UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CASSANDRA GREENE, ELIZABETH GOFF, and MARTIN TELLO 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.	**Docket No.: 10 cv 1094** **SUMMONS IN A CIVIL ACTION**

To:
C.B. Holding Corp – 1450 Route 22 West, Mountainside, New Jersey 07092
Charlie Brown's Acquisition Corp – 1450 Route 22 West, Mountainside, New Jersey 07092
Charlie Brown's of Commack, LLC - 1450 Route 22 West, Mountainside, New Jersey 07092
Charlie Brown's of Holtsville, LLC - 1450 Route 22 West, Mountainside, New Jersey 07092
Samuel Borges - 1450 Route 22 West, Mountainside, New Jersey 07092

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY

Virginia & Ambinder, LLP
111 Broadway, Suite 1403
New York, NY 10006
(212) 943 – 9080

an answer to the amended complaint which is served on you with this summons, within 21 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

Civil Action No. 10-cv-1094

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____ , a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Lloyd R. Ambinder
Virginia & Ambinder, LLP
111 Broadway, Suite 1403
New York, New York 10006
Tel: (212) 943-9080
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Jeffrey K. Brown
Leeds Morelli & Brown, P.C.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CASSANDRA GREENE, ELIZABETH GOFF, and MARTIN TELLO 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.

Docket No.: 10 cv 1094

FIRST AMENDED CLASS ACTION COMPLAINT

Non Jury Trial

Plaintiffs, by their attorneys, Virginia & Ambinder, LLP and Leeds, Morelli, & Brown, P.C, allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Fair Labor Standards Act (hereinafter referred to as "FLSA"), 29 U.S.C. §§ 207 and 216(b), New York Labor Law § 190 *et seq.*, New York Labor Law § 633; 12 New York Codes, Rules, and Regulations (hereinafter referred to as "NYCRR") § 142-2.2; 12 NYCRR 142-2.4; New Jersey Statutes Annotated (hereinafter referred to as N.J.S.A.") 34:11-56a *et seq.*; New Jersey Administrative Code (hereinafter referred to as N.J.A.C.") 12:56-14.1 *et seq.*; and 43 Pennsylvania Statutes (hereinafter referred to as P.S.") §§ 333.101 *et seq*, to recover unpaid minimum wages and overtime and improperly withheld wages and tips owed to Plaintiffs and all similarly situated persons who are presently or were formerly 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;; (collectively hereinafter referred to as "Charlie Brown's"), 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, individually (hereinafter collectively referred to as "Defendants").

2. Defendants operate a number of restaurants known as "Charlie Brown's Steakhouse" throughout New York, New Jersey, and Pennsylvania.

3. Beginning in approximately February of 2004 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of improperly withholding overtime and minimum wages from its employees, and wrongfully withholding

gratuities from individuals who earned them.

4. Beginning in approximately February of 2004 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of paying its tipped employees a wage less than the minimum wage for non-tipped employees, without following the provisions of 29 U.S.C. § 203(m), which require that "all tips received by such employee[s] have been retained by the employee[s]."

5. Beginning in approximately February of 2004 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of routinely failing to pay its employees at a rate of time and one half their regular rate of pay for all hours worked over 40 in any given work week.

6. Under the direction of Defendants' shareholder, corporate officer, and/or director, Samuel Borgese, Defendants instituted this practice of depriving their employees of the basic compensation for work performed as mandated by federal and state law.

7. Plaintiffs have initiated this action seeking for themselves, and on behalf of all similarly situated employees, all compensation, including minimum wages and overtime compensation, as well as improper deductions from wages, including tips, which they were deprived of, plus interest, damages, attorneys' fees, and costs.

JURISDICTION

8. Jurisdiction of this Court is invoked pursuant to FLSA, 29 U.S.C. §216(b), and 28 U.S.C. §1331 and 1337. This court also has supplemental jurisdiction under 28 U.S.C. § 1367 of the claims brought under the New York Labor Law.

VENUE

9. Venue for this action in the Eastern District of New York under 28 U.S.C. § 1391 (b) is appropriate because a substantial part of the events or omissions giving rise to the claims

occurred in the Eastern District of New York.

THE PARTIES

10. Plaintiff Greene is an individual who formerly worked for Defendants as a hostess from approximately August 2008 to June 2010.

11. Plaintiff Goff is an individual who began work for Defendants as a waitress in approximately October 2007 and still works for Defendants as a waitress.

