Darden's Decision

Which Future for Olive Garden, Red Lobster, & the Capital Grille?

by The Restaurant Opportunities Centers United

Central Florida Jobs with Justice

South Florida Jobs with Justice

Food Chain Workers Alliance

Family Values @ Work

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Table of Contents:

INTRODUCTION: Darden's Decision

Darden Restaurants, Inc. (Darden) is the world's largest full service restaurant company and a leader among national restaurant companies. Darden's sustainability report and proclamation of its core values include the intent to create a sustainable working environment.[1] If it lived up to these values, Darden could serve as a model for the entire restaurant industry. Unfortunately, at the moment, there is a gap between Darden's stated values and their actual practice.

Darden has been charged by its employees with engaging in illegal employment practices, including wage theft and discrimination. In addition, low wages and the lack of benefits such as paid sick days are putting the company's consumers at risk and have already incurred the company liability from a class action lawsuit in which consumers sued the company after being exposed to an Olive Garden employee who was sick with Hepatitis A. Moreover, Darden does not simply follow low industry standards; the company actively lobbies to keep minimum wages down for their workers and employs a former top Tobacco lobbyist to spearhead these efforts. The following report will describe these issues in detail and show that such practices, which may seem profitable in the short run, lead to liability and negative publicity that threaten Darden's brand equity built up over decades.

There are affordable and realistic alternatives that the company could employ, and that investors, conscious consumers, and policymakers should encourage the company to utilize. In fact, a growing body of conscious consumers is already demanding sustainable food options when making choices about where to eat out, and recent media is linking sustainable working conditions to sustainable food.[2] Darden is at risk of losing this growing market of diners.

By investing in employees rather than spending resources on lobbying to keep standards low, Darden would not only avoid threats to their brand equity, but also benefit from reduced turnover costs and increased worker productivity.

Darden faces an important decision. On one hand, it can continue to seek short-term profits by lobbying to keep standards low, engaging in illegal employment practices, paying low wages, and not allowing workers to earn paid sick days. This path puts consumers at risk and potentially creates irreparable damage to its brands. On the other hand, Darden can use its resources to invest in workers. This path entails long-term profits and a brand image of genuine sustainability.

Background: Darden and the Restaurant Industry

The restaurant industry is one of the largest and fastest growing industries in the country, accounting for nearly 1 in 11 private sector jobs (see Figure 1), and over $270 billion of the nation's Gross Domestic Product.[3] In contrast to the rest of the economy, the restaurant industry has proven resilient, growing through the recent economic downturn (see Figure 2). At the same time, the restaurant industry offers some of the least desirable wages and working conditions, accounting for seven of the ten lowest paid occupations in the country, according to the Bureau of Labor Statistics, and the two absolute lowest-paying jobs in the U.S.[4]

Darden is the largest full-service restaurant chain in the world, employing more than 180,000 workers at over 2,000 locations in North America and across the globe, including Red Lobster, Olive Garden, The Capital Grille, Bahama Breeze, and Longhorn Steakhouse.[7] As one of the most successful restaurant corporations in the world, Darden has the potential to act as a leader in changing these industry disparities. Unfortunately, as documented below, the company currently epitomizes the disparities in the restaurant industry and acts as a key political player in maintaining low industry employment standards.

"Sustainability at Darden": Contradictions Between Theory and Practice

Darden prides itself on being "a great company—one that makes a positive difference in people's lives."[8] Darden's 2nd Sustainability Report states that two areas of focus are "food safety; and [its] own workforce."[9] Working to achieve these laudable goals would make Darden a true model of sustainability. However, as shown throughout this report, Darden has compromised the safety of thousands of diners by paying low wages and not allowing workers to earn paid sick days, working conditions that often compel workers to work while sick or lose needed income. Moreover, workers have filed litigation against the company complaining about wage theft and racial discrimination, alleging denial of opportunities for advancement to workers of color.[10] These widely publicized incidents, which are driven by current company practices, present a long-term threat to Darden's brand equity.

Summary of Darden's low-road employment practices that threaten brand equity:

- **Working Sick and the Fayetteville Olive Garden Hepatitis Scare:** Darden does not allow its hourly employees to earn paid sick days.[11] Moreover, Darden employees reported being compelled to work while sick, and being fired for staying home to treat illness and injury.[12] In Fayetteville, NC, an Olive Garden server worked while suffering from Hepatitis A, potentially exposing thousands of diners. With an Olive Garden policy of not providing paid sick days and the tipped minimum wage in North Carolina being $2.13, the worker could not afford to take time off while sick. After an intervention by the Cumberland County Health Department,[13] the incident led to a class action lawsuit by restaurant diners and a number of nationally-distributed news articles about food safety and contagious disease at Olive Garden.[14]

- **Darden often pays the lowest wages possible to its employees, and has been sued for engaging in wage theft.** Darden pays as little as $2.13 per hour, the federal subminimum wage for tipped employees, in many of its restaurants.[15] Darden employees report that last year, the company decreased wages nationwide and this year instituted a plan to demote servers, leading to a loss of wages and benefits.[16] In 2011, Darden was forced to pay over $100,000 in back wages and fines by the Department of Labor for wage and hour violations, and has settled numerous claims of wage theft totaling nearly 14 million dollars.[17]

- **Darden has been accused of engaging in blatant race discrimination and segregation through multiple lawsuits.[18]** At The Capital Grille, employees have claimed the company engages in racial discrimination. Some have said that they were denied promotions, and others claim that their restaurant hired employees of color in the rush to open the restaurant and replaced them with white workers once the restaurant was established. At various Darden brands, workers claim they have been denied opportunities for advancement and have been fired or discriminated against due to race, age, and gender.[19]

- **Darden does not passively follow existing industry standards; it actively promotes industry disparities.** Darden is highly profitable, and compensated its CEO $8.5 million in 2011.[20] Meanwhile, the company actively lobbies against increases in the minimum wage, lobbies for tax breaks, and has hired a former leading tobacco industry lobbyist to push an aggressive anti-worker agenda.[21]

