?

A. I don't recall.

Q. Did she interview anyone?

A. I don't think so, no.

Q. Was she present for any interviews -- was she present for any discussions you had with Cynthia?

A. I don't think so.

Q. You said she was involved in the files. What files are you referring to?

A. Just employee files.

Q. What files did you look into?

A. We had -- our office would gather the -- whether it was Tom's employee file, Cynthia's employee file.

Q. What specifically is in the employee file that she'd look into for you, then?

A. I don't know. I don't recall.

Q. Other than possibly looking into the employee files, anything else she did?

A. She was part of our discussions.

Q. How many discussions?

1 *George Edward Banta, Jr.*

2 A. I don't recall.

3 Q. Where did these discussions take  
4 place?

5 A. In our office, 842 Main Street.

6 Q. Where is Banta Management, at 842?

7 A. Yes.

8 Q. Do you recall anything she  
9 specifically did by way of investigation?

10 A. I don't recall.

11 Q. What did Mr. Fisher do by way of  
12 investigation?

13 A. He participated in the conversation,  
14 in the discussions.

15 Q. What did he do by way of investigation?

16 MS. WONG-PAN: Objection.

17 Argumentative.

18 Q. What did he do? Did he interview any  
19 witnesses, to your knowledge?

20 A. I don't recall.

21 Q. Ever communicate directly with  
22 Cynthia Phillips?

23 A. I'm sure he did.

24 Q. Concerning this?

25 A. I don't recall.



*George Edward Banta, Jr.*

Q. As you sit here today, do you know whether he ever communicated directly with Cynthia Phillips concerning the investigation in connection with Tom O'Connor?

A. No, I don't recall.

Q. Was he present for any communications you had with Cynthia Phillips concerning Tom O'Connor?

A. I don't recall.

Q. You said she showed you her phone?

A. Yes.

Q. On how many occasions did she show you her phone?

A. I think, twice.

Q. When?

A. I don't recall.

Q. Where was the first occasion?

A. I think it was in Rhinebeck in the Wayfair Room in the Beekman Arms.

Q. The Wayfair Room is where?

A. In the Beekman Arms.

Q. Is that her office? I don't know what that means, so you have to -- that's why I'm asking, what is the Wayfair Room?

*George Edward Banta, Jr.*

A. It's the Beekman Arms. It's a hotel.

Q. I understand it's in the Beekman Arms, but what is the Wayfair Room?

A. It's a -- it's a banquet facility.

Q. So, the location of your discussion with Ms. Phillips was in the banquet facility?

A. Yup.

Q. And that's what you mean by Wayfair Room?

A. Yup.

Q. And at that room she showed you her phone?

A. Yes.

Q. Was anyone else present when she showed you her phone?

A. I don't recall.

Q. Do you recall any specific text messages you saw in her phone?

A. I don't recall.

Q. When was the next occasion she showed you her phone?

A. I don't recall.

Q. Who else was present?

A. I don't know.

1 *George Edward Banta, Jr.*

2 Q. Where was it?

3 A. I don't know.

4 Q. Did you ever document either time  
5 that you observed, saw her phone?

6 A. No.

7 Q. Did Mr. Fisher ever interview any  
8 employees?

9 A. I don't know.

10 Q. Well, did he tell you he did?

11 A. I don't recall.

12 Q. How did he participate in your  
13 investigation?

14 A. Just the discussions we had as  
15 information came in.

16 Q. What discussions do you specifically  
17 recall having in Mr. Fisher's presence?

18 A. I don't recall.

19 Q. Do you recall anything that was said  
20 by you or him?

21 A. Not technically.

22 Q. Not technically? What do you mean by  
23 "technically"?

24 A. I don't remember any specifics.

25 Q. What do you generally recall speaking

*George Edward Banta, Jr.*

with him about?

A. That we had all the information from the investigation. The overriding factor was there was an order of protection which precluded Tom from working at Beekman Arms, so we determined --

Q. What is the general --

A. I'm still --

Q. I'm sorry.

MS. WONG-PAN: Let him finish.

Q. And I do apologize. Go ahead.

A. It was determined at that point that his was a non-essential role. Our general manager needs to be at the property at any given moment. It's easier to find -- to replace a night auditor.

