

James K. Lubing, WY Bar No. 5-2284  
Kevin P. Gregory, WY Bar No. 7-5360  
LUBING LAW GROUP, LLC  
P.O. Box 3894  
Jackson, Wyoming 83001  
jim@lubinglawgroup.com  
kevin@lubinglawgroup.com  
*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

---

RUSTY AND MARC ANDRUS, a married couple, and RUSTLERS, LLC, a Wyoming Limited Liability Company,

*Plaintiffs,*

vs.

THE TOWN OF THAYNE, WYOMING, an incorporated Wyoming municipality, and the MAYOR AND MEMBERS OF THE TOWN COUNCIL OF THE TOWN OF THAYNE WYOMING, in each of their official capacities,

*Defendants.*

---

CASE NO. 18-CV-05-S

**PLAINTIFFS' DESIGNATION OF EXPERT WITNESSES  
PURSUANT TO FED. R. CIV. P. 26(a)(2)**

---

COME NOW the Plaintiffs, by and through their undersigned counsel, pursuant to the Court's *Order on Initial Pretrial Conference* as well as Federal Rule of Civil Procedure 26(a)(2), and hereby designate the following expert witnesses who may be called to render opinions at the trial of this matter, as follows:

**SPECIALLY RETAINED EXPERT WITNESSES**  
**PURSUANT TO F.R.C.P 26(a)(2)(c)**

1. **Jeff Wilkinson, CPA, CVA**  
**Wilkinson and Associates, LLC**  
**P.O. Box 627**  
**Jackson, Wy 83001**  
**Phone (307) 733-1658**  
**Fax (307) 739-1492**

Attached hereto as Exhibit A (along with the Exhibits thereto) are the following documents related to this designation of expert Jeff Wilkinson, CPA, CVA:

- A. Mr. Wilkinson's qualifications, as detailed in his curriculum vitae.
- B. Mr. Wilkinson's August 13, 2018 report describing his review of the financial documents and circumstances of Rustlers, LLC, with Mr. Wilkinson's opinions as to the viability of the business, the change in sales volumes between 2016 and 2017, the change in sales volumes relative to other full-service restaurants in the relevant geographic area, and related opinions, findings and conclusions. Mr. Wilkinson's opinions and conclusions, as set forth in Exhibit A, are based upon the documents and information identified in Exhibit A. Mr. Wilkinson's opinions and conclusions are all expressed within a reasonable degree of certainty, accepted in his field.
- C. Mr. Wilkinson's prior testimonies subject to Rule 26 disclosure.
- D. Mr. Wilkinson's publications subject to Rule 26 disclosure.
- E. Mr. Wilkinson's hourly rates for work as an expert witness in preparing reports, time spent during preparation for testimony at deposition or trial, and for time spent testifying as a witness at deposition or trial are as reflected in Exhibit A.

Mr. Wilkinson is expected to testify in accordance with the opinions, findings and conclusions contained in his report, as well as any deposition that he may undergo in the future relative to this litigation.

Plaintiffs expressly reserve the right to supplement Mr. Wilkinson's opinions with additional information acquired during discovery, including depositions yet to be completed, and additional documents requested and received from Defendants, if any.

**NON-RETAINED OR SPECIALLY EMPLOYED WITNESSES**  
**PURSUANT TO F.R.C.P 26(a)(2)(c)**

1. **Paige Savarese, CPA**  
**Paige Savarese, CPA, PC**  
**P.O. Box 1111**  
**Jackson, WY 83001**  
**307-413-0107**

Paige Savarese, CPA was the certified public accountant retained to assist Plaintiffs with the preparation and filing of their federal tax returns and other matters related to Plaintiffs' public accounting documents during the time periods relevant to this matter. It is expected that Ms. Savarese may testify as to the foundation and contents of such documents, which have been previously produced in discovery in this matter, and may ultimately render opinions as further described herein.

It is anticipated that Ms. Savarese may be called to testify relative to her experience in preparing Plaintiffs' financial and tax documents, as to the evidentiary foundation of the Plaintiffs' tax returns, financial statements, profit and loss statements, and other financial documents prepared by her office from 2015 to 2017. Ms. Savarese may also be called to testify in order to explain the processes followed in the preparation of such documents, the expenses of Plaintiffs included in such documents, and the profitability of Plaintiffs for the years in which Ms. Savarese assisted them in connection with the preparation of such documents. It is anticipated that the testimony of Ms. Savarese will be limited to and consistent with those materials previously produced in discovery in this matter.

**GENERAL PROVISIONS**

1. All opinions of the expert witnesses set forth herein are and will be to the required degree of probability pursuant to applicable law in the witness's field of expertise.

2. This designation is intended to supplement any and all interrogatories and requests for production of documents propounded by the Defendants, as well as any deposition of a particular witness.

3. The experts listed herein may criticize, comment upon, and/or rebut the deposition testimony, trial testimony, and/or data/reports, written materials and/or any raw data or testing materials produced and/or compiled in this case by the expert(s) or other witnesses designated or called by any of the Defendants.

4. Plaintiffs reserve the right to call any expert designated by any of the Defendants in this case, whether retained or withdrawn as an expert.

5. Because discovery, depositions and document exchange are ongoing, Plaintiffs reserve the right to supplement this designation by giving opposing counsel notice of additional opinions that may be generated from newly discovered and/or produced evidence or depositions.

#### **SUPPLEMENTAL DESIGNATION RESERVED**

Plaintiffs reserve the right to supplement this designation of expert witnesses pending ongoing discovery, or review of additional discovery not yet obtained or which will be provided later in the case.

#### **EXPERTS DESIGNATED BY THE DEFENDANTS**

Plaintiffs reserve the right to call any and all expert witnesses identified by Defendants.

#### **REBUTTAL EXPERTS**

Plaintiffs reserve the right to designate rebuttal testimony from experts identified in this disclosure, as well as the right to designate additional experts as reasonable and necessary to provide opinions and/or rebuttal testimony in response to opinions advanced by discovery or

designations obtained from Defendants' expert(s), as permitted by the Court and the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 13th day of August, 2018.

/s/

---

James K. Lubing, WY Bar No. 5-2284  
Kevin P. Gregory, WY Bar No. 7-5360  
LUBING LAW GROUP, LLC  
P.O. Box 3894  
350 E. Broadway  
Jackson, WY 83001  
(307) 733-7242 – Telephone  
(307) 733-7471 – Facsimile  
jim@lubinglawgroup.com  
kevin@lubinglawgroup.com  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of August, 2018, I caused a true and correct copy of the foregoing to be served on those listed below using the delivery method(s) indicated:

Richard Rideout, Esq.  
LAW OFFICES OF RICHARD RIDEOUT, PC  
211 West 19<sup>TH</sup> Street, Suite 100  
P.O. Box 389  
Cheyenne WY 82003-0389  
(303) 632-1901 – Telephone  
[rsrideout@qwestoffice.net](mailto:rsrideout@qwestoffice.net)  
*Attorney for Defendants*

U.S. Mail  
 Hand Delivery  
 Facsimile  
 CM/ECF Electronic Copy  
 Email

Thomas A. Thompson, Esq.  
MACPHERSON, KELLY & THOMPSON, LLC  
616 West Buffalo  
P.O. Box 999  
Rawlins, WY 82301  
(307) 324-2713 – Telephone  
(307) 324-7348 – Facsimile  
[tthompson@wyomingattorneys.net](mailto:tthompson@wyomingattorneys.net)  
*Attorney for Defendants, The Town of Thayne, Wyoming, and the Mayor and Members of the Town Council of the Town of Thayne Wyoming in each of their official capacities*