Connecting Working Conditions to Food Sustainability

Following national bestsellers such as Michael Pollan's *The Omnivore's Dilemma: A Natural History of Four Meals* and Eric Shlosser's *Fast Food Nation: The Dark Side of the All-American Meal*, there has been a growing number of consumers demanding sustainable food, including healthy, organic, and locally-sourced menu options. While the employees that produce, prepare, and serve the food have not been the center of focus for many of these consumers, that is beginning to change. After the release of a report on working conditions in food production and service by the Food Chain Workers Alliance,[24] influential New York Times food columnist Mark Bittman asserted in a recent column that the demands from conscious consumers must begin to address the needs of workers. **"**If you care about sustainability—the capacity to endure—it's time to expand our definition to include workers. You can't call food sustainable when it's produced by people whose capacity to endure is challenged by poverty-level wages."[25]

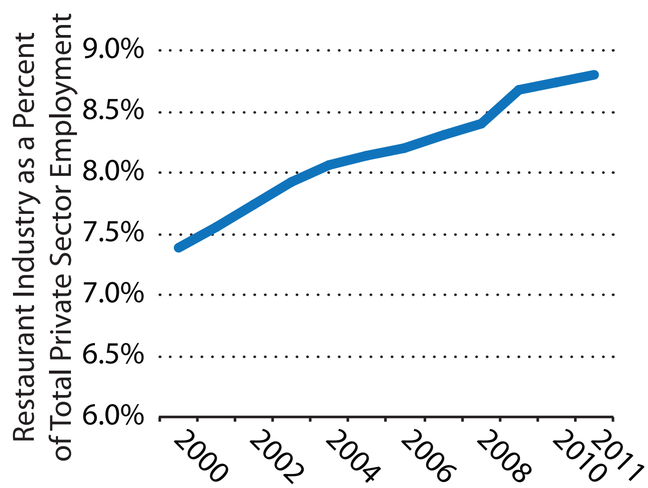


Figure 1: Restaurant employment has grown to nearly one in 11 private sector workers.[5]

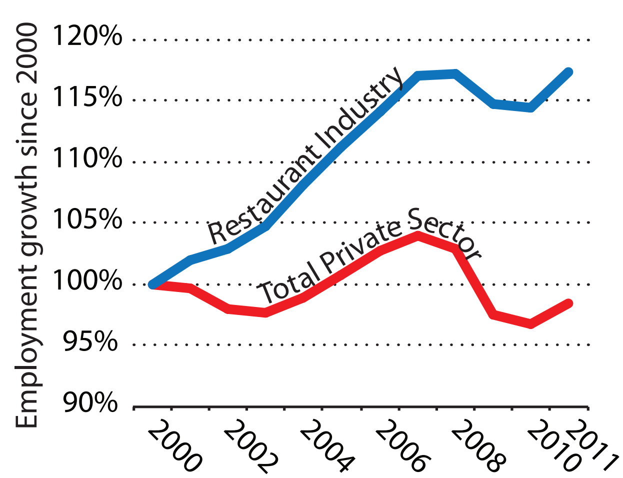


Figure 2: Restaurant industry growth has outpaced the overall private sector and faired much better in the Great Recession.[6]

METHODOLOGY

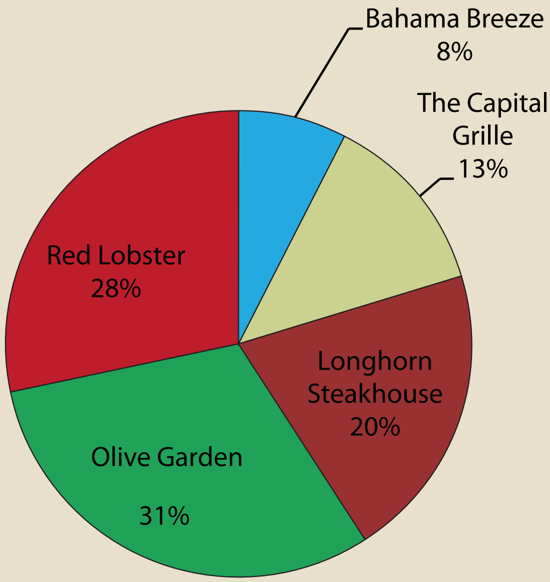


Figure 3: Brand composition of 39 surveyed Darden workers.[23]

Information in this report was gathered from various sources. Researchers analyzed data from the U.S. Department of Labor's Bureau of Labor Statistics to give context to industry-wide conditions. Profiles and stories included in the report are based on worker interviews and testimonials.[22] Primary document research includes Darden annual reports from 1999 to 2012, Darden lobbying reports from 2006 to 2012, and Legacy Tobacco Documents. Researchers also drew upon secondary source literature to show the latest research in various areas of study, including the implications of paid sick days policies.

Restaurant Opportunities Centers United gathered in-depth surveys from almost 5,000 restaurant workers in 9 cities across the country between 2004 and 2012. Thirty-nine of these workers were employed at Darden Restaurants. This report includes survey responses from these thirty-nine workers, which are not intended to be representative of the experiences of all Darden employees, but rather provide a snapshot of how Darden policies impacted these workers. The brand composition of the subsample is shown in Figure 3.

Darden's Practices

A. Serving While Sick

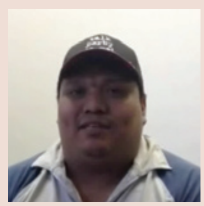
Earning the lowest-paying jobs in the country,[26] restaurant workers often work sick in order to make ends meet. Moreover, in a national survey of restaurant workers, nine out of ten workers reported not having access to paid sick days. Not surprisingly, almost two thirds (64%) reported cooking, preparing, and serving food while sick.[27] In a recent survey of Miami restaurant workers, the vast majority of workers who reported working while sick indicated that they did so because they could not afford to take a day off without pay (74%), and another sizable percentage reported that they fear getting fired if they stay home sick (17.9%).[28]

Darden exemplifies this industry-wide problem. Workers are not allowed to earn paid sick days at nearly all Darden restaurants, despite the fact that restaurant workers are in constant contact with the public.[29] In fact, of 39 Darden workers surveyed around the country, nine out of ten (89.7%) reported not receiving paid sick days and three-fourths (74.4%) of these workers reported having worked while sick.[30] In interviews, Darden workers reported being threatened with being fired if they took even one *unpaid* sick day (see profiles of Ignacio and Mario). In the Darden crew member handbook, the company instructs employees that any work absence should be requested three weeks in advance. This policy, which allows workers to be penalized at their manager's whim, coupled with low wages and lack of paid sick days, compels many employees to work when sick, potentially spreading illnesses to co-workers and customers.

