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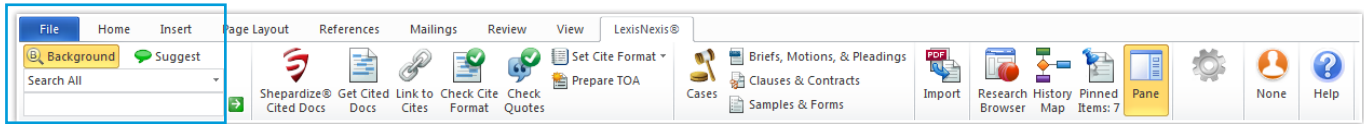


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**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

This matter is before the Court on Defendant's Motion to Dismiss Plaintiff's Alternative, Motion for Summary Judgment. For the reasons discussed below, the motion should be granted.

**FACTS**

Plaintiff Lyssa Escalante brings this suit against Defendants Gatsby Entertainment Mersis, who owns and operates Gatsby's, a restaurant and bar in Denver, Co. Gatsby Entertainment and Rob Mersis violated the Fair Labor Standards Act 201 (2006) et seq.; the Colorado Wage Claim Act, C.R.S. § 8-4-101; and the Wage Act, C.R.S. § 8-6-101; by diverting employee tips and failing to pay minimum wage; (2) Plaintiff worked at Gatsby's as a bartender and server from August 20, 2013; (3) Defendants instituted a tip-pooling arrangement that violated the federal law in that Gatsby's required all employees who received tips directly combine their tips into a pool, which Gatsby's distributed among those tips.

**LexisNexis**

subject matter jurisdiction

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My Firm's (475)

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1. The Vaccine Defendants Master Reply Brief in Support of Their Motion to Dismiss

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... b/a GLAXOSMITHKLINE (collectively "the Vaccine Defendants") [1] submit their Master Reply Brief in Support of Their Motion to Dismiss. INTRODUCTION In their Motion to Dismiss and their Master Brief in Support, the Vaccine Defendants demonstrated that this Court should dismiss all of Plaintiffs' claims against them for lack of subject matter jurisdiction because Plaintiffs have filed their claims in this Court before they have exhausted the statutory remedy of the Vaccine Act. Although their claims raise the same issues under the Vaccine Act, the Bridges Plaintiffs and the Tvert &amp; Weathersby Plaintiffs take different positions on whether the Vaccine Act applies to their ...

Client	Matter	Type	Author	Date
Georgia Pacific	General	PLEADING	Karen M. Ruby	Feb 25, 2007

Citations Referenced (81)

Information (3) | Questioned (7) | Caution (16) | Analysis (3)

