UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP
One North Broadway, 15th Floor
White Plains, New York 10601
(914) 328-0404
Jonathan M. Kozak
Attorneys for Defendants

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CASSANDRA GREENE and ELIZABETH GOFF, individually and on behalf of all other persons similarly situated who were employed by C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC; and/or any other entities affiliated with or controlled by C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC,

Plaintiffs,

-against-

C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC; and/or any other entities affiliated with or controlled by C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC; and SAMUEL BORGESE,

Defendants.

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Civ. No. 10 CV 1094 (JBW) (CLP)

DEFENDANTS' ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT

Defendants, C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE, CHARLIE BROWN'S ACQUISITION CORP., CHARLIE BROWN'S OF COMMACK, LLC, CHARLIE BROWN'S OF HOLTSVILLE, LLC, and SAMUEL BORGESE (collectively referred to herein as "Defendants"), by and through their attorneys, Jackson Lewis LLP, for their Answer to Plaintiffs' Class Action Complaint (the "Complaint") herein state as follows:

AS TO "PRELIMINARY STATEMENT"

1. Defendants deny the allegations contained in Paragraph 1 of the Complaint, except admit Plaintiffs purport to bring claims under the Fair Labor Standards Act ("FLSA") and New York State Labor Law, and its regulations, allegedly on behalf of themselves and others alleged to be similarly situated.

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint, except admit that Defendants Charlie Brown's of Commack, LLC and Charlie Brown's of Holtsville, LLC operate Charlie Brown Steakhouse restaurants located in Commack and Holtsville, New York respectively.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint.

4. Defendants deny the allegations contained in Paragraph 4 of the Complaint.

5. Defendants deny the allegations contained in Paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of the Complaint.

behalf of all allegedly similarly situated employees, compensation purportedly owed them, plus interest, damages, attorneys' fees and costs.

AS TO "JURISDICTION"

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint, except admit Plaintiffs purport this Court has jurisdiction over the claims in this action pursuant to FLSA, 29 U.S.C. § 216(b), and 28 U.S.C. § 1331 and 1337, and that Plaintiffs purport this Court has supplemental jurisdiction over Plaintiffs' state law claims.

AS TO "VENUE"

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint, except admit Plaintiffs purport venue is proper in this district because a substantial part of the events or omissions giving rise to the claims allegedly occurred in the Eastern District of New York.

AS TO "THE PARTIES"

10. Defendants deny the allegations contained in Paragraph 10 of the Complaint, except admit that Charlie Brown's of Commack, LLC employed Plaintiff Greene at certain times beginning in or about July 30, 2008 to the present.

11. Defendants deny the allegation contained in Paragraph 11 of the Complaint, except admit that Charlie Brown's of Commack, LLC employed Plaintiff Goff at certain times beginning in or about September 17, 2007 to the present.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint, except admit that C.B. Holding Corp. is organized and incorporated under the laws of the State of Delaware, that it has a place of business at 1450 Route 22 West, Mountainside, New Jersey, and that it is engaged in the business of asset management for Charlie Brown's Steakhouse restaurants.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint, except admit that Charlie Brown's Acquisition Corp. is organized and incorporated under the laws of the State of Delaware, that it has a place of business at 1450 Route 22 West, Mountainside, New Jersey, and that it is engaged in the casual dining restaurant business.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint, except admit that Charlie Brown's of Commack, LLC is a limited liability company organized and incorporated under the laws of the State of New York, that it has a place of business at 88 Veterans Memorial Highway, Commack, New York 11725, and that it is engaged in the business of operating a restaurant at that location.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint, except admit that Charlie Brown's of Holtsville, LLC is a limited liability company organized and incorporated under the laws of the State of New York, that it has a place of business at 45 Middle Avenue, Holtsville, New York 11742, and that it is engaged in the business of operating a restaurant at that location.

16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint, except admit that Samuel Borgese is the Chief Executive Officer of C.B. Holding Corp.

AS TO "CLASS ALLEGATIONS"

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

AS TO "FACTS"

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint, except admit that Samuel Borgese is the Chief Executive Officer of C.B. Holding Corp.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

AS TO "FIRST CAUSE OF ACTION AGAINST DEFENDANTS: FLSA MINIMUM WAGE COMPENSATION"

35. Defendants repeat and re-allege their responses and denials to Paragraphs 1 through 34 above, as if set forth fully herein in response to Paragraph 35 of the Complaint.

