

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

OCEANA SERVICES AND PRODUCTS
COMPANY and ANNE C. GILSON,
EXECUTRIX OF THE ESTATE OF JAMES
S. GILSON (DECEASED),

Plaintiffs,

v.

HOMETOWN COFFEE COMPANY and
THOMAS P. KAZAS,

Defendants.

Civil Action No.

Electronically filed

COMPLAINT

Plaintiffs, Oceana Services and Products Company (“Oceana”) and Anne C. Gilson, Executrix of the Estate of James S. Gilson (Deceased) (the “Estate”), by and through their attorneys, Morella & Associates, a Professional Corporation, complain against Defendants, Hometown Coffee Company (“Hometown”) and Thomas P. Kazas (“Mr. Kazas”), and in support thereof, aver as follows:

I. INTRODUCTION

1. This case is related to Partners Coffee Company, LLC versus Oceana Services and Products Company, et al., U.S.D.C. W.D.Pa. (Pittsburgh) at Civil Action No. 2:09-cv-236 before the Honorable William L. Standish (the “09-236 Case”).

2. Partners entered into, *inter alia*, an Asset Purchase Agreement with Oceana and Mr. Gilson whereby Partners purchased most of the assets of Oceana and a Consulting Agreement with Oceana whereby Oceana would continue to consult with Partners after the sale.

3. Partners breached the relevant agreements. Oceana and the Estate assert claims for breach of contract, fraud-in-the-inducement, negligent misrepresentation, and to pierce the veil of Partners in the 09-236 Case.

4. Upon information and belief, Mr. Kazas and/or Hometown Coffee Company are the sole members of Partners. They are liable under the piercing the veil doctrine. In addition, Hometown and/or Mr. Kazas participated in the alleged tortious conduct and are liable pursuant to the participation theory. They are not parties to the 09-236 Case.

5. This Complaint is to hold Mr. Kazas and Hometown liable for their participation in the tortious conduct and for the breach of the agreements pursuant to the piercing the veil doctrine.

II. PARTIES

A. PLAINTIFFS

6. Plaintiff, Oceana, is a Georgia corporation with its principle offices located at 154 Helmswood Circle, Marietta, Cobb County, Georgia 30064.

7. Plaintiff, the Estate, is the estate of James S. Gilson ("Mr. Gilson") (Deceased) filed in Probate Court of Cobb County, Georgia at Estate No. 09-1527. Anne C. Gilson ("Mrs. Gilson") is the Executrix of the Estate with an address in Marietta, Cobb County, Georgia.

B. DEFENDANTS

8. Defendant, Hometown, is a Pennsylvania corporation with its registered office located at 375 Southpointe Boulevard, Suite 440, Canonsburg, Washington County, Pennsylvania 15317 and its principle office located at 130 Southpointe Drive, Bridgeville, Allegheny County, Pennsylvania 15017.

9. Defendant, Mr. Kazas, is an adult male individual currently residing in Canonsburg, Washington County, Pennsylvania.

III. JURISDICTION AND VENUE

A. JURISDICTION

10. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 where the matter in controversy exceeds the sum or value of \$75,000 and there is complete diversity between the Plaintiffs, who reside in Georgia, and the Defendants, who reside in Pennsylvania.

B. VENUE

11. Venue is proper pursuant to 28 U.S.C. § 1391 where a substantial part of the events or omissions giving rise to the claims occurred in this district, and all the defendants reside in this district.

12. Venue is proper pursuant to ¶14.8 of the Asset Purchase Agreement (attached hereto as Exhibit “A” and incorporated by reference) and ¶14 of the Consulting Agreement (attached hereto as Exhibit “B” and incorporated by reference).

IV. BACKGROUND

13. Prior to May 2, 2008, Oceana and Mr. Gilson had a long standing (ten years) business relationship with Hometown and its President, Mr. Kazas. To wit, Oceana supplied Hometown with coffee.

14. Prior to May 2, 2008, Mr. Gilson and Mr. Kazas discussed the sale of Oceana (then known as Partners Coffee Company, Inc.).

15. The parties negotiated and agreed to terms including, for example, that the transaction would be an asset purchase (as opposed to a stock purchase), the purchase price, and the date for payment of the purchase price. In addition, it was contemplated that the purchaser

would be a company Mr. Kazas or Hometown Coffee Company would form specifically for this transaction.

16. Mr. Kazas or Hometown Coffee Company then formed (or caused to be formed on his behalf) that new company, Partners Coffee Company, LLC, specifically for this transaction.

17. Closing was set to occur on May 2, 2008.

18. At closing, a number of documents would be signed and/or provided including an Asset Purchase Agreement, Bill of Sale, Assignment and Assumption Agreement (Real Property Lease), Consent of Landlord to Assignment and Assumption Agreement, Assignment of Intellectual Property, Consulting Agreement, Restrictive Covenant Agreement, and others.

A. The Asset Purchase Agreement

19. The Asset Purchase Agreement provided for the sale of substantially all of the business and operating assets owned or utilized by Oceana in connection with its business of purchasing, processing, and packaging coffee products.

20. A material term of the Asset Purchase Agreement was, *inter alia*, that Oceana would be paid by Partners \$800,000 in full at closing.

21. At the closing, Partners did not pay the purchase price as required by the Asset Purchase Agreement.

22. Instead, on the scheduled closing date of May 2, 2008, Partners represented via a teleconference call that it was obtaining bank financing to pay the purchase price and that the funding would be completed on May 5, 2008 if Partners received all of the signed closing documents by that date. Because of the geographic location of the parties, the closing was being done via telephone and the mails.

23. Partners' agents, its attorneys, made this representation on a telephone conference call with Mr. Gilson. Mr. Kazas participated in this teleconference call on behalf of Partners.

24. In fact, Partners' attorneys told Mr. Gilson that Partners had completed its loan agreement and its lender was to transfer the required funds into Partners' attorneys' escrow account. This was false. The funds transfer never occurred and Partners' attorneys were unable to explain why.

25. Relying on these representations, Mr. Gilson executed all of the relevant documents including, but not limited to, the Asset Purchase Agreement and the Consulting Agreement, and forwarded the same to Partners' attorneys.

26. On May 5, 2008, Partners' attorneys confirmed via telephone that they had received Mr. Gilson's correctly signed documents. Partners' attorneys also stated that Mr. Kazas had still not signed one of the necessary documents on behalf of Partners, but that the necessary document was in route via courier.

27. Later on May 5, 2008, Partners' attorneys told Mr. Gilson that he could not locate Mr. Kazas, whom he believed to be out of the country, and that the funds would **not** be transferred that day.

28. Oceana and Mr. Gilson later learned that Mr. Kazas was not out of the country during this timeframe, but was instead in Las Vegas, Nevada.

29. On May 8, 2008, Partners' attorneys advised that Partners was looking into a second lending source and needed to determine which lender was offering the best deal for Partners.

30. Oceana and Mr. Gilson relied on Partners, Mr. Kazas, and their agents' representations that bank financing had been secured to pay the full purchase price and that the full purchase price would be paid.

31. Partners has never paid the full purchase price.

32. In addition, the Asset Purchase Agreement provides that Oceana and Mr. Gilson are entitled to all accounts receivables of Oceana existing on the closing date. See Ex. "A," ¶2.2.

33. Nevertheless, Partners has improperly retained monies paid in connection with accounts receivables existing on or before the closing date.

34. Partners was also required to employ Mrs. Gilson pursuant to ¶4.1 of the Asset Purchase Agreement. See Ex. "A." It has not done so.

B. The Consulting Agreement

35. In connection with the Asset Purchase Agreement, Partners and Oceana executed a Consulting Agreement dated May 2, 2008.