U.S. Mail  
 Hand Delivery  
 Facsimile  
 CM/ECF Electronic Copy  
 Email

\_\_\_\_\_  
/s/  
Kevin P. Gregory, *Attorney for Plaintiffs*

Jeff E. Wilkinson, CPA, CVA  
Managing Partner  
Susan R. Rowe, CPA  
Partner



Certified Public Accountants

Jackie B. Rodriguez, CPA  
Kathryn S. Steele, CPA, CVA  
Kim J. Wilkinson, CPA

P.O. Box 627 • Jackson, Wyoming 83001 • 307.733.1658 • Fax 307.739.1492 • www.wilkinson-cpas.com

**RE: EXPERT WITNESS REPORT, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING, CASE NO. 18-CV-05-S**

**IN THE MATTER OF RUSTY and MARC ANDRUS and RUSTLERS, LLC plaintiffs vs. THE TOWN OF THAYNE, WYOMING, and THE MAYOR and MEMBERS OF THE TOWN COUNCIL OF THE TOWN OF THAYNE, WYOMING, defendants.**

To Whom It May Concern:

I have been asked by Rusty and Marc Andrus, Rustlers, LLC, and the law firm of Lubing Law Group, LLC to serve as an expert witness in the above entitled matters. The following report is intended to constitute my Expert Witness Report, as follows:

1. Name: Jeff E Wilkinson, CPA, CVA who practices as a member of the Jackson, WY CPA Firm of Wilkinson & Associates, LLC.
2. Qualifications and Prior Testimony: See CV attached as Exhibit A.
3. Summary of matters on which I expect to testify: I expect to testify as an expert witness in this matter, expressing opinions relating to: (i) Did the Rustlers, LLC restaurant operation experience declining sales during 2017 compared with 2016; (ii) Whether Rustlers experienced better operational performance during 2016 than it did during 2017 given its high infrastructure and start-up costs incurred during 2016; (iii) How did Rustlers' monthly 2017 sales compare with its monthly 2016 sales, and how do these changes measure up against the experience of other Lincoln County, WY restaurants; (iv) How did the Rustlers' restaurant operation perform in terms of cash flows in 2017 vs 2016; (v) How did food and labor costs compare to restaurant industry averages?
4. Information Reviewed: I have relied on the following information listed in Exhibit B
5. Compensation: I have agreed to serve as an expert witness in this case, with compensation limited to my normal and customary hourly rate, based on the number of hours spent, at a rate of \$305 per hour for my services; \$225 per hour for staff CPA litigation support services, and \$95 per hour for administrative services.
6. Expert Opinion: Based on my review of the information cited above, the applicable accounting standards, and my 30 years of experience as a tax and business advisor and over 10 years of experience as a business valuation and litigation support expert in financial matters practicing in Jackson, WY, I have reached the following conclusions, all of which are expressed within a



reasonable degree of certainty accepted within the fields of accounting and business valuation:

## **GENERAL BACKGROUND**

In September of 2015 Rusty and Marc Andrus purchased the commercial property on Main Street in Thayne, WY from which they would operate their restaurant, Rustlers, LLC. Beginning in January 2015 through July 2016 the plaintiffs spent over \$186,000 on infrastructure, equipment, and other start-up costs preparing the premises to be operated as a restaurant. Beginning on July 1, 2016 (after most of the initial infrastructure and equipment investments had been made) the plaintiffs began operations and began offering food and beverage sales to the public. During 2017, Rustlers made no major infrastructure or equipment investments (other than purchasing an ice machine for just over \$3,000). Rustlers continued its general restaurant operations from January 1 through December 31, 2017. Rustlers has not reopened since its final day of operations, December 31, 2017.

### **FIRST OPINION**

#### **DID THE RUSTLERS, LLC RESTAURANT OPERATION EXPERIENCE DECLINING SALES DURING 2017 COMPARED WITH 2016?**

It is my opinion that the Rustlers, LLC restaurant operations experienced declining sales during 2017 compared with 2016.

I begin my analysis by looking at the first page of Rustlers' 2016 and 2017 income tax returns. Total 2016 sales amounted to \$350,454 for the 6 months it was in operation. As the restaurant was in operation for a full 12 months during 2017, it is reasonable to expect Rustlers' sales to increase substantially for that year. However, Rustlers' 2017 sales amounted to \$348,854. This is a \$1,600 drop. Rustlers generated slightly less cash in 2017 even though it was in operation for almost twice as many months. Rustlers did have different days of operation between 2016 and 2017, and this likely affected its 2017 sales. I have addressed this in my third opinion on pages 4 – 7.

### **SECOND OPINION**

#### **UNDERSTANDING THE HIGH INFRASTRUCTURE AND START-UP COSTS INCURRED BY RUSTLERS IN 2016, DID RUSTLERS EXPERIENCE BETTER OPERATIONAL PERFORMANCE DURING 2016 THAN IT DID DURING 2017?**

Before the restaurant began operating, Rustlers incurred high infrastructure, equipment, and start-up costs. These kinds of costs are commonly incurred by restaurants before and during the first year of operation and should not be taken as a sign of lack of business viability. This is especially true considering the high remodel work that was performed on the Rustlers building to bring the premises into proper operating condition. It is my opinion that, even though Rustlers spent more money overall in 2016 than it did

in 2017, the restaurant operation itself performed better in 2016 (in terms of sales and profitability) than it did in 2017.

I would point out that Rustlers' 2015 income tax return shows a net loss of \$36,294 with \$2,950 in rental income. This amounts to \$39,244 in total 2015 spending. Since Rustlers did not open until mid-2016, these 2015 expenditures should not be included in net income/loss calculations of the restaurant business itself. Money that is spent before a business opens its doors to the public is not generally considered an operating expense of the business according to IRS regulations and Generally Accepted Accounting Principles in the United States (US GAAP) promulgated by the Financial Accounting Standards Board (FASB). Both the IRS and US GAAP would consider almost all of Rustlers expenses incurred during 2015 and the first half of 2016 to be investments in business infrastructure in *preparation for* restaurant operations to begin, not a *reflection of* the restaurant's financial performance. This type of pre-opening investment and infrastructure spending would almost never be classified as a financial loss when evaluating the viability of a business.

Section 1.263(a)-1 of the Internal Revenue Code (IRC) sets forth extensive guidance on what the IRS considers "capital expenditures". The IRS defines "Capital Expenditures" as *assets* of a taxpayer's business that are not immediately deductible.<sup>1</sup>

Section 1.263(a)-1(d) of the IRC provides the following examples of capital expenditures

- An amount paid to *acquire* or produce a unit of real or personal tangible property
- An amount paid to *improve* a unit of real or personal tangible property.

Section 195 of the internal Revenue Code similarly requires that business start-up costs be treated as assets (i.e. capitalized expenditures). Spending money on business assets and investments is not a sign of flailing business operations.

All of Rustlers' infrastructure and equipment costs incurred before 07/01/2016 fall into these categories of capital expenditures that the IRS and US GAAP would consider business assets and not operating expenses. The IRS would consider start-up costs to be business assets. US GAAP would classify start-up costs as a non-recurring, non-operating expense of the business that would not recur in future years.

See the chart below for Rustlers' investing activity from 2015 through 2017:

---

<sup>1</sup> IRS Publication 535

<b>Rustlers, LLC Cash Receipts and Disbursements from Investing Activities</b>			
	2015	2016	2017
Cash Expenditures from Investing Activities			
Bar	(5,000)		
Flooring	(5,950)		
Repairs and Maintenance	(7,848)	(8,261)	
Rent	(5,172)		
Auto Expense	(661)		
Legal and Accounting	(2,149)	(563)	
Tools	(3,783)		
Utilities	(681)		
Contract Labor	(8,000)	(18,850)	
Business Licenses & Permits		(1,585)	
Consulting		(1,700)	
POS System		(5,698)	
Leasehold (Real Property) Improvements		(23,832)	
Sound System		(2,280)	
Kitchen Equipment		(64,345)	
Start-up Costs		(20,493)	
Ice Machine			(3,121)
<b>Total Cash Expenditures from Investing Activities</b>	<b>(39,244)</b>	<b>(147,606)</b>	<b>(3,121)</b>
2015 and 2016 Investment spending relates to payment liabilities incurred before opening day on 07/01/2016			

Some may conclude that because Rustlers spent more on startup investments in 2016 than it did in 2017, the restaurant's operational performance must have been worse in 2016 than it was in 2017. This would be an improper analysis, and the data suggests the opposite.

