

**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

Michael A. Jakowsky

Attorneys for Defendants

-----X
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.
-----X

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

**ANSWER OF DEFENDANT SAMUEL BORGESE TO PLAINTIFFS'
FIRST AMENDED CLASS ACTION COMPLAINT**

Defendant, SAMUEL BORGESE, (referred to herein as “Defendant”), by and through his attorneys, Jackson Lewis LLP, for his Answer to Plaintiffs’ First Amended Class Action Complaint (the “Amended Complaint”) herein states as follows:

AS TO “PRELIMINARY STATEMENT”

1. Defendant Borgese denies the allegations contained in Paragraph 1 of the Amended Complaint, except admits Plaintiffs purport to bring claims under the Fair Labor Standards Act (“FLSA”), and the New York, New Jersey and Pennsylvania State Labor Laws, and their applicable regulations, allegedly on behalf of themselves and others alleged to be similarly situated.
2. Defendant Borgese denies the allegations contained in Paragraph 2 of the Amended Complaint.
3. Defendant Borgese denies the allegations contained in Paragraph 3 of the Amended Complaint.
4. Defendant Borgese denies the allegations contained in Paragraph 4 of the Amended Complaint.
5. Defendant Borgese denies the allegations contained in Paragraph 5 of the Amended Complaint.
6. Defendant Borgese denies the allegations contained in Paragraph 6 of the Amended Complaint.
7. Defendant Borgese denies the allegations contained in Paragraph 7 of the Amended Complaint, except admits Plaintiffs initiated this action purporting to seek for themselves, and on behalf of all allegedly similarly situated employees, compensation purportedly owed them, plus interest, damages, attorneys’ fees and costs.

AS TO "JURISDICTION"

8. Defendant Borgese denies the allegations contained in Paragraph 8 of the Amended Complaint, except admits 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. Defendant Borgese denies the allegations contained in Paragraph 9 of the Amended Complaint, except admits 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. Defendant Borgese denies the allegations contained in Paragraph 10 of the Amended Complaint, except admits upon information and belief that Charlie Brown's of Commack, LLC employed Plaintiff Greene at certain times beginning in or about July 30, 2008 to May 2010.

11. Defendant Borgese denies the allegation contained in Paragraph 11 of the Amended Complaint, except admits upon information and belief that Charlie Brown's of Commack, LLC employed Plaintiff Goff at certain times beginning in or about September 17, 2007 to the present.

12. Defendant Borgese denies the allegation contained in Paragraph 12 of the Amended Complaint, except admits upon information and belief that Charlie Brown's of Old Tappan, LLC employed Plaintiff Tello at certain times beginning in or about October 2009 to in or about April 2010.

13. Defendant Borgese denies the allegations contained in Paragraph 13 of the Amended Complaint, except admits upon information and belief 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.

14. Defendant Borgese denies the allegations contained in Paragraph 14 of the Amended Complaint, except admits upon information and belief 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.

15. Defendant Borgese denies the allegations contained in Paragraph 15 of the Amended Complaint, except admits upon information and belief 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.

16. Defendant Borgese denies the allegations contained in Paragraph 16 of the Amended Complaint, except admits upon information and belief 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.

17. Defendant Borgese denies the allegations set forth in Paragraph 17 of the Amended Complaint, except admits that he is employed as the President and Chief Executive Officer of Charlie Brown's Acquisition Corp. and C.B. Holding Corp.

AS TO “CLASS ALLEGATIONS”

18. Defendant Borgese denies the allegations contained in Paragraph 18 of the Amended Complaint.

19. Defendant Borgese denies the allegations contained in Paragraph 19 of the Amended Complaint.

20. Defendant Borgese denies the allegations contained in Paragraph 20 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

21. Defendant Borgese denies the allegations contained in Paragraph 21 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

22. Defendant Borgese denies the allegations contained in Paragraph 22 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

23. Defendant Borgese denies the allegations contained in Paragraph 23 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

24. Defendant Borgese denies the allegations contained in Paragraph 24 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

AS TO “FACTS”

25. Defendant Borgese denies the allegations contained in Paragraph 25 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

26. Defendant Borgese denies the allegations contained in Paragraph 26 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

27. Defendant Borgese denies the allegations contained in Paragraph 27 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

28. Defendant Borgese denies the allegations contained in Paragraph 28 of the Amended Complaint.

29. Defendant Borgese denies the allegations contained in Paragraph 29 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