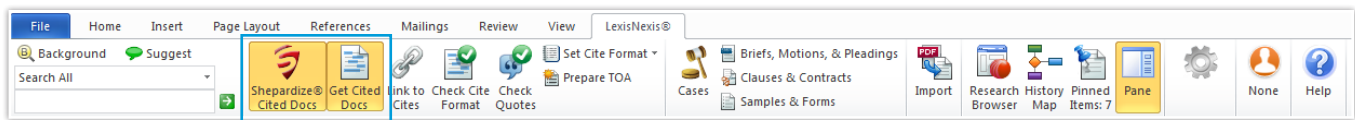
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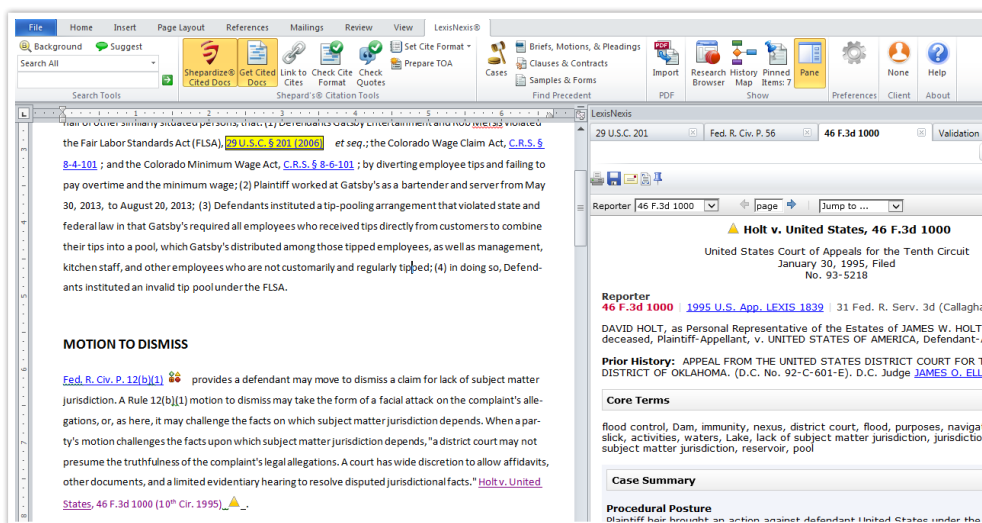
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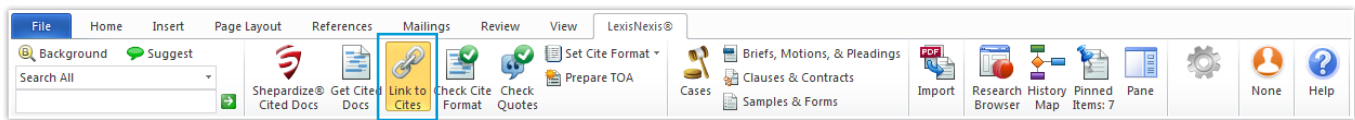
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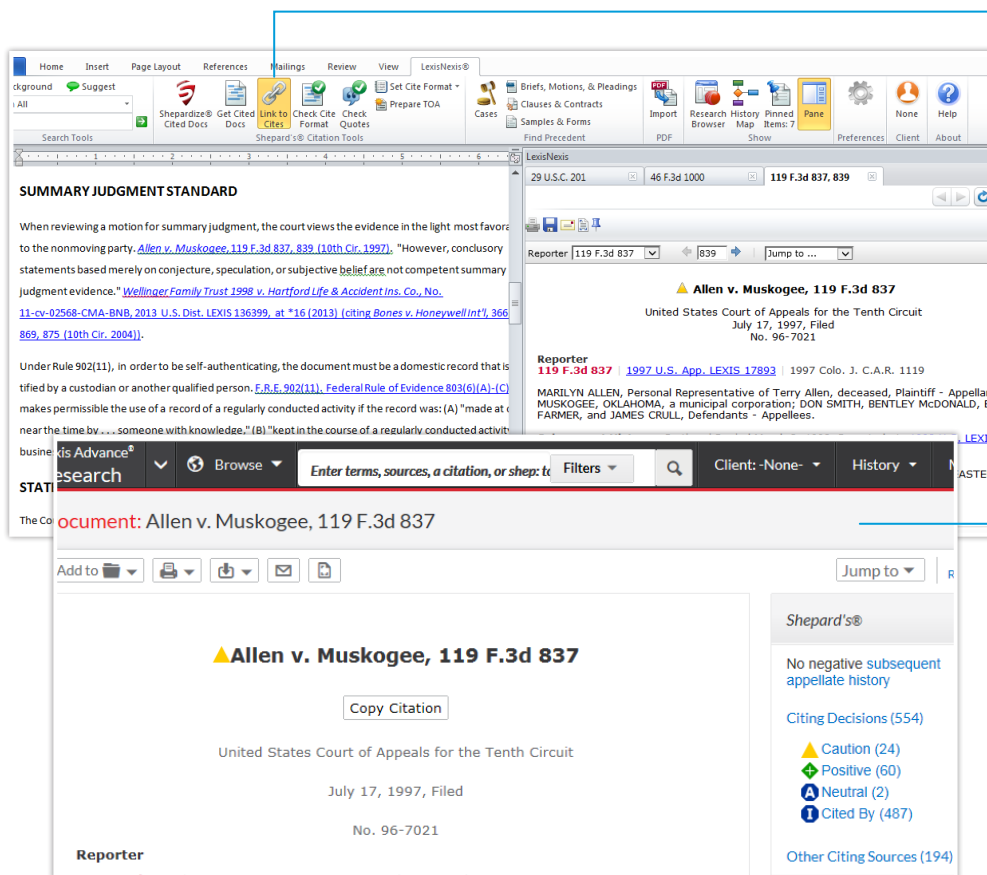


