

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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)	
)	Chapter 11
In re:)	
)	
TOPS MARKETS, LLC,)	Case No. 18-22277 (RDD)
)	
)	
)	
)	
Debtor)	
)	
)	
)	

ATTACHMENT TO AMENDED PROOF OF CLAIM

1. Paul J. Murphy, Regional Director for Region 3 of the National Labor Relations Board (the Board), Niagara Center Building, 130 S. Elmwood Avenue, Suite 630, Buffalo, New York 14202, is the statutory agent of the Board and is authorized under the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169, to make this Amended Proof of Claim on behalf of the claimants described below.

2. The Board has exclusive jurisdiction to determine the liability of Tops Markets, LLC (the Debtor), for unfair labor practices and to determine the amount of Debtor’s backpay and monetary liability. *See Nathanson v. NLRB*, 344 U.S. 25, 27 (1952); *San Diego Building Trades Council v. Garmon*, 359 U.S. 234, 245 (1959); *In re Tucson Yellow Cab*, 27 B.R. 621, 622-23 (Bankr. 9th Cir. 1983); *In re Shippers Interstate Service*, 618 F.2d 9, 12 (7th Cir. 1980). The Board is the exclusive public agent chosen by Congress to enforce the NLRA and is “a [bankruptcy] creditor as respects the back pay awards” it issues. *Nathanson*, 344 U.S. at 27.

3. The debt in unfair labor practice Cases 03-CA-192010 and 03-CA-196668 is evidenced by the Board's Order, dated May 9, 2018, adopting the findings and conclusions of the Administrative Law Judge in which the Judge found that the Debtor had committed unfair labor practices within the meaning of Section 8(a)(1) and (5) of the NLRA, 29 U.S.C. §§ 158(a)(1) and (5), by, *inter alia*, failing to implement and adhere to the wages, terms, and conditions of work as set forth in its collective-bargaining agreement with the United Food and Commercial Workers, Local 464A. The Administrative Law Judge's Decision and the Board's Order discussing these findings are attached to the initial Proof of Claim filed on August 17, 2018. Among other things, the Board's Order requires the Debtor to make the affected employees, at its facility located in LaGrangeville, New York, whole by way of reimbursements for any losses they incurred through its failure to implement and adhere to the terms in the collective-bargaining agreement. Debtor's liability for backpay for affected employees, as further set forth below, commenced on January 25, 2017, the date on which the contract should have been implemented, and accrued through February 21, 2018, the filing date of the Debtor's petition.¹

4. Pursuant to the Board's order, employees are entitled to backpay and interest, reimbursement for medical expenses, fringe benefit payments for pension, welfare, legal, and education funds, and excess tax liability. Exhibits 1 and 2 attached herein to the Amended Proof of Claim set forth the Board's amended calculations for the wage and benefit priorities, itemized interest and excess taxes, and the general unsecured claim.

5. (a) Wage priority, permitted under 11 U.S.C. § 507(a)(4), including vacation, sick time and personal days, is claimed in the total amount of \$47,866.31 during the period from January 25, 2017 through February 21, 2018, the date Debtor filed its petition for bankruptcy.

¹ The Board will be filing a separate Application for Administrative Expenses pursuant to Section 503(b)(1)(A)(ii) of the Bankruptcy Code, 11 U.S.C. § 503(b)(1)(A)(ii), for post-petition wages and benefits awarded as backpay pursuant to a Decision and Order of the Board.

(b) Contributions to an employee benefit plan, permitted under 11 U.S.C. § 507(a)(5), is claimed in the total amount of \$65,341.99 during the period from January 25, 2017 through February 21, 2018, the date Debtor filed its petition for bankruptcy.

(c) The remainder of the Board's pre-petition claim is a general unsecured claim totaling \$159,057.38. This figure is derived from wages and benefits owing prior to the 180 days pre-petition period, interest and excess tax liability.

DATED at Buffalo, New York this 20th day of August, 2018.