36. Pursuant to the Consulting Agreement, Partners retained Oceana to provide services, through Gilson, to Partners through April 30, 2011, with an option for Partners to extend the terms of the Agreement for two consecutive one year periods thereafter.

37. Execution of the Consulting Agreement was a condition precedent to the parties entering into the Asset Purchase Agreement.

38. After Partners failed to pay the purchase price as required under the Asset Purchase Agreement, Partners wrongfully purported to terminate the Consulting Agreement, thereby depriving Oceana of the compensation that it was to receive thereunder.

C. The Economic Harm

39. Partners has failed to pay Oceana \$380,000 towards the purchase price as required by the Asset Purchase Agreement.

40. Partners owes Oceana approximately \$20,000 for the accounts receivables Partners improperly retained.

41. Partners has failed to pay Oceana \$105,159.42 towards the Consulting Agreement.

42. Partners has failed to pay Oceana the performance bonus of approximately \$35,416.65 pursuant to the Consulting Agreement.

43. Partners has failed to pay Oceana the Retention Bonus of approximately \$35,416.65 pursuant to the Consulting Agreement.

44. Partners has failed to pay Oceana the Three Year Consulting Agreement Contingent EBITDA Based Bonus pursuant to the Consulting Agreement.

45. Partners owes \$90,000 for failing to employ Mrs. Gilson as an employee/consultant.

46. Oceana is owed statutory interest.

47. Oceana and Mr. Gilson are entitled to reimbursement from Partners for all expenses incurred by them in connection with the Asset Purchase Agreement including, but not limited to, reasonable attorneys' fees actually incurred. See Ex. "A," ¶12.3.

48. Hometown and Mr. Kazas' conduct is especially egregious and involves acts that are malicious, wanton, reckless, willful, and/or oppressive.

V. CLAIMS

COUNT I

**PIERCING THE COMPANY VEIL
(OCEANA & GILSON vs. HOMETOWN & KAZAS)**

49. Oceana and the Estate incorporate paragraphs 1 through 48 of their Complaint as if fully set forth herein.

50. Upon information and belief, (a) company formalities were not observed or company records kept for Partners; (b) there were no other members other than the company officers and directors for Hometown Coffee Company; and (c) Mr. Kazas and/or Hometown Coffee Company used assets of Partners for their own personal use.

51. Upon information and belief, (a) Partners was insufficiently capitalized at the outset; (b) there was intermingling of funds between and among Hometown Coffee Company and Partners as well as the personal assets of Mr. Kazas; (c) officers, managers, and directors, or the equivalent thereof, of Partners, if any, were not functioning; (d) Partners did not pay distributions in the regular or ordinary course of business; and (e) Mr. Kazas and/or Hometown Coffee Company held themselves out as conducting the business affairs without the use of company names and without identifying that their actions were taken as an officer or manager of Partners.

52. Upon information and belief, Partners is the alter ego of Mr. Kazas and/or Hometown Coffee Company or were operated as a single entity.

COUNT II
BREACH OF CONTRACT – ASSET PURCHASE AGREEMENT
(OCEANA & GILSON vs. HOMETOWN & KAZAS)

53. Oceana and the Estate incorporate paragraphs 1 through 52 of their Complaint as if fully set forth herein.

54. Partners entered into a contract with Oceana and Mr. Gilson. The Asset Purchase Agreement is the contract and sets forth the essential terms of their agreement. See Ex. “A.”

55. Oceana and Mr. Gilson complied with the contract’s terms. To wit, they have fulfilled all duties, obligations and conditions precedent with regard to enforcement of the Asset Purchase Agreement.

56. As set forth above, Partners has substantially and materially breached the terms of the Asset Purchase Agreement by

- a. failing and refusing to pay to Oceana the purchase price as required thereunder;
- b. improperly retaining accounts receivables; and
- c. failing to employ Mrs. Gilson.

57. Partners breached the contract’s implied covenant of good faith and fair dealing by attempting to evade the spirit of the bargain, utilizing subterfuges and inaction to evade its obligations, and willfully rendering imperfect performance.

58. Despite demand, Partners has failed and refused to remedy its breach of the Asset Purchase Agreement.

59. Oceana and the Estate have suffered and will continue to suffer substantial damages as a result of Partners' breach of the Asset Purchase Agreement.

60. Hometown and Kazas are liable for this breach pursuant to the piercing the veil theory.

COUNT III
BREACH OF CONTRACT – CONSULTING AGREEMENT
(OCEANA vs. HOMETOWN & KAZAS)

61. Oceana and the Estate incorporate paragraphs 1 through 52 of their Complaint as if fully set forth herein.

62. Partners entered into a contract with Oceana. The Consulting Agreement is the contract and sets forth the essential terms of their agreement. See Ex. “B.”

63. Oceana has fulfilled all duties, obligations and conditions precedent with regard to enforcement of the Consulting Agreement.

64. As set forth above, Partners has substantially and materially breached the terms of the Consulting Agreement by impermissibly purporting to terminate the Consulting Agreement.

65. Despite demand, Partners has failed and refused to remedy its breach of the Consulting Agreement.

66. Oceana has suffered and will continue to suffer substantial damages as a result of Partners' breach of the Consulting Agreement.

67. Hometown and Kazas are liable for this breach pursuant to the piercing the veil theory.

COUNT IV
FRAUD-IN-THE-INDUCEMENT
(OCEANA & GILSON vs. HOMETOWN & KAZAS)

68. Oceana and the Estate incorporate paragraphs 1 through 52 of their Complaint as if fully set forth herein.

69. Partners, itself and its authorized agents, represented to Oceana and Mr. Gilson that:

a. Partners was obtaining bank financing to pay the full purchase price and that funding would be completed on May 5, 2008 if Partners received all of the closing documents fully executed by Oceana by that date;

b. Partners had completed its loan agreement and its lender was to transfer the required funds into Partners' agents' (the law firm representing it in the transaction) escrow account by May 5, 2008;

c. on May 5, 2008 Mr. Kazas was out of the country;

d. on May 8, 2008 Partners was looking into a second lending source and needed to determine which lender was offering the best deal for Partners;

e. Partners would retain Oceana pursuant to a Consulting Agreement for the term of the agreement;

f. Partners would employ or retain Mrs. Gilson as an employee or consultant.

70. Partners, itself and its authorized agents, without privilege, deliberately failed to disclose to Oceana and Mr. Gilson that:

a. Partners had not obtained bank financing by May 2, 2008;

b. Funding for the full purchase price would not be completed on May 5, 2008 if Partners received all of the closing documents fully executed by Oceana by that date;

c. Partners had not completed the loan agreement of its lender (in order to fully finance the transaction) by May 2, 2008;

d. The lender was not to transfer the funds into Partners' agents' (law firm) escrow account by May 5, 2008;

- e. Mr. Kazas was in Las Vegas, Nevada on May 5, 2008;
- f. Upon information and belief, Partners was not looking into a second lending source or, in the alternative, was looking into a second lending source because the first lender could not or would not finance all or part of the transaction;
- g. Partners was undercapitalized;
- h. Partners was unable or unwilling to obtain sufficient debt financing in order to pay the purchase price pursuant to the Asset Purchase Agreement or to finance the Consulting Agreement;
- i. Partners had no intention of retaining Oceana for the term of any Consulting Agreement;
- j. Prior to (and after) executing the documents, Partners intended to promptly terminate the Consulting Agreement after its execution on a false pretext;
- k. Prior to (and after) executing the documents, Partners had no intention of employing or paying Oceana for consulting services as set forth in the Consulting Agreement; and
- l. Prior to (and after) executing the closing documents, Partners never intended to retain or employ Mrs. Gilson as an employee or consultant.