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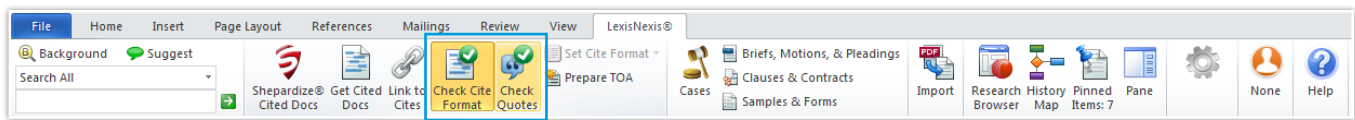
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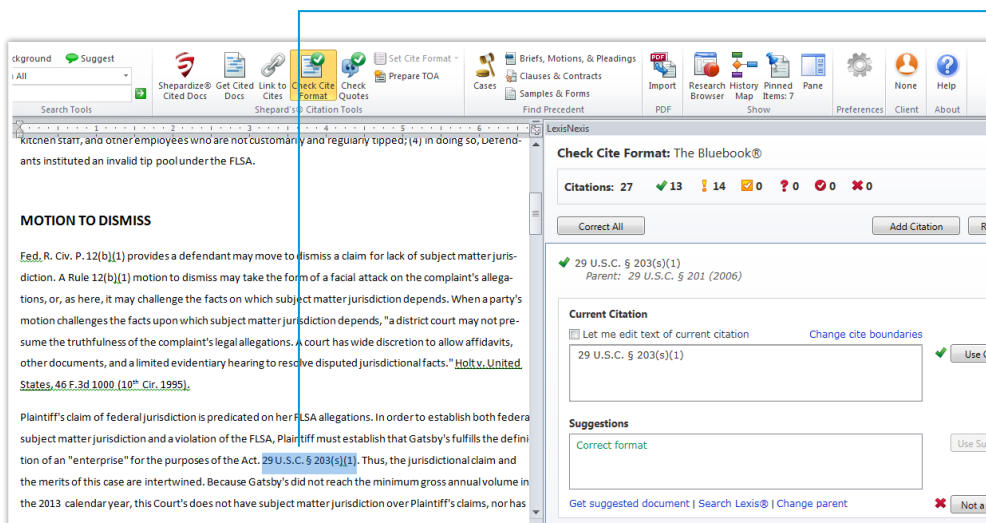
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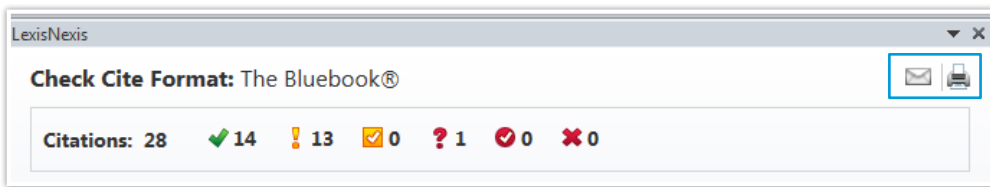


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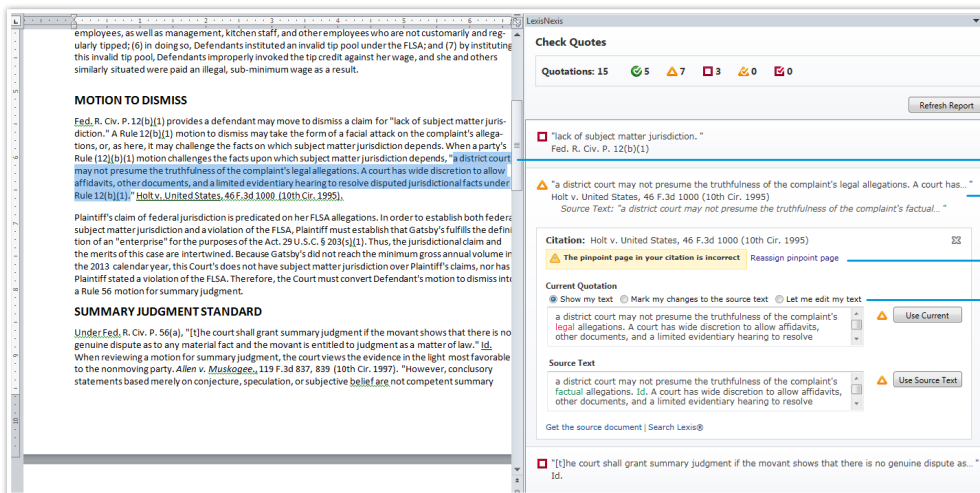
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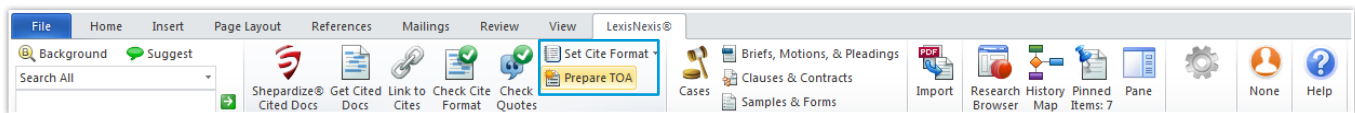
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**Federal Cases**