Q. What was discussed about the investigation?

A. I don't recall.

Q. As you sit here today, do you recall anything that was discussed in the presence of Mr. Fisher about the investigations?

A. I don't recall.

Q. Do you recall discussing any text

*George Edward Banta, Jr.*

messages that Mr. O'Connor showed you?

A. I don't recall the conversations.

Q. Nothing you recall, nothing whatsoever?

Did you ever email Mr. Fisher?

A. I don't recall.

Q. Did he email you about this issue?

A. I don't recall.

Q. Do you recall having any communications with your father?

A. Just our general discussion. I don't remember specific conversations.

Q. As you sit here today, what were the general discussions with your father?

A. The general discussion was that there was an odd relationship between Tom and Cynthia, and there was an order of protection. That was what we acted on.

Q. When you say there was a general discussion with your father about an odd relationship, when did you and he discuss this odd relationship between Tom and Cynthia?

A. After we saw the text messages and the emails and so forth.

*George Edward Banta, Jr.*

Q. Who is the "we"?

A. My dad, Rich, myself, Rebecca.

Q. Did you forward all these emails that Tom O'Connor sent to you to them?

A. I don't recall.

Q. What did each of them say?

A. I don't know.

Q. Anything you recall as you sit here today by -- what was said by you or these individuals?

A. I don't recall.

Q. Anything that would refresh your memory?

A. I don't...

MS. WONG-PAN: What was that?

A. I don't know. I don't recall what any specific conversations were.

MS. NICAJ: I will call for production of any and all written communications in connection with Tom O'Connor by the defendants. I'll put that request in writing. I'm just making a record of it as we sit here today.

-DOCUMENT/DATA REQUESTED:\_\_\_\_\_

1 *George Edward Banta, Jr.*

2 MS. WONG-PAN: We've turned over  
3 what we have. Once we get your request,  
4 if there's anything else, we'll respond to it.

5 Q. Cynthia Phillips had an email address  
6 that was assigned to her in connection with her  
7 position as general manager; right?

8 A. I believe so, yes.

9 Q. Did you ever ask her via email to  
10 send any and all text messages she had?

11 A. I don't think so.

12 Q. Did you ever ask her by email whether  
13 to send any and all emails she had to and from  
14 Tom O'Connor?

15 A. I didn't communicate with Cynthia via  
16 email.

17 Q. I'm not asking that. I'm asking a  
18 specific question: Did you ever via email have  
19 her -- ask her --

20 A. No.

21 MS. WONG-PAN: Wait. Let her  
22 finish the question.

23 MS. NICAJ: I'll withdraw that  
24 portion and have a clear record.

25 Q. Did you ever email her requesting any

George Edward Banta, Jr.

and all written correspondence she and Tom O'Connor had, whether by text message, email, Facebook, anything of that nature?

A. I don't -- I don't recall doing so.

Q. Did you ever ask her about whether she and Tom had -- when her and Tom's intimate relationship ended?

A. I don't recall.

MS. NICAJ: Mark this, please.

*(Whereupon, Plaintiff's Exhibit 28 1-page 11/30/12 Letter marked for identification.)*

Q. I'm going to direct your attention to Plaintiff's Exhibit 28. Who is the "we" you're referring to by way of, "We have made our decision to terminate your employment"?

A. My father, Rich, myself.

Q. All of you participated in the decision to terminate?

A. Yup.

Q. Yes?

A. Yes.

Q. It wasn't your decision alone; is that right?



1                    *George Edward Banta, Jr.*

2                    A.        That's correct.

3                    Q.        Do you recall what was said by each  
4                    person in making a decision to terminate?

5                    A.        No, not specifically.

6                    Q.        What?

7                    A.        Not specifically.

8                    MS. NICAJ: I'm going to take a  
9                    brief break.

10                   *(Recess held from 11:55 a.m. to 12:03 p.m.)*

11                   *(Whereupon, Plaintiff's Exhibit 29*  
12                   *1-page 11/16/12 Blotter Entry marked for*  
13                   *identification.)*

14                   CONTINUED EXAMINATION BY MS. NICAJ:

15                   Q.        Plaintiff's Exhibit 29, does that  
16                   refresh your memory as to whether you called the  
17                   police on November 16, 2012?