71. The representations were material in that Oceana and Mr. Gilson would not have executed or otherwise entered into the Asset Purchase Agreement, Consulting Agreement or any of the other closing documents had they known the truth. They were material also in that the representations were made knowingly and involved a non-privileged failure to disclose. Partners concealed these omissions in order to deceive Oceana and Mr. Gilson into believing Oceana would receive the full purchase price as required by the Asset Purchase Agreement by May 5,

2008 and to induce Mr. Gilson and Partners into executing the closing documents and delivering them to Partners or its agent.

72. The representations made by Partners were made with knowledge that they were false, conscious ignorance of the truth, or recklessness as to whether the representations were true or false.

73. The representations made by Partners were made with the intent of misleading Oceana and Mr. Gilson into relying on them and with the intent of inducing them to execute, *inter alia*, the Asset Purchase Agreement and the Consulting Agreement and deliver the agreements to Partners or its agent.

74. Oceana and Mr. Gilson relied on the above-described fraudulent misrepresentations made by Partners. Their reliance was justifiable in that: (a) Oceana and Mr. Gilson had a long standing (ten year) business relationship with Mr. Kazas and Hometown Coffee Company; (b) Mr. Kazas and Partners were represented by sophisticated legal counsel and said legal counsel made some or all of the above-referenced representations to Mr. Gilson and Oceana; (c) the closing occurred through the use of the mails due to the geographic locality of each party; and (d) Mr. Kazas, Partners, and its agents assured Oceana and Mr. Gilson that the terms of the agreements would be complied with if Mr. Gilson executed the documents and forwarded them to Partners' legal counsel.

75. The above-described damages suffered by Oceana and Mr. Gilson are the proximate result of Partners above-described fraudulent material misrepresentations and Oceana and Mr. Gilson's justifiable reliance thereon.

76. Hometown and Kazas are liable for this breach pursuant to the piercing the veil theory.

77. Hometown and Kazas are liable for this breach pursuant to the participation theory.

COUNT V
NEGLIGENT MISREPRESENTATION
(OCEANA & GILSON vs. HOMETOWN & KAZAS)

78. Oceana and the Estate incorporate paragraphs 1 through 52 & 68-77 of their Counterclaim as if fully set forth herein.

79. Partners made the above-described misrepresentation of material facts.

80. Partners made the misrepresentations under circumstances in which Partners ought to have known their falsity.

81. Partners made the misrepresentations with the intent to induce Oceana and Mr. Gilson into executing the Asset Purchase Agreement, Consulting Agreement, and other closing documents and forwarding or delivering them to Partners' legal counsel. Partners misrepresentations resulted in injury to Oceana and Partners who acted in justifiable reliance on the misrepresentations.

82. Hometown and Kazas are liable for this breach pursuant to the piercing the veil theory.

83. Hometown and Kazas are liable for this breach pursuant to the participation theory.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, Oceana Services and Products Company and Anne C. Gilson, Executrix of the Estate of James S. Gilson (Deceased), respectfully request that this Court enter judgment in their favor and against Defendants, Hometown Coffee Company and Thomas P.

Kazas, for damages exceeding \$75,000.00, punitive damages, attorneys' fees, interest and costs, and other such relief as this Court deems just proper.

Respectfully submitted,

MORELLA & ASSOCIATES
A PROFESSIONAL CORPORATION

January 12, 2010

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*Attorneys for Plaintiffs, Oceana Services and
Products Company and Anne C. Gilson, Executrix
of the Estate of James S. Gilson (Deceased)*

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is dated as of May 2, 2008 by and among Partners Coffee Company, LLC, a Delaware limited liability company ("**Purchaser**"), Partners Coffee Company, Inc., a Georgia corporation ("**Seller**"), and James S. Gilson, an individual resident of the State of Georgia (the "**Shareholder**").

RECITALS

A. Seller is engaged in the business of purchasing, processing and packaging coffee products (the "**Business**").

B. The Shareholder is the record and beneficial owners of one hundred percent (100%) of the issued and outstanding common stock of Seller.

C. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, Seller's right, title and interest in substantially all of the business and operating assets owned or utilized by Seller in connection with the Business.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and warranties contained herein, and in reliance thereon, Purchaser, Seller and the Shareholder, intending to be legally bound, hereby agree as follows:

ARTICLE I.

DEFINITIONS

In addition to other terms defined in this Agreement, when used in this Agreement and in the Exhibits and Schedules to this Agreement, capitalized words and terms shall have the meanings ascribed to them in Annex 1.

ARTICLE II.

PURCHASED ASSETS; ASSUMED LIABILITIES

2.1 Purchased Assets. At the Closing (as defined in Section 5.1), Seller shall sell and convey to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances), and Purchaser shall purchase from Seller, all of Seller's right, title and interest in and to the assets, properties and rights of every kind, real, personal and mixed, tangible and intangible, wherever situated which are used or useful in the conduct of the Business (the "**Purchased Assets**"), including, without limitation, the following:

2.1.1 Leasehold Interest. Seller's leasehold interest in the Real Property, together with the improvements and fixtures located thereon, and all rights and privileges relating thereto;

- 2.1.2 Equipment, Machinery and other Tangible Personal Property. All machinery, equipment, supplies, office furniture and office equipment, computing and telecommunications equipment and other items of personal property that are owned or leased by Seller and used in connection with the Business, including those described in Schedule 2.1.2 hereto;
- 2.1.3 Contracts Relating to the Business. All of the leases, coffee purchase contacts and other agreements identified in Schedule 2.1.3 hereto;
- 2.1.4 Customer Lists, Sales and Marketing Materials. All customer lists, sales data, catalogs, brochures, mailing lists, art work, photographs and advertising material that relate to the Business, whether in electronic form or otherwise;
- 2.1.5 Permits, Licenses. All governmental permits, licenses and registrations relating to the Business, including those listed in Schedule 2.1.5 hereto, to the extent such permits, licenses and registrations are transferable to Purchaser;
- 2.1.6 Trade Secrets. All trade secrets, processes, engineering and production drawings and specifications, technical and laboratory data, product samples, and all similar property of any nature, tangible or intangible, of Seller relating to the Business;
- 2.1.7 Intellectual Property. All patents, trademarks, trademark registrations, trade names, service marks, copyrights and copyright registrations (including applications for each of the foregoing), and internet domains used in connection with the Business, including those described in Schedule 2.1.7;
- 2.1.8 Property, Personnel and Accounting Books and Records. All other Books and Records of Seller relating to the Business, including property records and copies of personnel records of Employees who become employees of Purchaser;
- 2.1.9 Goodwill. All right, title and interest of Seller in and to the goodwill incident to the Business;
- 2.1.10 Inventory. All Inventory;
- 2.1.11 Prepaid Expenses. All Prepaid Expenses of, or for the benefit of, the Business on the Closing Date including those described in Schedule 2.1.11, to the extent the benefits thereof are transferable to Purchaser;

2.1.12 Computer Software. All computer applications software, owned or licensed, whether for general business usage (e.g., accounting, word processing, graphics) or specific, unique-to-the-business usage (e.g., order processing, manufacturing, process control, shipping, etc.) and all computer operating, security or programming software, owned or licensed by Seller;

2.1.13 Other Intangible Assets. All other assets (including all causes of action, rights of action, rights under Restrictive Covenants, confidentiality and similar agreements, all telephone numbers, telecopier numbers, websites, domain names, and email addresses) relating to the Purchased Assets or the Business; and

2.1.14 Corporate and Fictitious Names. The fictitious name "Partners Coffee Company" and all fictitious names used by Seller in connection with the Business described in Schedule 2.1.14.