The infrastructure, equipment, and start-up spending in 2015 and 2016 did not represent regular, recurring expenses of the operation. The fact that Rustlers only spent \$3,121 in capital expenditures during 2017 strongly supports the prediction that these initial infrastructure/start-up expenditures would significantly shrink in future years. They often do after a business leaves its 'start-up phase'.

If we properly classify Rustlers' infrastructure, equipment, and start-up spending as investments, and if we look at the dates on which those investments were made, the data begins to reveal that most of Rustlers initial investment costs occurred before the operation even opened its doors to the public. Those initial investment costs were needed to begin operations, and they should not be taken as an indication of the restaurant's operational performance itself:

<b>Rustlers, LLC</b>	
<b>2015 - 2017 Timeline of Cash Activity</b>	
August 1 - December 31, 2015	Repairs and improvements to business assets; other start-up costs
January 1 - July 1, 2016	Purchased POS System, Sound System, Kitchen Equipment; Incurred Start-up Costs and Leasehold (Real Estate) Improvements.
July 1, 2016 - December 31, 2016	Began Making Food and Beverage Sales
January 1 - December 31, 2017	Continued Making Food and Beverage Sales

**THIRD OPINION**

**HOW DID RUSTLERS' MONTHLY 2017 SALES COMPARE WITH ITS MONTHLY 2016 SALES, AND HOW DO THESE CHANGES MEASURE UP AGAINST THE EXPERIENCE OF OTHER LINCOLN COUNTY, WY RESTAURANTS?**

It is my opinion that Rustlers experienced monthly sales decreases during 2017 compared with its 2016 monthly sales. When comparing monthly 2016 sales to monthly 2017 sales I was not able to consider January – June 2017 sales. Rustlers was not open January – June 2016, and thus there was no data available for a year-by-year comparison. I compared Rustlers' sales during the 2<sup>nd</sup> half of 2017 to Rustlers' sales during the 2<sup>nd</sup> half of 2016.

Rustlers was open more frequently during the 2<sup>nd</sup> half of 2016 than the 2<sup>nd</sup> half of 2017. The decline in 2017 sales is partially explained by this. However, after correcting for the higher number of days of operation during the 2<sup>nd</sup> half of 2016 than there were during the 2<sup>nd</sup> half of 2017, Rustlers' sales still show a decline in 2017, as I will describe below. It is my opinion that Rustlers underperformed its Lincoln County restaurant peers during 2017.

Rustlers had 163 days of operation from July 1 – December 31, 2016 and 128 days of operation from July 1 – December 31, 2017. Because there were 35 fewer days of operation during the 2<sup>nd</sup> half of 2017, this is certainly a contributing factor to Rustlers' sales decline that must be accounted for.

Marc and Rusty Andrus represented to me that they had varying days of operation during both years. I confirmed this when I looked at Rustlers' daily sales reports contained within its Point-of-Sale system. My analysis of Rustlers' year-over-year sales is limited to comparable days. For example, if Rustlers was closed on the 3<sup>rd</sup> Wednesday in July 2017 I would not count sales from the 3<sup>rd</sup> Wednesday in July 2016.

To maintain comparability between the years, I only counted sales on days for which Rustlers was open in both 2016 and 2017.

Additionally, I looked at dinner sales only. Rustlers was sometimes open for lunch and sometimes not. It would not be accurate to compare the 3<sup>rd</sup> Wednesday in July 2016 with the 3<sup>rd</sup> Wednesday in July 2017 if Rustlers was open for lunch and dinner on that Wednesday in 2016 but only open for dinner on that Wednesday in 2017. Looking at dinner sales only and looking only at the days for which Rustlers was open during both years ensured that I maintained an apples-to-apples comparison.

After eliminating non-comparable days and non-comparable meals, I ended up with 116 days of dinner sales for 2016 and 117 days of dinner sales for 2017. The extra sales day included in 2017 is New Year's Eve. New Year's Eve fell on a Sunday in 2017, and it fell on a Saturday in 2016. This added one extra sales day to 2017, however I felt it would be unfair to exclude New Year's Eve sales from this analysis.

My analysis yielded the following sales patterns:

<b>RUSTLERS, LLC</b>			
<b>July - December Sales*</b>			
<b>2016 &amp; 2017</b>			
	<b>2016</b>	<b>2017</b>	<b>Decrease in Sales</b>
July	\$ 47,045.00	\$ 38,343.25	-18.50%
August	\$ 41,269.78	\$ 33,602.75	-18.58%
September	\$ 40,941.88	\$ 26,845.75	-34.43%
October	\$ 25,840.45	\$ 18,456.50	-28.58%
November	\$ 15,711.90	\$ 11,837.50	-24.66%
December	\$ 23,124.49	\$ 21,041.25	-9.01%
<b>Total</b>	<b>\$ 193,933.50</b>	<b>\$ 150,127.00</b>	<b>-22.59%</b>
* Utilizing Dinner only Sales on Comparable Days			

Other restaurants in Lincoln County, Wyoming, did not experience the same decline in sales during those time periods. Relying on data provided by the Wyoming Department of Revenue we can see that during the 2<sup>nd</sup> half of 2017, Rustlers' sales performance (compared to its 2016 sales) was below what other restaurants in the local economy experienced:

<b>Lincoln County Full Service Restaurants Sales Tax Collections by Month (Excludes Lodging Tax)</b>			
	2016	2017	Increase/ (Decrease)
July	36,259	44,766	23.46%
August	59,432	59,365	-0.11%
September	61,240	52,796	-13.79%
October	52,902	53,195	0.55%
November	48,801	41,384	-15.20%
December	29,764	23,873	-19.79%
<b>Total</b>	<b>288,398</b>	<b>275,379</b>	<b>-4.51%</b>

After limiting this analysis to comparable days and comparable meals only, the data strongly suggests that in 2017 Rustlers underperformed its peers within Lincoln county for July – November 2017 sales.

<b>RUSTLERS, LLC</b>				<b>Lincoln County Full Service Restaurant</b>
<b>July - December Sales*</b>				
<b>2016 &amp; 2017</b>				2017 Sales Tax Collections Increase over/(Decrease) from 2016 Sales Tax Collections
	2016	2017	Decrease in Sales	
July	\$ 47,045.00	\$ 38,343.25	-18.50%	23.46%
August	\$ 41,269.78	\$ 33,602.75	-18.58%	-0.11%
September	\$ 40,941.88	\$ 26,845.75	-34.43%	-13.79%
October	\$ 25,840.45	\$ 18,456.50	-28.58%	0.55%
November	\$ 15,711.90	\$ 11,837.50	-24.66%	-15.20%
December	\$ 23,124.49	\$ 21,041.25	-9.01%	-19.79%
<b>Total</b>	<b>\$ 193,933.50</b>	<b>\$ 150,127.00</b>	<b>-22.59%</b>	<b>-4.51%</b>
* Utilizing Dinner only Sales on Comparable Days				

After controlling for varying days and times of operation, Rustlers still experienced a 22.59% decrease (below July – December 2016 levels) in its overall sales for the months of July – December 2017. Lincoln County Full Service restaurants, on the other hand, experienced a 4.51% drop in July – December 2017 sales below their July – December 2016 levels.