Ignacio Villegas
7 years, Pantry Station, Capital Grille New York

I called in sick once because of throat problems. My manager told me "if you don't come, you already know what could happen, you could get fired." A second time, my cheek was swollen due to a tooth infection. Again, same thing, they told me I had to work. I had to go to work with my face swollen and with horrible pain that was difficult to tolerate because I need a job to survive and to support myself. Another time, the same thing happened to me on the right side [of my mouth], an inflammation, an infection, and it was exactly the same story. For me, it's very difficult to understand why Darden requires human beings to go to work in that much pain.

Mario
Kitchen Worker at Capital Grille Chicago for 7 years



"I was a worker at Capital Grille for seven years. I had an accident there; I fell down the stairs with two gallons of oil. And I asked for some days off because my spinal column was hurt. The chefs told me that I couldn't miss work or they could fire me. It isn't fair that we come to work and they just want to take advantage of us."

The Fayetteville Olive Garden Hepatitis Scare

Darden's paid sick days policies have compromised food safety and public health in the company's restaurants, creating liability and potential threat to the company's brand. One particularly horrific incident occurred at an Olive Garden in Fayetteville, North Carolina. A server was diagnosed with Hepatitis A, a highly contagious disease that can cause liver failure if left untreated. With the tipped minimum wage in North Carolina being only $2.13 per hour, and with a company policy that denies access to paid sick days, the server felt compelled to work untreated for two weeks, possibly infecting thousands of diners who had eaten at the Olive Garden over that period. The North Carolina Department of Health and Human Services and the Cumberland County Public Health Department were forced to act quickly to immunize thousands of diners who had eaten at the restaurant.[31]

Over 3000 residents of Fayetteville who had to take the vaccine filed a class action lawsuit against Darden Restaurants.[32] If Darden provided a better wage and paid sick days to its employees, this health hazard could have been avoided because the worker could have afforded to stay home. Several national news articles widely publicized the incident and the class action lawsuit, damaging the Olive Garden brand image and raising questions about food safety standards.[33]

AN ALTERNATIVE OPTION FOR DARDEN

Earned sick days: an affordable benefit with a high return

In a recent report by Rosemary Batt of Cornell University, several restaurant employers around the country report that the benefits to a company of allowing workers to earn paid sick days outweigh the cost. These employers note that direct costs are modest, both because the cost is marginal when workers stay home sick and because workers generally do not abuse paid sick days policies.[34] For every annual paid sick day taken by a full-time, year-round worker, the cost to the employer is just .4% of his or her pay.[35] Extensive survey research in San Francisco, where all employers are required to allow workers to earn paid sick days, found that workers typically use only 3 paid sick days even though they have access to at least 5 or 9 paid sick days, depending on the size of the business.[36] Hence, a rough and conservative estimate for the cost of providing 5 paid sick days, would place cost at 1.2% of pay. For the typical US restaurant worker with a wage of $9.09[37] working full-time and year-round, allowing workers to earn five paid sick days would cost just 10 cents per hour.

With such moderate costs, an earned sick days policy can easily pay for itself in decreased turnover costs and increased worker productivity. Average restaurant industry employee turnover for casual restaurants comparable to Olive Garden and Red Lobster[38] was 72% in 2010, according to the National Restaurant Association.[39] A widely-cited rubric places the cost to a company of losing an employee at 25% of the employee's annual income at the company.[40] Using a conservative estimate of the 2010 turnover rate[41] and turnover costs of just 20% of annual income, the cost of allowing workers to earn five paid sick days would be recouped if just 1 in every 13 Darden workers who would otherwise quit are instead encouraged to stay as a result of being able to recover when sick or take care of a sick child.[42]

The restaurant also benefits from quicker recoveries and fewer illnesses spread among coworkers. Recent survey research in Miami-Dade County, Florida found that when workers are compelled to work sick, it is often the case that their illness is prolonged, their performance is impeded, and they spread illness to other workers.[43] Further, more than half (56%) of human resources executives say that "presenteeism," when sick workers go to work instead of staying home, is a problem because workers coming in sick risk infecting others and may lower productivity.[44] Another study found that presenteeism costs $160 billion annually in lost productivity and may cost employers more than absenteeism due to illness.[45]

As confirmed by two recent peer-reviewed studies, paid sick days are also linked to greater worker health and wellness, which is in the best interest of the company. The first study found that workers with paid sick days are 28 percent less likely to be injured at work.[46] The second study found that workers with paid sick days are more likely to have had mammograms, Pap tests and endoscopies (such as colonoscopies), and to have seen a doctor or health care provider at least once in the past year.[47]

The costs of providing paid sick days are easily measurable, but moderate. On the other hand, the benefits to a company like Darden of allowing workers to earn paid sick days are more difficult to quantify, but decidedly more substantial in the long term. Employers reap rewards from investing in paid sick days through decreased turnover, increased worker productivity, and increased longevity for their employees. Further, this strategy lowers risk of contagion among staff and customers and lowers risk of liability.

B. Low Wages and Wage Theft

Despite its continuous growth, the restaurant industry offers many of the nation's lowest-wage jobs, with few to no benefits and little chance of career advancement. Seven of the ten lowest paid occupations in the country are in the restaurant industry.[48] Food servers, who are the largest category of tipped workers, experience three times the poverty rate of the rest of the American workforce,[49] and rely on food stamps at double the rate of the general population. A major reason for this degree of poverty is that the federal subminimum wage for tipped workers has been stuck at $2.13 since 1991. Since women comprise 66% of tipped workers and 71% of servers, the lower tipped minimum wage exacerbates gender pay inequity in the restaurant industry.[50]

As the largest full-service restaurant corporation, with solid profitability,[51] Darden has the means to put practice behind their sustainability rhetoric and help lead new industry standards for setting wages that are sustainable for workers and their families. However, this has not been the case. In states that peg their minimum wage to the federal law, Darden pays its tipped employees as little as $2.13.[52] While the $2.13 wage has not changed in over two decades, the executive compensation of the CEO has increased 23% per year on average since 2005 to $8.5 million in 2011.[53] This disparity shows that Darden could do more to create genuine sustainability in the restaurant industry. As documented in this section, Darden currently appears to pursue profit through exploitative practices, engaging in pushing their workers to do more for less and even engaging in wage theft. These practices hurt employee loyalty and threaten brand images with consumers.