18                   A.        Yes.

19                   Q.        It does?

20                   A.        I don't know who called the police.  
21                   Police were called.

22                   Q.        It says "Complainant." Do you see  
23                   that?

24                   A.        Okay.

25                   Q.        Do you know whether you were the

*George Edward Banta, Jr.*

complainant?

A. I don't recall.

Q. Or whether George, because it's not identified, you see there, whether it's you or your dad; right?

A. Yes, it could be my dad.

Q. You're the junior and he's the senior. Do you recall ever speaking to the police on that date?

A. I don't recall. I think my dad spoke to the police.

Q. Prior to the break, you indicated that you participated in the decision to terminate Mr. O'Connor's employment; is that correct?

A. Yes.

Q. Your dad did, too?

A. Yes.

Q. Mr. Fisher did, too?

A. Yes.

Q. Did your mom?

A. I don't believe so.

Q. Your sister?

A. No.

*George Edward Banta, Jr.*

Q. So, the three of you, you, your dad and Mr. Fisher, participated in the decision to terminate?

A. Yup.

Q. Have you been deposed in any other cases before?

A. Yup.

Q. How many?

A. I think, one.

Q. In connection with what?

A. Some other lawsuit.

Q. You said you're vice president of Banta Management?

A. Yes.

Q. For how long?

A. 2002.

Q. Prior to that, what did you do?

A. I traded currencies and fixed income.

Q. And since 2002, for any of the entities, the only time you've been deposed was one other occasion?

A. I believe so, yes.

Q. And that was in the Vitarius case?

A. I believe so, yes.

1                   *George Edward Banta, Jr.*

2                   Q.       That was a discrimination retaliation  
3 case?

4                   A.       Something along those lines, yes.

5                   Q.       And how long was your deposition  
6 then?

7                   A.       I don't recall. Not very -- not as  
8 long as this one.

9                   Q.       And do you recall having any  
10 communications concerning someone by the name of  
11 Andrea Choinsky?

12                  A.       I know the name, yes.

13                  Q.       Do you know whether she is still  
14 employed?

15                  A.       She's not at the Beekman Arms.

16                  Q.       Do you know how she came to no longer  
17 be employed there?

18                  A.       I don't recall.

19                  Q.       What about Jose Reid?

20                  A.       He was a maintenance person at the  
21 Beekman Arms.

22                  Q.       Do you know if he's still employed  
23 there?

24                  A.       No.

25                  Q.       Do you have any communications with

*George Edward Banta, Jr.*

him?

A. Not recently.

MS. NICAJ: Nothing further.

Actually, one more question.

Q. As you sit here today, is there anything you want to add, change or otherwise supplement to your previous testimony here today?

A. No.

Q. Okay. Based on your recollection, everything you've testified to was truthful under the penalty of perjury; is that correct?

A. Yes.

MS. NICAJ: Okay. Nothing further.

*(Time noted: 12:08 p.m.)*

STATE OF NEW YORK                    )  
  ) ss:  
COUNTY OF WESTCHESTER            )

I, GEORGE EDWARD BANTA, JR., the  
witness herein, having read the foregoing  
testimony of the pages of this deposition, do  
hereby certify it to be a true and correct  
transcript, subject to the corrections, if any,  
shown on the attached page.

o0o

\_\_\_\_\_  
GEORGE EDWARD BANTA, JR.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

1  
2 STATE OF NEW YORK )

3 ) ss:

4 COUNTY OF WESTCHESTER )  
5  
6

7 I, Nina Purcell, Notary Public within  
8 and for the State of New York, do hereby  
9 certify:  
10

11 That I reported the proceedings in the  
12 within entitled matter, and that the within  
13 transcript is a true record of said  
14 proceedings.  
15

16 I further certify that I am not  
17 related to any of the parties to the action by  
18 blood or marriage, and that I am in no way  
19 interested in the outcome of this matter.  
20

21 IN WITNESS WHEREOF, I have hereunto  
22 set my hand this 28th day of April 2015.

23   
24 \_\_\_\_\_  
25 NINA PURCELL,  
NOTARY PUBLIC

CORRECTION SHEET

Re: O'Connor v. Beekman Arms

The following corrections, additions or deletions were noted on the transcript of the testimony which I gave in the above-captioned matter, held on April 20, 2015.

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\_\_\_\_\_  
 GEORGE EDWARD BANTA, JR.