- Holt v. United States, 46 F.3d 1000 (10th Cir. 1995)
- Allen v. Muskogee, 119 F.3d 837 (10th Cir. 1997)
- Wellinger Family Trust 1998 v. Hartford Life & Accident Ins. Co., Civil Action No. 11-cv-02568-CMA-BNB, 2013 U.S. Dist. LEXIS 136399 (D. Colo. Sept. 24, 2013)
- Motley v. Marathon Oil Co., 71 F.3d 1547 (10th Cir. 1995)
- Comm. for First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992)
- Abdulhaseeb v. Calbone, 600 F.3d 1301 (10th Cir. 2010)
- Bail v. Renner, 54 F.3d 664 (10th Cir. 1995)
- Brereton v. Bountiful City Corp., 434 F.3d 1213 (10th Cir. 2006)

**Federal Statutes**

- 29 U.S.C. § 201 (2006)
- 29 U.S.C. § 203(s)(1) (2006)
- 29 U.S.C. § 203(s)(1)(A)(i) (2006)
- 28 U.S.C. § 1367(d) (1994)

**State Court Opinions**

- Dalal v. Alliant Techsystems, 934 P.2d 830 (1996)

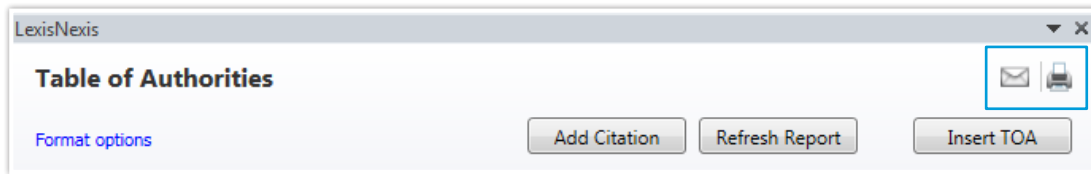
**State Statutes**

- Colo. Rev. Stat. § 8-4-101 (2010)

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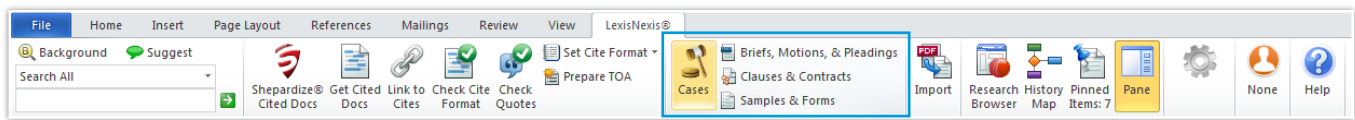