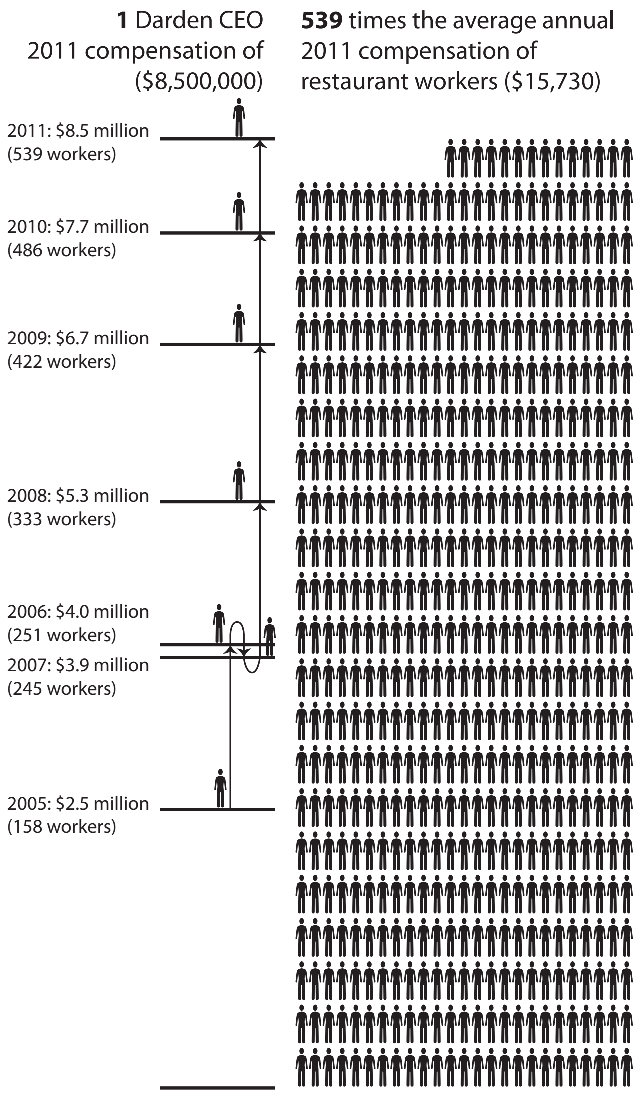


Figure 4: Darden Executive Pay Increases Rapidly While Worker Wages Remain Flat. While the Darden CEO has averaged a 23% raise every year from 2005 to 2011. The wage for many Darden tipped workers has remained $2.13 since 1991.[54]

Over the past two years, Darden has made a concerted effort to reduce costs by decreasing wages for tipped workers and increasing workloads. In 2011, the Orlando Sentinel reported that Darden reorganized tip sharing and lowered wages of bussers and bartenders, and this year increased the number of assigned tables per server, demoted many waitstaff to newly-created "service assistants."[55]

In February of 2011, the Orlando Sentinel report that, under the guise of "standardization," Darden began mandating Olive Garden and Red Lobster servers in Florida to pay bartenders and bussers a standardized amount from their tips based on a fixed percentage of sales. Darden then cut the base wages of bartenders and bussers, at times by half. This policy means Darden now relies on its employees to pay other employees. Bussers and bartenders report that the new required tip outs have not made up for the loss in income from the wage cuts.[56]

Darden workers speak out in social media on cut wages:

"I'm a busser at [the] Olive Garden and all of bussers and bartenders in my particular restaurant are pretty mad about this. My pay is being cut in half to $5 per hour plus 1.5% of servers' sales, divided amongst the bussers evenly, depending on how many hours we worked. I'm going to end up making A LOT less money, so I plan on leaving the company after being with them for 4 years. There's a bartender in my restaurant who has been there for over 15 years with his pay being cut to $5 per hour after receiving raises every year. And we were told that there are going to be no more raises. We will always be at $5 per hour plus tip share. It's just not right that a company can come in and say they're going to take away so much of our livelihood."

—Josh the Busser[57]

"My pay rate was cut in half [as a bartender]. … They tip out .75 percent of their sales to the bartender, and 1.5 to bussers. There is no bar business in our Olive Garden, except on Friday and Saturday night[s]. So I have more clean up, more stocking, and more work than the servers, and they only have to tip me out .75 percent of their sales."

— John Washer[58]

"This whole tip share is a load of crap. I work for a Darden Restaurant, and my wage was cut by $8.00 an hour and another bartender's wage was cut by $11.00 an hour. With the percentage of what the waitstaff tips us out, [this] does not even come close to making up the difference of our lost wages. Now many of us are having to find a second job to make up for the loss (they are also cutting back on our hours… not hiring anyone full time or to work full time hours)"

—refused to give name[59]

In July of 2012, the Orlando Sentinel reported on yet another cost cutting measure: Darden began implementing a policy of increasing the number of tables assigned to servers from three to four per shift, demoting many servers to "service assistants," and eliminating bussers.[60] The following social media posting and worker profile ("They don't care about their employees") notes that workers with seniority or previous injuries were among the first demoted, dramatically reducing pay and benefits for workers who had earned raises and paid vacation over years of dedicated service.

Workers speaking out on social media:

> *"What Darden (coughredlobstercough) is doing to the waitstaff is unreal. They are taking good servers off the floor and making them … servers assistants aka busboys … where they will be working for $4.00 an hour, plus tip shares. They now have to prove to the company that they are 'worthy' enough to be considered a server, even though most of these servers have been with the company for over 10+ years!!! Once made a SA, they cannot become a server again for 3 months. What is now happening?? … Darden has become, a once wonderful company to work for, to a freaking sweatshop!! They work you hard and they hardly pay you a dime. … If you treat your employees like crap and with no respect, and pay them next to nothing … don't expect getting great service at any of these restaurants!!!"*
>
> —whowantstoknow[61]

Along with actively reducing labor costs and wages, over the past eight years Darden Restaurants has been charged multiple times with wage theft claims:

- 2011- Darden had to pay $25,570 in back wages and was fined $30,800 after the U.S. Department of Labor Wage and Hour Division found that 140 current and former servers at an Olive Garden in Mesquite, Texas were victims of wage theft. The Olive Garden had its workers clock in when customers were seated, instead of at the start of their scheduled work shifts, resulting in shorter compensated hours. Olive Garden's failure to truthfully record its employees' hours violated the Fair Labor Standards Act's minimum-wage laws.[62]

- 2011 – Darden had to pay $27,427 in back wages to 109 current and former servers at a Red Lobster in Lubbock, Texas, plus a penalty of $23,980 to the US Labor Department. Again, Darden had workers clock in when the restaurant began seating customers, rather than at the assigned start time of their shift. The workers received shorter hours, which pushed them below

Profile: "They don't care about their employees"
Red Lobster, Server/Server Assistant

I'm originally from Indiana. I moved out to Elkhart 25 years ago. I have two children; my son is in his fourth year at Indiana State University, my daughter is 17. I've been in the restaurant industry since I was 19; I've been working at Red Lobster for 13 years. I've taken a lot of pride in what I do; I've never had any major incidents at work until now.