For the months of July – November 2017, Rustlers monthly sales dropped below their 2016 levels at rates lower than what other Lincoln County, WY full-service restaurants experienced.

The only exception is December 2017 in which Rustlers sales dropped to 9.01% below December 2016 Sales. In that same month, Lincoln County Full Service Restaurants experienced a sales drop of 19.79% below December 2016 sales levels. This is partially explained by the fact that I included one extra sales day in December 2017. Rusty and Marc Andrus have stated that they held several special events during December of 2017 including a Christmas Party, New Years' Eve Party, and a county catering event. This could account for the fact that Rustlers' 2017 December sales did not decline as far below its 2016 December sales as other county restaurants experienced. Overall, Rustlers experienced significant sales decreases at least during the 2<sup>nd</sup> half of 2017 beyond what the trends in the local economy would predict.

For a more detailed representation of exactly which days of operation I relied upon for this analysis, please see Exhibits C and D.

#### **FOURTH OPINION**

#### **HOW DID THE RUSTLER'S RESTAURANT OPERATION PERFORM IN TERMS OF CASH FLOWS IN 2017 VS 2016?**

Moving on to page 5 of Rustlers' 2016 and 2017 income tax returns we can see a net loss of (\$1,674) for 2016 and a net loss of (\$46,540) for 2017. However, further evaluation actual cash receipts and disbursements (and their nature) is warranted to fully understand how the business performed during 2016 and 2017. At the end of the day, generating sufficient cash (or failing to do so) is what will cause a business to succeed (or fail).

For example, items such as depreciation and amortization do not represent actual cash outlays. They are deducted according to Federal income tax regulations to reflect the usage of business assets. Additionally, in 2017 Rusty and Marc Andrus were paid \$35,000 in officer compensation. The IRS requires that all S-corporations (which Rustlers was in 2017) pay reasonable compensation to owner-employees. In 2016 no officer salary was paid. The IRS does not allow salaries to be paid to LLC members. (Rustlers was a multi-member LLC taxed as a partnership in 2016). Wage expenses for 2016 and 2017 are not comparable as one includes an officer salary and one does not. In 2017 there was also \$10,100 in rents paid to Rusty and Marc for use of the building. This should be added back as well since it benefitted the business owners.

Additionally, upon inspecting the QuickBooks purchasing detail for Rustlers, I discovered that the 2016 tax return and profit & loss statements contain at least \$30,000 in expenses that were incurred and paid before the restaurant opened on July 1, 2016. The largest of these pre-opening day expenses was a series of payments to a contract laborer (related to the real estate remodel work) in the amount of \$18,850 between the months of January and June of 2016. As discussed in my second opinion, both IRS

regulations and Generally Accepted Accounting Principles in the United States (US GAAP) would consider these pre-opening expenses to be non-recurring infrastructure, equipment, and investment costs and not as operating expenses of the restaurant. For a detailed list of the amounts, payment dates, and nature of these expenses, please see attached Exhibit E.

To get a better picture of how much cash the business operations generated or lost, (correcting for non-cash, non-comparable, and investment items), see the chart below:

<b>Cash Flow Analysis for 2016 &amp; 2017</b>		
<b>Comparative Schedules of Cash Receipts and Disbursements from Operations</b>		
	2016	2017
Sales per Tax Return	\$ 350,454	\$ 348,854
Expenses per Tax Return	(352,128)	(395,394)
<b>Net Loss</b>	<b>\$ (1,674)</b>	<b>\$ (46,540)</b>
<b>Cash Receipts (Losses) from Operations</b>		
Amortization & Depreciation (non-cash items add back)	19,847	25,276
Less: Cash spent on prepaid payroll taxes	(4,142)	
Plus: Prior year tax overpayment (non-cash item add back)		4,142
Plus: Sales tax expense liability not paid by year-end (non-cash item add back)		1,052
<b>Net Cash Receipts (Losses) from Operations</b>	<b>\$ 14,031</b>	<b>\$ (16,070)</b>
<b>Normalization for Officer Salary</b>		
Plus: 2017 Officer Salary (and related payroll taxes)	\$ -	\$ 37,762
Plus Self-Rents		\$ 10,100
<b>Add back of Additional Infrastructure and Investment Spending</b>		
Non-recurring startup, infrastructure, and investment costs paid before operations began.	\$ 30,958	
<b>Net Cash from Operations after Officer Salary Normalization</b>	<b>\$ 44,989</b>	<b>\$ 31,792</b>
<b>Monthly Profits</b>	<b>\$ 7,498</b>	<b>\$ 2,649</b>

During 2016 Rustlers was in operation for 6 months. During 2017 Rustlers was in operation for 12 months. After correcting for non-cash, non-comparable, and non-recurring investment items, the true monthly cash generated by Rustlers' operations was \$7,498 during 2016 and \$2,649 during 2017. This represents a 64.67% drop in monthly income during 2017.

It is my opinion that profitability of the restaurant operation declined during 2017. It is my opinion that declining sales were a contributing factor to Rustlers declining profitability during 2017. It is my opinion that, if future years' sales levels were to remain consistent with 2016 sales levels and future years' operating expenses were to remain consistent with 2016 operating expense levels, this would be a profitable business.

## FIFTH OPINION

### HOW DID FOOD AND LABOR COSTS COMPARE TO RESTAURANT INDUSTRY AVERAGES?

According to the National Restaurant Association and a restaurant benchmarking report compiled by Baker, Tilly, Virchow, Krause, LLP (from data gathered from financial statements of Baker Tilly clients), food and beverage costs will, on average represent 30% to 32% of sales while labor should represent 30% to 35% of sales.<sup>2</sup> Based on my 30 years of experience of providing accounting services to restaurant clients, I have also found these numbers to be useful benchmarks in controlling restaurant costs.

Food, beverage, and labor costs combined should be kept under 65% of Sales. Food, beverage, and labor costs are also known as Prime Costs. According to the National Restaurant Association, high prime costs is one of the main contributing factors to the underperformance and failure of restaurant operations.<sup>3</sup> I have also witnessed several restaurants struggle due to high prime costs as well.

It is my opinion, based on my industry research and my experience performing bookkeeping, advisory, and tax return preparation services for Wyoming restaurants, that Rustlers' food, beverage, and labor costs (as a percentage of sales) were reasonable during 2016. Rustlers was able to lower its food costs during 2017 to an even more optimal level. However, labor costs, as a percentage of sales, exceeded the restaurant benchmark ideals during 2017.

See the chart below for this metric applied to Rustlers' 2016 and 2017 financial performance.

<b>Rustlers, LLC</b>				
2016 & 2017 Food, Beverage, & Labor Costs as a Percentage of Total Sales.				
	2016		2017	
		% of Sales		% of Sales
Sales	\$ 350,454	100%	\$348,854	100%
Food and Beverage Costs*	\$ 119,098	34%	\$101,431	29%
Labor Costs (includes payroll taxes)**	\$ 115,783	33%	\$153,542	44%
<b>Total Prime Costs</b>	<b>\$ 234,881</b>	<b>67%</b>	<b>\$254,973</b>	<b>73%</b>
* 2016 Supplies Expense of \$28,633 Excluded from Food & Beverage Costs				
** 2017 Officer Salary of \$35,000 Excluded from Labor Costs for the sake of comparability				

<sup>2</sup> [www.bakertilly.com/uploads/restaurant-benchmarking.pdf](http://www.bakertilly.com/uploads/restaurant-benchmarking.pdf)

<sup>3</sup> ManageFirst: Controlling Foodservice Costs. Page 9.

2016 Prime Costs were near the industry average. 2017 Food and Beverage Costs improved. However, 2017 labor costs grew higher than is sustainable. This increase in labor costs (as a percentage of Sales) could have been alleviated had Rustlers' 2017 sales not declined as they did.