30. Defendant Borgese denies the allegations contained in Paragraph 30 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

31. Defendant Borgese denies the allegations contained in Paragraph 31 of the Amended Complaint.

32. Defendant Borgese denies the allegations contained in Paragraph 32 of the Amended Complaint.

33. Defendant Borgese denies the allegations contained in Paragraph 33 of the Amended Complaint.

34. Defendant Borgese denies the allegations contained in Paragraph 34 of the Amended Complaint, except admits that he is employed as the President and Chief Executive Officer of Charlie Brown's Acquisition Corp. and C.B. Holding Corp.

35. Defendant Borgese denies the allegations contained in Paragraph 35 of the Amended Complaint.

36. Defendant Borgese denies the allegations contained in Paragraph 36 of the Amended Complaint.

**AS TO “FIRST CAUSE OF ACTION AGAINST
DEFENDANTS: FLSA MINIMUM WAGE
COMPENSATION”**

37. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 36 above, as if set forth fully herein in response to Paragraph 37 of the Amended Complaint.

38. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 38 of the Amended 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.

39. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 39 of the Amended 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.

40. Defendant Borgese denies the allegations contained in Paragraph 40 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

41. Defendant Borgese denies the allegations contained in Paragraph 41 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

42. Defendant Borgese denies the allegations contained in Paragraph 42 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

43. Defendant Borgese denies the allegations contained in Paragraph 43 of the Amended Complaint.

44. Defendant Borgese denies the allegations contained in Paragraph 44 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

45. Defendant Borgese denies the allegations contained in Paragraph 45 of the Amended Complaint.

46. Defendant Borgese denies the allegations contained in Paragraph 46 of the Amended Complaint.

47. Defendant Borgese denies the allegations contained in Paragraph 47 of the Amended Complaint.

48. Defendant Borgese denies the allegations contained in Paragraph 48 of the Amended Complaint.

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

49. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 48 above, as if set forth fully herein in response to Paragraph 49 of the Amended Complaint.

50. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 50 of the Amended 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.

51. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 51 of the Amended 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.

52. Defendant Borgese denies the allegations contained in Paragraph 52 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

53. Defendant Borgese denies the allegations contained in Paragraph 53 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

54. Defendant Borgese denies the allegations contained in Paragraph 54 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

55. Defendant Borgese denies the allegations contained in Paragraph 55 of the Amended Complaint.

56. Defendant Borgese denies the allegations contained in Paragraph 56 of the Amended Complaint.

57. Defendant Borgese denies the allegations contained in Paragraph 57 of the Amended Complaint.

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

58. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 57 above, as if set forth fully herein in response to Paragraph 58 of the Amended Complaint.

59. Defendant Borgese denies the allegations contained in Paragraph 59 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

60. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 60 of the Amended 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. Defendant Borgese denies the allegations contained in Paragraph 61 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

62. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 62 of the Amended 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.

63. Defendant Borgese denies the allegations contained in Paragraph 63 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

64. Defendant Borgese denies the allegations contained in Paragraph 64 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

65. Defendant Borgese denies the allegations contained in Paragraph 65 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

66. Defendant Borgese denies the allegations contained in Paragraph 66 of the Amended Complaint.

67. Defendant Borgese denies the allegations contained in Paragraph 67 of the Amended Complaint.

**AS TO “FOURTH CAUSE OF ACTION AGAINST
DEFENDANTS: NEW YORK OVERTIME
COMPENSATION LAW”**

68. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 67 above, as if set forth fully herein in response to Paragraph 68 of the Amended Complaint.

69. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 69 of the Amended 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.

70. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 70 of the Amended 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.

71. Defendant Borgese denies the allegation contained in Paragraph 71 of the Amended Complaint.

72. Defendant Borgese denies the allegation contained in Paragraph 72 of the Amended Complaint.

73. Defendant Borgese denies the allegations contained in Paragraph 73 of the Amended Complaint.

74. Defendant Borgese denies the allegations contained in Paragraph 74 of the Amended Complaint.

75. Defendant Borgese denies the allegations contained in Paragraph 75 of the Amended Complaint.

**AS TO “FIFTH CAUSE OF ACTION AGAINST
DEFENDANTS: NEW YORK LABOR LAW ARTICLE 6”**

76. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 75 above, as if set forth fully herein in response to Paragraph 76 of the Amended Complaint.