[The company] started doing personality tests that asked questions like "Where do you live? How far do you commute to work? How many people did you stay friends with at your last job?" I did the test but then I had to take a family leave to take care of an aunt. I took care of my aunt for a month before she passed away and then I returned to work.

Right before all this happened, I'd gotten an injury from falling off a bike and was probably eligible for short-term disability. I was going to have to take more time off. That was when they told me that I was demoted because of the test results. They didn't show me the test; I don't even know how I did or what I answered wrong. Essentially, I was going to have to be a "server assistant" for 13 weeks and if I did a good job, I would get my old server job back.

Since this happened, I haven't been able to sleep. It's just consumed me in the last 4 weeks. It's been horrible. It was such a slap in the face, especially at just the moment in my life when I needed…

They just don't care about their employees… it's just the way that we're treated. First they started making changes in the back of the house. They started making one person do the job of three to save money. Morale is really bad. Server assistants are quitting because they get paid a flat rate without tips. They demoted 6 or 7 servers to server assistants, 2 of which have been there for 13 years… They only demoted people who may be injured or getting vacation pay. The day after I found out, I talked to one of my managers and she brought up the injury from my fall like 3 or 4 times. She said that I may be getting too old for this and that I should move on.

the federal minimum wage, violating the Fair Labor Standards Act's minimum wage and record-keeping provisions.[63]

- 2004, 2007 – In 2004, servers and bartenders in California Red Lobsters filed a class action lawsuit accusing Darden of forcing them to cover cash shortages and customer walkouts at the end of their shifts. In 2007, servers and bartenders at California Olive Gardens also filed a class action against this practice. Darden settled both class actions for $4 million.[64]

- 2005 – More than 20,000 current and former food servers, bussers, hosts, bartenders and kitchen workers at California Red Lobster and Olive Garden restaurants filed a class action lawsuit alleging that Red Lobster and Olive Garden refused to allow breaks to its workers throughout the state in violation of California labor law. Furthermore, employees were required to pay for the cost of purchasing and maintaining uniforms, which also violated California's labor code. Darden appealed the case all the way to California's Supreme Court, but ultimately settled the class action for $9.5 million.[65]

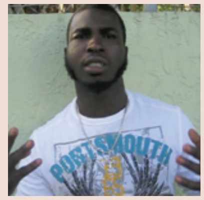
Darden's practice of exploiting workers through wage theft has not stopped with the fines and settlements mentioned above. More than 80 Capital Grille workers nationwide have come forward to report wage violations in lawsuits being litigated in federal court in Los Angeles, New York City, Chicago, Maryland, and Miami. Among the allegations, workers have charged Darden with failure to pay overtime wages, forcing them to work off the clock without pay, and failure to provide breaks.[66]

The 39 Darden workers who were surveyed nationwide also reported experiencing wage theft. Two out of five (38.2%) had worked off the clock without being paid, and approximately the same proportion (40.0%) had experienced overtime wage violations.

Employer policies that push employee workloads past reasonable limits, such as Darden's new policies outlined above, often create unsafe workplace conditions. Almost one third (29.7%) of Darden workers surveyed said that they had done something due to time pressure at work that put their own safety at risk. Two out five (39.5%) had cut themselves on the job, and over half (55.3%) had burned themselves. These practices not only put workers at risk, but also impact food safety. More than one third (34.2%) of Darden workers surveyed nationwide said that they had done something due to time pressure that may have endangered the health and safety of consumers in the restaurant.

Frantz

Capital Grille, Miami, Current Dishwasher



Frantz is a young Haitian immigrant who works for the Capital Grille in Miami as a dishwasher. Frantz often wasn't paid for all the hours he worked. He'd finish a long, exhausting shift at the hot dishwashing machine and clock out, only to find that the Sous Chef had already clocked him out, sometimes half an hour before he had finished working. Frantz told the Sous Chef "If you clock me out, I'm not going to finish the work," but it kept happening.

The other Haitian dishwashers at the Capital Grille noticed that they were being clocked out early as well. One went to a manager to complain, and shortly thereafter management significantly reduced his work hours. But Frantz didn't want to let management get away with it; he couldn't afford to have his hours cut. Frantz organized a group of Capital Grille workers to deliver a letter, notifying Darden that workers at that restaurant would be joining the federal lawsuit initiated by workers in other cities, and that it would be illegal for the company to retaliate against those workers. This Capital Grille, under new pressure to comply with the law, finally stopped illegally clocking out Frantz and the other dishwashers before they finished their shifts.

Elose Arestil

1.5 years at Capital Grille in Miami, former Dishwasher

I'm originally from Haiti. I was working in the Capital Grille in Miami as a dishwasher for one and a half years. I wasn't very happy because I was doing the job of two or more people. I usually worked for four hours or more, but the Chef would clock me out earlier than I finished. I kept the place clean and threw the trash out but the management never saw me as an employee.

One day as I was working, my boss told me to hurry up and to do the job as fast as possible. I was doing the dishes so fast that when I closed the dishwasher, I closed the door on my hand. I didn't notice any pain at that moment, but by the time I got home I noticed my hand was swollen. I went to the doctor and the doctor

gave me a special cream to put on it. I went back to my boss and gave her the papers that said I had hurt my hand doing the job, and then my boss told me that I no longer had any job at the restaurant.

I went on unemployment for support, and I received one check for $173. After that, I didn't get any checks. I asked the unemployment people why I had stopped receiving checks and they said that my boss had told them that I had quit when I was actually fired. ... The way I was let [go] was not right. As people, I had respect for them, and they should give the same respect to me.