Notwithstanding the foregoing provisions of this Section 2.1, the transfer of the Purchased Assets pursuant to this Agreement shall not include the assumption of any liability or obligation related to the Purchased Assets, unless such liability or obligation is expressly included in the Assumed Liabilities (see Section 2.3).

2.2 Excluded Assets. Notwithstanding Section 2.1, the following assets (collectively, the "*Excluded Assets*") shall be excluded from this Agreement:

2.2.1 All accounts receivable of Seller existing on the Closing Date;

2.2.2 Cash and cash equivalents on hand or in bank accounts;

2.2.3 Assets constituting any funds for the benefit of Employees;

2.2.4 Corporate minute books and stock books; and

2.2.5 Assets listed on Schedule 2.2.5.

2.3 Assumed Liabilities. Subject to the other provisions hereof, on the Closing Date, Purchaser shall assume the following, and only the following liabilities (collectively, the "*Assumed Liabilities*");

- 2.3.1 Obligations of Seller accruing after the Closing Date under the contracts, leases, agreements, orders and commitments identified in Schedule 2.1.3; provided that the rights thereunder have been duly and effectively assigned to Purchaser; provided further, that Purchaser shall not assume or discharge any obligation relating to (a) any payment under any such contract, lease, agreement, order or commitment that Seller was otherwise obligated to pay prior to the Closing Date, or (b) a breach of the terms of a contract, lease, agreement, order or commitment caused by the assignment thereof to Purchaser at the Closing;
- 2.3.2 Obligations of Seller accruing after the Closing Date under the permits and licenses identified in Schedule 2.1.5; provided that the rights thereunder have been duly and effectively assigned to Purchaser; and
- 2.3.3 Liability for the vacation entitlement that each Employee who becomes an employee of Purchaser has accrued as of the Closing Date, payable when each Employee takes such vacation, provided that such accrued vacation does not exceed, on average, more than five (5) days per employee.

Except for the obligations expressly assumed by Purchaser pursuant to the foregoing provisions of this Section 2.3, it is understood and agreed that Purchaser does not and will not assume or become obligated to pay or perform any debts, liabilities, contracts or other obligations of Seller, Shareholder or their respective Affiliates, whether now existing or hereafter arising, for which Seller, Shareholder or their respective Affiliates is or may become liable however arising, including without limitation obligations arising pursuant to the law of contracts, tort, strict liability or applicable Regulations.

ARTICLE III. PURCHASE PRICE

3.1 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall be (a) Eight Hundred Thousand Dollars (\$800,000), plus (b) the assumption of the Assumed Liabilities. The portion of the Purchase Price identified in clause (a) shall be paid at Closing (i) by Purchaser to or at the direction of Seller in cash by wire transfer in the amount of Seven Hundred Thirty Eight Thousand Dollars (\$738,000) (the "**Cash Purchase Price**"), and (ii) by delivery by Purchaser of a promissory note in the form of Exhibit "A" hereto (the "**Promissory Note**"), payable to Seller in the original principal amount of Sixty Two Thousand Dollars (\$62,000), as adjusted if applicable pursuant to Section 3.2 below.

3.2 Determination of Closing Inventory. No less than five (5) Business Days prior to the Closing Date, Purchaser and Seller shall jointly perform a physical inventory of Seller's Inventory to determine the actual cost value of such Inventory. In the event that the actual cost value of such Inventory as of the Closing Date is less than Two Hundred Sixty-Two Thousand Dollars (\$262,000) (the "**Minimum Closing Inventory**"), the portion of the Purchase Price to be paid pursuant to the Promissory Note shall be reduced on a dollar for dollar basis by an amount

equal to the amount by which the actual cost value of the Inventory as of the Closing Date is less than the Minimum Closing Inventory.

3.3 Allocation of Purchase Price. The Purchase Price shall be allocated in accordance with Schedule 3.3. After the Closing, the parties shall make consistent use of the allocation, fair market value and useful lives specified in Schedule 3.3 for all Tax purposes and in all filings, declarations, and reports with the Internal Revenue Service, including reports required to be filed under Section 1060 of the Code. Purchaser shall prepare and deliver IRS Form 8594 to Seller within 45 days after the Closing to be filed with the Internal Revenue Service.

3.4 Transfer Taxes. Each of Purchaser and Seller shall bear and be responsible for the payment of one half of all Taxes (excluding Taxes based on or measured by income) that are or may be imposed by any Government Authority and that are payable or arise as a result of this transfer of the Purchased Assets, notwithstanding the Party upon which such Taxes are actually imposed.

ARTICLE IV.

EMPLOYEE MATTERS

4.1 Offer of Employment. Purchaser shall offer employment on and as of the Closing Date, on an at-will basis, to those active Employees of Seller specified on Schedule 4.1 at substantially the same base salaries or wages and benefits as were paid or provided by Seller immediately prior to the Closing Date.

4.2 Other Employee Benefits. Seller agrees that, with respect to claims for workers' compensation and all claims under Seller's employee benefit programs by persons working for the Business arising out of events occurring prior to the Closing, whether reported or unreported as of the Closing and whether insured or uninsured (including, but not limited to, workers' compensation, life insurance, medical and disability programs), Seller shall, at its own expense, honor or cause its insurance carriers to honor such claims in accordance with the terms and conditions of such programs or applicable workers' compensation statutes.

ARTICLE V.

CLOSING

5.1 Closing. Subject to the satisfaction of the conditions set forth in Articles X and XI, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Metz Lewis, LLC, counsel to the Purchaser, at 11 Stanwix Street, 18th Floor, Pittsburgh, Pennsylvania 15222 at 10:00 a.m. local time on May 2, 2008, or on such other date as may be agreed upon by Purchaser and Seller, but in no event later than May 2, 2008 unless otherwise mutually agreed upon by the Parties in writing (the "Closing Date").

5.2 Deliveries by Seller. At the Closing, Seller shall execute and deliver the following to Purchaser:

- 5.2.1 An Assignment and Assumption Agreement substantially in the form of Exhibit "B" hereto with respect to that certain Commercial Lease Contract, originally dated March 14, 1996, as amended (the "*Real Property Lease*"), between M.D. Hodges Enterprises, Inc. ("*Landlord*") and Seller with respect to real property located at 4225 Westfield Drive, Fulton County, Georgia (the "*Facility*"), which Assignment and Assumption Agreement shall contain the consent of Landlord.
- 5.2.2 A general bill of sale substantially in the form of Exhibit "C" hereto (the "*Bill of Sale*"), transferring to Purchaser title to all of the tangible personal property included in the Purchased Assets, subject only to Permitted Encumbrances;
- 5.2.3 One or more instruments of assignment and assumption substantially in the form of Exhibit "D" hereto (the "*Assignment and Assumption Agreements*"), assigning to Purchaser all of Seller's right, title and interest in each of the contracts, leases, licenses and other agreements included in the Purchased Assets, together with all consents of third parties that are required to make each such assignment effective as to such third parties;
- 5.2.4 An Assignment substantially in the form of Exhibit "E" hereto (the "*Trademark Assignment*"), in a form recordable in the United States Patent and Trademark Office, assigning to Purchaser all of Seller's right, title and interest in each trademark set forth on Schedule 2.1.7.
- 5.2.5 Such additional instruments of conveyance and transfer as Purchaser may reasonably require in order to more effectively vest in it, and put it in possession of, the Purchased Assets;
- 5.2.6 A Consulting Agreement substantially in the form of Exhibit "F" hereto (the "*Consulting Agreement*"), pursuant to which Seller and the Shareholder shall agree to provide certain consulting services to Purchaser;
- 5.2.7 A Restrictive Covenants Agreement substantially in the form of Exhibit "G" hereto (the "*Restrictive Covenants Agreement*"), pursuant to which Seller and the Shareholder shall provide certain assurances to the Purchaser concerning competition with the Purchaser and the Business; and
- 5.2.8 Such documents and instruments, in recordable form, as may be necessary and appropriate, in Purchaser's reasonable discretion, to change the corporate name of Seller, effective upon the filing of such documents and instruments with the Secretary of the State of Georgia, to a name other than and not deceptively similar to "Partners Coffee Company, Inc."