Respectfully submitted,

/s/ Paul J. Murphy

PAUL J. MURPHY
Regional Director
National Labor Relations Board, Region 3
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202

Name	WAGE PRIORITY 8/20/17 - 2/20/18	AMOUNT AVAILABLE FOR BENEFIT PRIORITY AFTER WAGE PRIORITY CAP OF \$12,850
DIMAGGIO, CHRISTOPHER R	\$ 10,755.77	\$ 2,094.23
HANKAMP, CYNTHIA A	\$ 3,555.00	\$ 6,684.00
NOVOA, WILLIAM	\$ 9,412.94	\$ 3,437.07
PALMER, KEVIN J	\$ 1,014.54	\$ 6,684.00
PECORELLA, GREGORY C	\$ 5,312.20	\$ 6,684.00
SHEEHAN, RYAN	\$ 778.66	\$ 4,750.00
STRACK, EDWARD W	\$ 4,629.31	\$ 8,220.69
CAREY, CHRISTOPHER	\$ 2,248.54	\$ 6,653.50
CLARK, SHEILA G		\$ 940.00
SWEENEY, DANIEL P	\$ 254.75	\$ -
Total FT		
ACKERMAN, KATRINA M		
ANDREWS, MARK R	\$ 944.56	\$ 1,602.00
CATALANO, MICHAEL A	\$ 250.25	\$ 795.00
COLLINS IV, GEORGE A	\$ 1,275.18	\$ 1,602.00
DARROW, CHARLES M	\$ 2,303.44	\$ 1,602.00
GALLAGHER, DANIELLE C	\$ 781.65	\$ 1,602.00
HARRIS, DANIEL M	\$ 774.28	\$ 1,602.00
HEADY, JOANN E	\$ 1,467.30	\$ 1,590.00
JACKSON, WILLIAM	\$ 219.00	
JOHNSON, SAMANTHA L	\$ 6.00	
JOSE LOPEZ, MANUEL	\$ 24.00	
MCDERMOTT, JOHN P	\$ -	\$ 1,602.00
MICHETTI, FRANK P	\$ 1,199.58	\$ 1,602.00
OLLIVETT, PAUL	\$ 46.50	
PORTUGAL, ADRIANA M		
RACCHUMI, SAMANTHA	\$ 13.00	
STALLONE, CHRISTOPHER E	\$ 426.63	\$ 1,599.00
WHITTON, JOSEPH E		
GRANUZZO, VINCENT V		

ARGENTI JR, CHARLES		
BINDA, ROBERT P		
BROWN, QUAYSHAWN C		\$ 1,541.00
CONTELMO, JEFFREY J		\$ 210.00
COVERT, COLLEEN		

EXHIBIT 3

EXHIBIT 1

DREANY, GAIGE C		
DUNN, BRADLEY N		
EDWARDS, CHRISTIAN A		
GILMAN, ASHLEY		
MAULSBY, JONATHAN D		
MONACO, SABRINA G	\$ 117.50	\$ 265.00
MONAHAN, ARIANNA M		\$ 55.00
NETTO, NICHOLAS E		\$ 56.75
PETTYJOHN, SADIE T		
REDETI, KYLE		
SCHEMBRI, THOMAS J	\$ -	\$ 266.75
SHERMAN, DEVON		
SHERMAN, TYLER C	\$ 55.75	
SWEENEY, DANIEL P		\$ 1,602.00
TANNUM, WYATT J		
GAVASCI, CHRISTIAN A		
LAMONT, ASHLEY N	\$ -	
HUNT, MELISSA		
OLMO-ESCOTO, DAWN M		
MOSCIOLI-FALLAS, MARCELLA A		
BAYREUTHER, JAMES		
CORBIN, WAYNE		
HEINRICH, STEVEN		
LANGELLA, TONI		
BURCHFIELD, KATELYN		
GALINDO, DAMIEN		
MILKINS, RYNE C		
Total PT		