36. Defendants neither admit nor deny the allegations set forth in Paragraph 36 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

37. Defendants neither admit nor deny the allegations set forth in Paragraph 37 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

AS TO "SECOND CAUSE OF ACTION AGAINST DEFENDANTS: FLSA OVERTIME COMPENSATION"

47. Defendants repeat and re-allege their responses and denials to Paragraphs 1 through 46 above, as if set forth fully herein in response to Paragraph 47 of the Complaint.

48. Defendants neither admit nor deny the allegations set forth in Paragraph 48 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

49. Defendants neither admit nor deny the allegations set forth in Paragraph 49 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

AS TO "THIRD CAUSE OF ACTION AGAINST DEFENDANTS: FAILURE TO PAY MINIMUM WAGE"

56. Defendants repeat and re-allege their responses and denials to Paragraphs 1 through 55 above, as if set forth fully herein in response to Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

58. Defendants neither admit nor deny the allegations set forth in Paragraph 58 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

60. Defendants neither admit nor deny the allegations set forth in Paragraph 60 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

AS TO "FOURTH CAUSE OF ACTION AGAINST DEFENDANTS: NEW YORK OVERTIME COMPENSATION LAW"

66. Defendants repeat and re-allege their responses and denials to Paragraphs 1 through 65 above, as if set forth fully herein in response to Paragraph 66 of the Complaint.

67. Defendants neither admit nor deny the allegations set forth in Paragraph 67 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

68. Defendants neither admit nor deny the allegations set forth in Paragraph 68 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

69. Defendants deny the allegation contained in Paragraph 69 of the Complaint.

70. Defendants deny the allegation contained in Paragraph 70 of the Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of the Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

AS TO "FIFTH CAUSE OF ACTION AGAINST DEFENDANTS: NEW YORK LABOR LAW ARTICLE 6"

74. Defendants repeat and re-allege their responses and denials to Paragraphs 1 through 73 above, as if set forth fully herein in response to Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint, except state that to the extent the allegations constitute conclusions of law, no response is required thereto.

76. Defendants neither admit nor deny the allegations set forth in Paragraph 76 of the Complaint because they set forth conclusions of law to which no response is required; provided, however, to the extent such allegations set forth factual matters, they are denied.

77. Defendants deny the allegation contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegation contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

AS TO "WHEREFORE"

81. The "WHEREFORE" clause immediately following Paragraph 80 of the Complaint, including subparagraphs "1." through "6.", sets forth Plaintiffs' prayer for relief to which no responsive pleading is required. However, to the extent a responsive pleading is required, Defendants deny that Plaintiffs are entitled to any relief whatsoever either individually or on behalf of others.

DEFENDANTS' AFFIRMATIVE AND OTHER DEFENSES

82. By way of further answer, Defendants assert the following affirmative and other defenses. In asserting these defenses, Defendants are providing notice to Plaintiffs of the defenses they intend to raise, and they do not assume the burden of proof as to matters that, as a matter of law, are Plaintiffs' burden to prove.

AS AND FOR A FIRST DEFENSE

83. Plaintiffs' Complaint, in whole or in part, fails to state a cause of action upon which relief can be granted as a matter of fact and/or law.

AS AND FOR A SECOND DEFENSE

84. Plaintiffs' Complaint is barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A THIRD DEFENSE

85. At all times relevant hereto, Defendants acted in good faith and have not violated any rights which may be secured to Plaintiffs under any federal, state or local laws, rules, regulations or guidelines.

AS AND FOR A FOURTH DEFENSE

86. Plaintiffs' claims are barred under the doctrine of accord and satisfaction.

AS AND FOR A FIFTH DEFENSE

87. Plaintiffs were exempt from the overtime and wage-hour provisions of the FLSA or any equivalent New York State law.

AS AND FOR A SIXTH DEFENSE

88. Any acts or omissions on the part of Defendants were in good faith, and Defendants had reasonable grounds for believing that any such act or omission was not a violation of the FLSA, or New York Labor Law.

AS AND FOR A SEVENTH DEFENSE

89. Plaintiffs' Complaint fails to state a claim upon which either pre-judgment or post-judgment interest, liquidated damages, or attorneys' fees may be awarded.

AS AND FOR AN EIGHTH DEFENSE

90. Without admitting that Plaintiffs were subject to the overtime and wage-hour provisions of the FLSA, or any equivalent New York State law, Plaintiffs were paid properly under all applicable wage and hour laws.

