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Atlantic & Pacific Tea Company, Inc., The
Food Emporium and Waldbaum, Inc.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

_____ X

BENEDETTO LAMARCA, KENNETH
PALMA, and DOLORES GUIDDY,

INDEX NO. 04601973

Individually, and on behalf of all others
Similarly situated as Class Representatives,

Plaintiffs,

-against-

THE GREAT ATLANTIC AND PACIFIC TEA
COMPANY, INC., d.b.a. A&P, THE FOOD
EMPORIUM, and WALDBAUM's,

Defendants.

**ANSWER TO SECOND
AMENDED CLASS ACTION
COMPLAINT**

_____ X

Defendants, by their attorneys, Fulbright & Jaworski L.L.P., as and for their answer to the
Second Amended Class Action Complaint ("Complaint") allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the
allegations set forth in paragraphs "1" and "2" of the Complaint, except admit that plaintiffs
purport to commence an action against defendants, and that plaintiffs are former or current
employees of defendants.

2. Deny the allegations set forth in paragraphs "3," "4," and "5" of the Complaint.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the Complaint, except admit that plaintiff Benedetto LaMarca (“LaMarca”) was employed by defendant The Great Atlantic & Pacific Tea Co., Inc. (“A&P”) in various stores during his employment.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint, except admit that plaintiff Dolores Guiddy (“Guiddy”) worked as an hourly employee as a Bakery Manager at The Food Emporium stores at various times during her employment.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint, except admit that plaintiff Stephen Tedesco (“Tedesco”) worked as an hourly employee in various positions at Waldbaum’s stores in Nassau and Suffolk Counties in the State of New York during his employment.

6. Admit the allegations set forth in paragraph “9,” and deny the allegations set forth in paragraph “10” of the Complaint, except admit that all defendants operate under a generalized set of similar time and attendance policies.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Complaint, except admit that plaintiffs “were hired as employees by Defendant and assigned to work on the premises of retail stores operated by Defendant in the normal course of Defendant’s business.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “12,” “14,” and “15” of the Complaint.

9. Admit the allegations set forth in paragraph “13” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegation that

defendants have “obtained the benefits of the laws and the retail and labor markets of the State of New York.”

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the Complaint, except admit that plaintiffs purport to bring this action for an alleged violation of the New York Labor Law as a class action pursuant to New York Civil Practice Law and Rules §§ 901 et seq.

11. Deny the allegations set forth in paragraphs “17,” “18,” “19,” “20,” “21,” “22,” and “23” of the Complaint.

12. Admit the allegation in paragraph “24” of the Complaint that defendants scheduled plaintiffs to work in shifts that begin and end at particular times, and except as admitted, deny the allegations set forth in paragraph “24” of the Complaint.

13. Deny the allegations set forth in paragraphs “25,” “26,” “27,” and “28” of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the Complaint, except admit that plaintiffs were entitled to unpaid meal periods.

15. Deny the allegations set forth in paragraphs “30,” “31,” “32,” “33,” “34,” “35,” “36,” “37,” and “38” of the Complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “39” of the Complaint, except admit that plaintiff Benedetto LaMarca was employed by A&P in various stores during his employment.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the Complaint, except admit that LaMarca was a full-time employee regularly scheduled to work 40 hours per week in the Peekskill store.

18. Deny the allegations set forth in paragraphs “41,” “42,” “43,” “44,” and “45” of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the Complaint, except admit that plaintiff Guiddy worked as an hourly employee as a Bakery Manager at The Food Emporium stores at various times during her employment.

20. Deny knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint, except admit that Guiddy was a full-time employee regularly scheduled to work 40 hours per week.

21. Deny the allegations set forth in paragraphs “48,” “49,” “50,” and “51” of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “52” of the Complaint, except admit that plaintiff Stephen Tedesco worked in various positions at Waldbaum’s stores in Nassau and Suffolk Counties in the State of New York during his employment.

23. Deny the allegations set forth in paragraphs “53,” “54,” “55,” and “56” of the Complaint.

Answering the First Cause of Action

24. Answering paragraph "57" of the Complaint, Defendants repeat and reallege their answers to paragraphs "1" through "56" of the Complaint as if fully set forth and rewritten herein.

25. Deny the allegations set forth in paragraphs "58," "59", and "60" of the Complaint.

First Affirmative Defense

26. The Complaint fails to state a cause of action upon which relief can be granted.

Second Affirmative Defense

27. The claims in the Complaint are barred by the applicable statute of limitations.

WHEREFORE, defendants demand judgment dismissing the Complaint, together with the costs and disbursements of this action.

Dated: New York, New York
July 26, 2005

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