Segregation and Discrimination

Occupational segregation and discrimination are prevalent in the restaurant industry, as documented through extensive survey research and matched-pair audit testing.[71] Workers of color are often relegated to lower-paying positions in fast food chains or in the "back of the house" (kitchen area) in full-service restaurants. Extensive surveying of the nation's restaurant workforce has found that as a result of this segregation, a $3.70 per hour pay gap exists between white workers and workers of color.[72]

As a leader in the restaurant industry, Darden has a responsibility to provide genuine opportunities to workers of color, and has the potential to create a new model of equal opportunity and inclusion industry-wide. Unfortunately, workers report that this is not currently the case at Darden restaurants. In recent litigation, workers of color have charged the company with denying them opportunities to advance and, at times, actively discriminating against them. Workers have accused Darden of engaging in openly discriminatory and racist practices, such as firing workers for not providing the right "image" for the corporation's fine dining brand.[73]

Darden recently settled a class action lawsuit brought by 37 black workers at a Bahama Breeze restaurant in Beachwood, Ohio.[74] The lawsuit, filed in 2008, charged Bahama Breeze's managers with repeatedly harassing black employees through the use of racial slurs such as "n**ger," "stupid n**ger," "Aunt Jemima," and "you people." Mangers also denied black employees work breaks while providing them to white employees. Additionally, the managers would openly mimic what they perceived to be the speech and mannerisms of black people in front of their black employees. The harassment took place over a period of five years and continued despite multiple employee complaints. The U.S. Equal Employment Opportunity Commission (EEOC) announced a $1.26 million settlement from Darden in 2009. In describing the settlement, the EEOC's acting chairman Stuart J. Ishimaru said "No worker should ever have to endure a racially hostile work environment in order to earn a paycheck."[75]

AN ALTERNATIVE OPTION FOR DARDEN
Livable Wages: Raising Wages Benefits Darden and Its Workers

Offering workers wages with which they can support themselves and their families can facilitate lower turnover and higher productivity for Darden. Underpaid workers have no interest in a restaurant's success or profitability and will leave when they can find something better. The chef owner of Jack Rose pays non-tipped workers no less than $9.50 per hour. He explained his reasoning: "If I'm getting the minimum wage, then I'm [only] going to do the minimum effort."[67]

Andy Shallal, owner of Busboys and Poets, established a pay scale in which the lowest wage paid to non-tipped workers was set at $9.25 per hour ($2 above the federal minimum wage) and the lowest wage paid to tipped workers was set at $4 ($1.87 above the federal tipped minimum wage). Andy says he put himself in the worker's shoes and understood it was neither in the worker's interest nor his own to pay too low a wage. "If I come in to work and I'm stressed out because I can't pay my rent and my job isn't allowing me to pay my rent, I don't know how much focus I can muster to make guests happy."[68] Roseanne Martino, general manager of One if By Land, Two if by Sea echoed this observation, "You get what you pay for, and that means in terms of commitment and dedication too. If it's just another minimum-wage job and they can just laterally move somewhere else, then there's no real commitment to you. And it costs a lot of money to train people. You want to retain them."[69]

These employers and many others have reported that workers who are paid a livable wage feel a sense of loyalty and obligation to their employers. The experience of these profitable business owners indicate that Darden employees who receive sustainable wages are more likely to stay with the company for longer periods of time, thus reducing turnover costs. As stated earlier, the cost to a company of losing an employee has been credibly estimated at 25% of the employee's annual income at the company.[70]

Out of 39 Darden workers surveyed nationwide, six said they had been passed over for a promotion at least partially because of race. Seven reported they had received verbal abuse at least partially motivated by racial factors. Two out of five workers (41.0%) said that they had experienced or observed sexual harassment at the restaurant.

Keith Jones and Marcus Dijon

Keith Jones, a family man with three kids, is a waiter with a ten-year career. Marcus Dijon, a native of Memphis, Tennessee, moved to Maryland from his birthplace of Memphis, Tennessee when he was five years old. His father is a cook who emigrated from Panama, and Marcus followed in his footsteps, working for 13 years in the restaurant industry. Keith and Marcus worked at The Capital Grille for close to two years as servers before they were unjustly terminated in the spring of 2011.

The Capital Grille is the fine dining brand of the Darden Restaurant Company. Although the company has won several diversity awards and the company's Chief Executive Officer (CEO) is African American, Keith and Marcus report that diversity has not meant equal opportunity. Reflective of the restaurant industry as a whole, Darden's hourly livable wage positions are disproportionately found in the company's fine dining steakhouse, The Capital Grille. Yet the vast majority of servers, bartenders, and managers there are white. It has also been reported that workers from Olive Garden and Red Lobster are not encouraged to apply to work at The Capital Grille.[76]

Keith and Marcus joined The Capital Grille shortly after it opened. In that first year, the restaurant was hectic and disorganized, with a lot of management turnover. The restaurant was chronically overstaffed. Ten to fifteen servers were always scheduled to work the floor, so management regularly had to "cut down the floor." Keith was cut on multiple occasions. Because management made it clear that workers were not to punch in early, the four to five hours of pre-shift work that Marcus and others like him did every week went unpaid. At times, he would set up and then get sent home before clocking in. There were no sick days, so servers worked sick since they could not afford to do otherwise. "Nobody got vacation," Keith said, "Nobody took days off for family."

At first, managers provided some safety equipment, like cutting gloves, but these slowly disappeared and were never replaced. Workers never had access to other equipment, such as gloves for polishing glassware. When Keith and Marcus were hired, they were two of three Black servers. At the time, The Capital Grille also employed three black workers in the kitchen, and two black cocktail waitresses—a total of eight out of the 40 workers at the restaurant.

"When a restaurant opens up, they just want to hire people and open up," Marcus said. "As a result, it was fairly diverse when the restaurant first opened."

By the time Keith and Marcus were fired, all eight black workers were gone. Keith saw that The Capital Grille divided servers into "the haves and the have-nots." Managers always gave certain white servers the most lucrative tables and areas, and wanted white females to serve groups of businessmen. Some white servers served so many guests that they were assigned three server assistants. In contrast, Keith was rarely assigned a server assistant. This meant both fewer guests—and tips—and more work.

Six months before Keith and Marcus were fired, several company representatives met with management to discuss concerns about the company's image. "After that meeting there was a lot of heat on the black servers," Marcus recalled. The Capital Grille's regional manager told the General Manager that he wanted certain servers gone because they "didn't fit the company image," Keith noted. Upper management wanted to remove black servers, and used corporate image as an excuse.

One after another, Black servers, bartenders, and kitchen staff were let go. One of the cocktail waitresses was fired while another cocktail waitress was granted maternity leave but never rescheduled when she was ready to return. Fired Black workers were replaced with White workers.

