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- HIGH SCHOOL -

MOCK TRIAL



STATE OF BUCKEYE EX REL.

HOLLIS FITZPATRICK

— v. —

FRAN DEBIER, ET AL.



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and the American Civil Liberties Union of Ohio Foundation.

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Witness **Statements**

STATEMENT OF HOLLIS FITZPATRICK

Relator – Owner of Fitzpatrick’s

1 My name is Hollis Fitzpatrick. My family has owned and operated Fitzpatrick’s – a local
2 restaurant located in the center of Harmony – for as long as I can remember. Growing up, my
3 parents often told me how Fitzpatrick’s has long been a local favorite in Harmony. We like to
4 keep things consistent and predictable so that our customers know what they’re going to get
5 when they dine with us. Many of my memories from childhood and my teenaged years involve
6 the restaurant in some way. I never saw myself running the place because I’m more of a big
7 picture person than a detail person. I find keeping track and staying on top of details to be an
8 unpleasant feature of being “the boss,” but my parents were ready to retire. I wanted to keep the
9 family legacy alive, so I agreed to take over. My partner and I moved into the apartment above
10 the restaurant when I started running things, so I was able to be very hands on.

11 While I have a lot of fond memories and a lot of affection for Fitzpatrick’s, I have to
12 admit that things haven’t always been easy. My family has always kept our food prices low, so
13 profit margins can be slim. I’m fortunate to have a partner that makes a great salary working for
14 their family’s drone company, so I don’t have to worry about bringing in too much money. Still,
15 I tried to run the restaurant efficiently so I would have something to pass down to my own
16 children one day. I’ve always been a do-it-yourself person to save money, such as growing a lot
17 of the produce that we’ve used in the restaurant in my garden at home. Over the years, I also got
18 creative with what I could do myself rather than calling a technician to do it. I think the project I
19 am most proud of at the restaurant is doing the plumbing. Do you have any idea how much a
20 plumber charges just to come out and diagnose a problem when it comes up? I saved a bundle!
21 Of course, the Harmony Health Department wasn’t as impressed with my plumbing project as I
22 was. They issued a citation, saying the plumbing as installed was in violation of the health code.

23 This wasn't the first citation from the Harmony Health Department for one of my DIY projects.
24 If they can't get your restaurant for issues of cleanliness – which was most certainly the case at
25 Fitzpatrick's – then they go out of their way to get you on technical violations. I mean,
26 restaurants are heavily regulated under the health code, but I've always wondered if they had a
27 quota of citations they needed to write or something.

28 As I mentioned, profit margins were sometimes pretty slim at the restaurant. Things were
29 really rough during the Great Recession of 2008. The economic recovery was so slow – I didn't
30 think the restaurant would make it. In early 2010, I filed for bankruptcy under Chapter 11, but
31 the judge dismissed the petition because my attorney missed a deadline to file an update with the
32 bankruptcy court. After that, I explored a bunch of different business options that could utilize
33 the space at Fitzpatrick's, such as a game café, a book café, heck, even a cat café. Given the area,
34 none of those were viable options. Even if a different business would have been viable,
35 converting the restaurant to something else would require substantial, expensive renovations that
36 just aren't feasible. I became so despondent that I seriously considered getting out of the
37 restaurant business altogether and selling Fitzpatrick's, but no one was interested in buying the
38 restaurant during such a slump in economic recovery.

39 Thankfully, the economy improved, and Fitzpatrick's eventually got back on its feet. By
40 late 2015, the lunch and dinner rushes came back and there were people waiting for tables again.
41 It was so good to get back to normal! I noticed we were also getting a younger clientele. You
42 know the type – young people who do everything electronically and always have their cell phone
43 close by. I noticed the new clientele had tastes, dietary needs and preferences our menu did not
44 accommodate, so I switched to organic produce and altered the menu a bit to appeal to the
45 younger crowd. Sure, the organic produce and specialty menu items were an additional cost but

46 investing in changes to the menu really paid off. We saw a whole new group of diners in addition
47 to our regulars' familiar faces and we were making a profit again. Over the course of several
48 months, we reinvested in the restaurant. We refreshed the interior design and replaced the
49 counter seating. We also repaired and upgraded the fixtures in the bathrooms. By 2019, we had
50 been doing so well, my accountant Phoenix Anderson convinced me to make some additional
51 investments. I took out a small loan and installed pin ball machines, a projector, and a self-serve
52 ice cream bar. I also upgraded the POS system to get away from the pen and paper method that
53 Phoenix hated so much. Between late 2015 and the Spring of 2020, Fitzpatrick's made a decent
54 profit that increased slightly each year.

55 Sometime in 2018, a real estate developer named Riley Zhang approached me about
56 selling the current Fitzpatrick's space and reopening in one of their developments. By that time,
57 Fitzpatrick's had been back on its feet for a couple of years, and I was honestly embarrassed that
58 I had ever considered selling the place, so I politely declined the offer. Still, Riley constantly
59 visited Fitzpatrick's at weird times of the day to pepper me with questions about how profitable
60 we were and to make comments about our menu. I think they intentionally chose odd times to
61 visit because we weren't as busy. Riley even went so far as to suggest that we transition to "fast
62 casual" – AKA a fast-food restaurant. I was completely offended by the suggestion! I repeatedly
63 told Riley that Fitzpatrick's was doing well and that we weren't selling, but they continued
64 pestering me. They didn't want to take no for an answer because apparently Fitzpatrick's was the
65 only business on the main strip refusing to sell, and Riley wasn't happy about it.

66 I ran out of patience with Riley and wanted them gone so I agreed to let them look over
67 Fitzpatrick's financials. I thought that might be enough to convince them to leave me alone, but I
68 was wrong. Riley became fixated on the idea of buying Fitzpatrick's current location and having

69 us reopen as a fast-food restaurant in their new development. They tried to convince me that, in
70 their experience, the clientele around Fitzpatrick's were more likely to visit a fast-food restaurant
71 than to dine at a sit-down restaurant. What experience?! Riley is a young kid who might have a
72 good idea or two, but they're a know-it-all who refuses to listen to someone with more
73 experience. Riley's offers to buy the restaurant were insultingly low; they were just trying to get
74 one over on me. After I rejected two or three different offers, they eventually got the hint and left
75 me alone. Dealing with Riley Zhang was nothing but a negative experience.

76 A couple of years later, things took a very sharp turn when the international pandemic
77 involving COVID-19 started dominating the news. COVID-19 was a new airborne disease that
78 no one knew anything about other than it is easily transmittable through close-proximity and
79 touch. It was a really scary time. The start of the pandemic was a whirlwind with deaths from the
80 virus, business closures, and a stay-at-home order. Governor DeBier closed all bars and
81 restaurants on March 15, 2020. We had very little notice, so it was a hard hit to the local food
82 industry.

83 The financial situation at the restaurant deteriorated quickly because we had already had
84 a slow start the year, which was normal coming of the winter holidays. March was typically the
85 beginning of our busy time because of St. Patrick's Day, but restaurants were shut down before
86 business had a chance to pick back up. Being completely closed to in-person dining meant I had
87 no way to pay my employees, so I applied for a Paycheck Protection Loan ("PPL") from the
88 Small Business Administration on April 8, 2020. The PPL was a forgivable loan under a state
89 government program designed to help businesses keep employees on staff during the pandemic.
90 All I know about the loan is that if we furloughed or terminated any employee, the loan would

91 become repayable to the state – the rest I left to Phoenix to figure out. On April 30, 2020 we
92 received our first PPL payment from the SBA for \$125,000.00.

93 After receiving the payment, I met with Phoenix to see what cuts we could make to keep
94 the restaurant running. Phoenix ran the numbers a whole bunch of different ways and the answer
95 was always the same – we were going to be operating at a net loss, no matter what. I revisited the
96 idea of adding a carry-out component to our business. With the first PPL payment, I hired a local
97 high school student with a web-design business to build a website for Fitzpatrick’s. The entire
98 experience was a nightmare! The website constantly generated errors. The orders that would
99 come to us were either completely wrong – the order would say that someone ordered beef when
100 they actually ordered chicken – or the order was correct but the quantity was wrong – the order
101 would say that someone ordered four chicken sandwiches when they really only ordered two.
102 These constant errors resulted in even more losses for Fitzpatrick’s, so we shut down the website
103 and abandoned the idea of including carry-out as an option for our restaurant. We did continue to
104 take orders placed over the telephone, but the volume of telephone orders was a fraction of what
105 other restaurants do through the various tech platforms.

106 The stay-at-home order was set to expire on May 1, 2020. We tried to keep carryout
107 going in the meantime, but the income was negligible. I didn’t know what to do – we were faced
108 with the reality that we wouldn’t bring in any money for another four weeks. As you can
109 imagine, I wasn’t the only one who was upset. All over Buckeye, people were protesting the
110 orders that Governor DeBier put in place. Finally, things seemed to be on the upswing in late
111 April when Governor DeBier announced a plan to slowly reopen Buckeye. This was such good
112 news! I thought for sure they would start with restaurants and bars, since those were the first

113 businesses to be shut down, but that didn't happen. Instead, they resumed health procedures and
114 permitted dental and veterinary offices to reopen.

115 Days later, everything took a step backwards when Governor DeBier extended the stay-
116 at-home order to May 29, 2020. This was the exact opposite of what the governor had just told us
117 days before. The plan was to slowly reopen Buckeye, not to keep things shut down. It had been
118 over six weeks since we had made any money, and I was afraid the stay-at-home order would
119 just keep getting extended. Admittedly, I was angry and scared about the future of Fitzpatrick's.
120 When Governor DeBier announced that restaurants would be allowed to reopen, with
121 restrictions, on May 15, 2020, I couldn't even be excited. Only restaurants with outdoor seating
122 were permitted to open, which Fitzpatrick's did not have. There was no way for me to even add
123 outdoor seating because we were boxed in by a small sidewalk out front and a narrow alley in the
124 back. I was crushed.

125 Finally, on May 21, restaurants were permitted to reopen for indoor dining with
126 restrictions in place. I was so excited to finally be able to reopen! I spoke with someone at the
127 Harmony Health Department to understand the restrictions that were put in place. Every other
128 table had to remain empty with at least six feet of clearance between all tables, the total number
129 of occupants, including kitchen staff and customers, had to be reduced to 50% of the normal
130 capacity, plexiglass had to be installed between tables and between counter seats, physical menus
131 were prohibited, the restaurant was required to close all in-person dining no later than 6:00 p.m.,
132 and all customers were required to wear masks, unless they were actively eating or drinking.

133 After that conversation, I headed right over to Fitzpatrick's with a tape measure and
134 plexiglass. I was willing to do whatever we had to do to reopen because we certainly couldn't
135 afford to be closed any longer. Fitzpatrick's wasn't a large restaurant by any means. Our family

136 made several improvements to the building and the area surrounding the restaurant over the
137 years, but space inside the restaurant is limited. It was not at all uncommon for there to be a wait
138 for a table during our lunch and dinner rush. We had only a few four-person booths and tables,
139 one two-person table, and twelve counter seats. If we filled every available seat, we could
140 accommodate thirty-four customers at a time. While I never heard any complaints about the size
141 of the restaurant and usually, I agreed with the locals who said that it added to the restaurant's
142 charm, it was a serious problem when it came to complying with the pandemic restrictions.