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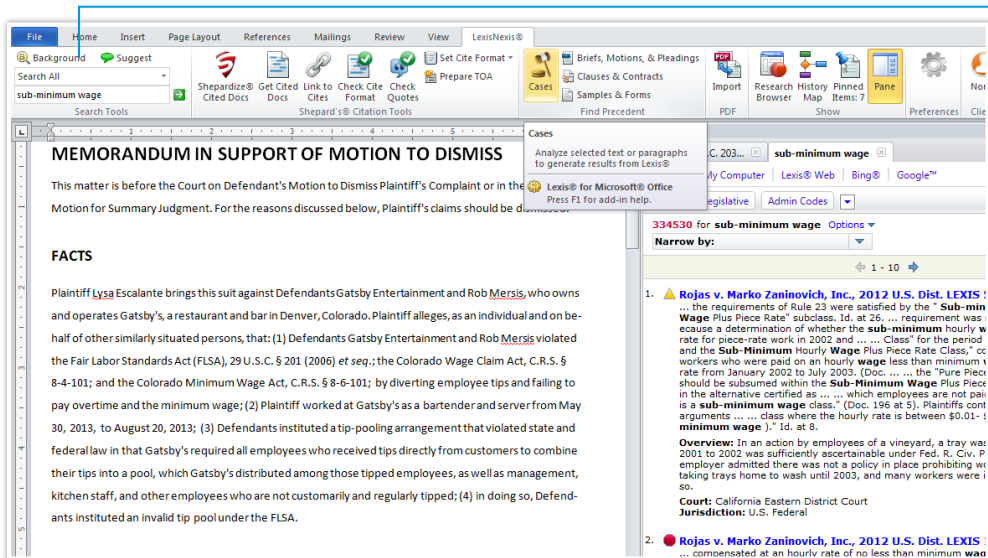
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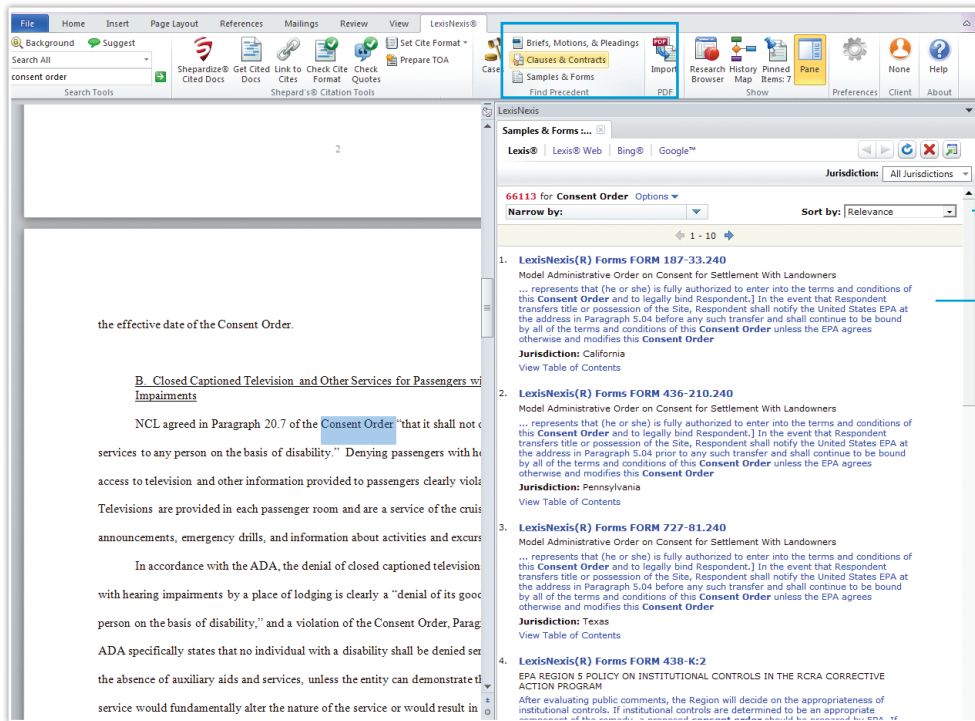