A few months before he was terminated, Keith was written up following a customer complaint about service. The food had taken a long time to come out, and Keith says he was unfairly blamed. Three months later, Keith was terminated.

After Keith was fired, Marcus was told that it had been "time for [Keith] to go." The general manager was seen as friendly to the white servers, but didn't talk to the black servers at all. The sole black supervisor told

Marcus he was in danger of losing his job. A week later, Marcus was fired.

The restaurant has a written disciplinary policy of three warnings followed by a meeting with the general manager. Marcus had been warned once for using his phone. He came in to work one day and was told to set up and work a party, with no additional information about a discount. Customers later complained that they had not been given their promised discount.

"I didn't get called into the office, I didn't have a meeting, an opportunity to talk about the problem. I just got a text message," exclaimed Marcus. "I was fired by text!" The Black supervisor was also fired.

AN ALTERNATIVE OPTION FOR DARDEN

Rising Through the Ranks: Internal Promotion Fosters Future Talent at Every Level

Employers interviewed in case studies for the report, "Taking the High Road: A How-To Guide for Successful Restaurateurs," emphasized the need for creating career ladders in their restaurant to encourage workers to stay for the long term. According to these employers, creating genuine career ladders includes providing workers with training opportunities and a policy of internal promotions in which current employees receive first notice of job openings and the process for applying for these openings is transparent, formalized, and consistent. These employers reported that they hire from within to retain committed, long-term staff. These employers also noted that internal promotion eliminates the need to introduce unknown staff who could interrupt team chemistry. [77]

Darden restaurants has defending its claims to diversity and inclusion by arguing that it promotes women and people of color to management.[78] However, management is only one of many possible promotions. The company would greatly benefit from promoting existing hardworking and dedicated hourly employees to higher level hourly positions such as waitstaff and bartending positions in the company's fine dining restaurants, regardless of their race. This practice would improve employee loyalty and morale more than hiring for such higher-level hourly positions from the outside. Darden has the opportunity to serve as a real leader in desegregating the restaurant industry by giving workers of color more opportunities to move out of the industry's lowest-wage jobs.

From Profit to Power and Politics

Darden has the potential to serve as a role model to and help raise employment standards industry-wide. However, despite substantial profits and high executive pay, Darden lobbies vigorously in federal and state legislatures to oppose increases to the minimum wage. [79] As documented below, the efforts Darden has taken to pursue a policy agenda to maintain the lowest possible employment standards—going so far as to hire a former leading tobacco lobbyist—are not in the long-term interest of a company with sustainability as a core value.

Profit and High Executive Compensation While Lobbying to Pay Workers Less and to Pay Fewer Taxes

The CEO of Darden received $8,480,148 in compensation in 2011,[80] or the equivalent of 539 times the average annual compensation of restaurant workers nationwide.[81] Even after executive compensation, net profit is still 5.95%,[82] which is substantial in a high-volume industry (see "What is a healthy restaurant company profit?").

Fighting Against Increases in the Minimum Wage and Transparency

With such high executive compensation and low employee pay, it is not surprising that Darden has lobbied against the inclusion of mandatory disclosure of CEO to median employee ratio in the Wall Street reforms that followed the Global Financial Crisis of 2008.[83] The outcome of such disclosures might impact the company's image in the eyes of shareholders, customers, and the many Darden workers who earn unsustainably low wages.

In 2006, when the federal minimum wage was at a 51-year low in real value, the company fought against any increase.[84] More recently, in early 2012, Darden opposed a New York legislative proposal to help offset the lost value of the state minimum wage by increasing it from $7.25 to $8.50. In the first two months of 2012, 21 businesses and trade organizations lobbied the New York State legislature.[85] Darden, along with other business and trade organizations, succeeded in defeating the measure despite the fact that 79% of New Yorkers favored the increase.[86] Roughly 609,000 low-wage New Yorkers would have received an increase in annual income of $880 had the bill passed.[87] During this same period, Darden reported that its annual profit increased by $72 million.[88]

What is a Healthy Restaurant Company Profit?

Profit rates vary because of the nature and structure of the industry, but the strength of the business is dependent on other factors.

High-Margin Industries

High-profit margin industries make a relatively high amount of profit per unit sold but sell lower volumes. Typical examples of high-margin businesses are high-end retailers and jewelers. High-margin companies therefore have a low cost of sales compared to revenues but sell a much smaller number of products.

Low-Margin Industries

Low-margin industries make a smaller amount of profit per unit sold than high-margin companies but sell much higher volumes. Grocery stores and low-end retailers are typical examples of low-margin industries. These industries sell a large number of products relative to high-margin companies.[89] Restaurants are another example of a typically low-margin industry.

Essentially, a high volume of customers and frequent inventory turnover compensates for a company's low profit margin. Below are a few specific examples of companies that appear to have "low" profit margins, but are far stronger than that one metric might suggest. Each is a solid business that ranks among the dominant players in its industry.[90]

Company	Recent Net Profit Margin
Darden Restaurants (Olive Garden, Red Lobster)	5.95%
Cheesecake Factory	5.41%
Brinker International (Chili's)	5.2%
Target	3.8%
Wal-Mart	3.5%
Whole Foods Market	1.8%

Figure 5: Dominant players in the retail and restaurant industry and their 2011 profit margins.[91]

Profit Margin Further Examined:

Businesses with returning customers typically have lower profit margins. Supermarkets, for example, have a normal profit margin of only 1 to 2 percent but thrive because their entire business model is based upon customers returning. Similarly, restaurants depend upon a strong returning customer base to succeed.