143 I called Finley Abara, the Director of the Buckeye Restaurant Association and a former
144 employee of Fitzpatrick's who I've known for a long time. I asked for their assistance with
145 changing the layout of the restaurant to maximize the number of diners while complying with the
146 restrictions. Once I started measuring, Finley and I realized just how significant an impact these
147 restrictions were going to have on Fitzpatrick's ability to operate. To make a profit, we needed to
148 operate at a minimum of two-thirds capacity during our breakfast, lunch, and dinner rushes. This
149 proved to be an impossible task given the restrictions we had to follow.

150 As I said, Fitzpatrick's wasn't a big place. To comply with the COVID-19 guidelines, we
151 had to close the two-top table, one of the four-person booths, and one of the four-top tables in
152 addition to closing all but four counter seats. Given the reduced capacity and restricted layout,
153 our usual maximum of thirty-four patrons was slashed to no more than sixteen people in the
154 restaurant at one time. There was no configuration that Finley or I could come up with that
155 would have made Fitzpatrick's profitable. We couldn't even guarantee that the remaining tables
156 would always be full. To be sure we weren't missing anything, I used an online platform that
157 calculates a restaurant's maximum efficiency. Finley also utilized the services of an industrial
158 designer who looked at the space to create the best layout given the government restrictions. The

159 website and the designer came to the same conclusion I did; there was no way to operate at two-
160 thirds capacity while following the guidelines.

161 To make matters worse, being forced to close in-person dining by 6:00 p.m. meant we'd
162 miss out on two hours of the dinner rush that would otherwise last three hours. Business at
163 Fitzpatrick's started to pick up around 5:00, got busy at 5:30 and stayed busy until we closed at
164 8:00. During our normal rush, we could turn over all of our tables at least three times during
165 dinner service. It was not at all unusual for us to serve 60-70 people between 5:00 and 8:00 p.m.
166 Without being able to operate on at least two-thirds capacity and without the ability to stay open
167 for the entire dinner rush, Fitzpatrick's would not be profitable. We were open from 8:00 a.m.
168 until 8:00 p.m., but dinner was easily the biggest money maker of the day. With less than half
169 capacity and a drastically reduced dinner service, I was not optimistic about Fitzpatrick's future.

170 On June 3, 2020, I requested a hearing before the state health department seeking an
171 exemption from the COVID-19 restrictions, because we simply couldn't afford to operate in
172 accordance with the restrictions. I was also angry, because I knew that back on March 19, 2020,
173 Governor DeBier gave an exemption to the health orders to the cast and crew of a movie that was
174 being filmed in Wilbur, Buckeye about a Buckeye football legend. The way I heard it, the
175 exemption allowed food and beverages to be served 24 hours a day until they were done
176 shooting. They were allowed to operate when businesses like mine were completely shut down! I
177 felt like we were being treated unfairly because we weren't as connected. I finally heard back
178 from the Health Department almost a month later. They denied my request in a one sentence
179 letter – they said there was just no mechanism in place for someone to make a request like that. I
180 was really upset – the health orders were killing my business, and no one seemed to care.

181 I wasn't ready to throw in the towel, so we reopened and did our best, but the restrictions
182 made it impossible for us to break even, let alone make a profit. Local businesses were inspected
183 by the health department pretty regularly to make sure they were in compliance with the
184 regulations – these inspections were much more frequent than the typical inspections we're used
185 to. Wearing masks became a hot button issue in Harmony and the employees of Fitzpatrick's
186 grew to hate trying to ensure that patrons were following the mask rules. We learned that many
187 of our competitors were switching to a carry-out model and were getting good business using
188 food delivery platforms like UltraEats and DoorDelivery. I looked into joining those services but
189 found that it would require a substantial investment to utilize these platforms. We'd have to
190 update our sales system again, create a separate pick-up area, and develop a website for people to
191 order from, just to name a few things. We just couldn't afford to implement those changes.

192 While we muddled along as best we could, COVID-19 cases continued to increase and
193 people seemed to stop going to restaurants for an indoor, sit down meal. I scraped and saved as
194 much as I could to protect our employees, but we were operating at a net loss. Despite all of my
195 efforts, I learned that not only were we losing money due to our compliance with the health
196 orders, but we were losing money to employee theft as well. On September 17, 2020, I fired
197 Aspen Bennett for stealing money from our cash register. I caught them red handed! I was
198 devastated. I couldn't believe they would do that to me after everything I did to keep them
199 employed. Things got so bad that members of the family began forgoing paychecks just to keep
200 the restaurant going. Not only that, but many of our patrons were completely sick of all the
201 restrictions. They were especially sick of the mask mandate that had been put in place by
202 Governor DeBier. If we thought ensuring compliance with the restrictions was bad when we first
203 opened, we had another thing coming. By October, patrons were openly telling us they would no

204 longer dine at Fitzpatrick's if they were required to wear masks. It was not uncommon for
205 patrons to get angry and walk out if they were asked to put on their mask.

206 The second PPL payment of \$125,000.00 came in on October 13, 2021. We had been
207 operating at a net loss for so long that it seemed the PPL money went out to pay bills the same
208 day that it came in. We continued to try to stay afloat with family members continuing to forgo
209 paychecks. The patrons who were tired of the restrictions continued to protest by either not
210 patronizing Fitzpatrick's at all or by getting angry and walking out. Just as the situation was
211 coming to a head, there seemed to be some light at the end of the tunnel. On October 28, 2020, I
212 was watching the governor's daily press briefing when they announced a new process to request
213 exemptions from the existing COVID restrictions. Apparently, the governor's restaurant buddies
214 complained the restrictions were unfairly broad and said there should be a review process for
215 individual businesses. I was thrilled with the possibility of navigating around the restrictions, but
216 I was livid that they didn't create this process months ago when I originally made the request.
217 First, Governor DeBier allowed the Rural Meijer movie to ignore restrictions and then they
218 created a whole new process just because their friends asked for it. It was clear the governor gave
219 special treatment to their inner circle and left small businesses like mine hanging out to dry.

220 On November 4, 2020, I set my frustrations aside and reapplied for an exemption from
221 the COVID-19 restrictions. It was only two days after the application became available, so I
222 figured I would hear back soon. I needed an answer fast because Fitzpatrick's was holding on by
223 a thread and I was pretty much out of options. The restaurant was hemorrhaging money so, we
224 made the difficult decision to lay off all employees who weren't members of the family. We
225 knew this worked against us being forgiven for the paycheck protection loans, but there was no
226 other option. We tried to wait for a response from the Health Department and tried to continue

227 operating in compliance with the restrictions, but it was just impossible. The Health Department
228 didn't get back to me for over a month, and they didn't even grant my request because they
229 wanted "more information." To add insult to injury, other small businesses owned by friends of
230 DeBier were approved for exemptions almost immediately. By the time the response came
231 through, Fitzpatrick's was done. I made the most difficult decision of my life and closed the
232 restaurant for good. On December 12, 2020, Fitzpatrick's served its last meal.

233 Governor DeBier finally lifted the restrictions on bars and restaurants on May 20, 2021
234 and I watched from a distance as businesses began to return to normal. That was never going to
235 be a reality for Fitzpatrick's and other small restaurants that weren't on Governor DeBier's
236 favorites list. I met with a lawyer to see what could be done. Before the health orders were
237 imposed, Fitzpatrick's was doing well and operating at a profit. Had Governor DeBier not
238 imposed such harsh restrictions on restaurants, we would have continued to be a profitable
239 restaurant. It is completely unfair for the Governor to create restrictions that force a business to
240 operate at a net loss for nearly a year and ultimately close its doors due to the subsequent
241 financial crisis. Small businesses heavily depend on foot traffic and operate on thinner margins
242 than large corporations or big box stores – how did the governor expect us to make enough
243 money to pay our electric bill, insurance, and other fixed operating costs with restrictions this
244 onerous? Small business owners were left behind and ignored and I'm angry about it. Because of
245 the restrictions put in place by Governor DeBier, I lost my family's business. I lost the
246 Fitzpatrick legacy, and I can never get it back.

STATEMENT OF PHOENIX ANDERSON

Relator – Accountant for Fitzpatrick’s

1 My name is Phoenix Anderson and I’ve handled the books for Fitzpatrick’s for over 10
2 years. I grew up in Harmony and used to go to Fitzpatrick’s after tennis practice in high school
3 because they had the best grilled cheese sandwiches and French fries. When the whole team
4 showed up, we practically took over the entire dining area! I guess that’s not saying much given
5 the size of the restaurant. I left Harmony for college, on a tennis scholarship to Wolverine State
6 University. I studied Sports Management for the first few semesters, then switched to Financial
7 Management when I ended up losing my scholarship. I’d missed a few too many practices and
8 my parents put pressure on me to pick a more “practical” major since they were footing the bill
9 for college. One of my roommates was heavily into day trading around that time and convinced
10 me that working in finance was the way to go.

11 I graduated in 2002 with a B.S. in Financial Management and moved to New York City
12 to work in accounting for Fountainhead Fund, an upstart hedge fund managed by my roommate’s
13 cousin. I had a blast in New York City and was making a pretty good living working for the
14 hedge fund. I wasn’t too worried about the timeline for earning a CPA license. Why put so much
15 pressure on myself jumping through a hoop like that, when there was plenty of money to be
16 made with all kinds of financial products? After a few years, though, one of my roommates got
17 into a little bit of trouble with an expensive drug habit, unfortunately, and decided to leave the
18 city. At the same time, Fountainhead Fund’s management team lost a few top brass to a
19 competitor and new management began scrutinizing my work, my clients, my expense accounts,
20 heck they probably knew every time I went to the bathroom. It didn’t take long for that to get old
21 and I decided moved back to Harmony, where rent is more reasonable, and I knew I’d be able to
22 find a job pretty easily.

23 A friend of my father's helped me find a job with a regional CPA firm called Rand and
24 Associates. I was working full time, working as a tennis coach part time, working on my
25 YouTube channel, plus going to all these rotary club meetings and other network-y things to start
26 getting to know businesspeople in town. I didn't have a lot of extra time to study for the CPA
27 exam, and I've never been that great at exams anyway. I passed the CPA exam on my second try,
28 in 2007, and got my license a few months later.

29 I ended up meeting Hollis Fitzpatrick at a booster club fundraising event for the Harmony
30 High School football team. We got to trading stories and they were interested to learn about my
31 hedge fund work. They ended up mentioning that their restaurant had seen better days and they
32 were starting to think they might be able to use some help with their books. It was kind of
33 kismet, because I'd grown sick of the demanding schedule at Rand and didn't think I was being
34 paid what I was worth. I thought I could do better on my own and so I decided to hang up my
35 own shingle. It was strategic too, because I had a few side hustles going, working on converting
36 a 1998 Chevy Astro minivan as well as growing my YouTube channel, CryptoFIRE. The
37 channel is kind of a passion project, it's all about cryptocurrency and financial independence.
38 You don't get wealthy on a taxable salary, passive income and dividends are where it's at.

39 During the time I was consulting for Fitzpatrick's, I met one of Hollis' cousins who was
40 working at the restaurant. We hit it off and dated for a while before we ended up getting married,
41 making me an official part of the Fitzpatrick family. I was a little nervous about mixing my
42 personal and professional life, but it's all worked out okay. There are worse people to work for
43 than your cousin-in-law. I just spent a lot of time at the restaurant between working on the
44 financials and visiting my spouse. On the positive side, I could satisfy my fried food craving
45 pretty much any time I wanted.