5.3 Delivery by Shareholder. At the Closing, the Shareholder shall each execute and deliver the Restrictive Covenants Agreement to Purchaser.

5.4 Deliveries by Purchaser. At the Closing, Purchaser shall deliver the following to Seller:

5.4.1 The Cash Purchase Price;

5.4.2 The Promissory Note;

5.4.3 The Assignment and Assumption Agreement with respect to the Real Property Lease;

5.4.4 The Assignment and Assumption Agreement(s);

5.4.5 The Trademark Assignment; and

5.4.6 The Consulting Agreement.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF SELLER AND THE SHAREHOLDER

To induce Purchaser to enter into this Agreement, Seller and the Shareholder hereby jointly and severally make, as of the date hereof and as of the Closing Date, the following representations and warranties to Purchaser, except as otherwise set forth in written disclosure schedule (the "*Disclosure Schedule*") delivered to Purchaser on or prior to the date hereof, a copy of which is attached hereto as Annex 2. The Disclosure Schedule is numbered to correspond to the various sections of this Article VI setting forth certain exceptions to the representations and warranties contained in this Article VI and certain other information required by this Agreement.

6.1 Organization. Good Standing. Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia, and has all requisite corporate power and authority to own and lease the Purchased Assets and to carry on the Business, to execute and deliver this Agreement and the Ancillary Agreements, to consummate the transactions contemplated hereby and to perform all the terms and conditions to be performed by it.

6.2 Capitalization. Section 6.2 of the Disclosure Schedule contains a complete and accurate description of the authorized capitalization of Seller. All of the issued and outstanding shares of capital stock of Seller are owned of record and held beneficially by the shareholders identified in Section 6.2 of the Disclosure Schedule free and clear of all Encumbrances.

6.3 Authorization of Agreement and Enforceability. Seller has taken all necessary corporate action to authorize the execution, performance and delivery of this Agreement and the Ancillary Agreements. This Agreement constitutes, and the Ancillary Agreements to which Seller is a party, upon Seller's execution and delivery thereof, will constitute, the legal, valid and binding obligations of Seller, enforceable in accordance with their terms. This Agreement constitutes, and the Ancillary Agreements to which the Shareholder is a party, upon the Shareholder's execution and delivery thereof, will constitute, the legal, valid and binding obligations of the Shareholder, enforceable in accordance with their terms.

6.4 No Violation; Consents. Except as is set forth on Section 6.4 of the Disclosure Schedule, the execution, delivery and performance by Seller and the Shareholder of this Agreement and the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby will not (with or without the giving of notice or the lapse of time, or both) (a) violate any provision of the charter or bylaws of Seller, (b) violate, or require any consent, authorization or approval of, or exemption by, or filing under any provision of any Regulation to which Seller, the Shareholder, the Business or the Purchased Assets are subject, (c) violate any Order of any Governmental Authority applicable to Seller, the Shareholder, the Business or the Purchased Assets, (d) conflict with, result in a breach of, constitute a default under, or accelerate or permit the acceleration of the performance required by, or require any consent, authorization or approval under any contract, agreement or instrument to which Seller or the Shareholder are a party or any of the Purchased Assets is bound, or (e) result in the creation or imposition of any Encumbrance upon the Purchased Assets.

6.5 Financial Statements. Seller has delivered to Purchaser true and complete copies of (a) unaudited balance sheets of the Business at December 31, 2007, 2006 and 2005 and the related statements of income and cash flows for the years then ended; and (b) unaudited balance sheets of Seller at March 31, 2008 and related statements of income and cash flows for the period then ended. True and correct copies of such financial statements are attached as Section 6.5 of the Disclosure Schedule. Except as set forth in Section 6.5 of the Disclosure Schedule, the foregoing financial statements have been prepared in accordance with GAAP consistently applied throughout the periods involved except as may be noted therein. Except as set forth in Section 6.5 of the Disclosure Schedule, such financial statements, including the related notes, fairly present the financial position of the Business at the dates indicated and the results of operations and cash flows of the Business for the periods then ended in accordance with GAAP.

6.6 Accounts Receivable. All Accounts Receivable as set forth on the Balance Sheet have or will have arisen only in the ordinary course of business consistent with past practice for goods sold and delivered or services performed.

6.7 Inventory. The Inventory as set forth on the Balance Sheet was or will be acquired and maintained in accordance with the regular business practices of the Business, consists or will consist of new and unused items of a quality and quantity useable or saleable in the ordinary course of business consistent with past practice, and is or will be valued in accordance with GAAP consistently applied, and with respect to Inventory intended for sale, was or will be saleable at prices at least equal to the value thereof on the books of Seller.

6.8 Absence of Certain Changes or Events. Except as set forth in Section 6.8 of the Disclosure Schedule, since the Balance Sheet Date, in its conduct of the Business, Seller has not:

- 6.8.1** Amended in any material respect or terminated any contract other than in the ordinary course of the Business consistent with past practice;
- 6.8.2** Suffered the occurrence of any events that, individually or in the aggregate, have had, or could reasonably be expected to have, a material adverse effect on the Purchased Assets or the results of operations of the Business;
- 6.8.3** Incurred any damage or destruction having a material adverse effect on the Purchased Assets or the results of operations of the Business by fire, storm, or similar casualty, whether or not covered by insurance;
- 6.8.4** Sold, transferred, replaced or leased any of the Purchased Assets or sold any Inventory at a discount, except for transactions in the ordinary course of the Business consistent with past practice;
- 6.8.5** Waived or released any material rights with respect to the Purchased Assets or the Business;
- 6.8.6** Transferred or granted any rights to any Proprietary Rights;
- 6.8.7** Entered into any transaction or made any commitments (for capital expenditures or otherwise) other than in the ordinary course of the Business consistent with past practice;
- 6.8.8** Changed its methods of accounting;
- 6.8.9** Increased the compensation of Employees, except following normal review procedures or as reasonably deemed necessary in the ordinary course of the Business consistent with past practice; or
- 6.8.10** Materially altered its conduct in its relations with suppliers or customers.

6.9 Title to Properties: Absence of Liens and Encumbrances. Seller owns and will transfer to Purchaser at the Closing good and marketable title to all of the Purchased Assets, including without limitation the material properties and assets reflected on the Balance Sheet (except as set forth in Section 6.9 of the Disclosure Schedule or except as sold or otherwise disposed of by Seller after the Balance Sheet Date in the ordinary course of the Business consistent with past practice), free and clear of all Encumbrances, other than Permitted Encumbrances. The Real Property Lease is in full force and effect and, to Seller's Knowledge, constitutes the legal, valid and binding obligation of the lessor thereunder, enforceable in accordance with its terms.

6.10 Proprietary Rights.

6.10.1 Schedule 2.1.7 hereto sets forth a correct and complete list of all patents, logos, trademarks, trade names, service marks and applications or registrations therefor used in and material to the Business, and Section 6.10 of the Disclosure Schedule sets forth a correct list of all inventions, intellectual property and trade secret assets used in and material to the Business (collectively, the "*Proprietary Rights*").