77. Defendant Borgese denies the allegations contained in Paragraph 77 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

78. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 78 of the Amended 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.

79. Defendant Borgese denies the allegation contained in Paragraph 79 of the Amended Complaint.

80. Defendant Borgese denies the allegation contained in Paragraph 80 of the Amended Complaint.

81. Defendant Borgese denies the allegations contained in Paragraph 81 of the Amended Complaint.

82. Defendant Borgese denies the allegations contained in Paragraph 82 of the Amended Complaint.

**AS TO “SIXTH CAUSE OF ACTION AGAINST
DEFENDANTS: NEW JERSEY MINIMUM WAGE
COMPENSATION”**

83. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 82 above, as if set forth fully herein in response to Paragraph 83 of the Amended Complaint.

84. Defendant Borgese denies the allegations contained in Paragraph 84 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

85. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 85 of the Amended 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.

86. Defendant Borgese denies the allegations contained in Paragraph 86 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

87. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 87 of the Amended 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.

88. Defendant Borgese denies the allegations contained in Paragraph 88 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

89. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 89 of the Amended 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.

90. Defendant Borgese denies the allegations contained in Paragraph 90 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

91. Defendant Borgese denies the allegations contained in Paragraph 91 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

92. Defendant Borgese denies the allegations contained in Paragraph 92 of the Amended Complaint.

93. Defendant Borgese denies the allegations contained in Paragraph 93 of the Amended Complaint.

94. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 94 of the Amended 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.

95. Defendant Borgese denies the allegations contained in Paragraph 95 of the Amended Complaint.

96. Defendant Borgese denies the allegations contained in Paragraph 96 of the Amended Complaint.

**AS TO “SEVENTH CAUSE OF ACTION AGAINST
DEFENDANTS: NEW JERSEY OVERTIME
COMPENSATION”**

97. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 96 above, as if set forth fully herein in response to Paragraph 97 of the Amended Complaint.

98. Defendant Borgese denies the allegations contained in Paragraph 98 of the Amended Complaint.

99. Defendant Borgese denies the allegations contained in Paragraph 99 of the Amended Complaint.

100. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 100 of the Amended 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.

101. Defendant Borgese denies the allegations contained in Paragraph 101 of the Amended Complaint.

102. Defendant Borgese denies the allegations contained in Paragraph 102 of the Amended Complaint.

**AS TO “EIGHTH CAUSE OF ACTION AGAINST
DEFENDANTS: PENNSYLVANIA MINIMUM WAGE
COMPENSATION”**

103. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 102 above, as if set forth fully herein in response to Paragraph 103 of the Amended Complaint.

104. Defendant Borgese denies the allegations contained in Paragraph 104 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

105. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 105 of the Amended 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.

106. Defendant Borgese denies the allegations contained in Paragraph 106 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

107. Defendant Borgese denies the allegations contained in Paragraph 107 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

108. Defendant Borgese neither admits nor denies the allegations set forth in Paragraph 108 of the Amended 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.

109. Defendant Borgese denies the allegations contained in Paragraph 109 of the Amended Complaint, except states that to the extent the allegations constitute conclusions of law, no response is required thereto.

110. Defendant Borgese denies the allegations contained in Paragraph 110 of the Amended Complaint.

111. Defendant Borgese denies the allegations contained in Paragraph 111 of the Amended Complaint.

112. Defendant Borgese denies admit nor deny the allegations set forth in Paragraph 112 of the Amended 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.

113. Defendant Borgese denies the allegations contained in Paragraph 113 of the Amended Complaint.

114. Defendant Borgese denies the allegations contained in Paragraph 114 of the Amended Complaint.

**AS TO “NINTH CAUSE OF ACTION AGAINST
DEFENDANTS: PENNSYLVANIA OVERTIME
COMPENSATION”**

115. Defendant Borgese repeats and re-alleges his responses and denials to Paragraphs 1 through 114 above, as if set forth fully herein in response to Paragraph 115 of the Amended Complaint.