Rustlers had to staff its restaurant for a full 12 months in 2017. It would have been difficult for the business to predict that 2017 sales would dip so far below 2016 sales. Even if Rustlers' management had started to notice a decline in 2017 sales, it would still have been difficult to control labor. The restaurant needed to remain open and somewhat staffed during its regular hours of operation. Responding to a slow sales day by sending waitstaff home and closing the business early when patrons expect the business to be open will only accelerate the declining sales problem. Patrons may not return to an establishment with unpredictable hours of operation.

The business was limited with regard to the measures it could take to reduce staff in response to declining sales. Food costs in a situation of declining sales are easier to control. Management can buy food and beverage items as-needed. However, management must maintain minimum staffing levels for a predictable range of hours each week even when business has slowed.

It is my opinion that Rustlers was able to successfully control its food costs. It is also my opinion that the decline in Rustlers' 2017 sales was likely a contributing factor to its high 2017 labor cost. This assertion is supported by the fact that Rustlers was able to control labor costs in relation to sales during 2016 when its sales were at a more sustainable level.

To the extent that poor internal management decisions may have been a contributing factor to high food, beverage, or labor costs, it is important to be aware that there is often a long learning curve for all new businesses to figure out how to maximize efficiency. It takes time for new businesses to learn their market and adjust their costs and staffing needs accordingly. Had Rustlers continued operating into 2018 and future years, the restaurant would have had more time to gauge the market and adjust its food, beverage, and labor costs more proportionately with customer demands. However, the fact that management was able to control food costs to a greater degree during 2017 than during 2016 is one indication that management was successfully responding to its market in terms of cost efficiency.

To recap, I present a summary of my conclusions, all of which are expressed within a reasonable degree of certainty within the fields of accounting and business valuations, below:

- Rustlers' restaurant operations experienced declining sales during 2017 compared with its 2016 sales.
- In 2016 Rustlers' restaurant operations experienced higher profitability than during 2017.

- At least during the 2<sup>nd</sup> half of 2017, Rustlers' sales declined from their 2016 levels beyond what its Lincoln county peers (Full Service restaurants) experienced.
- After accounting for startup, infrastructure, and initial investment costs, the profitability of Rustlers' restaurant operation declined during 2017 below 2016 profitability levels. Declining sales were a contributing factor to Rustlers' declining profitability. The 2016 cash flows from operations indicate that Rustlers was, initially, a profitable business.
- Rustlers demonstrated reasonable food and labor costs during 2016. Rustlers became even more efficient with its food costs during 2017. Rustlers was not able to reduce its labor costs to an appropriate percentage of its sales during 2017. Declining sales were a contributing factor to Rustlers high labor costs (in proportion to sales).

Supplement to Report: I reserve the right to supplement this report and the opinions contained herein based on information gathered from my continuing review of documents already produced as well as documents which may subsequently be produced, and additional information that may become available, including but not limited to receipt of more detailed information on the bases for opinion offered by other experts in this matter.

Very truly yours,

  
Jeff E. Wilkinson, CPA, CVA

Wilkinson & Associates, LLC

**Jeff E. Wilkinson, CPA, CVA**  
Curriculum Vitae

**Wilkinson & Associates, LLC**  
**307-733-1658 Office**  
**Box 627**  
**307-739-1492 FAX**

**172 Center Street, Suite 201**  
**Post Office**  
**Jackson, WY 83001**

[jeff@wilkinson-cpas.com](mailto:jeff@wilkinson-cpas.com)

**PROFESSIONAL CREDENTIALS & EDUCATION:**

- Certified Public Accountant (CPA) – Wyoming (active)
- Certified Valuation Analyst (CVA) – National Association CVA, 1998
- B.A. Business Administration – University of Montana, 1987 with honors

**PROFESSIONAL SOCIETIES:**

- American Institute of Certified Public Accountants
- Wyoming Society of Certified Public Accountants
- National Association of Certified Valuation Analysts

**SUMMARY OF EXPERIENCE:**

- Jeff Wilkinson has thirty years of experience in the accounting profession and provides estate, trust, financial, accounting and income tax planning services to individuals and businesses.

**AREAS OF EXPERTISE:**

- Jeff Wilkinson's expertise includes individual and business income taxation, business valuation services, litigation support, bankruptcy restructuring, and financial planning. He has testified as an expert witness in business valuations, divorce settlements and other accounting and tax matters.

**FORENSIC AND VALUATION EDUCATION:**

- Valuation Issues in Family Owned Businesses
- The Mechanics of Buying/Selling a Business
- Valuation Methods: Alternatives and Decision Criteria
- Advanced Valuations Discounts and Premiums
- Valuing Pass Through Entities: S-Corp and LLC vs. C-Corp
- Valuing Family Limited Partnerships
- Business Interruptions: Losses and Claims
- Financial Statement Misrepresentations and Fraud Prevention, Detection and Response

- Current Update in Valuations (2004, 2008, 2013, 2016)
- Levels of Value

**FORENSIC AND VALUATION EDUCATION** (continued):

- Case Studies in Business Valuations (2004, 2008, 2013, 2016)
- Business Valuations: CVA Exam
- Applying Market and Guideline Methods in Valuations
- Capitalization/Discount Rates: Assessing the Alternatives
- Normalizing and then Projecting Earnings
- Working Through the Business Valuations Standards Maze
- Fundamentals of the Business
- Forensic Accounting - Foundational Tools
- Forensic Accounting – Advanced Indices, Lexicology, Benefit Streams, Damages
- Exit Option Case Studies
- Exit Planning

**FEDERAL & DISTRICT COURT RULE 26(a)(2)(B) INFORMATION WITH RESPECT TO QUALIFICATION OF THE WITNESS:**  
***Qualified as Expert Witness in Federal and State District courts***

TESTIMONY:

- In the case of *Carin Blatt v Jill Smith*; Jessica Rutzick and Associates, Jessica Rutzick; Civil Action #16239 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;
- In the case of *Reynolds v Reynolds*; Mulligan Law Office, Richard Mulligan; Civil Action #16189 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;
- In the case of *Tozzi v Tozzi*; Moffett and Associates, J. Denny Moffett for the conservator; Mulligan Law Office, Richard Mulligan for the Plaintiff; Civil Action #15675 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;
- In the *Conservatorship of Reba Bass*; Davis & Cannon LP, Kim Cannon; Civil Action #17360 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;

DEPOSITIONS:

- In the case of *Herman v Herman*; Cohen Law Offices, Ken Cohen; Civil Action #16570 in Teton County 9<sup>th</sup> District Court; presided over by Hon. Judge Timothy Day;
- In the case of *Reynolds v Reynolds*; Mulligan Law Office, Richard Mulligan; Civil Action #16189 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;
- In the case of *Tozzi v Tozzi*; Moffett and Associates, J. Denny Moffett for the conservator; Mulligan Law Office, Richard Mulligan for the Plaintiff; Civil Action #15675 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;
- In the *Conservatorship of Reba Bass*; Davis & Cannon LP, Kim Cannon; Civil Action #17360 in Teton County 9<sup>th</sup> District Court; Presided over by Hon. Judge Timothy Day;

## DOCUMENT INDEX

- Rustlers, LLC 2015 Federal Income Tax Return
- Rustlers, LLC 2016 Federal Income Tax Return
- Rustlers, LLC 2017 Federal Income Tax Return
- Rustlers, LLC QuickBooks file (provided by the Rustlers, LLC CPA).
- Spreadsheet compiled by Rusty and Marc Andrus detailing Rustlers, LLC expenses paid for from personal funds prior to establishing Rustlers' checking account (provided by the Rustlers, LLC CPA).
- Rustlers, LLC monthly **Profit & Loss** reports for June 2016 through December 2017 (provided by the Rustlers, LLC CPA).
- Rustlers, LLC Daily Sales Report for July 1, 2016 – December 31, 2017.
- Daily sales data by meal obtained from the Rustlers, LLC Point-of-Sale system (LAVU).
- 2016 – 2017 Aggregated Sales and Use Tax Distribution Reports published by the State of Wyoming Department of Revenue.
- Internal Revenue Code
- IRS Publication 535
- “Restaurant Benchmarking” report published by Baker, Tilly, Virchow, Krause, LLP from data gathered from financial statements of the advisory firm.
- *Controlling Foodservice Costs: Second Edition*. By the National Restaurant Association Educational Foundation. Published by Pearson Education, Inc. 2007, 2013.