46 In late 2008, Hollis stopped by my office and expressed concerns about Fitzpatrick's
47 financial stability. I ended up taking over all of Fitzpatrick's books and completely devoted
48 myself to learning the business inside and out. I saw how stressful the financial part of the
49 business was for Hollis and noticed they were often distracted and did not enjoy bookkeeping.
50 As a new upstart CPA business, it was a great opportunity to shine, by taking a significant worry
51 off Hollis's plate so they could focus on what they did best - serving delicious food and spending
52 time chatting with their customers. I quickly saw that market volatility at the time was putting a
53 damper on people's discretionary spending habits, and a small family-owned diner like
54 Fitzpatrick's was taking a hit. Fitzpatrick's was a greasy spoon. Burgers ten different ways, chili,
55 fries, grilled cheese, you name it. Lots of things people can whip up at home. One of my first
56 recommendations was for Hollis to update the menu with three "modern" items: avocado toast,
57 vegan queso dip, and a kale smoothie. We argued back and forth for about a month about the
58 menu additions. Hollis was adamant that the menu should remain true to its roots and not expand
59 into what they viewed as expensive trends. The only compromise was that Hollis brought in
60 more organic produce from their garden.

61 For the rest of 2008, Hollis dug in their heels about keeping prices low, resulting in
62 continually decreasing profit margins, dropping from around 6% of sales to hovering at about 1
63 or 2% in 2009 and 2010. By then the economy was recovering from the recession and Hollis
64 consulted with a lawyer and decided to file for Chapter 11 bankruptcy, which ended up getting
65 dismissed because the lawyer (a family friend who didn't really specialize in bankruptcy filing)
66 ended up not getting some paperwork filed in time. Hollis and I were meeting practically once a
67 month during 2010 and 2011, when they were exploring many different avenues for regaining
68 profitability. We explored alternative businesses that could utilize their existing space, such as a

69 game cafe, book cafe, even a cat cafe. In particular, I thought a game cafe would be a good bet,
70 lots of kids around playing Prison Dragons or whatever it's called. Given the area though, none
71 of the options were viable. Fitzpatrick's is in a tiny space near Harmony High School. A really
72 cute historical building with a narrow dining room and a tiny kitchen space, no outdoor seating
73 and limited parking. As I said before, it can barely fit a tennis team, much less enough gamers,
74 books, or cats to turn a profit after the required expensive renovations for a conversion like that.
75 Hollis even considered exiting the food industry altogether but didn't find what they wanted in a
76 buyer.

77 During 2011 and 2012, the economy made a slow but steady recovery. The area around
78 Fitzpatrick's benefitted from the Federal tax incentive program for first-time homebuyers and we
79 saw a steady influx of young professionals move into the area. Fitzpatrick's doubled down on its
80 nostalgia factor, stuck with its tried-and-true greasy spoon menu, with the exception of a few
81 small changes, and managed to turn a modest profit in 2012, and in each year leading up to the
82 pandemic. We used a cash-based accounting system for Fitzpatrick's. Technically, this system
83 doesn't meet GAAP (generally accepted accounting principles) standards, but with Fitzpatrick's
84 small size and Hollis's intent that it will always stay that way, cash-basis was just so much less
85 of a hassle. Despite the obvious stress it caused them, I saw that Hollis liked to fancy themselves as
86 a pretty hands-on business owner and likes to be able to "understand" the books at a glance.
87 They found their previous CPA's double-entry system confusing and were happy when I
88 suggested going to a cash-basis system late in 2009. I was able to take care of the intricacies of
89 the work, without causing Hollis unnecessary angst with complicating-looking paperwork.

90 In cash-basis accounting, you record payments when they're received and processed.
91 Accounts receivable do not come into play with a cash-basis system. You record the income

92 when you receive the cash in hand. Particularly when you don't maintain inventory, as in a
93 service-based business, this is a more useful system than accrual-based accounting. GAAP
94 generally have more impact for businesses looking to secure funds from investors. Fitzpatrick's
95 had no investors and a fairly straightforward general ledger containing capital, assets, revenues
96 and expenses. In fiscal year 2012, Fitzpatrick's revenue was right around \$500,000, I think. This
97 increased by about 2% per year up until the pandemic, with an overall modest profit hovering at
98 about 3.5% of sales. COGS (cost of goods sold) was consistently moderate to high for a business
99 of its size since they used quality ingredients, yet they were not inclined to raise prices. Hollis
100 offset this somewhat by growing some of their own food, such as herbs and tomatoes. Fixed
101 overhead held steady at around 40% of sales and labor was half that, at 20%. All in all,
102 Fitzpatrick's was not in the red between 2012 and 2019, though no one could say it was a cash
103 cow either. It brought in enough to keep the lights on and give Hollis some extra cash. They
104 certainly didn't have any interest in leveraging the business for financial independence and
105 retiring early. It wasn't going to help with any grandkids' college educations the way they ran
106 things, either. I'm not sure if Hollis really understood this. They liked to think they were hands
107 on, but they really had no idea what was happening financially with the restaurant. Hollis'
108 spouse was the breadwinner, so Hollis just tinkered around at the restaurant to keep the family's
109 legacy alive.

110 In 2019, I successfully talked Hollis into making some new investments in the restaurant.
111 We managed to weather the storm in 2008 and turned a decent enough profit over the last seven
112 years, so it seemed like a good time to make the next move. We went back and forth on ideas to
113 attract new, younger crowds until we came to a compromise. I got my way by convincing Hollis
114 to update the point-of-sales ("POS") system so servers didn't have to hand write customer checks

115 anymore. Hollis got their way by adding a self-serve ice cream sundae bar and a couple of
116 pinball machines “for the kids.” We both agreed to purchase a new projector and screen bundle
117 so we could show sporting events at the restaurant. This was something that would appeal to new
118 customers and our regulars, so it made sense. This was the biggest change Hollis had agreed to
119 since I started working with them, so I didn’t waste any time for fear they might change their
120 mind. In Q3 of 2019, Hollis took out a small business loan to cover the expenses which totaled
121 about \$23,000. The bulk of the loan went toward the pinball machines which cost us a total of
122 \$13,498. Hollis really wanted to bring in Harmony’s younger crowd, so they opted for a \$6,999
123 Mandalorian machine and a \$6,499 Avengers machine. We spent \$5,498 on the 4k projector
124 bundle and \$1,500 to install the updated POS system. Luckily, the ice cream bar wasn’t too
125 expensive because we were able to convert part of the old waitstaff counter into a refrigerated
126 buffet station for only \$2,500. I figured we wouldn’t have any trouble repaying the loan if
127 Fitzpatrick’s revenue continuing trending the way it had been, and we managed to bring in new
128 customers with the improvements. I could never have predicted a once in a lifetime pandemic
129 would hit, completely wiping out any hope of paying off the loan.

130 When restrictions were enacted to combat the pandemic, Fitzpatrick’s was unfortunately
131 in precisely the worst position to withstand the economic stress of dramatically reduced customer
132 traffic. January and February had always been slow months for the restaurant because people
133 tend to avoid greasy spoon diners while on their new year’s resolution diets. That’s a normal part
134 of the food service industry, but typically business picked up again around St. Patrick’s Day. I
135 mean, it was a restaurant named Fitzpatrick’s, need I say more? Buckeye’s first confirmed
136 COVID-19 case occurred on March 9 and the governor closed all bars and restaurants on March
137 15, so we didn’t make it to the St. Patrick’s Day upswing. By the time the pandemic hit, we had

138 already dipped into the cash reserve to get through our normal slow time and things only got
139 worse from there. The restrictions effectively took away Fitzpatrick's ability to function as a
140 viable business. At first indoor dining was eliminated. Then it returned, with restrictions. The
141 restrictions reduced capacity by 50%, required six feet of distance between tables, and forced
142 Fitzpatrick's to close its doors at 6 p.m. each day. During Q2 of 2020, Fitzpatrick's experienced
143 more than a two-thirds reduction in sales. The stock market also tanked, and I unfortunately
144 liquidated 80% of my portfolio within a month, adding probably a decade or more to my early
145 retirement plan.

146 For the rest of financial year 2020, Fitzpatrick's continued to operate at a significant loss.
147 The distancing and capacity guidelines made it impossible to turn a profit because it cut the
148 number of available seats to less than half. To be profitable, Hollis needed to fill at least two-
149 thirds of the restaurant during peak business times. Two-thirds capacity was the last point at
150 which the restaurant would be profitable, with a profit margin of just about 1.25%. The impact of
151 the regulations was especially severe because it cut out two hours of the dinner rush by forcing
152 restaurants to close at 6 p.m. Fitzpatrick's made about 60% of their daily revenue from the dinner
153 rush, which usually lasted from 5-8 p.m. Cutting out two full hours of service on top of the other
154 restrictions not only eliminated any profit, but it created a significant deficit.

155 To provide some context, before the pandemic, Fitzpatrick's would make about \$1,578 in
156 daily revenue when they were operating on mostly full capacity. Taking out the fixed overhead,
157 the cost of my contract, labor (about 20% of revenue) and food costs (about 35% of revenue),
158 Fitzpatrick's turned a daily profit just under \$57. Even during the times when they could only
159 run on two-thirds capacity, the restaurant still brought in enough to make a profit with a daily
160 revenue of about \$1,200. Reducing food costs to 30% and labor to a skeleton crew (about 14% of

161 revenue), contract and fixed overhead remaining the same, Fitzpatrick's would make a daily
162 profit just over \$15. Normally business trends were somewhere on the spectrum between full
163 capacity and two-thirds capacity, so Fitzpatrick's typical profit margin was 3.5%. With the
164 pandemic restrictions in place, the daily revenue was dramatically reduced to an average
165 somewhere around \$458. Even with the staff working at a skeleton crew and food costs only
166 running 30% of the total daily revenue, Fitzpatrick's was still losing almost \$730 every day.
167 There was no way for the restaurant to survive on that model.

168 Hollis recognized that competitors were turning to online ordering and carryout services,
169 but the upfront technology investment to get these systems quickly in place was cost prohibitive.
170 The PPL funds helped somewhat, but not nearly enough. The size of the restaurant also
171 complicated matters. There simply wasn't space to easily accommodate the foot traffic generated
172 by a sizeable enough carry out business in order to offset the cost. The estimate to upgrade the
173 POS system again, construct an area in the dining room to accommodate carryout guests, add
174 parking, purchase food containers/bags, and amp up cleaning routines was just too great a
175 financial hurdle. That doesn't even take into consideration building contingency for when the
176 restaurant needed to temporarily halt all operation when a customer or employee tested positive
177 for COVID-19. It all overwhelmed Hollis and amounted to more than the PPL funds, anyway.
178 Ironically, one of Fitzpatrick's financial obligations was payments on a somewhat high-interest
179 small business loan obtained after the Chapter 11 didn't work out. Those funds had been used to
180 make needed general repairs to the plumbing system, refresh the interior design (it hadn't been
181 touched since the 80's), and replace the bar and seating area. As I mentioned, we had just
182 updated the POS system in 2019, but once again, Hollis had no plans to grow or expand the

183 operation, so the investment in technology was just enough to update it, not to bring it to modern
184 standards by adding things like touchless pay.