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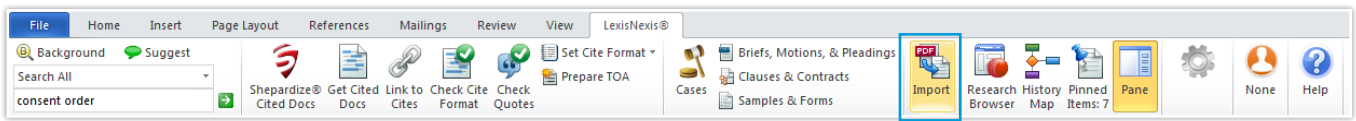
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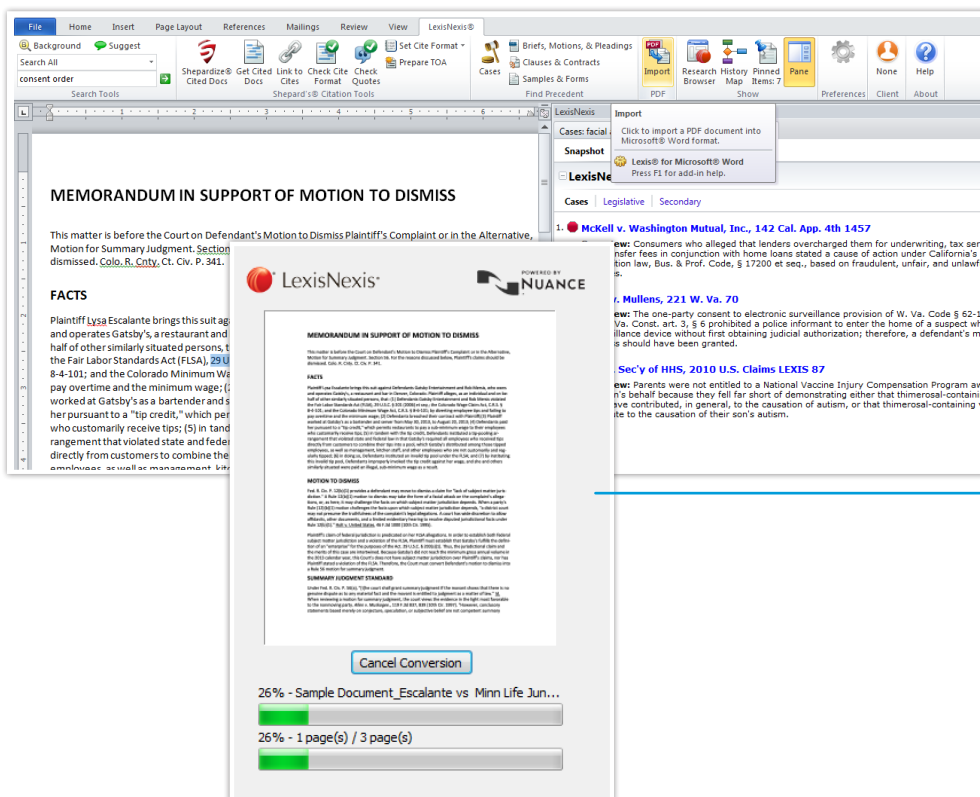
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**STATE LAW CLAIMS**

The Court should decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. While the Court could choose to exercise supplemental jurisdiction, "notions of comity and federalism demand that a state court try its own lawsuits, absent compelling reasons to the contrary." *Bull v. Renner*, 54

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<i>Davis v. B &amp; S, Inc.</i> , 38 F. Supp. 2d 707	9/24/20
... to pay less than minimum wage to employees who receive tips. 29 U.S.C.S. § 203 (m). The mechanism that § 203(m) creates is known as the "tip credit." The tip credit allows employers to use a portion of the employee's tip income to supplement it...	
<b>Pinned from:</b> tip credit > tip credit > Lexis® > Cases	
<i>United States v. Fior D'Italia</i> , 536 U.S. 238	9/24/20
... report, had statutory authority to (rather than estimating each employee's tip income) use the aggregate estimation method, under which the IRS (1) determined the average percentage tip on the restaurant's credit card sales, (2) assumed the same ...	
<b>Pinned from:</b> tip credit > tip credit > Lexis® > Cases	
<i>Bubble Room, Inc. v. United States</i> , 159 F.3d 553	9/24/20
Tipped employees must report all tips received in the course of employment in one or more ... 31.6053-1. In that regard, unlike the situation where a tip is charged to a credit card, no record exists of the amount of a cash tip. Cash receipts at...	