12. Plaintiff Tello is an individual who formerly worked for Defendants as a salad maker from approximately October 2009 through April 2010.

13. Upon information and belief, Defendant C.B. HOLDING CORP. is a foreign corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

14. Upon information and belief, Defendant CHARLIE BROWN'S ACQUISITION CORP. is a foreign business corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

15. Upon information and belief, Defendant CHARLIE BROWN'S OF COMMACK, LLC. is a domestic limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

16. Upon information and belief, Defendant CHARLIE BROWN'S OF HOLTSVILLE, LLC. is a domestic limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

17. Upon information and belief, Defendant SAMUEL BORGES is a resident of 1450 Route 22 West, Mountainside, New Jersey, and is, and at all relevant times was, an officer, director, president, vice president, and/or owner of Charlie Brown's.

CLASS ALLEGATIONS

18. This action is properly maintainable as a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b), and as 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.

19. This action is brought on behalf of Plaintiffs and a class consisting of similarly situated employees who performed work for Defendants as restaurant employees.

20. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 500 employees. In addition, the names of all potential members of the putative class are not known.

21. The questions of law and fact common to the putative class predominate over any questions affecting only individual members.

22. The claims of the named Plaintiffs are typical of the claims of the putative class.

23. Plaintiffs and their counsel will fairly and adequately protect the interests of the putative class.

24. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

FACTS

25. Upon information and belief, beginning in or about 2004, the Defendants employed numerous individuals at various Charlie Brown's Steakhouse locations in New York, New Jersey, and Pennsylvania as wait staff, bus staff, bartenders, barbacks, and other occupations which "customarily and regularly receive tips" as that term is defined under 29

U.S.C. § 203(m) and the regulations and caselaw interpreting same.

26. Upon information and belief, beginning in or about 2004, the Defendants employed numerous individuals at various Charlie Brown's Steakhouse locations in New York, New Jersey, and Pennsylvania as salad makers, dishwashers and other occupations which do not "customarily and regularly receive tips."

27. Upon information and belief, under 29 U.S.C. § 201, *et seq.*, and the cases interpreting same, Charlie Brown's constitutes an "enterprise engaged in commerce."

28. Upon information and belief, while working for Defendants, Plaintiffs and the members of the putative class were regularly required to perform work for Defendants, without receiving proper minimum wages and overtime compensation as required by applicable federal and state law.

29. Upon information and belief, Plaintiffs and all members of the putative class constituted "employees" as that term is defined under 29 U.S.C. § 203(e), New York Labor Law § 651, N.J.S.A. 34:11-56a1, and 43 P.S. § 333.103(e) and case law interpreting the same.

30. The payments made to Plaintiffs and other members of the putative class by Defendants, and gratuities received by Plaintiffs and other members of the putative class, constitute "wages" as that term is defined under New York Labor Law § 651, N.J.S.A. 34:11-56a1, and 43 P.S. § 333.103(d).

31. Upon information and belief, Defendants engaged in a regular pattern and practice of making unlawful deductions from the earned wages of Plaintiffs and other members of the putative class in violation of 29 U.S.C. § 203, New York Labor Law § 193, and New York Labor Law § 196-d. These deductions *include but are not limited to* taking of tipped employees' earned tips by management employees and withholding of tipped employees' wages for improper purposes such as "liquor shortages" and other improper deductions.

32. Upon information and belief, while working for Defendants, Plaintiffs and the members of the putative class did not receive all earned overtime wages, at the rate of one and one half times the regular rate of pay, for the time in which they worked after the first forty hours in any given week.

33. Upon information and belief, Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the Fair Labor Standards Act and applicable New York, New Jersey, and Pennsylvania State law by failing to maintain proper and complete timesheets or payroll records, and, upon information and belief, by falsifying employees' time records to reflect fewer hours than were actually worked.

34. Upon information and belief, Defendant Samuel Borgese was an officer, director, shareholder, and / or president or vice president of Charlie Brown's, and (i) had the power to hire and fire employees for those entities; (ii) supervised and controlled employee work schedules or conditions of employment for those entities; (iii) determined the rate and method of payment for Defendants' employees; and (iv) maintained employment records for Charlie Brown's.

35. Upon information and belief, Defendant Samuel Borgese dominated the day-to-day operating decisions of Charlie Brown's, made major personnel decisions for Charlie Brown's, and had complete control of the alleged activities of Charlie Brown's which give rise to the claims brought herein.

36. Upon information and belief, Defendant Samuel Borgese was a supervisor, officer and/or agent of Charlie Brown's, who acted directly or indirectly in the interest of Charlie Brown's, and is an employer within the meaning of the Fair Labor Standards Act. Samuel Borgese, in his capacity as an officer, director, shareholder, and / or president or vice president, actively participated in the unlawful method of payment for Charlie Brown's employees.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
FLSA MINIMUM WAGE COMPENSATION

37. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 36 hereof.

38. Pursuant to 29 U.S.C. § 206, "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than— (A) $5.85 an hour, beginning on the 60th day after May 25, 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and (C) $7.25 an hour, beginning 24 months after that 60th day."

39. Further, pursuant to 29 U.S.C. § 203(d), an "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

40. Plaintiffs and other members of the putative class are employees, within the meaning contemplated in Fair Labor Standards Act ("FLSA"), 29 U.S.C. §203(e).

41. Charlie Brown's constitutes an employer within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d).

42. Pursuant to 29 U.S.C. § 203(d) and the cases interpreting the same, Samuel Borgese constitutes as an "employer" for the purpose of FLSA and, consequently, is liable for violations of FLSA.

43. Upon information and belief, Defendants failed to pay Plaintiffs and other members of the putative class all earned minimum wages for all of the time they worked for Defendants in any given week.

44. Pursuant to 29 U.S.C. § 203(m), a "tip credit" against the minimum wage may only be taken against the minimum wage where "all tips received by such employee have been retained by the employee, except [for] the pooling of tips among employees who customarily and regularly receive tips."

45. Upon information and belief, Defendants did not pay all tips received by its tipped employees to those employees and others working in occupations which "customarily and regularly receive tips," and improperly retained tips and gratuities for management personnel and restaurant expenses.

46. Upon information and belief, Defendants illegally claimed a tip credit against the minimum wage for its tipped employees, when such a credit was not legally permissible.

47. The failure of Defendants to pay Plaintiffs and other members of the putative class their rightfully owed wages was willful.

48. By the foregoing reasons, Defendants are liable to Plaintiffs and members of the putative class in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
FLSA OVERTIME COMPENSATION

49. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 48 hereof.

50. Pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C § 207, "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a

rate not less than one and one-half times the regular rate at which he is employed."

51. Further, pursuant to 29 U.S.C. § 203(d), an "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

52. Plaintiffs and other members of the putative class are employees, within the meaning contemplated in Fair Labor Standards Act ("FLSA"), 29 U.S.C. §203(e).

53. Charlie Brown's constitutes an employer within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d).

54. Pursuant to 29 U.S.C. § 203(d) and the cases interpreting the same, Samuel Borgese constitutes as an "employer" for the purpose of FLSA and, consequently, is liable for violations of FLSA.

55. Upon information and belief, Defendants failed to pay Plaintiffs and other members of the putative class all earned overtime wages, at the rate of one and one half times the regular rate of pay, for the time in which they worked after the first forty hours in any given week.

56. The failure of Defendants to pay Plaintiffs and other members of the putative class their rightfully owed wages and overtime compensation was willful.

57. By the foregoing reasons, Defendants are liable to Plaintiffs and members of the putative class in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
FAILURE TO PAY MINIMUM WAGES

58. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 57

hereof.

59. Pursuant to the Article Six and Article Nineteen of the New York Labor Law, workers, such as Plaintiffs and other members of the putative class, are protected from wage underpayments and improper employment practices.

60. Pursuant to Labor Law § 651, the term "employee" means "any individual employed or permitted to work by an employer in any occupation."

61. As persons employed for hire by Defendants, Plaintiffs and other members of the putative class are "employees," as understood in Labor Law § 651.

62. Pursuant to Labor Law § 651, the term "employer" includes any "any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer."

63. As an entity that hired the Plaintiffs and other members of the putative class, Charlie Brown's constitutes an "employer."

64. Upon information and belief, pursuant to New York Labor Law §§ 190 *et seq*, 650 *et seq* and the cases interpreting same, Samuel Borgese is an "employer."

65. In failing to pay Plaintiffs and other members of the putative class proper wages, Defendants violated Labor Law § 650, *et seq*, by failing to pay Plaintiffs and other members of the putative class minimum wages for all hours worked.

66. Upon information and belief, Defendants' failure to pay Plaintiffs and other members of the putative class minimum wages was willful.

67. By the foregoing reasons, Defendants have violated New York Labor Law § 650 *et seq*. and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of New York in an amount to be determined at trial, interest, attorneys' fees and costs.

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

68. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 67 hereof.

69. 12 NYCRR §142-2.2 requires that "[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate."

70. New York Labor Law § 663, provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

71. Upon information and belief, Plaintiffs and other members of the putative class at times worked more than forty hours a week while working for Defendants.

72. Upon information and belief, Plaintiffs and other members of the putative class did not receive the New York statutory minimum wages or overtime compensation for all hours worked after the first forty hours of work in a week.

73. Consequently, by failing to pay to Plaintiffs and other members of the putative class the minimum wages and overtime compensation for work he performed after the first forty hours worked in a week, Defendants violated New York Labor Law § 663 and 12 NYCRR § 142-2.2.

74. Defendants' failure to pay wages and overtime compensation for work performed by Plaintiffs after the first forty hours worked in a week was willful.

75. By the foregoing reasons, Defendants have violated New York Labor Law § 663 and 12 NYCRR § 142-2.2 and are liable to Plaintiffs who performed work for Defendants within the State of New York in an amount to be determined at trial, plus interest, attorneys' fees, and

costs.

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

76. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 75 hereof.

77. Gratuities provided by Defendants' patrons to Plaintiffs and other members of the putative class constitute "wages" as that term is defined under Article 6 of the New York Labor Law, specifically including but not limited to Labor Law §§ 193, 196-d, 198(3).

78. Pursuant to New York Labor Law § 196-d, "No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee."

79. By improperly withholding portions of gratuities provided to Plaintiffs and other members of the putative class, Defendants violated New York Labor Law § 196-d.

80. By improperly charging Plaintiffs and other members of the putative class for surcharges and fees *including but not limited to* "liquor shortages," and other improper deductions, Defendants violated New York Labor Law § 193 by making improper deductions from the wages of Plaintiffs and other members of the putative class for reasons other than those allowed under Labor Law § 193.

81. Upon information and belief, Defendants' improper withholding of wages and gratuities earned by Plaintiffs and other members of the putative class was willful.

82. By the foregoing reasons, Defendants have violated New York Labor Law § 190 *et seq.* and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of New York in an amount to be determined at trial, plus interest,

attorneys' fees, and costs.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS
NEW JERSEY MINIMUM WAGE COMPENSATION

83. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 82 hereof.

84. Pursuant to N.J.S.A. 34:11-56a *et seq.* and N.J.A.C. 12:56-14.1 *et seq.* workers, such as Plaintiffs and other members of the putative class, are protected from wage underpayments and improper employment practices.

85. Pursuant to N.J.S.A. 34:11-56a1(g), the term "employer" means "any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

86. As an en entity that hired the Plaintiffs and other members of the putative class, Charlie Brown's constitutes an "employer."

87. Pursuant to N.J.A.C. 12:56-14.1(a), the term "restaurant industry" means "any eating or drinking place which prepares and offers food or beverages for human consumption either in any of its premises or by such services as catering, banquets, box lunch or curb service."

88. As an entity which prepares and offers food and beverages for human consumption in its premises, Charlie Brown's constitutes a restaurant industry.

89. Pursuant to N.J.S.A. 34:11-56a1(h), the term "employee" means "any individual employed by an employer."

90. As persons employed for hire by Defendants, Plaintiffs and other members of the putative class are "employees."

91. Upon information and belief, pursuant to N.J.S.A. 34:11-56a *et seq,* and the cases interpreting the same, Samuel Borgese is an "employer."

92. Defendants failed to pay Plaintiffs and members of the putative class the minimum wage for all hours worked.

93. In failing to pay Plaintiffs and members of the putative class minimum wages for all hours worked, Defendants violated N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-14.2.

94. Pursuant to N.J.S.A. 34:11-56a25, "[i]f any employee is paid by an employer less than the minimum fair wage to which such employee is entitled...such employee may recover in a civil action the full amount of such minimum wage less any amount actually paid to him or her by the employer together with costs and such reasonable attorney's fees as may be allowed by the court...."

95. Upon information and belief, Defendants' failure to pay Plaintiffs and other members of the putative class minimum wages was willful.

96. By the foregoing reasons, Defendants have violated N.J.S.A. 34:11-56a *et seq.* and N.J.A.C. 12:56-14.1 *et seq.* and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of New Jersey in an amount to be determined at trial, interest, attorneys' fees and costs.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS NEW JERSEY OVERTIME COMPENSATION

97. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 96 hereof.

98. Plaintiffs and other members of the putative class regularly worked over forty hours per week, and were not always properly paid overtime compensation at time and one half their regular hourly wage for such hours.

99. In failing to pay Plaintiffs and members of the putative class overtime

compensation for all hours worked over 40 in any given week, Defendants violated N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-14.3.

100. Pursuant to N.J.S.A. 34:11-56a25, "[i]f any employee is paid by an employer less than the minimum fair wage to which such employee is entitled...such employee may recover in a civil action the full amount of such minimum wage less any amount actually paid to him or her by the employer together with costs and such reasonable attorney's fees as may be allowed by the court...."

101. Upon information and belief, Defendants' failure to pay Plaintiffs and other members of the putative class overtime compensation was willful.

102. By the foregoing reasons, Defendants have violated N.J.S.A. 34:11-56a *et seq.* and N.J.A.C. 12:56-14.1 *et seq.* and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of New Jersey in an amount to be determined at trial, interest, attorneys' fees and costs.

EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS
PENNSYLVANIA MINIMUM WAGE COMPENSATION

103. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 102 hereof.

104. Pursuant to 43 P.S. § 333.101 *et seq.* workers, such as Plaintiffs and other members of the putative class, are protected from wage underpayments and improper employment practices.

105. Pursuant to 43 P.S. § 333.103(g), the term "employer" means "any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee."

106. As an entity that hired the Plaintiffs and other members of the putative class, Charlie Brown's constitutes an "employer."

107. Upon information and belief, pursuant to 43 P.S. § 333.101 *et seq* and the cases interpreting same, Samuel Borgese is an "employer."

108. Pursuant to 43 P.S. § 333.103(h), the term "employee" includes any individual employed by an employer.

109. As persons employed for hire by Defendants, Plaintiffs and other members of the putative class are "employees."

110. Defendants failed to pay Plaintiffs and members of the putative class the minimum wage for all hours worked.

111. In failing to pay Plaintiffs and members of the putative class minimum wages for all hours worked, Defendants violated 43 P.S. § 333.104.

112. Pursuant to 43 P.S. § 333.113 "If any employee is paid by his or her employer less than the minimum....such worker may recover in a civil action the full amount of such minimum wage less any amount actually paid to the worker by the employer, together with costs and such reasonable attorney's fees as may be allowed by the court...."

113. Upon information and belief, Defendants' failure to pay Plaintiffs and other members of the putative class minimum wages was willful.

114. By the foregoing reasons, Defendants have violated 43 P.S. § 333.101 *et seq* and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of Pennsylvania in an amount to be determined at trial, interest, attorneys' fees and costs.

NINTH CAUSE OF ACTION AGAINST DEFENDANTS PENNSYLVANIA OVERTIME COMPENSATION

115. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 114 hereof.

116. Plaintiffs and other members of the putative class regularly worked over forty hours per week, and were not always properly paid overtime compensation at time and one half their regular hourly wage for such hours.

117. In failing to pay Plaintiffs and members of the putative class overtime compensation for all hours worked over 40 in any given week, Defendants violated 43 P.S. § 333.104.

118. Upon information and belief, Defendants' failure to pay Plaintiffs and other members of the putative class overtime compensation was willful.

119. By the foregoing reasons, Defendants have violated 43 P.S. § 333.101 *et seq* and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of Pennsylvania in an amount to be determined at trial, interest, attorneys' fees and costs.

WHEREFORE, Plaintiffs, 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 and SAMUEL BORGESE

demand judgment:

(1) on their first cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs,

(2) on their second cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs;

(3) on their third cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections;

(4) on their fourth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections;

(5) on their fifth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections;

(6) on their sixth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited New Jersey law sections;

(7) on their seventh cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited New Jersey law sections;

(8) on their eighth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Pennsylvania law sections;

(9) on their ninth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Pennsylvania law sections; and

(10) whatever other and further relief the Court may deem appropriate.

Dated: New York, New York
September 1, 2010

By: _____

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