185 Not one to give up easily, Hollis went ahead and hired a kid from Harmony High School
186 to design a website to try to generate business without exorbitant cost. Unfortunately, you get
187 what you pay for when it comes to web design. The site was unreliable, buggy, and had no
188 impact on steadily decreasing sales. The snafus and errors on the site contributed to even further
189 losses, since Fitzpatrick's prides itself on customer service. To accommodate angry guests, they
190 probably gave away as much food as they sold for the month the website was operational (if you
191 can call it that). In another desperate attempt to keep the business alive, Hollis took a second
192 round of PPL money, hoping to keep the staff on payroll. Hollis kept up with it for about a
193 month, but it wasn't feasible for much longer than that. With no way to increase takeout orders,
194 we quickly determined that Fitzpatrick's would continue operating at a net loss if it attempted to
195 comply with the full range of restrictions in order to achieve loan forgiveness. In mid-November,
196 Hollis made the difficult decision to lay off all employees who were not Fitzpatrick family
197 members in an effort to keep the doors open. Even after that, the family ended up skipping pay
198 checks to keep things going, but it wasn't enough.

199 Fitzpatrick's was a quaint family institution and part of its charm had always been its
200 reluctance to change a formula that's tried and true. But unfortunately, the impact of the
201 restrictions was devastating. Restaurants with more square footage, more flexible menu, and less
202 labor-intensive food preparation fared much better. Likewise, it was easier for businesses with
203 modern technology in place, such as POS systems that could pivot to online and touchless sales
204 by downloading an app to an iPad and plugging in a card reader. Fitzpatrick's location in a small
205 historical shopping strip with barely adequate parking didn't help matters. There was no

206 opportunity for outdoor seating and little room for parking during non-pandemic times, and
207 certainly not enough to accommodate increased carry out traffic.

208 All in all, the last straw for Hollis was the mask mandate, which prompted a good amount
209 of the regular customers to refuse to dine at Fitzpatrick's if they were required to wear a mask.
210 Without this bit of remaining steady sales, there was no way to keep going so Fitzpatrick's
211 officially closed on December 12, 2020. Of course, the good governor was making what they
212 thought was the right decision for citizens, but where's the line between protecting the public and
213 infringing on peoples' right to make their own health decisions and profitably run their
214 businesses?

STATEMENT OF FINLEY ABARA

Relator – Director of Buckeye Restaurant Association

1 My name is Finley Abara, and I am the director of the Buckeye Restaurant Association. I
2 grew up in Harmony and have remained closely connected to the community. My first job in
3 high school was working at Fitzpatrick’s busing tables. I was in the grade just below Hollis, so I
4 was familiar with the family even before working there. Starting at Fitzpatrick’s, I learned the
5 restaurant business from the ground up. Up until it’s closure, I visited the restaurant regularly.
6 Prior to the pandemic, I met there once a month with my friends and colleagues in the Charles
7 Shultz Literary Club.

8 During my time at Fitzpatrick’s, Hollis’s parents were good to me. They saw that I had an
9 interest in the restaurant business and they exposed me early on to all facets of running a food
10 establishment. Fitzpatrick’s emphasized a family atmosphere, cleanliness, and the importance of
11 long-term relationships. The Fitzpatrick family found a niche and they stayed within that niche
12 all those years. Many food establishments opened and closed in Harmony over my lifetime – yet
13 Fitzpatrick’s had remained as steadfast as ever. Making money or chasing the all-mighty dollar
14 for the sake of wealth was never a focus for the Fitzpatrick family. On more than one occasion I
15 can recall conversations with the business accountant that implied that, but for some inheritance
16 monies, the restaurant would never have been able to survive. Hollis eventually reached a point
17 where their profit margins were within the industry standard of 3-5%. I’m sure they were in the
18 lower end of that range, but Hollis was comfortable and happy with the way things were going.

19 My jobs at Fitzpatrick’s included busing tables; clean-up; preparing for inspections;
20 waiting tables; short-order cook and inventory control. The restaurant was extremely busy early
21 in the morning, then again for lunch and dinner. We took the time between meals to catch up on
22 cleaning and stocking. Fitzpatrick’s did not sell alcoholic drinks, so once the diner crowd cleared

23 out, we were ready to shut down. Cleanup usually happened by 7:30 p.m. so we could leave right
24 at the 8:00 closing time. Business was always steady because Fitzpatrick's focused on family and
25 community. Even when the Big Freeze of '77 and the Great Blizzard of '78 hit Buckeye and
26 Harmony, Fitzpatrick's stayed open and delivered food to anybody that needed it. Before the
27 pandemic, I do not recall Fitzpatrick's ever being closed for business.

28 By the time I graduated high school I knew I wanted to remain in the food industry. I
29 enjoyed the personal interactions I had with all the customers at Fitzpatrick's. I saw how a family
30 business can become a part of the fabric of a community. I knew the people; I knew their
31 schedules and I knew what they did and did not like. Because I had experience in the food
32 industry, I received a partial scholarship to Cornell University in the Food Industry Management
33 Program. I obtained my bachelor's degree from Cornell in 1979.

34 My bachelor's degree provided me with access to leading-edge theory as well as real-
35 world techniques. Cornell is a leading source of applied and academic research focusing on high-
36 priority issues facing the food industry with the goal of improving food system efficiency and
37 performance. I was exposed to various successful and unsuccessful business strategies,
38 marketing, and management studies, combined with leadership experience. Cornell always
39 conducted premier programs for food industry leaders on campus and around the world,
40 including the highly regarded Food Executive Program. I credit these programs for laying the
41 foundation for my professional success. Unfortunately, I have not had the time to go back and
42 get my Ph. D. or otherwise further my studies.

43 Right out of college in June of 1979 I saw an opportunity to strike out on my own and get
44 into the food industry. With a loan from my parents, I purchased a Joe Joe's Sub shop franchise
45 in a local mall. The lease did not provide for a seating area and there was no place for my

46 customers to sit and eat. Sadly, the business failed within a year. Between 1980 and 1983 the
47 United States was in a deep economic depression. As a result, jobs in the food industry all but
48 disappeared so my next job was selling life insurance. I only got paid if I sold a policy. As I
49 became more comfortable with selling insurance products, I moved on to become a licensed
50 insurance agent. I was able to get a job with an independent insurance agency just one county
51 over from Harmony. As I was not far away, I was able to maintain my hometown connections.

52 As my experience in the agency and insurance products increased, I realized that I could
53 create a niche for myself by selling insurance to restaurants, food vendors, suppliers of food
54 industry products and others involved directly or indirectly in the food industry. I was uniquely
55 positioned to corner this market given my experience in both insurance and the food industry.
56 Thanks to my experience working at Fitzpatrick's and because of my education at Cornell, I
57 understood the risks that small businesses in the food industry faced on a day-to-day basis. My
58 failure with Joe Joe's Sub shop became a key part of my success. Along with the
59 recommendations I had obtained, it was easy for me to talk to small food industry business
60 owners and develop affordable insurance plans for them. I experienced great success, and within
61 ten years I owned the insurance agency.

62 Over the next 20 years I grew my insurance agency so that it had a presence throughout
63 the state. I was able to expand my clientele to include some the most prominent restaurant and
64 food industry establishments in Buckeye. I am lucky to have very loyal customers like the Walter
65 Winchell franchises, Adam's Ribs Steakhouse, Breadsticks, the Everything Not Meat Eatery and
66 The Buckeye State University. In fact, when the boys run out of the tunnel on Saturdays, it is my
67 agency sign you see on top of that tunnel.

68 As a result of my business acumen coupled with my record of success in working with
69 food industry clients, I was asked to give lectures on restaurant risk management. As a service to
70 the industry, I developed checklists that covered various aspects of the food industry, including
71 health and safety. I contributed to the development of an app for members. On numerous
72 occasions I have been a guest lecturer at Cornell.

73 As a result of the depression of 2008, the restaurant food industry suffered serious
74 setbacks. Up until then, the Association lacked the ability to make an impact for its members. As
75 a result of my experience and reputation for getting things done, I was recruited to take over the
76 Restaurant Association in 2010. I had to give up the day to day operation of my insurance
77 company, but it was a good transition for me. I was tasked with guiding the Association's
78 strategic path towards its vision for a thriving restaurant and foodservice community. I have
79 consistently reinforced the Association's position as the unifying voice of the restaurant and
80 foodservice industry, and the recognized leader for employee training and certification programs.
81 Working in concert with state restaurant associations, I continued to strengthen the Association's
82 advocacy efforts to ensure restaurants of every size are represented at the local, state, and federal
83 levels within Buckeye.

84 When I took over the Association there were only 183 member establishments in the
85 state. I leveraged my contacts in the insurance and food industry and now the Association boasts
86 a robust membership of over 2,000 establishments as well as an associate membership of over
87 3,000 vendors and suppliers making the Buckeye Restaurant Association one of the most
88 influential groups advocating for the rights of the food service industry in Buckeye. Our
89 Association funds many activities for our members including educational opportunities. We
90 employ a full-time team of lobbyists that, among other things, help advance laws aimed at

91 protecting food industry owners. We are always on the lookout for and preventing overreaching
92 governmental regulation.

93 During my tenure at the Restaurant Association, I have provided testimony to Buckeye’s
94 congressional leaders on issues ranging from kitchen cleanliness and food integrity to occupancy
95 requirements and restrictions. I have a close working relationship with the state health
96 department officials. Members of our association are provided with assistance in fighting health
97 orders and citations for alleged health code violations ranging from food quality, to infestation,
98 to cleanliness and similar issues.

99 When the food truck industry came online, our Association was instrumental in brokering
100 a deal between the local governments in Buckeye, the restaurant owners and the food truck
101 industry so that food trucks could co-exist with restaurants and not place an undue burden upon
102 local government services, specifically waste management. I worked on establishing the
103 occupancy and food integrity guidelines for food trucks so that Buckeye consumers could be
104 assured a certain quality of food experience whether the food was served from a restaurant or a
105 truck.

106 Instead of running from the competition presented by the food truck industry, we decided
107 to innovate. Under my leadership our association hired designers and architects and related
108 professionals so we could assist our members in maximizing occupancy and services. We
109 worked with local government officials to create zones in urban areas to allow for outdoor café-
110 style seating. We lobbied at the local levels to create DORAs – Designated Outdoor Refreshment
111 Areas – to encourage residents to walk from local restaurant to restaurant while enjoying
112 alcoholic drinks. Each year our association works closely with The Buckeye University to
113 provide safe and family-friendly tailgate experiences before football games.

114 When COVID-19 hit, nobody was ready for it. Everybody was scared. Government
115 officials immediately assumed that the disease was easily spread by proximity and touch.
116 Because of that assumption, the food service industry suffered arbitrary restrictions – restrictions
117 that were imposed out of fear – not science. On behalf of our members, we agreed that it was
118 important to support aggressive steps to protect the nation’s public health. However, there was an
119 unproven suggestion that restaurants were part of the problem. In the rush to judgment our
120 members suffered inconsistent and restrictive governmental mandates. Like the Roman Senate to
121 Caesar all those years ago, our government did its best to kill an industry. The Ides of March
122 2020 sounded the death knell for many of our members in Buckeye. Governor DeBier closed
123 many businesses without proper consideration. Businesses like Fitzpatrick’s. Businesses that
124 were barely making it when times were good. The restrictions were not uniformly enforced.
125 Movie sets where food was served near singers and dancers were granted exemptions. Our
126 association was left out in the cold. Our members were not provided with any procedural
127 recourse to get relief from these orders. Members like Fitzpatrick’s asked for a chance to be
128 heard – but those requests were instantly and categorically denied. Our industry was a
129 convenient scapegoat for reflexive shutdowns.