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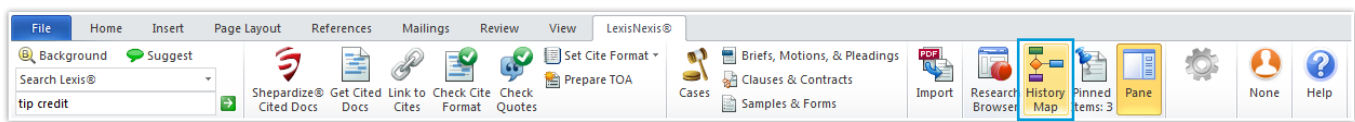
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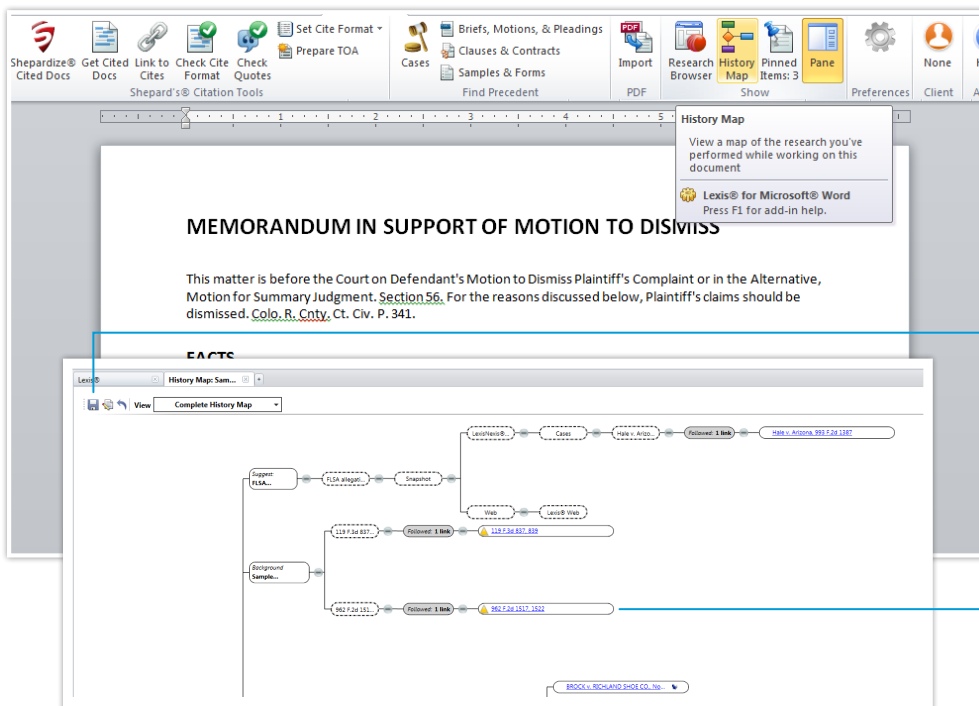
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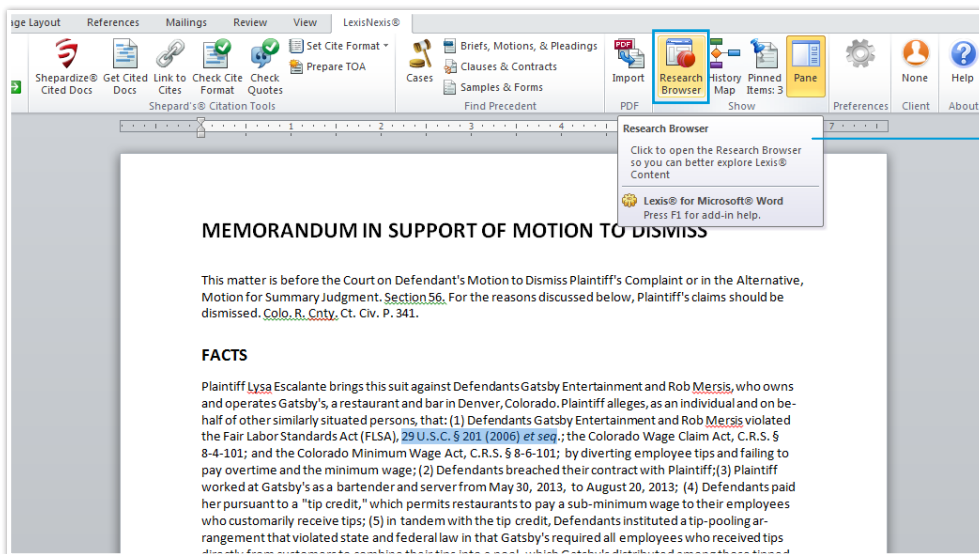


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