6.10.2 Seller owns or possesses adequate licenses or other valid right to use (without the making of any payment to others or the obligation or grant rights to others in exchange) all the Proprietary Rights. The Proprietary Rights included in the Purchased Assets constitute all such rights necessary to conduct the Business in accordance with past practice and are being conveyed to Purchaser together with the other Purchased Assets. The validity of the Proprietary Rights and the rights therein of Seller have not been questioned in any litigation to which Seller is a party, nor has any such litigation threatened. To the knowledge of the Seller, the conduct of the Business does not conflict with patent rights, licenses, trademark rights, trade name rights, copyrights or other intellectual property rights of others.

6.10.3 No material use of any Proprietary Rights owned by Seller has heretofore been, or is now being, made by any Person other than Seller. Seller has no Knowledge of any material infringement of any Proprietary Rights owned or licensed by Seller. No present or former director, officer, employee or consultant of Seller or any Affiliate of Seller has any interest in any of the Proprietary Rights.

6.10.4 All personnel, including employees, agents, consultants, and contractors, who have contributed to or participated in the conception and development of the Proprietary Rights on behalf of Seller either (a) have been party to a "work-for-hire" arrangement or agreement with the Seller, in accordance with applicable federal and state law, that has accorded Seller full, effective, exclusive, and original ownership of all tangible and intangible

property thereby arising, or (b) have executed appropriate instruments of assignment in favor of the Seller as assignee that have conveyed to the Seller full, effective, and exclusive ownership of all tangible and intangible property thereby arising.

6.11 Contracts and Material Agreements. Section 6.11 of the Disclosure Schedule lists each agreement, arrangement or understanding (whether written or oral and including all amendments thereto) relating to the Business to which the Company is a party or by which the Company or its assets are bound that is material to the Company or its assets (collectively, the "Material Agreements"), including, without limitation, the following: (i) agreements pursuant to which the Company sells or distributes any products and received revenues during the calendar year 2007; (ii) agreements evidencing, securing or otherwise relating to any indebtedness for borrowed money for which the Company is, directly or indirectly, liable; (iii) capital or operating leases or conditional sales agreements relating to vehicles, equipment or other Purchased Assets having an aggregate value in excess of \$25,000; (iv) agreements pursuant to which the Company is entitled or obligated to acquire any assets from a third party; (v) employment consulting, noncompetition, separation, collective bargaining, union, or labor agreements or arrangements; (vi) agreements with or for the benefit of any shareholder, director, officer, employee, or consultant (or any Person that claims or has any basis to claim any rights as such) of Seller or any affiliate or immediate family member thereof; (vii) licenses of computer software; (viii) supply agreements or arrangements pursuant to which the Company is entitled or obligated to acquire any assets from a third party having an aggregate value in excess of \$25,000; (ix) any other agreement pursuant to which the Company could be required to make or entitled to receive aggregate payments or other aggregate value in excess of \$25,000; (x) any agreement, contract or commitment for the future purchase of, or payment for, supplies or products, or for the performance of services by another party, involving in any one case in excess of Twenty-Five Thousand Dollars (\$25,000.00); any (xi) any representative, sales agency, dealer or distributor agreement, contract or commitment; and (xii) any other material agreement, contract or commitment not made in the ordinary course of business.

Except as detailed on Section 6.11 of the Disclosure Schedule, each of the agreements, contracts, commitments, leases and other instruments, documents and undertakings listed on Section 6.11 of the Disclosure Schedule is valid and enforceable in accordance with its terms, the parties thereto are in compliance with the provisions thereof, no party is in default in the performance, observance or fulfillment of any material obligation, covenant or condition contained therein, and no event has occurred that with or without the giving of notice or lapse of time, or both, would constitute a default thereunder. No such agreement, contract, commitment, lease or other instrument, document or undertaking contains any contractual requirement with which there is a reasonable likelihood Seller or any other party thereto will be unable to comply. No advance payments have been received by Seller by or on behalf of any party to any of the agreements, contracts, commitments, leases and other instruments listed on Section 6.11 of the Disclosure Schedule for services to be rendered or products to be delivered to such party after the Closing Date. No consent or approval of any party to any agreement, contract, commitment, lease or other instrument, document or undertaking listed on Section 6.11 of the Disclosure Schedule

is required for the execution of this Agreement or the consummation of the transactions contemplated hereby.

6.12 Permits, Licenses. Seller has all permits, licenses, registrations, orders and approvals of federal, state or local Governmental Authorities that are required to operate the Business (including without limitation those required under any Environmental Law) (collectively, the "*Permits*") and Seller is in compliance with the material terms and conditions of the Permits. Section 6.12 of the Disclosure Schedule hereto sets forth a correct and complete list of all Permits, each one of which is in full force and effect, and the renewal or expiration date of each such Permit. No suspension or cancellation of any of the Permits has been threatened and no cause exists for such suspension or cancellation. Any Permits that cannot be transferred are identified as such on Section 6.12 of the Disclosure Schedule hereto.

6.13 Compliance with Regulations. Seller has at all times conducted, and is presently conducting, the Business so as to comply with all Regulations applicable to the conduct or operation of the Business or the ownership or use of the Purchased Assets, in each case except where the failure to comply would not, individually or in the aggregate, have a material adverse effect on any of the Purchased Assets or the results of operations of the Business.

6.14 Legal Proceedings. There is no claim, action, suit, proceeding, investigation or inquiry pending before any federal, state or other court or Governmental Authority or threatened against the Business or any of the Purchased Assets, or relating to the transactions contemplated by this Agreement that could reasonably be expected to have a material adverse effect on the Purchased Assets or the results of operations of the Business, nor does Seller know or have reasonable grounds to know of any basis for any such claim, action, suit, proceeding, investigation, or inquiry. Seller is not a party to or subject to the provisions of any Order of any Governmental Authority that relates to the Purchased Assets or the Business or that might affect the transactions contemplated by this Agreement.

6.15 Absence of Undisclosed Liabilities. Seller has no liabilities or obligations relating to the Business except (a) those liabilities and obligations set forth on the Balance Sheet and not heretofore paid or discharged; (b) those liabilities and obligations arising in the ordinary course of business consistent with past practice under any agreement, contract or commitment specifically disclosed on Section 6.15 of the Disclosure Schedule hereto; and (c) those liabilities and obligations incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date.

6.16 Books and Records. All material books of account and other financial and other records of Seller relating to the Business (the "*Books and Records*") are complete and correct in all material respects and have been made available to Purchaser. All of the Books and Records have been prepared and maintained in accordance with good business practices and in compliance in all material respects with applicable Regulations and other requirements.

6.17 Employees. Section 6.17 of the Disclosure Schedule sets forth a true and correct list of all individuals employed by Seller in the conduct of the Business, their present position and rate of compensation, and their accrued, unused vacation time as of March 31, 2008.

6.18 Labor Disputes. There are no discrimination complaints nor any other kind of employment or labor related disputes against Seller in connection with the Business pending before or threatened before any Governmental Authority, and no dispute respecting minimum wage or overtime claims or other conditions or terms of employment exists. The Business has not experienced any material labor disputes or any material work stoppage due to labor disagreements within the past three years. With respect to the Business (a) there is no unfair labor practice charge or complaint against Seller pending or threatened before the National Labor Relations Board; (b) there is no labor strike, slowdown or stoppage pending or threatened against or affecting Seller; and (c) Seller has no knowledge of any question concerning representation that has been raised within the past three years or is threatened respecting the Employees.

