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Sent: Friday, December 6, 2024 12:33 PM

To: Ferguson, Andrew <aferguson2@ftc.gov>; Barnett, Gary <gbarnett@ftc.gov>; Peraza, Marco <mperaza@ftc.gov>

Cc: Brennan Duckett <BDuckett@restaurant.org>

Subject: RE: Meeting with National Restaurant Association

Marco and Commissioner Ferguson – thank you for your time today and please see the meeting summary below.

Summary:

Restaurants should not be included in the FTC’s “Rule on Unfair or Deceptive Fees.” Specifically, the rule should permit:

1. Service fees to compensate waitstaff
2. Delivery fees
3. Credit card usage fees

Restricting service fees is anti-worker as it cuts server wages. Service fees are fully compliant with existing law as IRS Rev. Rul. 2012-18 says “...to the extent any portion of a service charge paid by a customer is distributed to an employee it is wages for FICA tax purposes. This action would also scrap existing collective bargaining agreements

Customers enjoy delivery from restaurants and would be confused if they would order from a separate menu with higher prices for delivery. Additionally, the FTC proposal has no solution for how different types of delivery (distance, product type, order size) would incur different menu prices.

Restricting credit card usage fees ends transparency for customers and forces unbanked customers to essentially pay for credit card usage without the convenience or access to credit card rewards programs.

Finally, the sky-high compliance costs of \$3.5 billion across the industry and over \$4,800 per menu would force restaurant operators to raise menu prices. Restaurant operators run on a 3-5% margin and make an average of \$45,000/year. The cost of making this change would be approximately 10% of their total income.