**Rustlers, LLC**  
**Daily Dinner Sales (post-4pm)**  
**Tallied by Month**

Friday, July 1, 2016	2,214.50	1,732.00	Friday, June 30, 2017
Saturday, July 2, 2016	2,004.00	1,750.50	Saturday, July 1, 2017
Wednesday, July 6, 2016	1,888.50	2,297.00	Wednesday, July 5, 2017
Thursday, July 7, 2016	1,912.00	1,830.25	Thursday, July 6, 2017
Friday, July 8, 2016	1,815.50	1,783.50	Friday, July 7, 2017
Saturday, July 9, 2016	3,146.00	1,806.00	Saturday, July 8, 2017
Tuesday, July 12, 2016	2,078.50	1,765.00	Tuesday, July 11, 2017
Wednesday, July 13, 2016	2,095.00	2,161.75	Wednesday, July 12, 2017
Thursday, July 14, 2016	1,983.50	1,519.00	Thursday, July 13, 2017
Friday, July 15, 2016	1,854.00	1,814.00	Friday, July 14, 2017
Saturday, July 16, 2016	2,575.00	2,283.00	Saturday, July 15, 2017
Tuesday, July 19, 2016	108.00	2,238.75	Tuesday, July 18, 2017
Wednesday, July 20, 2016	2,983.50	1,275.25	Wednesday, July 19, 2017
Thursday, July 21, 2016	2,125.00	1,326.75	Thursday, July 20, 2017
Friday, July 22, 2016	3,261.50	2,545.25	Friday, July 21, 2017
Saturday, July 23, 2016	2,338.75	2,003.00	Saturday, July 22, 2017
Tuesday, July 26, 2016	1,982.75	1,969.75	Tuesday, July 25, 2017
Wednesday, July 27, 2016	2,617.00	1,805.00	Wednesday, July 26, 2017
Thursday, July 28, 2016	2,410.00	1,124.00	Thursday, July 27, 2017
Friday, July 29, 2016	3,242.00	1,358.75	Friday, July 28, 2017
Saturday, July 30, 2016	2,410.00	1,954.75	Saturday, July 29, 2017
<b>Total</b>	<b>47,045.00</b>	<b>38,343.25</b>	<b>Total</b>

**Rustlers, LLC**  
**Daily Dinner Sales (post-4pm)**  
**Tallied by Month**

Tuesday, August 2, 2016	1,209.00	1,202.25	Tuesday, August 1, 2017
Wednesday, August 3, 2016	1,540.00	1,244.00	Wednesday, August 2, 2017
Thursday, August 4, 2016	1,895.50	1,298.50	Thursday, August 3, 2017
Friday, August 5, 2016	3,320.50	2,161.75	Friday, August 4, 2017
Saturday, August 6, 2016	2,014.75	1,452.50	Saturday, August 5, 2017
Tuesday, August 9, 2016	2,231.50	1,762.75	Tuesday, August 8, 2017
Wednesday, August 10, 2016	1,816.00	1,623.00	Wednesday, August 9, 2017
Thursday, August 11, 2016	1,609.75	1,028.25	Thursday, August 10, 2017
Friday, August 12, 2016	2,252.25	1,101.25	Friday, August 11, 2017
Saturday, August 13, 2016	2,468.00	2,365.75	Saturday, August 12, 2017
Tuesday, August 16, 2016	1,751.50	1,844.00	Tuesday, August 15, 2017
Wednesday, August 17, 2016	3,035.28	1,032.75	Wednesday, August 16, 2017
Thursday, August 18, 2016	1,438.50	2,088.50	Thursday, August 17, 2017
Friday, August 19, 2016	2,478.00	2,453.75	Friday, August 18, 2017
Saturday, August 20, 2016	1,760.00	3,383.00	Saturday, August 19, 2017
Thursday, August 25, 2016	1,732.00	1,204.25	Thursday, August 24, 2017
Friday, August 26, 2016	2,936.00	2,892.75	Friday, August 25, 2017
Saturday, August 27, 2016	2,913.25	986.25	Saturday, August 26, 2017
Tuesday, August 30, 2016	1,383.00	846.00	Tuesday, August 29, 2017
Wednesday, August 31, 2016	1,485.00	1,631.50	Wednesday, August 30, 2017
<b>Total</b>	<b>41,269.78</b>	<b>33,602.75</b>	<b>Total</b>

**Rustlers, LLC**  
**Daily Dinner Sales (post-4pm)**  
**Tallied by Month**

Thursday, September 1, 2016	1,182.00	961.50	Thursday, August 31, 2017
Friday, September 2, 2016	2,035.25	1,906.25	Friday, September 1, 2017
Saturday, September 3, 2016	3,149.50	1,273.25	Saturday, September 2, 2017
Tuesday, September 6, 2016	1,696.50	1,122.50	Tuesday, September 5, 2017
Wednesday, September 7, 2016	1,265.38	766.50	Wednesday, September 6, 2017
Thursday, September 8, 2016	1,944.50	1,114.75	Thursday, September 7, 2017
Friday, September 9, 2016	3,008.50	1,207.25	Friday, September 8, 2017
Saturday, September 10, 2016	2,657.00	1,735.75	Saturday, September 9, 2017
Tuesday, September 13, 2016	1,752.00	1,515.00	Tuesday, September 12, 2017
Wednesday, September 14, 2016	1,447.00	1,454.25	Wednesday, September 13, 2017
Thursday, September 15, 2016	1,580.75	872.50	Thursday, September 14, 2017
Friday, September 16, 2016	1,975.50	1,213.00	Friday, September 15, 2017
Saturday, September 17, 2016	2,678.70	2,021.75	Saturday, September 16, 2017
Tuesday, September 20, 2016	1,807.90	1,388.00	Tuesday, September 19, 2017
Wednesday, September 21, 2016	1,465.00	853.50	Wednesday, September 20, 2017
Thursday, September 22, 2016	2,127.50	843.75	Thursday, September 21, 2017
Friday, September 23, 2016	2,029.90	1,566.75	Friday, September 22, 2017
Saturday, September 24, 2016	2,452.50	1,364.50	Saturday, September 23, 2017
Tuesday, September 27, 2016	1,544.50	1,340.50	Tuesday, September 26, 2017
Wednesday, September 28, 2016	1,489.00	1,181.00	Wednesday, September 27, 2017
Friday, September 30, 2016	1,653.00	1,143.50	Friday, September 29, 2017
<b>Total</b>	<b>40,941.88</b>	<b>26,845.75</b>	<b>Total</b>