6.19 Payroll Practice/Employee Arrangements. Section 6.19 of the Disclosure Schedule contains a complete list of each employee benefit plan and/or holiday, vacation or other bonus practice or any other employee pay practice, arrangement, agreement or commitment (the "Payroll Practice/Employee Arrangement") and maintained by or with respect to which Seller has any liability or obligation, whether actual or contingent, with respect to Employees or their respective beneficiaries. Seller has not taken any action that may result in Purchaser being a party to, or bound by, any employee benefit plan, and Purchaser shall have no liability under, or be subject to any liability on account of, any employee benefit plan or Payroll Practice/Employee Arrangement following the consummation of the transactions contemplated hereby. No employee arrangement has provided for the payment of retiree benefits by Purchaser.

6.20 Tax Matters. Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Regulations. All Tax Returns and reports filed by Seller are true, correct and complete. Seller has paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, except such Taxes, if any, described in Section 6.20 of the Disclosure Schedule which are being contested in good faith. No claim has ever been made or is expected to be made by any Governmental Authority in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and Seller has no Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

6.21 No Finder. Seller has not taken any action that would give to any Person a right to a finder's fee or any type of brokerage commission in relation to, or in connection with, the transactions contemplated by this Agreement.

6.22 Interest in Business. Seller has not granted, and there is not outstanding, any option, right, agreement or other obligation pursuant to which any Person could claim a right to acquire in any way all or any part of, or interest in, the Business.

6.23 Condition of Assets. All tangible assets and properties which are part of the Purchased Assets are in good operating condition and repair and are usable in the ordinary course of the Business consistent with past practice and conform in all respects to all applicable Regulations relating to their construction, use and operation.

6.24 Affiliate Transactions. Section 6.24 of the Disclosure Schedule sets forth a summary of all purchases of goods or services by Affiliates of Seller for the three years ended December 31, 2007.

6.25 Environmental Matters.

6.25.1 Seller has not received any notice relating to the Business or the Real Property alleging any violation of any Environmental Law or any written request for information from any Governmental Authority or other Person pursuant to any Environmental Law and it is, to the Knowledge of Seller, with respect to the Business and the Real Property, in compliance in all material respects with all applicable Environmental Laws;

6.25.2 Except as authorized by any valid permit issued pursuant to an Environmental Law, there are, to the Knowledge of Seller, no Regulated Substances released by Seller or, to the Knowledge of Seller, any other Person on or beneath the Real Property in quantities or concentrations that could give rise to obligations, responsibilities, liabilities or debts of Seller or Purchaser under any Environmental Law;

6.25.3 Seller has not received any notice or order from any Governmental Authority or private or public entity in connection with the Business advising it that Seller is responsible for or potentially responsible for remediation or paying for the cost of investigation or remediation of any Regulated Substance, and Seller has not entered into any agreements pertaining thereto;

6.25.4 To the Knowledge of Seller, the Real Property does not contain any: (a) underground storage tanks, (b) underground injection wells; (c) septic tanks in which process wastewater or any Regulated Substances have been disposed; (d) asbestos; (e) equipment using PCBs; or (f) drums buried in the ground; and

6.25.5 Section 6.25 of the Disclosure Schedule identifies all environmental studies in the possession of Seller or its Affiliates relating to the Real

Property, and true and complete copies of such studies have been delivered to Purchaser.

6.26 Insurance. Section 6.26 of the Disclosure Schedule sets forth a complete list of all insurance policies maintained by Seller.

6.27 Customers. Set forth in Section 6.27 of the Disclosure Schedule is a complete list of each customer of the Company during the year ended December 31, 2007, and indicating the amount of revenues attributable to each customer during such year. Except as set forth in Section 6.27 of the Disclosure Schedule, none of the customers that accounted for more than \$50,000 in revenues for the year ended December 31, 2007 (each a "Material Customer") has threatened to, or notified the Company of any intention to, terminate, or materially alter its relationship with the Company, and there has been no material dispute with a Material Customer since January 1, 2008. Except as set forth in Section 6.27 of the Disclosure Schedule, to the Knowledge of the Seller or the Shareholder, there is no basis for any termination of the Company's relationship with any Material Customer.

6.28 No Significant Items Excluded. Except for Excluded Assets, there are no material assets or properties of Seller or agreements, contract or commitments to which Seller is a party that are used or useful to the ongoing operation of the Business by Purchaser.

6.29 Completeness and Accuracy. All information set forth on any Schedule hereto is true, correct and complete. No representation or warranty of Seller contained in this Agreement contains or will contain any untrue statement of material fact, or omits or will omit to state any material fact necessary to make the statements made therein not misleading. All contracts, permits and other documents and instruments furnished or made available to Purchaser by Seller are or will be true, complete and accurate originals or copies of originals and include all amendments, supplements, waivers and modifications thereto.

ARTICLE VII.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

To induce Seller and the Shareholder to enter into this Agreement, Purchaser hereby makes, as of the date hereof and as of the Closing Date, the following representations and warranties to Seller and the Shareholder:

7.1 Organization, Good Standing, Power. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own and lease the Purchased Assets and to carry on the Business and to execute and deliver this Agreement and the Ancillary Agreements to which Purchaser is a party, to consummate the transactions contemplated hereby and thereby and to perform all the terms and conditions hereof and thereof to be performed by it.

7.2 Authorization of Agreement and Enforceability. Purchaser has taken all necessary company action to authorize the execution and delivery of this Agreement and the Ancillary Agreements to which Purchaser is a party, the performance by it of all terms and conditions hereof and thereof to be performed by it and the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and the Ancillary Agreements, upon Purchaser's execution and delivery thereof, will constitute, the legal, valid and binding obligations of Purchaser, enforceable in accordance with their terms.

7.3 No Violations; Consents. The execution, delivery and performance by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby will not (with or without the giving of notice or the lapse of time, or both) (a) violate any provision of the charter or bylaws of Purchaser, (b) violate, or require any consent, authorization or approval of, or exemption by, or filing under any provision of any law, statute, rule or regulation to which Purchaser is subject, (c) violate any judgment, order, writ or decree of any court applicable to Purchaser, (d) conflict with, result in a breach of, constitute a default under, or accelerate or permit the acceleration of the performance required by, or require any consent, authorization or approval under any contract, agreement or instrument to which Purchaser is a party or any of its assets is bound or, (e) result in the creation or imposition of any Encumbrance upon its assets, which violation, conflict, breach, default, acceleration or Encumbrance, or the failure to make or obtain such filing, consent, authorization or approval, with respect to the matters specified in clauses (b) through (e) could, individually or in the aggregate, reasonably be expected to have a material adverse effect on Purchaser or prevent or delay the consummation of the transactions contemplated by this Agreement.

7.4 Legal Proceedings. There is no claim, action, suit, proceeding, investigation or inquiry pending before any Governmental Authority or threatened against Purchaser or any of Purchaser's properties, assets, operations or businesses that might prevent or delay the consummation of the transactions contemplated hereby.

7.5 No Finder. Purchaser has not taken any action which would give to any Person a right to a finder's fee or any type of brokerage commission in relation to, or in connection with, the transactions contemplated by this Agreement.

ARTICLE VIII.

COVENANTS OF SELLER PRIOR TO CLOSING DATE

8.1 Required Actions. Between the date of this Agreement and the Closing Date, Seller covenants that it will, in its conduct of the Business, except as otherwise agreed by Purchaser in writing:

8.1.1 Access to Information. Give to Purchaser and its counsel, accountants, consultants and other representatives, at their sole expense and risk, reasonable access, during normal business hours, to such of the properties, books, accounts, contracts and records of Seller as are relevant to the

CONSULTING AGREEMENT

This Consulting Agreement (this "*Agreement*") is made and entered into as of May 2, 2008 by and among Partners Coffee Company, LLC, a Delaware limited liability company ("*Company*"), and Oceana Service and Products Company, a Georgia corporation ("*Consultant*").