116. Defendant Borgese denies the allegations contained in Paragraph 116 of the Amended Complaint.

117. Defendant Borgese denies the allegations contained in Paragraph 117 of the Amended Complaint.

118. Defendant Borgese denies the allegations contained in Paragraph 118 of the Amended Complaint.

119. Defendant Borgese denies the allegations contained in Paragraph 119 of the Amended Complaint.

AS TO "WHEREFORE"

120. The "WHEREFORE" clause immediately following Paragraph 119 of the Complaint, including subparagraphs "1." through "10.", sets forth Plaintiffs' prayer for relief to which no responsive pleading is required. However, to the extent a responsive pleading is required, Defendant Borgese denies that Plaintiffs are entitled to any relief whatsoever either individually or on behalf of others.

AFFIRMATIVE AND OTHER DEFENSES

121. By way of further answer, Defendant Borgese asserts the following affirmative and other defenses. In asserting these defenses, Defendant Borgese is providing notice to Plaintiffs of the defenses he intends to raise, and he does 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

122. Plaintiffs' Amended 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

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

AS AND FOR A THIRD DEFENSE

124. At all times relevant hereto, Defendant Borgese 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

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

AS AND FOR A FIFTH DEFENSE

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

AS AND FOR A SIXTH DEFENSE

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

AS AND FOR A SEVENTH DEFENSE

128. Plaintiffs' Amended 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

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

AS AND FOR A NINTH DEFENSE

130. 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

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

AS AND FOR AN ELEVENTH DEFENSE

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

AS AND FOR A TWELFTH DEFENSE

133. The Amended 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

134. The Amended 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

135. 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 or any applicable New Jersey or Pennsylvania State Law.

AS AND FOR A FIFTEENTH DEFENSE

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

AS AND FOR A SIXTEENTH DEFENSE

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

AS AND FOR A SEVENTEENTH DEFENSE

138. The Plaintiffs' claims under the New Jersey, New York and Pennsylvania Labor Law may not be maintained as Plaintiffs were paid properly pursuant to the FLSA, and under any correspondingly applicable regulations.

AS AND FOR AN EIGHTEENTH DEFENSE

139. Samuel Borgese is not and was not an "employer" within the meaning of the FLSA or the New Jersey, New York or Pennsylvania Labor Law during the periods alleged in the Complaint, in whole or in part.

AS AND FOR A NINETEENTH DEFENSE

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

AS AND FOR A TWENTIETH DEFENSE

141. Defendant Borgese reserves all other defenses available under the FLSA, and/or New Jersey, New York or Pennsylvania Labor law.

AS AND FOR A TWENTY-FIRST DEFENSE

142. Defendant Borgese reserves the right to amend or add additional affirmative defenses or counter-claims, which may become known during the course of this action.

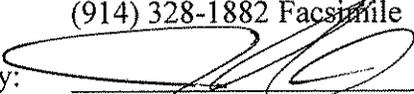
WHEREFORE, Defendant Borgese respectfully requests that this Court:

1. Dismiss Plaintiffs' Amended 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' Amended Complaint;
3. Award Defendant Borgese 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

One North Broadway, 15th Floor
White Plains, New York 10601
(914) 328-0404
(914) 328-1882 Facsimile

By: 

Jonathan M. Kozak

kozakj@jacksonlewis.com

Michael A. Jakowsky

Jakowskym@jacksonlewis.com

Attorneys for Defendant Samuel Borgese

Dated: September 14, 2010
White Plains, New York

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
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.
-----X

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

CERTIFICATE OF SERVICE

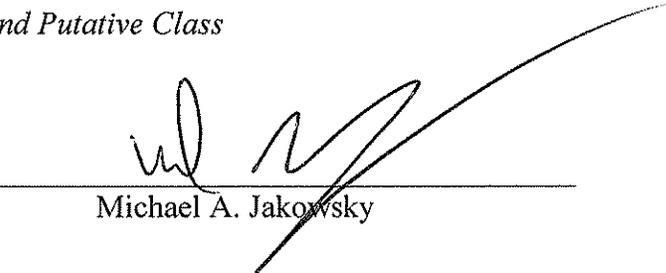
I, hereby certify that a true and correct copy of the attached Answer of Defendant Samuel Borgese to Plaintiffs' First Amended Class Action Complaint was served via ECF and regular U.S. mail, postage pre-paid, on September 14, 2010 upon:

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

-and-

Jeffrey K. Brown
Leeds, Morelli, and Brown, P.C.
One Old Country Road, Suite 347
Carle Place, New York 11514

Attorneys for Plaintiffs and Putative Class



Michael A. Jakowsky