\$ 47,866.31 \$ 65,341.99

Name	INTEREST AND EXCESS TAX GENERAL UNSECURED	GRAND TOTAL GENERAL UNSECURED
DIMAGGIO, CHRISTOPHER R	\$ 1,417.00	\$24,612.71
HANKAMP, CYNTHIA A	\$ 477.31	\$13,048.62
NOVOA, WILLIAM	\$ 1,203.54	\$22,514.36
PALMER, KEVIN J	\$ 296.95	\$12,206.03
PECORELLA, GREGORY C	\$ 678.16	\$14,738.05
SHEEHAN, RYAN	\$ 35.22	\$35.22
STRACK, EDWARD W	\$ 509.09	\$12,799.76
CAREY, CHRISTOPHER	\$ 317.07	\$10,986.23
CLARK, SHEILA G		\$1,238.00
SWEENEY, DANIEL P	\$ 37.89	\$4,768.96
Total FT		
ACKERMAN, KATRINA M		
ANDREWS, MARK R	\$ 53.49	\$2,101.80
CATALANO, MICHAEL A		\$172.50
COLLINS IV, GEORGE A	\$ 141.60	\$3,413.59
DARROW, CHARLES M	\$ 305.40	\$4,954.43
GALLAGHER, DANIELLE C	\$ 50.96	\$2,135.62
HARRIS, DANIEL M	\$ 192.00	\$3,292.46
HEADY, JOANN E		\$144.25
JACKSON, WILLIAM		\$0.00
JOHNSON, SAMANTHA L		\$0.00
JOSE LOPEZ, MANUEL		\$0.00
MCDERMOTT, JOHN P	\$ 29.00	\$2,192.50
MICHETTI, FRANK P	\$ 27.59	\$2,003.35
OLLIVETT, PAUL		\$0.00
PORTUGAL, ADRIANA M		\$0.00
RACCHUMI, SAMANTHA		\$0.00
STALLONE, CHRISTOPHER E		\$1,921.50
WHITTON, JOSEPH E		\$11.75
GRANUZZO, VINCENT V		\$524.00
		\$0.00
ARGENTI JR, CHARLES		\$0.00
BINDA, ROBERT P		\$0.00
BROWN, QUAYSHAWN C		\$2,704.60
CONTELMO, JEFFREY J		\$0.00
COVERT, COLLEEN		\$0.00

EXHIBIT 4

EXHIBIT 2

DREANY, GAIGE C		\$3,264.67
DUNN, BRADLEY N		\$1,215.00
EDWARDS, CHRISTIAN A	\$ 14.02	\$2,138.27
GILMAN, ASHLEY		\$0.00
MAULSBY, JONATHAN D		\$0.00
MONACO, SABRINA G		\$1,967.48
MONAHAN, ARIANNA M		\$1,290.74
NETTO, NICHOLAS E		\$467.25
PETTYJOHN, SADIE T		\$0.00
REDENTI, KYLE		\$0.00
SCHEMBRI, THOMAS J	\$ 3.72	\$1,916.02
SHERMAN, DEVON		\$0.00
SHERMAN, TYLER C		\$20.75
SWEENEY, DANIEL P		\$746.00
TANNUM, WYATT J		\$46.25
GAVASCI, CHRISTIAN A		\$24.00
LAMONT, ASHLEY N	\$ 13.83	\$1,790.43
HUNT, MELISSA		\$0.00
OLMO-ESCOTO, DAWN M		\$17.25
MOSCIOLI-FALLAS, MARCELLA A		\$0.00
BAYREUTHER, JAMES		\$0.00
CORBIN, WAYNE		\$0.00
HEINRICH, STEVEN		\$0.00
LANGELLA, TONI		\$0.00
BURCHFIELD, KATELYN		\$0.00
GALINDO, DAMIEN		\$31.00
MILKINS, RYNE C		\$1,602.00
Total PT		
	\$ 5,803.83	\$159,057.38