130 The public health and welfare of Americans has largely been the responsibility of
131 individual states. It wasn't until the turn of the 20th century that the federal government took an
132 interest in food safety. In 1934, the FDA and the U.S. Public Health Service created the first
133 “Restaurant Sanitation Program,” a voluntary set of food safety regulations for restaurants that
134 could be adopted by individual states. The early inspection system included grade-based
135 restaurant ratings — A, B and C — and focused on many of the same food safety concerns we
136 see today. Handwashing and hygiene of workers were paramount, as was refrigeration of

137 perishable foods and general cleanliness of kitchen and bathrooms. The original guidelines also
138 included a prohibition against using cyanide-based polish to clean silverware.

139 That original Restaurant Sanitation Program expanded and changed over the decades,
140 eventually becoming known simply as the federal Food Code. Starting in 1993, the Food Code
141 was updated and republished every two years until 2001, when the schedule was moved to every
142 four years. The Food Code is continuously updated to reflect the latest scientific understanding
143 of the causes of foodborne illnesses and the best industry practices for keeping restaurant-goers
144 safe.

145 Today's Food Code, like the original 1934 document, is a voluntary set of regulations,
146 not federal law. It's still up to individual states to write their own food safety rules, although most
147 states align their regulations closely with the recommendations of the FDA. To make things
148 more complicated, restaurant inspections are often conducted by city or county officials, not state
149 regulators. In those cases, it's the local health authorities who write and enforce their own food
150 safety regulations. When COVID-19 occurred, our industry was not ready to respond to the
151 drastic forced shutdowns and restrictions imposed by the public health orders. This was far
152 greater oversight than the industry had ever seen.

153 Pre-COVID, our association had been in the forefront of protecting the public. For years
154 and years restaurants have successfully protected guests and employees from health calamities. It
155 has always been a major part of our industry. Over the years we developed policies and
156 procedures that were carefully developed with the cooperation of health officials and scientists.
157 Our members have regularly sanitized surfaces, required staff to wash hands, and have adhered
158 to occupancy restrictions and similar public health and safety orders. We should have had the

159 chance to comply with additional reasonable restrictions. Instead, without warning, our industry
160 was singled out. Closed without thought. Closing was a first resort instead of a last resort.

161 In spite of the unfair treatment of our members, our association went into action and
162 quickly developed Best Practices for Food Stores and Restaurants and Food Pickup/Delivery
163 Services. We did not step aside. Our members were provided the tools for safe and successful
164 reopening, whenever that might come. Unfortunately, for some restaurants like Fitzpatrick's,
165 with no ability to do take-out or outdoor dining, the May 2021 order to reopen came too late.

166 Because of my close ties with the family, I assisted the Fitzpatrick's with various
167 attempts to change the layout of their space to comply with the new regulations. We worked with
168 an online platform that helps restaurant maximize their business model by using layout and
169 overhead costs to determine how many guests are needed to make the business profitable. Given
170 the restrictions imposed on restaurants, no feasible business model could turn a profit. If granted
171 an opportunity, we would have presented evidence at a hearing that showed that there was no
172 place for the Fitzpatrick's to increase capacity. To comply with the orders, Fitzpatrick's had to
173 reduce occupancy. There was no amount of square footage in the restaurant to allow for creative
174 use to get more people in. A review of the floor plan of Fitzpatrick's makes it obvious that it was
175 not an establishment that could install a drive-up window. The seating restrictions inside once
176 partial reopening was allowed still severely limited the access to food by patrons. The worst
177 blow was the curfew imposed on restaurants. Governor DeBier and the Health Department
178 forced restaurants to close in-person dining by 6:00 p.m. which severely impacted the dinner
179 rush. Typically, restaurants make about 60% of their revenue from dinner service, so the
180 dramatic cut back in hours was devastating. It meant there was no time for restaurants to turn
181 over their tables during the dinner service. Under normal circumstances, restaurants usually turn

182 tables three times during their peak business hours. For Fitzpatrick's, the curfew cut out one-
183 third of their busiest time. When you add that to the overall reduced capacity, the government
184 pushed Fitzpatrick's past the point of no return.

185 Fitzpatrick's was not perfect throughout its history. From time to time, like any restaurant
186 there would be health violations. However, Fitzpatrick's was never found to have violated any
187 serious health regulations. Rather, the violations were technical in nature. The loyal patrons of
188 Fitzpatrick's were there because it was steady. They knew who was going to be there and they
189 knew what the food was going to be like once they sat down. It was one of the "constants" in the
190 community. The community's relationship with Fitzpatrick's was turned upside down as a result
191 of the pandemic restrictions restaurants were forced to comply with. The comradery and
192 atmosphere were gone, and some patrons were especially outraged by the mask mandate. This
193 was simply too great a hurdle for Hollis to overcome, so they were forced to shut down.

STATEMENT OF ELLIS MAZAKIS

Respondent – Buckeye Director of Health and Human Services

1 My name is Elis Mazakis and I am the Buckeye Director of Health and Human Services.
2 I was born and raised in the State of Buckeye and have always wanted to give back to my local
3 community. Ever since I was a little child, I knew I wanted to be a doctor and work in health
4 care. As I continued to pursue my passion, I learned that one way to help protect the health of
5 people was by working to develop policy behind the health care industry. This started my
6 journey towards exploring a career with the Buckeye Department of Health and Human Services.

7 I have worked for the Buckeye Department of Health and Human Services for the past
8 twenty years, seven of which I have been in the director position. Prior to working for the
9 Department, I obtained my bachelor's degree in health services from the University of Arizona
10 in 1994. I then obtained my master's in public health from The Buckeye State University in 2000
11 and an M.D. with an emphasis in epidemiology in 2004. I started working for the Buckeye
12 Department of Health and Human Services right out of school in 1994 as a Public Health
13 Sanitarian. I remained in this role while completing graduate and medical school, eventually
14 working my way up in the Department. I was appointed to be the Director of Health and Human
15 Services in 2014. It has been a long road to get where I am, but it has all been worth it knowing I
16 am helping to make Buckeye a safer place. While not everyone agrees with everything the
17 Health Department does, I know we make decisions in the public's best interest.

18 The Buckeye Department of Health and Human Services' primary mission is to enhance
19 and protect the well-being of all citizens of Buckeye by providing effective health and human
20 services and fostering advances in medicine, public health, and social services. The
21 Department's responsibilities include drafting policy and other restrictions related to the health
22 and safety of the public in Buckeye. This includes responding to emergency health situations,

23 like the breakout of a global pandemic. The Department deals with policies related to medical
24 care, food and drug, and disease prevention and control. My primary responsibilities as the
25 director are to oversee and partake in the development of these policies, enforce the mission of
26 the Department, and work with other team members throughout the process. Our team works
27 together to create, implement, and oversee these policies which become even more important
28 during instances such as the COVID-19 pandemic.

29 One of the Department’s responsibilities is to oversee health regulations of restaurants
30 and to ensure restaurants abide by the proper provisions and safety standards. The Department
31 helps create the Health and Food Code based on a model developed by the Food and Drug
32 Administration (FDA) to ensure restaurants are able to provide safe services to their customers
33 and protect the public from health issues that could arise in the food service industry. The first
34 “Restaurant Sanitation Program” was created in 1934 by the FDA and the U.S. Public Health
35 Services which was a voluntary set of food safety regulations for restaurants. Individual states
36 had a choice of whether or not to adopt the regulations suggested by these organizations. These
37 regulations later became known as the federal Food Code and were updated every four years to
38 continuously reflect the latest scientific understanding of foodborne illnesses and to provide the
39 best industry practices for keeping restaurant-goers safe. The State of Buckeye drafted their own
40 Health and Food Code in the 1940s and has continued to update the code based on
41 recommendations from the FDA, U.S. Public Health Services, and the Buckeye Department of
42 Health and Human Services.

43 Every restaurant receives a grade from the Buckeye Health Department. The Buckeye
44 grading system is based on the FDA Food Code, which identifies 56 different inspection items.
45 An inspection of each restaurant occurs at least once a year. The inspector awards the restaurant

46 a number of points based on their compliance with the various inspection items laid out in the
47 code. The points are added up and the restaurant is given a letter grade ranging from A to C.
48 Restaurants that receive a Grade A means that the establishment is clean, up to code, and free of
49 violations. Grade B means the restaurant has some issues that must be fixed. If a restaurant
50 receives a Grade C, the restaurant is a public risk and on the verge of closure. Once the restaurant
51 receives a grade, it is posted both on the restaurant storefront and on a public online database.

52 While restaurants with a B rating are still safe to patronize, there is some sort of violation
53 leading to a B grade. Some of the most common ones are vermin infestations such as rats, mice,
54 or insects, temperature related offenses concerning either holding or prepping food, or unsanitary
55 handling such as inadequate hand washing. Restaurant ratings are given based on a delicate
56 balance of health and safety measures to keep the public safe. Restaurants with higher ratings
57 have fewer violations and are deemed safer for the public to patronize than restaurants with
58 lower ratings.

59 Fitzpatrick's restaurant received a B- rating as the result of their January 2020 inspection,
60 which occurred a few months before the outbreak of the COVID-19 pandemic. Specifically, the
61 inspector cited violations for plumbing that had not been approved as part of the dishwashing
62 sink and use of non-ground fault circuit interrupter plugs near water sources. The inspector also
63 noted that the employee handwashing signs were faded and in need of replacement. Additionally,
64 Fitzpatrick's was using produce from their home garden instead of an approved vendor. Because
65 of the number of violations noted by the health inspector Fitzpatrick's rating was a B-, meaning
66 that the restaurant could still be patronized, but letting the public know there were several
67 violations of the Buckeye Health Code.

68 The Department also responds to public health emergencies, such as global pandemics,
69 by developing proper guidelines and protocols to protect the public during such emergencies. In
70 early 2020, the world was dealing with an outbreak of a new disease known as COVID-19. The
71 first confirmed case of this virus in Buckeye occurred March 9, 2020. In response, Buckeye’s
72 Governor Fran DeBier announced statewide measures that would combat the spread of COVID-
73 19. Such measures included closing bars, restaurants, salons, barbershops, and tattoo parlors. On
74 March 22, 2020 Governor DeBier issued a stay-at-home order with exceptions for essential
75 workers and businesses. Based on guidance from my department, the stay-at-home order was not
76 expected to lift until May 29, 2020. As a result, restaurants, like Fitzpatrick’s were forced to
77 close for several months. We in the Health Department understood the restrictions would be a
78 shock to some residents, but we acted out of necessity and in our capacity as public health
79 officials responsible for the safety of Buckeye’s citizens.

80 The reason for such harsh actions and precautions by the government was the due to the
81 highly contagious nature of COVID-19. Our department’s understanding of the virus, at the time
82 these precautions were implemented, was that it was easily spread between individuals as the
83 result of proximity and touch. The main way the virus spreads is through respiratory droplets that
84 can transmit to others or a surface when an individual coughs, sneezes, or talks. Because many
85 restaurants in Buckeye have seating where individuals from various households sit in close
86 proximity to one another, restaurants were deemed likely “hot spots” for the disease to spread
87 and infect more of the public. Particularly because individuals are touch numerous surfaces and
88 bring items close to their nose and mouths, it makes it much more likely that an individual could
89 contract or spread the disease in a restaurant setting.

90 As our understanding of COVID-19 grew, it became clear that such harsh restrictions
91 may not have been as necessary as we initially thought. However, public health and safety was
92 always our department's number one goal. As a result, we thought it best to make
93 recommendations for restrictions that would prevent the spread of COVID-19 and protect the
94 public. However, once it was clear such stringent restrictions were unnecessary, the department
95 began strategizing to issue new guidelines that maintained public safety while also allowing
96 Buckeye businesses to safely reopen to the public.