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_ 2015.



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All emails to and from the named parties concerning Tom O'Connor and Cynthia Phillips

75    7

Any and all written communications in connection with Tom O'Connor by the defendants

106    24

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# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THOMAS P. O'CONNOR,

Plaintiff,

**AFFIDAVIT**

-against-

14-CV-06237 (VB)

BEEKMAN ARMS- DELAMATER INN, INC., BANTA  
MANAGEMENT SERVICES, INC., CYNTHIA PHILLIPS,  
individually, GEORGE E. BANTA, JR., individually, and  
GEORGE E. BANTA, SR., individually,

Defendants,  
-----X

STATE OF NEW YORK    )  
                                  ) ss.  
COUNTY OF DUTCHESS)

GEORGE BANTA, JR, being duly sworn deposes and says:

1. This Affidavit is submitted in support of Defendants' motion for summary judgment, and annexes documents that were not shown to me at my deposition or marked as exhibits at that deposition.
2. My office is at 842 Main Street, Poughkeepsie New York, inside Uno's Chicago Grill, which is a business that my family owns.
3. Mr. O'Connor's employment was terminated on November 30, 2012. At the time of the termination, I had received and reviewed the Family Court Petition filed by Ms. Phillips; and the Orders of Protection dated October 26, 2012 and November 16, 2012.
4. At the time of the termination, as mentioned during my deposition, I had also received information from Ms. Phillips' therapist, which was a letter requesting a leave of absence. That letter is attached as Exhibit A. Her request was granted.



5. At the time of the termination, I was aware that Ms. Phillips had seen an orthopedist.

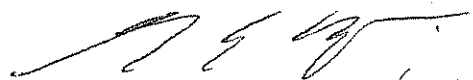
6. At the time that Mr. O'Connor was terminated, I had received statements from Kasey Shumway and Heather Benton, annexed as Exhibit B.

7. I have been told that Mr. O'Connor claims that he was harassed because of an instruction to follow him to one of the apartments that we own. I have no knowledge of what Mr. Reid was told by anyone other than myself.

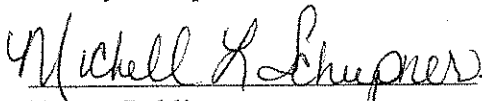
8. However, the Court should be aware that Ms. Phillips manages apartments that we own in Rhinebeck, including an apartment at 15 Garden Street, Rhinebeck, New York that was leased by Jeff Cantor in calendar year 2012. We do not permit any to reside in the apartments who is not listed on the lease and "Jessica Albizu" has not been one of our tenants at any apartment.

9. Attached is the lease for 15 Garden Street, Rhinebeck New York for calendar year 2012.

The foregoing is true and accurate, under penalty of perjury.

  
George Banta Jr.

Signed and sworn before me this  
2<sup>nd</sup> day of September, 2015.

  
Notary Public

MICHELL L. SCHUPNER  
Notary Public, State of New York  
No. 01SC5054756  
Qualified in Dutchess County  
Commission Expires Jan. 22, 2018

# EXHIBIT C



## **TOLLING AGREEMENT**

This Agreement is made by and between Banta Management Services, Inc., Banta BWW, MDT LLC, Banta Nine Mall, LLC, Banta BWW ON, LLC, Banta BWW NB, LLC, George E. Banta, Sr., George E. Banta, Jr., and their officers, agents, parent corporations, subsidiaries, joint employers and/or representatives (collectively “Buffalo Wild Wings” or “Defendants”) and Plaintiffs. This agreement is for the benefit of Plaintiffs and “Potential Plaintiffs” as that term is defined. “Potential Plaintiffs” are those servers, bussers, bartenders and other “tipped workers” employed by Buffalo Wild Wings at locations operated by Defendants at Middletown, New York, Wappinger Falls, New York and Oneonta, New York between June 6, 2010 and the date this tolling agreement is ended by either party pursuant to the terms of this Agreement.