**Rustlers, LLC**  
**Daily Dinner Sales (post-4pm)**  
**Tallied by Month**

Saturday, October 1, 2016	2,089.75	1,721.00	Saturday, September 30, 2017
Tuesday, October 4, 2016	1,533.50	1,078.00	Tuesday, October 3, 2017
Thursday, October 6, 2016	2,206.75	1,001.00	Thursday, October 5, 2017
Friday, October 7, 2016	2,260.00	1,566.00	Friday, October 6, 2017
Saturday, October 8, 2016	2,184.50	1,498.75	Saturday, October 7, 2017
Tuesday, October 11, 2016	1,268.75	798.00	Tuesday, October 10, 2017
Thursday, October 13, 2016	1,476.50	479.50	Thursday, October 12, 2017
Friday, October 14, 2016	1,224.50	1,323.50	Friday, October 13, 2017
Saturday, October 15, 2016	1,350.50	925.25	Saturday, October 14, 2017
Tuesday, October 18, 2016	791.75	1,002.00	Tuesday, October 17, 2017
Thursday, October 20, 2016	1,078.00	434.00	Thursday, October 19, 2017
Friday, October 21, 2016	2,016.30	1,347.25	Friday, October 20, 2017
Saturday, October 22, 2016	1,901.15	1,367.00	Saturday, October 21, 2017
Tuesday, October 25, 2016	721.00	310.50	Tuesday, October 24, 2017
Thursday, October 27, 2016	904.00	1,142.50	Thursday, October 26, 2017
Friday, October 28, 2016	897.00	1,307.00	Friday, October 27, 2017
Saturday, October 29, 2016	1,936.50	1,155.25	Saturday, October 28, 2017
<b>Total</b>	<b>25,840.45</b>	<b>18,456.50</b>	<b>Total</b>

**Rustlers, LLC**  
**Daily Dinner Sales (post-4pm)**  
**Tallied by Month**

Wednesday, November 2, 2016	1,187.50	750.00	Wednesday, November 1, 2017
Friday, November 4, 2016	1,466.50	1,233.50	Friday, November 3, 2017
Saturday, November 5, 2016	1,494.65	670.00	Saturday, November 4, 2017
Tuesday, November 8, 2016	906.50	475.00	Tuesday, November 7, 2017
Wednesday, November 9, 2016	1,324.50	381.00	Wednesday, November 8, 2017
Tuesday, November 15, 2016	953.75	745.25	Tuesday, November 14, 2017
Wednesday, November 16, 2016	768.00	895.25	Wednesday, November 15, 2017
Friday, November 18, 2016	1,628.25	1,082.25	Friday, November 17, 2017
Saturday, November 19, 2016	1,179.50	1,651.25	Saturday, November 18, 2017
Tuesday, November 22, 2016	610.00	816.25	Tuesday, November 21, 2017
Wednesday, November 23, 2016	734.75	1,268.00	Wednesday, November 22, 2017
Friday, November 25, 2016	846.00	229.00	Friday, November 24, 2017
Saturday, November 26, 2016	1,738.50	732.75	Saturday, November 25, 2017
Tuesday, November 29, 2016	709.50	519.25	Tuesday, November 28, 2017
Wednesday, November 30, 2016	164.00	388.75	Wednesday, November 29, 2017
Total	15,711.90	11,837.50	Total

**Rustlers, LLC**  
**Daily Dinner Sales (post-4pm)**  
**Tallied by Month**

Thursday, December 1, 2016	688.00	521.50	Thursday, November 30, 2017
Friday, December 2, 2016	1,207.50	1,066.25	Friday, December 1, 2017
Saturday, December 3, 2016	1,140.00	561.25	Saturday, December 2, 2017
Tuesday, December 6, 2016	473.25	582.50	Tuesday, December 5, 2017
Wednesday, December 7, 2016	755.00	463.75	Wednesday, December 6, 2017
Thursday, December 8, 2016	474.00	271.00	Thursday, December 7, 2017
Friday, December 9, 2016	742.75	854.75	Friday, December 8, 2017
Saturday, December 10, 2016	2,320.50	1,877.25	Saturday, December 9, 2017
Tuesday, December 13, 2016	268.00	524.50	Tuesday, December 12, 2017
Wednesday, December 14, 2016	328.90	510.75	Wednesday, December 13, 2017
Thursday, December 15, 2016	737.00	735.75	Thursday, December 14, 2017
Friday, December 16, 2016	1,524.50	1,256.25	Friday, December 15, 2017
Saturday, December 17, 2016	1,177.40	1,008.00	Saturday, December 16, 2017
Tuesday, December 20, 2016	1,149.00	960.50	Tuesday, December 19, 2017
Wednesday, December 21, 2016	1,266.50	1,486.00	Wednesday, December 20, 2017
Thursday, December 22, 2016	1,380.50	609.50	Thursday, December 21, 2017
Friday, December 23, 2016	1,275.50	1,274.50	Friday, December 22, 2017
Tuesday, December 27, 2016	1,233.75	826.50	Tuesday, December 26, 2017
Wednesday, December 28, 2016	641.50	439.75	Wednesday, December 27, 2017
Thursday, December 29, 2016	1,077.50	1,110.50	Thursday, December 28, 2017
Friday, December 30, 2016	1,646.50	721.75	Friday, December 29, 2017
Saturday, December 31, 2016	1,616.94	1,082.75	Saturday, December 30, 2017
		2,296.00	Sunday, December 31, 2017
<b>Total</b>	<b>23,124.49</b>	<b>21,041.25</b>	<b>Total</b>
<b>Grand Total</b>	<b><u>193,933.50</u></b>	<b><u>150,127.00</u></b>	<b>Grand Total</b>

**RUSTLERS, LLC**  
**July - December Sales Changes**  
**2016 & 2017**

Foot- notes	<b>Rustlers, LLC</b>		<b>Lincoln County: Full Service Restaurants.</b>	
1	<b>Months of July</b>		<b>Months of July</b>	
	Tuesday - Saturday Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 48,477.50	\$ 38,343.25	-20.91%	23.46%
1, 2	<b>Months of August</b>		<b>Months of August</b>	
	Tuesday - Saturday Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 41,269.78	\$ 34,564.25	-16.25%	-0.11%
1, 3	<b>Months of September</b>		<b>Months of September</b>	
	Tuesday - Saturday Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 40,941.88	\$ 27,605.25	-32.57%	-13.79%
4	<b>Months of October</b>		<b>Months of October</b>	
	Tuesday - Saturday Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 25,840.45	\$ 16,735.50	-35.24%	0.55%
5	<b>Months of November</b>		<b>Months of November</b>	
	Tuesday - Saturday Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 15,711.90	\$ 11,837.50	-24.66%	-15.20%
6	<b>Months of December</b>		<b>Months of December</b>	
	Tuesday - Saturday Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 23,124.49	\$ 22,205.00	-3.98%	-19.79%
	<b>July - December</b>		<b>July - December</b>	
	Total Dinner Sales (after 4pm) 2016	2017	2017 Sales Percentage Increase/(Decrease) Compared with 2016 Sales	2017 County Sales Tax Collection Increase/(Decrease) Compared with 2016 Sales Tax Collections
	\$ 195,366.00	\$ 151,290.75	-22.56%	-4.51%

**RUSTLERS, LLC**  
**July - December Sales Changes**  
**2016 & 2017**

- 1 During the months of July - September, 2016, Rustlers was open 7 days a week. During the months of July - September, 2017, Rustlers was closed on Sundays and Mondays. We have excluded all sales made on Sundays and Mondays for the months of July - August, 2016 for the sake of comparability.
  
- 2 In order to preserve comparability, these sale numbers exclude sales made on Tuesday, August 23, 2016 and Wednesday, August 24, 2016 because Rustlers was closed on Tuesday, August 22, 2017 and Tuesday, August 23, 2017.
  
- 3 In order to preserve comparability, these sale numbers exclude sales made on Thursday, September 29, 2016 because Rustlers was closed on Thursday, September 28, 2017
  
- 4 During the month of October, 2016 Rustlers was closed on Wednesdays. During the month of October, 2017, Rustlers was closed on Sundays and Mondays. In order to preserve comparability, we have excluded all sales made on Sundays and Mondays for the month of October, 2016 and all sales made on Wednesdays for the month of October, 2017.
  