97 On May 15, 2020 restaurants were permitted to reopen for outdoor dining only if they
98 adhered to certain restrictions put in place by the Department of Health and Human Services. A
99 week later on May 21, 2020 restaurants were permitted to reopen indoor dining, also with certain
100 restrictions in place. To create these restrictions, myself and the rest of my team at the
101 Department worked with local restaurant owners to determine what restrictions would be the
102 least burdensome on restaurant operations but still protect public health. When making these
103 determinations the health and safety of the public was always the main priority.

104 These restrictions for reopening restaurants included: every other table must remain
105 empty with at least six feet of clearance between all tables, the total number of occupants,
106 including kitchen staff and customers, must be reduced to 50% of the normal capacity, plexiglass
107 must be installed between tables and at the counter, physical menus are prohibited, the restaurant
108 must close to in-person dining by 6:00 pm, and all customers and staff must wear masks. Such
109 restrictions were put in place to help control the spread of COVID-19 while allowing restaurants
110 to reopen and continue providing their services to the public.

111 Once these restrictions were in place, a memo was issued by the department outlining
112 what restaurants needed to do to comply with these restrictions. The memo also included some

113 recommendations for local restaurants to help them comply with the restrictions, such as
114 locations to obtain plexiglass, how to develop a virtual menu, and ways to maximize seating
115 arrangements in small spaces. Some businesses requested exemptions from the restrictions but, at
116 the time, it wasn't feasible. Not only did we not have a structure in place to process those types
117 of requests, it also wasn't safe to lift restrictions that early in the reopening timeline. We needed
118 to gather data which we could only do by allowing business to resume, with restrictions in place.
119 The plan was always to reevaluate at a later time.

120 At the time the restrictions were enacted, it was understood that the virus could be
121 transmitted through respiratory droplets when people cough, sneeze, or talk. Furthermore,
122 COVID-19 can be transferred by touching a surface or object that has the virus on it then
123 touching your mouth, nose, or eyes. In addition to encouraging individuals to wash their hands
124 more frequently and efficiently, the Department issued guidance encouraging individuals to wear
125 masks or facial coverings in public and to keep a moderate distance apart from individuals
126 outside of their home.

127 Governor DeBier issued a statewide mask mandate for all Buckeye counties on July 23,
128 2020 requiring individuals who were in public places to have a mask or some sort of facial
129 covering. As time went on, Buckeye continued to see an increase in number of COVID-19 cases
130 and an increase in the number of deaths from the virus. In order to prevent further spread of the
131 disease Governor DeBier announced a curfew on August 17, 2020 that lasted from 10:00 pm to
132 5:00 am. We knew that, despite the existing restrictions, large gatherings were taking place in
133 some communities throughout the state, so the curfew was intended to combat that problem.
134 Once again, these added restrictions were implemented at my recommendation after consulting

135 with my team and other public health guidance. The additional guidelines were put in place until
136 the number of new cases decreased, and more was known about COVID-19.

137 Eventually, numbers began to improve statewide, and we reevaluated our stance. By
138 November, we were not ready to completely lift restrictions, but we were optimistic about the
139 overall number of cases and community spread. Governor DeBier met with some business
140 owners in the service industry and directed the Health Department to create an exemption
141 application for businesses that could operate safely without the COVID-19 restrictions.
142 Specifically, there were some restaurants and other businesses in large enough spaces that the
143 capacity and distancing restrictions were no longer necessary. Any exemptions were to be issued
144 on a case-by-case basis and only granted if businesses could prove safe operation without the
145 restrictions in place. For example, we looked for businesses with significant ventilation and air
146 flow. Governor DeBier announced the exemption process during a press conference on October
147 28, 2020, and the application went live a few days later on November 2. We immediately
148 received a huge influx of applications, so much so that we began processing applications around
149 the clock. We responded to requests as quickly as possible, but it often took several weeks for us
150 to notify business owners of their application status. Often, we needed more information before
151 we could make a final decision, which was the case with Fitzpatrick’s. After we notified them
152 that we needed additional information, we never received any follow up.

153 While I have had an impeccable career with the Department, a few months ago, after this
154 whole Fitzpatrick’s business started, an investigation was opened with the ethics committee.
155 Apparently, the committee received an anonymous tip that I was allowing health inspectors to
156 take bribes from restaurant owners to “look the other way” regarding some of their health code
157 violations and to ensure they received acceptable grades from the department. An investigation is

158 still pending with the ethics committee, but I can assure you that I would never allow such a
159 thing to happen. I pride myself on holding the Department, its members, and myself to the
160 highest ethical and safety standards to ensure the health and wellbeing of the public. This
161 accusation is merely a rumor and is likely from a disgruntled individual who is not willing to
162 accept that the restrictions we issued were for the protection of the public, and not as a
163 punishment for struggling businesses. In my time with the Department, I have learned that you
164 must have thick skin because people will attack you personally for decisions you make to keep
165 the public safe.

166 The restrictions we implemented were crucial in preventing the further spread of COVID-
167 19 and were for the protection of the people of Buckeye. While such operations may not be ideal
168 in the food service industry, it is better for the restaurants to be open with minimal restrictions
169 than to be closed all together. The Department has done all they can to provide additional help to
170 restaurants to ensure they understood what was required of them, and we even provided
171 additional resources to ease the transition to this “new normal.” The citizens of the State of
172 Buckeye are all in this together, and while things may not be ideal, they are in place to provide
173 for a safer, healthier and brighter tomorrow.

STATEMENT OF RILEY ZHANG

Respondent – Real Estate Developer

1 My name is Riley Zhang and I'm Harmony's top real estate developer. Real estate is my
2 passion and I love working with the local community to create modern, fun, and exciting spaces
3 in Harmony. I plan to take my dream beyond just my hometown by sharing my talents with the
4 rest of the state. Buckeye Magazine recently named me a developer to watch, and I hope to be
5 the top developer in the state within the next five years.

6 Growing up, I wanted to be a restaurateur, but in college at Buckeye State University I
7 was lucky enough to land an internship with Wilmot Developers and fell in love with real estate
8 development. I graduated from Buckeye State University with a Bachelor of Science in Finance.
9 The commercial market was at an all-time low when I graduated, and it was near impossible to
10 get a developer job. I studied for and received my real estate license in 2008 and worked for two
11 years for a residential real estate firm. By 2010, the commercial market had somewhat recovered
12 and I began dipping my toes into commercial deals. In 2011, Wilmot Development reached out
13 and I was hired on as an entry level property developer. I worked my way up the ranks at Wilmot
14 Development until I felt I'd learned all they could teach me, then started my own firm – Zhang
15 Real Estate – in 2016. A couple of my proudest developments are Weston Town Center, an
16 extremely popular outdoor shopping center in Harmony, and The Burch, a development featuring
17 apartments, popular restaurants, and office space.

18 A lot of people think that real estate development slowed down as a result of the COVID-
19 19 pandemic. Nothing has been farther from the truth! Some businesses that struggled before the
20 pandemic couldn't hang on, but businesses that were doing well before have continued to
21 flourish. I've been working with Mickey's Ice Cream to find a second location for their old

22 school ice cream parlor. The original Mickey's location opened at Weston Town Center about
23 three years ago. Mickey's struggled at the beginning of the pandemic, but quickly linked up with
24 many of the delivery apps and offered takeout. Mickey's was able to grow their business so
25 much that they're looking to add a second location on the east side of Harmony and are begging
26 to be a part of my next large-scale development on the northside.

27 The pandemic has also forced a lot of people to rethink their career choices and many
28 have decided to open small businesses. One of the clients I'm working with right now was laid
29 off from his job in the restaurant industry and decided to start cooking pizzas out of his kitchen,
30 posting his pies on social media. Within two months of the COVID-19 pandemic, he had built a
31 social media following and now has a six-month waitlist for his specialty pizzas! He's currently
32 looking for a space to open his own pizza restaurant so he can serve his delicious one-of-a-kind
33 pies to the masses.

34 I myself was initially worried about how Zhang Real Estate would make it through the
35 pandemic. I even applied for a paycheck protection loan ("PPL"). At the beginning there were
36 rumors that chain restaurants like Orangebees took all the PPL money, but I was able to secure
37 one and ensure Zhang Real Estate was not financially impacted. We ended up using a decent
38 chunk of the PPL money to comply with pandemic restrictions like plexiglass or extra laptops for
39 our employees with underlying health conditions so they could continue to work from home.
40 We've now bounced back and are working on a new development on the northside of town.

41 A lot of restaurants throughout the industry have raised prices as a result of the pandemic.
42 At the beginning of the COVID-19 pandemic, customers were tipping large amounts at small
43 businesses and that's continued. Many of the players in the restaurant industry have learned that
44 they can charge more as long as the restaurant is open about the fact that they're facing increased

45 costs due to pandemic shortages. Chicken wings became a hot commodity during the height of
46 the pandemic because they were very hard to come by. Restaurants managed the supply change
47 by increasing prices and placing capacity limits on wing orders. This ended up increasing
48 restaurants' overall revenue because people were desperate to get their hands on some chicken
49 wings, and they ended up supplementing their order with additional menu items. I've also seen
50 restaurants add a 10% charge for carryout and others add a 20% tip charge. Customers are
51 willing to pay extra to get out of their homes after so long being stuck cooking themselves or
52 getting takeout. Restaurants not raising prices and taking the hit on increased food costs are
53 making a mistake and are in danger of losing significant profits.

54 Before and even during the pandemic, most small business owners jump at the
55 opportunity to be a part of a Zhang development. I tend to either encounter struggling business
56 owners who appreciate the generous offer to buy their land, or I find businesses that are doing
57 well but are in need of a refreshed business. The pandemic actually helped me acquire new
58 clients because owners were ready for a change after months of closures and restrictions. Much
59 like homeowners used the time to remodel and refresh, business owners took the opportunity to
60 make changes they'd been wanting to implement for a while. Sometimes that meant finding new
61 space or exiting the business to pursue other passions. Zhang developments are on the cutting
62 edge of design, and we have a reputation for taking businesses who were doing average and
63 allowing them to grow in the newly developed space.

64 I'm honestly not sure which of those business types Fitzpatrick's fits into. A couple years
65 ago I'd classify them as a struggling business, but it's also the type of business that might benefit
66 from a Zhang development. In 2018, I approached the owner, Hollis Fitzpatrick, about a
67 potential development. Fitzpatrick's is located in a fairly well-traveled area of Main Street, but is

68 the only restaurant in the area. Most other businesses surrounding Fitzpatrick's are shops, gyms,
69 service-oriented businesses, and offices. All the other businesses in the area were interested in
70 my offer and had all but signed the contract. One of the dry cleaners was relieved I was offering
71 to buy them out of a lease and planned to move to an area with lower rent. Others were excited
72 about the potential benefits of the development. Fitzpatrick's was the hold out.

73 Fitzpatrick's has always been known as a greasy spoon restaurant. Over the last five or so
74 years, the restaurant has added some healthier options preferred by the millennial generation.
75 The restaurant now offers smoothies, organic meat and produce, as well as some vegan options.
76 This appears to have helped attract younger customers, but it's still a sit-down restaurant and
77 many younger customers prefer takeout or fast-casual restaurants.