AS AND FOR A NINTH DEFENSE

91. Plaintiffs are not similarly situated for the purposes of a collective action under 29 U.S.C. § 216(b).

AS AND FOR A TENTH DEFENSE

92. Plaintiffs are not adequate representatives of the putative class members.

AS AND FOR AN ELEVENTH DEFENSE

93. Collective Action certification is not appropriate pursuant to Section 216(b) of the Fair Labor Standards Act.

AS AND FOR A TWELFTH DEFENSE

94. The Complaint is barred, in whole or in part, because the named Plaintiffs cannot establish that they are similarly situated to potential members of the collective action for the purposes of 29 U.S.C. § 216(b). Thus, class certification is not appropriate.

AS AND FOR A THIRTEENTH DEFENSE

95. The Complaint is barred, in whole or in part, because the named Plaintiffs have failed to satisfy the statutory prerequisites to proceed collectively under 29 U.S.C. § 216(b).

AS AND FOR A FOURTEENTH DEFENSE

96. Plaintiffs are unable to meet the criteria necessary to maintain a class action under Article 9 of the New York Civil Practice Law and Rules and Rule 23 of the Federal Rules of Civil Procedure.

AS AND FOR A FIFTEENTH DEFENSE

97. Plaintiffs, and those persons on whose behalf Plaintiffs purport to bring this action, cannot establish a willful violation under the FLSA or the New York Labor Law.

AS AND FOR A SIXTEENTH DEFENSE

98. Plaintiffs, and those persons on whose behalf Plaintiffs purport to bring this action, are not entitled to liquidated damages because at all times Defendants acted in good faith and had reasonable grounds for believing that their acts and/or omissions were not a violation of the FLSA.

AS AND FOR A SEVENTEENTH DEFENSE

99. The Plaintiffs' claims under the New York Labor Law may not be maintained as Plaintiffs were paid properly pursuant to the FLSA, and under correspondingly applicable regulations of the New York State Department of Labor.

AS AND FOR AN EIGHTEENTH DEFENSE

100. C.B. Holding Corp., Charlie Brown's Acquisition Corp. and Samuel Borgese are not and were not "employers" within the meaning of the FLSA or the New York Labor Law during the periods alleged in the Complaint, in whole or in part.

AS AND FOR A NINETEENTH DEFENSE

101. Samuel Borgese has no personal liability under the legal theories and/or factual allegations asserted by Plaintiffs.

AS AND FOR A TWENTIETH DEFENSE

102. Defendants reserve all other defenses available under the FLSA, and/or New York Labor law.

AS AND FOR A TWENTY-FIRST DEFENSE

103. Defendants reserve the right to amend or add additional affirmative defenses or counter-claims, which may become known during the course of this action.

WHEREFORE, Defendants respectfully request that this Court:

1. Dismiss Plaintiffs' Complaint in its entirety and all claims for relief set forth therein, with prejudice;

2. Deny each and every demand for relief as set forth in Plaintiffs' Complaint;

3. Award Defendants the reasonable attorneys' fees and costs they incur in defending this action, and

4. Grant such other and further relief as this Court may find to be just and proper.

Respectfully submitted,

JACKSON LEWIS LLP

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White Plains, New York 10601
(914) 328-0404
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By: _____
Jonathan M. Kozak
kozakj@jacksonlewis.com

Attorneys for Defendants

Dated: April 5, 2010
White Plains, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CASSANDRA GREENE and ELIZABETH GOFF, individually and on behalf of all other persons similarly situated who were employed by C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC; and/or any other entities affiliated with or controlled by C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC,

Plaintiffs,

-against-

C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC; and/or any other entities affiliated with or controlled by C.B. HOLDING CORP. d/b/a CHARLIE BROWN'S STEAKHOUSE; CHARLIE BROWN'S ACQUISITION CORP.; CHARLIE BROWN'S OF COMMACK, LLC; CHARLIE BROWN'S OF HOLTSVILLE, LLC; and SAMUEL BORGESE,

Defendants.

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Civ. No. 10 CV 1094 (JBW) (CLP)

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of Defendants' Answer to Plaintiffs' Class Action Complaint was served via ECF and regular U.S. mail, postage pre-paid, on April 5, 2010 upon:

Lloyd R. Ambinder
James E. Murphy
Virginia & Ambinder, LLP
111 Broadway, Suite 1403
New York, New York 10006

-and-

Jeffrey K. Brown
Leeds, Morelli, and Brown, P.C.
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Attorneys for Plaintiffs and Putative Class

Jonathan M. Kozak