Advocating for corporate tax breaks

Darden is also highly active in lobbying for tax breaks.[92] The company appears on a recent list of corporate tax dodgers, paying only 17.6% on average between 2008 and 2010 (the statutory federal tax rate is 35%). The organization states, "Unspecified 'federal income tax credits' reduced taxes by $45 million, $45 million, and $46 million in 2010, 2009 and 2008. Deferred taxes, predominantly accelerated depreciation, explain the remainder of the company's low tax rate in 2009."[93] Darden had lobbied around accelerated depreciation tax breaks in 2007 and again in 2012.[94]

How Darden Increased Its Political Influence

In December 2006 Darden hired former leading tobacco lobbyist Bob McAdam as Senior Vice President of Government and Community Affairs. As seen in Figure 6, Darden's federal political spending increased exponentially after bringing in McAdam—indicating that his hire signaled Darden's conscious decision to become a powerful political actor to shape policies like the minimum wage.[95]

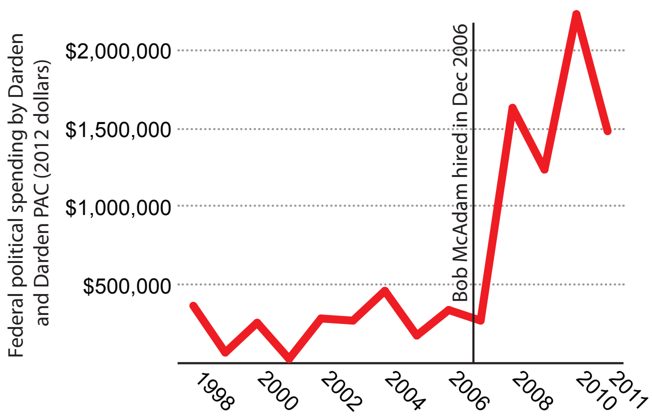


Figure 6: McAdam helped make Darden the heavyweight political actor it is today.[96]

In hiring MacAdam, Darden brought on an individual with well-known experience in helping corporations exert great political influence, even when it required "spin." As Vice President for Special Projects at the Tobacco Institute, MacAdam had worked to defeat legislation unfavorable to the tobacco industry, put a positive spin on the industry, bolster the industry's credibility with legislators and the public and help reduce the controversy over health concerns. The Tobacco Institute's President described the Institute's mission as "Publiciz[ing] scientific research funded by the industry which produces counter evidence to unfavorable findings or, at least, helps to keep the question open."[97] Another high-ranking staff member stated, "scientists will not buck for love. … It takes money."[98] As he led the fight against tobacco regulations, McAdam worked hand-in-hand with state and local affiliates of the restaurant lobby across the country.[99]

From 2000 to 2006, McAdam became the top lobbyist and public relations specialist for Wal-Mart, the largest corporation in the world. He lobbied local governments and managed local opposition to opening up new stores. A recent *New York Times* article revealed that McAdam was leading Wal-Mart's government relations division when the company was engaged in a bribery scandal in Mexico, as well as during a subsequent cover-up authorized by Wal-Mart's US headquarters. In September 2005, a former official of Wal-Mart de Mexico, Wal-Mart's biggest foreign subsidiary, informed corporate headquarters of a vast campaign of bribery in their rush to expand through Mexico. An initial investigation by Wal-Mart reported back to the company's US headquarters that there was reason to believe that both Mexican and American laws had been broken. After some deliberation, corporate headquarters handed the investigation over to the general counsel of Wal-Mart de Mexico, himself a target of the investigation. Predictably, the investigation yielded no more results and exonerated all executives in question until investigative reporting by the NY Times unearthed the scandal. The current investigation is still ongoing and has in fact expanded to include allegations of tax evasion and money laundering.[100] According to the NY Times, the cover-up may lead to conviction of top Wal-Mart executives for violating the Foreign Corrupt Practices Act, punishable by fines of up to $5 million and prison sentences of up to 20 years.[101] In September 2005, McAdam was already Senior Vice President of Wal-Mart's Corporate Affairs Department, which oversees all government and public relations issues.

Now as Senior Vice President for Government and Community Affairs at Darden, MacAdam has helped Darden become an active player in corporate lobbying associations. As late as 2010, McAdam represented Darden on the American Legislative Exchange Council (ALEC) private sector board, a place for active corporate leaders of the organization.[102] ALEC is a corporate-funded and led organization that advocates at the state and local level for copycat legislation

drafted by ALEC to advance a corporate agenda. Corporate members have included restaurant companies such as Darden and Yum! Brands, as well as large oil corporations, for-profit prison corporations, Wal-Mart, and Koch Industries. ALEC garnered national headlines this year after the man who shot and killed 17-year-old Florida resident Trayvon Martin was not arrested because of legislation created by ALEC, the 'Stand Your Ground Law.' This law, which passed in Florida as well as in many other states, prevents police from arresting an individual who claims to have shot someone simply because they felt threatened by the person.

Wal-Mart, under McAdam's leadership, co-chaired the ALEC committee that spawned this legislation. [103] As the NY Times reported, Wal-Mart, the largest seller of shotguns and ammunitions, stood to profit from Stand Your Ground and similar legislation.[104]

By hiring MacAdam, and more recently, appointing Wal-Mart CEO William Simon to its Board of Directors,[105] Darden has signaled its desire to follow Wal-Mart's example in exerting great political influence to win legislation that increases short-term profits at the long-term expense of workers and consumers.

4

DARDEN'S DECISION: Short-Term Investments Can Lead to Long-Term Gains

Despite the values espoused in its sustainability report, Darden currently provides wages and working conditions that are unsustainable for many of its workers, a choice that could ultimately hurt the reputation and brands of the company. Darden would benefit from a different choice: investing in its employees. The company should not only ensure that potentially illegal practices outlined in this report are ended, but should also allow hourly employees to earn paid sick days and increased wages, particularly waitstaff paid just $2.13 per hour. A growing body of evidence confirms that earned sick days are an affordable investment to decrease worker turnover and increase productivity. Similarly, research demonstrates the value to employers of increasing wages from $2.13 as an investment in workers who have long deserved a raise.

Darden executives and shareholders currently face a decision. On the one hand, they can continue on the path they have followed up to this point. But from a purely business standpoint, this path entails a serious risk. Olive Garden is already directly connected to a Hepatitis A incident, in which a class action lawsuit was filed against Darden for fostering the conditions that endangered thousands of people. Without timely corrective action, major and potentially irreparable brand damage may follow. Advocacy groups are increasingly bringing attention to public health incidents linked with the lack of paid sick days and low wages, which do not allow workers to take a day off when sick; the Olive Garden Hepatitis scare underscores how disastrous that practice can be.

On the other hand, Darden can correct its course now and become a beacon in the restaurant industry for practices that are sustainable for workers and the public health. From a business perspective, this path results in decreased turnover costs, with workers more likely to want to stay in their jobs. Moreover, this path does not entail any risks to the company's brands, which have been built over decades. In fact, Darden's brands would instead garner praise from the growing base of consumers who are concerned about eating ethically and consuming sustainable food, understanding that sustainable working conditions must be an integral component of that process.

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