78 Fitzpatrick's was the only business opposed to selling when I approached the area
79 businesses about my development opportunity. I visited the restaurant at all hours and days –
80 breakfast, lunch, dinner, weekdays, weekends, and honestly never saw a large crowd there.
81 Hollis kept telling me what great business they were doing, but I never saw it. I even tried talking
82 to them about changing their business model to reflect current dining trends. Fitzpatrick's is a
83 casual restaurant that twenty years ago was probably very popular but isn't anymore and that was
84 apparent from all the times I visited. Fitzpatrick's definitely has a handful of regulars who keep
85 them in business, but I didn't think they could be profitable long-term or even continuing in
86 2018. I talked with Hollis repeatedly about the possibility of retooling their business model and
87 rebranding Fitzpatrick's as a fast-casual restaurant. I thought Fitzpatrick's had delicious food, but
88 ultimately felt they'd be more successful (and occupy less space in the development) if they
89 transitioned to fast casual.

90 Hollis was livid when I suggested the transition. They gave me a speech that their
91 business model has worked for decades, and their grandfather didn't start the restaurant only to
92 turn it into a glorified McArches. I told Fitzpatrick I understood and asked to look at the
93 restaurant finances so I could see if we'd be able to find a solution. Once I looked at the books, I
94 was even more convinced Fitzpatrick's needed to move to a fast-casual model. Fitzpatrick's was
95 barely breaking even as it was. A fast-casual model would allow them to have less servers, less
96 food waste, and attract more customers. In my experience, the type of people who were visiting
97 the existing businesses in the area are more likely to visit a fast-casual restaurant to pick up a
98 meal to go than they are to go to a sit-down restaurant. The foot traffic in the area peaked
99 between 4-6 p.m. so there wasn't much hope of drawing a large dinner crowd for a sit-down
100 meal. This pattern told me that a fast-casual establishment would be popular because people
101 would be more likely stop by to pick up dinner on their way home. I also already had a high-end
102 restaurant interested in the development and needed a few fast-casual restaurants to balance out
103 the development.

104 Once I looked over Fitzpatrick's financials, I showed the owner how much I'd charge the
105 restaurant using the same amount of square footage in the new development compared with the
106 reduced square footage they'd need for a fast casual restaurant. I also offered an amount for the
107 current land which in my view was more than generous given their current financial situation.
108 Hollis was convinced I was wrong about their financials. I liked Fitzpatrick's and after all my
109 visits had developed an obsession for the cheese fries, so I agreed to have a forensic accountant
110 look at Fitzpatrick's financials.

111 The forensic accountant came to the same conclusion I did: Fitzpatrick's was not making
112 money. During a good period, the restaurant's profit margin was on the very low end of the

113 industry standard which ranges from 3-5% for restaurants. It was clear that this was a direct
114 result of their business model. Hollis told me the restaurant was busiest during their dinner
115 service which, as I mentioned earlier, would be improved by a fast-casual model. Typically, a
116 restaurant's peak business hours account for over half of their revenue so it's ideal to be in a high
117 traffic area. Fitzpatrick's would have been able to significantly increase their profit if they
118 switched to fast-casual because it would reduce their fixed overhead by a decent amount while
119 increasing their revenue from the dinner rush. They could still have sold the same food their
120 family had been serving for generations, but they wouldn't have to spend as much money to do
121 it.

122 I went to Hollis again with my best and final offer, even bringing the forensic accountant
123 with me to share some cheese fries. The forensic accountant and I met with Hollis to share the
124 findings. Hollis said they were shocked and still said I was trying to short the business. I told
125 Hollis over and over I wanted to help the restaurant and, in my view, the only way to help was by
126 signing onto the development and accepting my offer. I offered Fitzpatrick's an amount of
127 money for the land, a spot in the new development with reduced square footage in which they
128 could offer a fast-casual restaurant. I even offered reduced rent for the first two years in the
129 development as a thank you for staying in the area.

130 Hollis said they weren't interested in the development. Then I offered a contract option
131 which didn't require Fitzpatrick's to open as part of the development. I told Hollis as much as I'd
132 love to see Fitzpatrick's as part of the development, I could understand not wanting to
133 completely change their business model. This option came with more money up front for the sale
134 of the building but would require the restaurant to vacate within two months of the contract being
135 finalized. Hollis wasn't interested in that offer either. They said my offer was way too low and

136 countered with a ridiculous number. At that point, I felt like I'd done all that I could to make that
137 deal work, but Hollis didn't understand what they were doing. I told Hollis no deal and walked
138 out. I haven't had those delicious cheese fries since and all of the surrounding businesses were
139 upset the deal fell through, but Hollis was being unreasonable.

140 I've heard Fitzpatrick's is now suing, claiming that the pandemic restrictions forced the
141 restaurant to close. That claim is so farfetched it's difficult to believe such a lawsuit could be
142 filed. Fitzpatrick's was losing money four years ago and certainly has to be losing money now.
143 I've tried to use DoorDeliver to get some Fitzpatrick's cheese fries in an effort to avoid a heated
144 exchange with Hollis while still satisfying my craving, but Fitzpatrick's isn't on DoorDeliver or
145 any other delivery app! I can't imagine how Fitzpatrick thinks that's a good business decision.
146 Every other restaurant in Harmony that competes with Fitzpatrick's is on DoorDeliver. Even the
147 fast-casual restaurants Fitzpatrick hates so much have adopted these delivery apps.

148 Knowing Hollis, I'm sure they didn't do much to change the restaurant's layout to
149 accommodate the restrictions. I did hear something about Hollis using an online tool to
150 maximize the restaurant's efficiency which is laughable. If they wanted to maximize efficiency,
151 they would have taken me up on my offer! Besides, those tools are a joke. When I was getting
152 started in real estate development, I tested out a few of those kinds of tools with no success. If
153 you even slightly alter the information you put into the calculator, you get wildly different
154 outputs. Additionally, the information you get is only as good as the information you put in
155 because it's all based on an algorithm. If I want to maximize retail space, I know that different
156 sizes and types of shelving will allow me to have differing amounts of merchandise, but the
157 online tool can't tell me that. It will only give me information for the exact type of shelving I put

158 into the calculator. I'm not at all surprised Hollis went this route though. If there's a cheap way
159 to cut-corners, Hollis is all over it.

160 From what I understand Fitzpatrick's has also been firing their employees. I ran into one
161 of their ex-employees working at another restaurant in town. Aspen Bennett had been one of my
162 favorite servers at Fitzpatrick's. Aspen confirmed many of the same observations I'd made at
163 Fitzpatrick's years ago. Aspen also told me how much the business had been suffering as Hollis
164 refused to adapt to the pandemic. Unlike so many other businesses, Fitzpatrick's refused to add
165 outdoor seating. Based on what I saw years ago, the pandemic restrictions wouldn't have
166 impacted the number of customers Fitzpatrick's could serve at a time, mostly because they were
167 never anywhere near capacity. Regardless, Fitzpatrick's could have offered outdoor seating and
168 reservations through TableOpen in addition to delivery as a way of attracting new customers.
169 The pandemic brought about a movement to support struggling small businesses, all Hollis had
170 to do was develop a social media presence to make the restaurant's needs known and modernize
171 the business a bit. If they had taken those actions, Fitzpatrick's would have been profitable again
172 like their grandfather's business was decades ago. Instead, Hollis remained stubborn and stuck
173 in their ways which ultimately lead to Fitzpatrick's downfall. Now, they're just looking for a
174 way to pass the blame onto someone else.

STATEMENT OF ASPEN BENNETT

Respondent – Former Fitzpatrick’s Employee

1 My name is Aspen Bennett and I am currently a server at Harmony Bistro, an upscale
2 restaurant in downtown Harmony. I started working at the Bistro when I left Fitzpatrick’s in
3 September of 2020 and honestly, I’ve never been happier. I got into the service industry in high
4 school, and this is the first restaurant I’ve worked for that actually knows how to run a business
5 and, you know, pays their employees!

6 I’ve lived in Harmony my whole life and I love it here. A lot of my friends moved away
7 after college because they wanted something different than a small town where everybody knows
8 everybody, but that’s exactly why I stayed. I’m a people person. I love making small talk, I love
9 gossip, and I love having a job that lets me get to know people for a living. I’m sure I could
10 make more money working in a big city, but I wouldn’t get the personal connection I have here
11 in Harmony. You know how some people say hairdressers are also therapists? It’s the same way
12 being a server in a small town! You really get to know the regulars and, to me at least, it feels
13 like you’re part of one big family.

14 I got into the restaurant business when I was younger and still figuring things out. I’d
15 worked at a local ice cream shop while I was in school, but I needed something more than just
16 seasonal work and it seemed like a restaurant would be the perfect fit. I could still talk to people
17 and get to know the town regulars; I would just get more hours and make more money. I started
18 as a server at this little Italian place called Antonio’s. The food was great, and the customers
19 were really nice, so I stuck around for about three years, despite the owners being absolutely
20 toxic people to work for. It was a husband and wife team who couldn’t stand each other and
21 neither one of them knew anything about running a business. For a while I just kept my head
22 down and did my job, but near the end it was pretty unbearable. One day, while I was filling in
23 for one of the dishwashers, the owner threw a pot right at his wife’s head! It just barely missed

24 me, and her, thankfully. If that wasn't enough to make me rethink my job, the owners also
25 accused me of stealing!

26 Like I said, the Antonio's didn't know how to run a restaurant so they would often just
27 have servers grab their own tip money out of the till rather than bother themselves to keep
28 records. After working a double one Saturday, I'd earned a decent amount in tips, so I stopped at
29 the register to collect my money before being off for a few days. The owners saw me grab the
30 money and didn't say anything. A few days later I get a call from the police asking me to come
31 down to the station and answer some questions about theft at the restaurant. I had no idea I was
32 the one being accused! Apparently, the Antonio's told the cops that I stole \$200 from them. I
33 worked at Antonio's for three years, I couldn't believe they would do this to me! I told the cops
34 the truth, but it was my word against theirs. My family didn't have any money for a lawyer, so I
35 talked with the public defender who advised me to plead guilty to petty theft and take a deal.
36 They said if I pleaded guilty, I could just pay a small fine and do a few hours of community
37 service. My parents wanted the whole thing to go away so they told me to take the plea and they
38 would pay the fine so we could be done. I took the plea and immediately started looking for a
39 new job. In the end, the joke's on the Antonio's because their restaurant closed down not long
40 after I left. Now I work in the restaurant that took its place.

41 In 2014, after a few months of being unemployed, I finally found a new job at
42 Fitzpatrick's. At first, I really enjoyed working for Hollis. They were committed to the family
43 feel of the restaurant by keeping staff small, mostly family, and always walking around the
44 dining room to talk to customers. Even better, the family actually got along really well, unlike
45 the Antonio's. The work environment was so much better than my last job that I overlooked
46 some of the problematic things for a long time. Rose colored glasses, you know?

47 After being at Fitzpatrick's for a while, I started picking up on things that made me
48 question what kind of place I was working for. The physical space was a complete mess and
49 clearly hadn't been updated since Hollis' parents owned the restaurant. Sure, the building was

50 old and was a historic site in downtown Harmony, but it was much worse off than the other
51 businesses in the area. From leaks in the kitchen and dining room to sketchy outlets and
52 electrical work, it was in bad shape. I noticed it was off-putting to new customers who seemed to
53 never come back, so I tried bringing it up to Hollis. They just dismissed it because they didn't
54 have the money to fix anything and said I was overreacting. Fitzpatrick's had filed for
55 bankruptcy a few years before I started working there but they never ended up getting approved.
56 I didn't know the exact financial situation of the restaurant, but I do know Hollis kept the food
57 prices too low to really make much money. Tips were never great while I was working there
58 because tables rarely spent more than \$20. Hollis insisted that things were getting better but if
59 more money was coming in, there wasn't much to show for it.

60 When things got bad enough that they couldn't be ignored, Hollis would "fix" it on their
61 own instead of hiring a professional. This includes the already sketchy electrical work! Several
62 of the outlets needed replaced so Hollis decided to try their hand at being an electrician. After
63 that, all the servers avoided getting too close to the electrical outlets in the bathroom and kitchen
64 because it was easy to get shocked while washing your hands. The plumbing situation was just as
65 bad, if not worse. When the pipes needed replaced, Hollis once again took it upon themselves to
66 do the work. They somehow made things even worse so now the plumbing backs up, pouring
67 dirty dishwater into the sink where we clean produce and prep salads. The Health Department
68 even sited Fitzpatrick's for all the violations but Hollis just dismissed them as minor and
69 continued to do things their own way.

70 Even if you overlook the physical issues of the restaurant, the food itself left a lot to be
71 desired. Personally, I never ate the food even before the pandemic hit. It just wasn't sanitary or
72 tasty and I was honestly worried it might make someone sick. Some people refer to Fitzpatrick's
73 as a "greasy spoon" type of place, and it definitely was greasy, but it lacked the redeeming
74 qualities usually associated with that sort of restaurant. The food was fried, bland, greasy, and all
75 around unhealthy. Almost nothing was made fresh and instead came from a package in the

76 freezer. The “fresh” produce we used was just the leftovers from Hollis’ home garden that they
77 labeled organic on the menu to try and draw a younger crowd. Most of the customers that
78 frequented Fitzpatrick’s didn’t even like the food, they just used it as a gathering place more than
79 as a restaurant. This was bad for business because people would hang around a long time, even
80 after they finished eating. A *good* restaurant can turn over their tables more than three times
81 during a service, but most places are happy if they can turn them over three times. Fitzpatrick’s
82 was lucky if they could turn over two times in a service, even during the “rushes.” Like I said,
83 people came to hang out, so tables tended to stay longer at Fitzpatrick’s than any other
84 restaurants I’ve worked for. In a small place like that, you really can’t afford to have tables stick
85 around.

86 In my entire time working at Fitzpatrick’s, it was rare to see new people come into the
87 restaurant. It was usually just your town regulars who got together for lunch or the early bird
88 dinner. The atmosphere appealed more to the retirees in Harmony than anyone else, so business
89 tended to be slow later in the evening. Working the daytime shift made more tips than working
90 the typical dinner rush like you see in most restaurants. Really, by 5:30 p.m. it was so slow
91 Hollis only kept one server on staff and cut the kitchen staff back significantly. There were a few
92 times I worked the evening shift where I literally stood outside trying to drum up business. It’s
93 hard to make tips when no one stops in to eat!

94 I was able to get past the shady repairs and I could avoid the eating the food, but money
95 became a real issue. Payday was always extremely stressful. Either Hollis would be late on
96 paying us or would give us a personal check instead of an official one from the business account.
97 Given the DIY repairs, food from Hollis’ home garden, and the stress around payday, it was
98 clear that Fitzpatrick’s wasn’t making money. At least not anywhere near enough to comfortably
99 pay staff and make enough money to have something saved for building repairs. This was an
100 issue long before the pandemic hit, but it only got worse after that. There were plenty of times
101 when I thought about quitting, but the job market wasn’t great and I didn’t want to risk going

102 somewhere worse, or possibly end up unemployed. I stuck it out for a long time, but the COVID-
103 19 pandemic brought everything to a boiling point.

104 You have to understand that working in a restaurant is always a gamble with your health.
105 You work closely with people while they are eating, talking, and laughing so it's impossible to
106 avoid coming in contact with germs. You wash your hands and do what you can, but people go
107 out to eat even when they're sick. It's very common as a server to catch colds and anything else
108 that goes around. The problem is exacerbated by the lack of PTO policy in the food service
109 industry, so your only options are to come to work sick or miss out on an entire day of income.
110 That's especially problematic if you are unlucky enough to get sick on a weekend; then you miss
111 out on your biggest day of tips in addition to the hours lost. I have personally gotten sick
112 multiple times throughout cold and flu season. I even got swine flu when that was a thing a few
113 years back. Admittedly, I went to work sick more than once because I couldn't afford not to.
114 That's a regular part of restaurant life, so you can imagine how scary it was when COVID-19 hit.

115 Early news of COVID-19 made me nervous, but I assumed it would just be another swine
116 flu type of thing where we would have to be extra cautious about washing hands and general
117 hygiene. It wasn't until early March when Governor DeBier and Albert Schwarz decided to
118 cancel the big bodybuilding competition that I realized how dangerous this new disease was. At
119 that point, Buckeye didn't even have any confirmed cases yet, just a few people being monitored
120 and tested. The bodybuilding competition is a massive event in Buckeye, so I figured things had
121 to be serious for them to cancel. That's a whole lot of money down the drain so I knew the
122 governor and health officials must have been really worried about spreading this new disease.
123 After that, I was scared to go into work. Like I said before, the customers at Fitzpatrick's were
124 mostly retirees and older people so I was worried about getting one of them sick. I was also
125 worried about my own health. I have asthma and from the little I knew about COVID-19, it
126 seemed to affect people's lungs, so it made me nervous working in an environment where I
127 routinely picked up illnesses. I certainly didn't want to be out of a job, but I was relieved when

128 the governor and Health Department closed restaurants to in-person dining. I didn't expect
129 business to go downhill so quickly, though.

130 A lot of restaurants in the area, and all around the country quickly transitioned to takeout
131 options to stay open during the pandemic utilizing walk-up windows and delivery services.
132 Fitzpatrick's did not. Hollis only took orders over the phone which meant there wasn't enough
133 business to bring back any staff. I offered Hollis suggestions on how to make takeout work on a
134 bigger scale. Ultra-Eats and DoorDelivery were already popular in Harmony, so it seemed like a
135 no-brainer. Hollis dismissed that idea immediately because they said it was too expensive. At
136 this point, we were several weeks into the state mandated closure and the push to save local
137 businesses was gaining traction on social media. I offered to use my own social media accounts
138 to spread the word that Fitzpatrick's needed help transitioning to delivery and takeout service. I
139 even offered to create and operate accounts for Fitzpatrick's to spread the word and I offered to
140 do it for free. Hollis just responded with some vague comment about not asking for community
141 handouts. I was persistent and followed up with other ideas like offering bagged lunch options
142 that people could easily call in to order and just pick up from the counter inside. I also suggested
143 the idea of setting up the hostess stand in the doorway to use as a sort of make-shift takeout
144 window. None of my ideas were good enough for some reason and Hollis just stuck to offering
145 the full menu that could only be ordered by calling in.

146 Finally, Governor DeBier announced that restaurants could reopen to in-person dining on
147 May 15, for outdoor seating only. I was thrilled! This seemed like a safe option for staff and
148 customers, and I know everyone was eager to get back to some sort of normal. After the
149 announcement I didn't hear from Hollis, so I called to see what the plan was. I was shocked;
150 Hollis had no intention of offering outdoor seating! They said it wasn't possible because the
151 sidewalk in front of the restaurant didn't have enough room. I suggested using the employee
152 break area in the back alley, but Hollis refused. They said that was for employees only and it
153 wasn't suitable for dining. Tons of other restaurants used whatever space they could to add

154 outdoor seating, even using parking spaces, so I couldn't understand why Hollis was so resistant.

155 Hollis seemed determined to stick it out until in-person dining could resume indoors.

156 On May 21, 2020 restaurants were allowed to reopen for indoor dining with restrictions,

157 including spacing out tables, limiting capacity, and closing early. I was glad for the mandated

158 restrictions because I worried that Hollis wouldn't enforce any rules on their own. Closing early

159 didn't bother me in the slightest because we were so dead by 5:30 that I hardly made any tips

160 after that in normal circumstances. When it came time to reconfigure the restaurant, Hollis was

161 already fed up with the state guidelines and seemed to go out of their way to prove that

162 Fitzpatrick's couldn't accommodate the restrictions. The restaurant was small so there were only

163 so many options to maintain six feet between each table, but Hollis didn't do much to make it

164 work. They kept the tables in the same configuration and just closed off the biggest tables. They

165 still refused to add outdoor seating and they were against the idea of subbing out smaller tables

166 to replace the larger ones. This would have allowed them to seat more people because you could

167 have fit more 4-top tables in the space even with the 6 feet apart rule. Hollis said they shouldn't

168 have to buy new tables just because the state was trying to put them out of business.

169 Unsurprisingly, Fitzpatrick's was losing money and they had to lay off non-family staff members

170 after a few months of being reopened. Hollis kept me on because I had been there the longest and

171 I was willing to work any shift, but by September I had enough.

172 I put up with a lot of things in my 6 years at Fitzpatrick's, but Hollis' response to the

173 pandemic was the last straw. The business was in terrible shape, and it was already a struggle to

174 get my paychecks before the pandemic hit. I watched as Hollis refused again and again to adjust

175 or reorganize to adjust to the government restrictions. My paychecks got smaller, and tips

176 became few and far between because business slowed significantly. There was simply no way

177 Fitzpatrick's could compete with other area restaurants when Hollis refused to change their

178 ways. Near the end of September, I quit. I want to be clear about that last part. Hollis Fitzpatrick

179 did not fire me for stealing. I quit because of how terribly they mismanaged the business and

180 their complete lack of commitment to making changes to accommodate the new way of life
181 during the pandemic. Hollis knew the real story behind my petty theft charge, but they used my
182 record against me by telling everyone they fired me because they caught me stealing. I am not a
183 thief, and I certainly wouldn't risk my reputation for a few dollars. I began looking for a new job
184 immediately. I made sure to get ahead of Hollis' rumors and by the first week in November, I got
185 lucky. Harmony Bistro had an opening for an experienced server. They had done so well during
186 the pandemic that not only were they able to keep all their servers on staff, but they actually
187 needed to hire more people. I was so excited for the opportunity to work for such a thriving
188 restaurant that I applied immediately. I was a little nervous that Hollis's nasty rumors would get
189 in the way of my chances, but fortunately that was not the case. The owners of Harmony Bistro
190 knew not believe Hollis's claims that I was a thief and they hired me right away.

191 The Bistro is still new in town, but it is hands down the best restaurant I have ever
192 worked in. The owners, Jessie and Ollie, are responsive to customer and staff input and they
193 fully embraced changes necessitated by the pandemic. They regularly talk with other business
194 owners in the area to share ideas. The Bistro utilizes DoorDelivery and has a takeout stand set up
195 just outside the entrance to keep capacity under control while also keeping sales up. They set up
196 tables out back in the alley and spruced up the area with some string lights and decorations to
197 make customers feel welcome. It has been a huge hit and my tips have been great! I wish I
198 started working here sooner because I hear Jessie and Ollie even paid their employees during the
199 shutdown by using tips from takeout orders. Working at Harmony Bistro has been a great
200 experience and it is proof that Fitzpatrick's is just an outdated establishment with a stubborn
201 owner. I'm not surprised to hear that Hollis is looking for a scapegoat for their problems, but
202 they don't have a leg to stand on.