- 5 During the month of November, 2016 Rustlers was closed on Thursdays. During the month of November, 2017, Rustlers was closed on Sundays and Mondays. In order to preserve comparability, we have excluded all sales made on Sundays and Mondays for the month of November, 2016 and all sales made on Thursdays for the month of November, 2017  
  
In order to preserve comparability, these sale numbers exclude sales made on Tuesday, November 1, 2016 because Rustlers was closed on the corresponding Tuesday in 2017 (Tuesday, October 31, 2017)  
  
Additionally, these sale numbers exclude sales made on Friday, November 10, 2017 and Saturday, November 11, 2017 because Rustlers was closed on the corresponding Friday and Saturday during 2016 (Friday, November 11, 2016 and Saturday, November 12, 2016)
  
- 6 Rustlers was closed on Sundays and Mondays during the months of December, 2016 and December, 2017  
  
As New Years Eve, December 31, 2017 fell on a Sunday, and as Rustlers was open on that Sunday, we included the sales made on Sunday, December 31, 2017 in order to remain comparable with the December 2016 sales. Rustlers was open on Saturday, December 31, 2016.

**Rustlers LLC**  
**Additional Startup Expense Detail**  
 January 1 - June 30, 2016

Type	Date	Name	Memo	Split	Debit
<b>Business Licenses and Permits</b>					
Check	02/26/2016	Town of Thayne	Bar and Grill	Bank Of Star Valley	1,375.00
Check	04/24/2016	Wyo Dept of Revenue	Sales and Use Tax Licenses	Bank Of Star Valley	60.00
Check	06/16/2016	Town of Thayne		Bank Of Star Valley	50.00
Check	06/17/2016	Wyo Dept of Agriculture		Bank Of Star Valley	100.00
<b>Total Business Licenses and Permits</b>					
<b>Consulting</b>					
Check	04/06/2016	TR Freedom		Bank Of Star Valley	125.00
Check	04/25/2016	TR Freedom		Bank Of Star Valley	270.50
Check	04/29/2016	Tucker and Tucker		Bank Of Star Valley	54.00
Check	05/16/2016	TR Freedom		Bank Of Star Valley	600.00
Check	06/20/2016	TR Freedom		Bank Of Star Valley	650.00
<b>Total Consulting</b>					
<b>Contract Labor</b>					
Check	1/15/2016	Brent - Labor		Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	2,000.00
Check	1/22/2016	Brent - Labor		Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	2,000.00
Check	2/10/2016	Brent - Labor		Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	1,000.00
Check	2/24/2016	Brent - Labor		Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	1,000.00
Check	03/04/2016	Brent Hailey	Labor	Bank Of Star Valley	2,000.00
Check	03/24/2016	Brent Hailey		Bank Of Star Valley	2,000.00
Check	04/07/2016	Brent Hailey		Bank Of Star Valley	2,000.00
Check	05/03/2016	Brent Hailey		Bank Of Star Valley	2,000.00
Check	05/16/2016	Brent Hailey		Bank Of Star Valley	2,000.00
Check	06/16/2016	Brent Hailey		Bank Of Star Valley	2,850.00
<b>Total Contract Labor</b>					
<b>Professional services</b>					
<b>Bookkeeping/Accounting</b>					
Check	04/29/2016	Tucker and Tucker		Bank Of Star Valley	562.50
<b>Total Bookkeeping/Accounting</b>					
<b>Professional services</b>					
<b>Repairs and Maintenance</b>					
Check	01/05/16	Jenkins - Foam insulation	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	237.85
Check	01/04/16	Jenkins - bulbs and drih bits	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	25.17
Check	01/08/16	Jenkins - Lumber	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	52.53
Check	01/09/16	Lowes- low vo11age box	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	9.49
Check	12/29/15	hebdon - snow removal	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	550.00
Check	01/06/16	Chevron - propane	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	22.85
Check	01/08/16	True Value - fastners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	6.72
Check	01/08/16	True Value - fastners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	4.15
Check	01/04/16	True Value - fastners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	13.44
Check	01/09/16	Home Depot - supplies	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	880.98
Check	01/11/16	True Value - coax cable	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	23.08
Check	01/12/16	True Value - joist hanger	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	4.16
Check	01/13/16	True Value - solder kit	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	15.78
Check	01/13/16	True Value - fastners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	6.50
Check	01/13/16	True Valeu - pipe stuff	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	7.46
Check	01/12/16	Jenkins - insulation	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	632.14
Check	01/19/16	Jenkins - Dry wall/ roofing	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	1,581.03
Check	01/17/16	Home Depot - supplies	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	85.94
Check	01/15/16	Landfill	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	9.00
Check	01/20/16	Jenkins - waffer board	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	193.75
Check	01/21/16	True Value - guidepoint bits	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	12.59
Check	01/21/16	Chevron - propane	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	36.28
Check	01/21/16	True Value - fastners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	4.40
Check	01/20/16	True Value - rental/ lift	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	23.00
Check	01/20/16	True Value - cuttwheel	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	12.56
Check	01/21/16	True Value - halo bulbs	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	15.73
Check	01/20/16	True Value - cuttwheel	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	6.28

**Rustlers LLC**  
**Additional Startup Expense Detail**  
 January 1 - June 30, 2016

Type	Date	Name	Memo	Split	Debit
	01/22/16	True Value -elec extender/ blades	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	18.10
	01/23/16	Landfill	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	5.00
	02/06/16	HomeDepot - box extenders	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	3.49
	02/06/16	Home Depot - supplies	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	296.99
	02/06/16	England Plumbing - floor drain	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	71.55
	02/01/16	Jenkins - dry wall	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	806.76
	01/27/16	True Value - electrical	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	22.04
	01/29/16	True Value - crimp ring	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	6.81
	01/29/16	True Value - elbows	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	103.76
	01/26/16	True Value - bulb	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	41.37
	02/02/16	hebbon - snow removal/ January	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	465.00
	02/08/16	Landfill	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	16.00
	02/08/16	Landfill	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	5.00
	02/09/16	True Value - drill bit	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	47.54
	02/09/16	ily DoHar -- bulbs and battery	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	19.16
	02/09/16	True Value - bulbs and fasteners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	9.79
	02/09/16	Family Dollar - bulbs	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	14.36
	02/08/16	True Value - hook and covers	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	69.68
	02/10/15	True Value - bulbs	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	75.41
	02/13/16	True Value - speaker wire	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	30.95
	02/12/16	Chevron - propane	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	20.48
	02/15/16	True Value - wasp spray	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	22.01
	02/22/16	True Value - outlet kit	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	34.64
	02/10/16	Radiant Systems	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	932.74
	02/23/16	True Value - box and cover	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	8.79
	02/27/16	True Value - tape	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	14.68
	02/27/16	True Value - basement paint	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	88.17
	02/26/16	True Value - sealant, tools	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	18.96
	02/23/16	True Value - vent, fastners	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	9.79
	02/26/16	True Value - blocks and doth	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	31.58
	02/29/16	Landfill	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	5.00
	02/29/16	True Value - basement paint	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	63.49
	02/29/16	True Value - basement paint	Repairs and Maintenance	Expenses from Personal Acct Prior to Establishing Rustlers' Checking Acct	29.39
Check	03/21/2016	Hebbon Construction	Snow Removal	Bank Of Star Valley	165.00
Check	03/31/2016	Star Valley Glass and Lock	Snow Removal	Bank Of Star Valley	104.45
Check	05/14/2016	Hebbon Construction	Snow Removal	Bank Of Star Valley	110.00
<b>Total Repairs and Maintenance</b>					<b>8,260.79</b>
<b>TOTAL</b>					<b>30,957.79</b>