WHEREAS Plaintiffs and Potential Plaintiffs are or were employees of Buffalo Wild Wings and Plaintiffs have indicated their intent to file an action (the “Action”) bringing claims on behalf of themselves and Potential Plaintiffs under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) and the New York Labor Law (“NYLL”);

WHEREAS, without admitting any liability or likelihood of liability, counsel for Plaintiffs and Potential Plaintiffs and Buffalo Wild Wings agree that pre-litigation discussions of the proposed Action are warranted;

NOW THEREFORE, for good and sufficient consideration, the receipt of which is hereby acknowledged, Plaintiffs and Potential Plaintiffs and Buffalo Wild Wings hereby agree as follows:

1. Tolling Provision. The statute of limitations on any claim brought by Plaintiffs in the Action under the FLSA or NYLL (as described above) shall be tolled during the period of time beginning on the Effective Date of this Agreement (defined below) and ending seven (7) days after either party gives notice of termination to the other as set forth below (hereinafter, the “Tolling Period”). Neither party shall put forward or rely upon the time passing within the Tolling Period as a bar by virtue of the statute of limitations or laches in the Action. Provided, however, nothing in this Agreement shall prohibit Buffalo Wild Wings from relying on the passage of time occurring outside of the Tolling Period for the purposes of asserting the statute of limitations or laches as defenses in the Action. This paragraph does not apply to claims made to enforce this Agreement. Nothing contained in this Agreement shall be deemed as an admission by any party with respect to any allegations or claims.

2. Duration. The Effective Date of this Agreement is July 28, 2016, and this Agreement shall terminate seven (7) days after either party gives written notice of cancellation to the other.

3. Use of Agreement. During the term of this Agreement, Plaintiffs and Potential Plaintiffs shall refrain and forebear from commencing, instituting, or prosecuting any lawsuit, arbitration, action, or other proceeding against Buffalo Wild Wings raising FLSA or NYLL claims. Furthermore, during the term of this Agreement, Buffalo Wild Wings shall advise counsel for Plaintiffs of any other pending litigation or contemplated litigation on behalf of one or more tipped workers of which Buffalo Wild Wings or its counsel is or becomes aware. Upon execution of this Agreement by the Parties, Plaintiffs' counsel shall disclose to Defendants' counsel the names of the individual plaintiffs who have agreed to be members of the putative class action and/or collective action. During the term of this Agreement, Plaintiffs' counsel agrees that it will not solicit additional employees or former employees of the Defendants to be members of the putative class action and/or collective action. During the term of this agreement, Defendants agree they will not discuss this matter with any putative Plaintiff.

4. Modification. This Agreement can be modified only in a writing signed by the parties. This Agreement shall constitute the entire understanding between the parties concerning the subject matter of this Agreement and supersedes and replaces all prior negotiations, proposed agreements, and agreements, written or oral, relating to this subject.

5. Successors. This Agreement shall bind and benefit each of the parties and their respective predecessors, successors, and assigns.

6. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

7. Execution of Counterparts. Separate counterparts of this Agreement may be executed by the parties with the same force and effect as if all such parties had executed a single copy of this Agreement.

8. Authority to Bind. Each Counsel executing this Agreement represents and warrants that he or she has been authorized to enter into this Agreement on behalf of the party on whose behalf it is signed and that signatory has full and complete authority to do so.

9. Notices. Any notice, request, instructions or other document to be provided hereunder by either party to the other shall be in writing and delivered personally or mailed by certified mail, postage prepaid, return receipt requested (such personally delivered or mailed notice to be effective on the date actually received) or by electronic means as follows:

If to Plaintiffs and Potential Plaintiffs, address to:



If to Plaintiffs and Potential Plaintiffs, address to:

Brian S. Schaffer  
Fitapelli & Schaffer, LLP  
28 Liberty Street  
New York, New York 10005

If to Defendants, address to:

Benjamin F. Neidl  
Wilson, Elser, Moskowitz,  
Edelman & Dicker, LLP  
677 Broadway  
Albany, New York 12207

Notwithstanding anything to the contrary in this Agreement, either party may alter the name and contact information to whom notice is to be sent under this section, by providing the other party with an updated name and contact information in writing.

Dated: June 6, 2016

Plaintiffs and Potential Plaintiffs

By:

  
Brian S. Schaffer

Dated: 8/1, 2016

Banta Management Services, Inc., Banta BWW,  
MDT LLC, Banta Nine Mall, LLC, Banta BWW ON,  
LLC, Banta BWW NB, LLC, George E. Banta, Sr.,  
and George E. Banta, Jr.

By:

