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September 7, 2010

VIA ECF
Magistrate Judge Cheryl L. Pollak
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Greene, et al. v. C.B. Holding Corp.
d/b/a Charlie Brown's Steakhouse, et al.
Case No. 10 Civ. 1094 (JBW)(CLP)

Dear Judge Pollak:

We represent the Defendants in the above-referenced matter. This letter is submitted pursuant to Your Honor's directive during the status teleconference on September 1, 2010.

Following the Court's conditional certification of this FLSA collective action, the Parties conferred regarding the preparation of a proposed notice to send to the potential collective action members. While the Parties have been able to reach agreement on a majority of the language for the proposed notice, there are still a few issues on which the Parties have been unable to agree. As such, during the September 1, 2010 teleconference, Your Honor directed the Parties to submit a letter brief outlining their respective positions regarding issues in dispute related to the proposed notice. Plaintiffs' counsel has submitted the Parties' proposed notice, with Defendants' proposals in red font, and Plaintiffs' proposals in blue font. Defendants' position as to the disputed verbiage from the proposed notice is addressed below.

Page 1, Paragraph 3
The Word "Potentially" Should Precede The Term "Similarly Situated."

Although the Court has conditionally certified this matter as a collective action for notice purposes, the Court has not conclusively determined that the collective action group (consisting essentially of all non-exempt restaurant employees) is similarly situated to the named Plaintiffs. That determination will not be made until the conclusion of discovery and a dispositive decision is rendered on Defendants' anticipated motion for decertification. It would be inaccurate and prejudicial to permit the term "similarly situated" to appear in the notice

without qualification. Consequently, the verbiage in notice should read "potentially similarly situated," instead of simply "similarly situated." See Sexton v. Franklin First Financial, Ltd., No 08-CV-04950(JFB)(ARL), 2009 U.S. Dist. LEXIS 50526 (E.D.N.Y. June 16, 2009) (granting defendants' objection and modifying the collective action notice to read "potentially similarly situated" instead of "similarly situated"); Sobczak v. AWL Industries, Inc., 540 F. Supp. 2d 354 (E.D.N.Y. 2007) (approving notice containing "potentially" similarly situated language); Gjurovich v. Emmanuel's Marketplace, Inc., 282 F. Supp. 2d 101 (S.D.N.Y. 2003) (same).

Page 3, Paragraph 3
Defense Counsel's Telephone Number Should Appear With Their Contact Information.

The notice must include the contact information for Defendants' counsel as one source from whom potential plaintiffs may obtain information. See Bah v. Shoe Mania, Inc., No. 08 Civ. 9380, 2009 U.S. Dist. LEXIS 40803, at *12 (S.D.N.Y. May 13, 2009); Guzman v. VLM, Inc., 07-CV-1126, 2007 U.S. Dist. LEXIS 75817, at *24 (E.D.N.Y. Oct. 11, 2007). The contact information without question should include Defendants' telephone number. See e.g., Gjurovich, 282 F. Supp. at 108; Sobczak, 540 F. Supp. 2d at 368.

On the Notice: Page 3, Bottom of the Page.
Potential Opt-In Plaintiffs Must Be Informed About The Effects Of Deciding to Opt Into This Lawsuit As A Party Plaintiff.

Potential opt-ins should be informed that if they decide to participate in the lawsuit, Plaintiffs Goff, Greene and Tello will be their agents and will make decisions on their behalf concerning the litigation; the method and manner of conducting this litigation; entering into an agreement with Plaintiffs' counsel concerning attorney's fees and costs; any settlement thereof; and, any other matters pertaining to this lawsuit. See e.g., Gjurovich, 282 F. Supp. at 107; Sobczak, 540 F. Supp. 2d at 367. Potential opt-ins also should be informed that decisions and agreements made and entered into by the assigned Representative will be binding if they choose to join this lawsuit and delegate decision making authority. This provision also should be included in the consent form. See e.g., Gjurovich, 282 F. Supp. at 109.

In addition, the notice also must include a full description of what it means to become a participant in a litigation of this nature to ensure that any individual's decision to opt-in as a party plaintiff is based on full and fair informed consent. In particular, notice of the collective action should include a statement that the opt-in plaintiffs may be required to participate in written discovery and that they may be required to appear for deposition and/or trial in the Eastern District of New York. See Sexton, 2009 U.S. Dist. LEXIS 50526, at *42; Shajan v. Barolo, Ltd., 10 Civ. 1385, 2010 U.S. Dist. LEXIS 54581, at *5 (S.D.N.Y. June 2, 2010); Bah, 2009 U.S. Dist. LEXIS 40803, at *11; Hallissey v. America Online, Inc., 99-CIV-3785, 2008 U.S. Dist. LEXIS 18387 (S.D.N.Y. Feb. 19, 2008). Consequently, Defendants' proposed "Effects of Joining This Lawsuit" Section must be included in the proposed Notice as well as the similar language on the Consent to Joinder.

Page 4, Bottom of the Page.
The Court Does Not Have To "So Order" The Notice Itself.

The "So Ordered" portion of the proposed Notice is unnecessary, potentially misleading and should be removed. Assuming the Parties' Proposed Publication Order is approved and So Ordered by the Court, the proposed Notice need not also be separately ordered. It is unnecessary to have the Court separately "So Order" the Notice. Further, including such language is potentially prejudicial as it may appear to a lay person that the Court has approved or endorsed this lawsuit.

Page 5, Paragraph 1 and 2.
The Consent To Joinder Form Should Contain Language Wherein Potential Opt-Ins Can Include The Dates And Locations Of Employment.

The Consent to Joinder form should include information from the opt-in regarding his/her dates and locations of employment with Charlie Brown's Steakhouse. In the event the consent form is returned by someone who may have been known by a different name during their employment (or in the event the form is not clear or completely legible), additional identifying variables will assist the Parties in locating relevant information pertaining to each individual.

* * * * * * * *

Discovery Schedule.

During the September 1, 2010 teleconference, Your Honor also directed the Parties to provide you with a proposed discovery and class certification schedule.

The Parties have conferred regarding a schedule for further proceedings in this matter, including class discovery and Plaintiffs' anticipated motion for Rule 23 certification. Plaintiffs will propose class written discovery be served within three (3) weeks, responses within five (5) weeks thereafter, and pre-class certification depositions within 30 days after service of responses. Defendants' position is that proceeding with class discovery and Rule 23 motion practice prior to the expiration of the collective action opt-in period would be premature and inefficient. Defendants' position is that this matter may be more efficiently handled, given its potential scope, if the Parties further confer regarding necessary discovery, Plaintiffs' anticipated Rule 23 motion (as well as any other appropriate motions) upon the conclusion of the opt-in period. For instance, in Thiebes v. Wal-Mart Stores, Inc., 98-802-KI, 1999 U.S. Dist. LEXIS 18649, at *11 (D. Or. Dec. 1, 1999), the District Court for a variety of reasons chose to postpone the submission of the plaintiffs' Rule 23 motion until the conclusion of the opt-in period. One of the reasons the court cited for doing so was to "see how many employees do, in fact, choose to opt in to the collective action. At that point, [the court] will be best equipped to determine if joinder is impracticable and, thus, whether a class action may be appropriate."

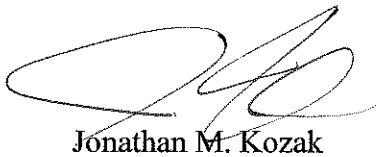
As such, Defendants propose that the Parties meet and confer regarding a discovery and motion schedule following the opt-in period. Alternatively, Defendants' request that Plaintiffs' proposed schedule be implemented beginning upon the conclusion of the opt-in period.

While Judge Weinstein directed that matter to proceed "expeditiously," he did not impose any specific deadlines. Moreover, Defendants' proposal moves this matter forward efficiently as well as expediently - - depending upon the mailing of the notice, possibly within the next six months. Prudent deferral of Rule 23 issues will not disadvantage either party and will not hinder the Court's prompt adjudication of this matter.

Thank you for your consideration of this matter.

Respectfully submitted,

JACKSON LEWIS LLP



JMK/mrg

Jonathan M. Kozak

cc: LaDonna M. Lusher, Esq., *Counsel for Plaintiffs* (via e-mail)
Lloyd Ambinder, Esq., *Counsel for Plaintiffs* (via e-mail)