RECITALS

A. Pursuant to an Asset Purchase Agreement (the "*Purchase Agreement*") by and among Company as "Purchaser", Consultant as "Seller", and the shareholders of Seller, the Company purchased from Consultant substantially all of the assets of Consultant previously used by Consultant in purchasing, roasting, processing, packaging and sale of coffee products (the "*Business*").

B. By virtue of owning the Business, Consultant has certain experience and knowledge in the Business, and Company wishes to avail itself of Consultant's management and advisory services.

C. Consultant acknowledges that Consultant's execution of this Agreement is a condition precedent and an inducement to the Company entering into the Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Consultant. Company hereby retains Consultant as an independent contractor to provide the Services set forth in Section 3 of this Agreement, and Consultant agrees to provide such Services in accordance with the provisions of this Agreement. Unless otherwise agreed to by Company in writing, Consultant shall provide such Services exclusively through the personal services of James S. Gilson.

2. Term. This Agreement shall commence on the date of this Agreement and shall continue through April 30, 2011 (the "*Initial Term*"), unless terminated prior thereto pursuant to the provisions of this Agreement. The Company shall have the option to extend the term of this Agreement for two consecutive one (1) year periods thereafter (each a "*Renewal Term*"). The Initial Term and each Renewal Term, if applicable, are collectively referred to as the "*Consulting Period*". If the Company elects to exercise the extension options, the Company shall give notice of its exercise of such option to Consultant not less than ninety (90) days prior to the commencement of either such Renewal Term.

3. Obligations of Consultant.

3.1 Scope of Duties. During the term of this Agreement, the Consultant shall cause James S. Gilson to be available to provide consulting and advisory services to the Company in the following areas, and to render such additional services as are pertinent thereto: coffee purchasing strategy; coffee blending, roasting and flavoring supervision; customer, supplier and vendor relations; and such other areas as may be requested from time to time by Company. Consultant will cause James S. Gilson to devote such time as shall be necessary to

perform the Consultant's duties, but in any event not less than forty (40) hours per week if requested to do so by Company. Consultant agrees to comply with Company's reasonable policies and standards in the performance of his duties and services under this Agreement (collectively, the "Services").

3.2 Standard of Care. Consultant shall provide the Services pursuant to this Agreement to the best of his ability and with all due care and diligence.

3.3 Limitation of Consultant's Authority. Consultant is not an agent of Company and has no authority to bind the Company as an agent. Without limiting the foregoing, Consultant shall not do or agree to do any of the following on behalf of Company:

(a) Incur on behalf of Company any expenditure unless Consultant has obtained the prior authorization thereof from Company; or

(b) Enter into on behalf of Company any commitment, contract or arrangement unless authorized by Company from time to time.

4. Compensation.

4.1 Monthly Consulting Fee. In consideration of Consultant's performance of the Services during the Consulting Period, Company shall pay to Consultant a consulting fee (the "Consulting Fee") in the amount of Eight Thousand Three Hundred Fifty Dollars (\$8,350) per calendar month, payable no later than the 15th calendar day of each calendar month during the Consulting Period with respect to the then current calendar month.

4.2 Performance Bonus. Company shall also pay Consultant an annual performance bonus (the "Performance Bonus") for each fiscal year from May 1 through April 30 (each a "Bonus Calculation Year") (beginning with the fiscal period of May 1, 2008) during the Consulting Period in the amount of Twenty Five Thousand Dollars (\$25,000), provided that Consultant has not materially failed to perform the duties and obligations set forth in Section 3 of this Agreement during such Bonus Calculation Year. Such Performance Bonus, to the extent earned by Consultant, shall be paid by Company to Consultant no later than May 15 following the end of each Bonus Calculation Year.

4.3 Customer Retention Bonus. Company shall also pay Consultant an annual customer retention bonus (the "Customer Retention Bonus") for each Bonus Calculation Year, not to exceed Twenty Five Thousand Dollars (\$25,000) per Bonus Calculation Year, based upon the amount of coffee sold and delivered by the Company during each Bonus Calculation Year to (a) customers set forth on Schedule 1 attached hereto (the "Legacy Customers"), or (b) customers identified by Consultant which purchase coffee products from the Company as a direct result of the efforts of Consultant ("Additional Customers"), provided, that in no event shall any affiliate of the Company, including without limitation Hometown Coffee Company, Inc., be considered an Additional Customer. Such Customer Retention Bonus shall be determined by multiplying (a) the sum of Twenty Five Thousand Dollars (\$25,000) and (b) a fraction (i) the numerator of which is the lesser of (y) the number of pounds of coffee sold and delivered to Legacy Customers and Additional Customers during the applicable Bonus Calculation Year, or (z) the Base Amount (as defined below), and (ii) the denominator of which

is the number of pounds of coffee sold and delivered to Legacy Customers during the period beginning May 1, 2007 and ending April 30, 2008 (the "**Base Amount**"). Such Customer Retention Bonus, to the extent earned by Consultant, shall be paid by Company to Consultant no later than May 15 following the end of each Bonus Calculation Year.

4.4 **Contingent EBITDA Based Bonus.** The Company shall also pay to Consultant an annual bonus (the "**Contingent Bonus**") during each fiscal year from May 1 through April 30 (beginning with the fiscal period of May 1, 2008) during the Consulting Period, not to exceed One Hundred Fifty Thousand Dollars (\$150,000) per fiscal year, in an amount equal to twenty percent (20%) of the EBITDA (as defined herein) for such fiscal period of the Company's operating division located at the former Partners Coffee Company, Inc. facility located in Atlanta, Georgia (the "**Operation**"). Such Contingent Bonus shall be paid by the Company to Consultant no later than July 15 following the end of each such fiscal period during the Consulting Period. Payment of such Contingent Bonus shall be accompanied by a written statement by Company demonstrating its calculation. For purposes of the calculation of the Contingent Bonus, "**EBITDA**" shall mean the earnings before interest, taxes, depreciation and amortization of the Operation, calculated in accordance with Generally Accepted Accounting Principles as in effect in the United States, consistently applied, *provided* that to the extent that other divisions or affiliates of Company provide services or benefits to the Operation, the Company may include as expenses for purposes of determining the EBITDA of the Operation an amount equal to the costs of services provided by such other divisions or affiliates of the to the Operation, including, without limitation, the reasonable allocation of the employee, overhead and external provider service costs of such divisions or affiliates which either fully or partially support the Operation.

4.5 **Payment of Taxes.** Consultant is an independent contractor and as such, is solely responsible for any and all taxes, or payments in lieu of taxes, due any federal, state or local taxing authority as a result of the compensation paid to Consultant under this Agreement.

4.6 **Pro-Rationing.** To the extent that any Consulting Fee is to be paid with respect to a partial calendar month, such Consulting Fee shall be pro-rated.

5. **Termination.** Company shall have the right to terminate this Agreement for cause effective upon written notice from Company to Consultant. Upon a termination for cause, the Company shall owe no further compensation to Consultant and, except for the provisions of Sections 6 and 7 of this Agreement, this Agreement shall be of no further force or effect. For purposes of this Agreement, "**cause**" shall mean (a) the commission by Consultant or James S. Gilson of a felony or a crime involving moral turpitude, (b) the commission by Consultant or James S. Gilson of any act involving dishonesty, fraud or a breach of the duty of loyalty with respect to Company or any of its affiliates, (c) gross negligence or willful misconduct by Consultant or James S. Gilson with respect to the Company or any of its affiliates or substantial and repeated failure to perform the duties of Consultant, (d) any material breach of this Agreement by Consultant or James S. Gilson which (if capable of cure) is not cured within fifteen (15) days after Consultant's receipt of notice of the same from Company. Consultant may terminate this Agreement at any time by written notice by Consultant to Company.

6. Confidentiality And Non-Compete Provisions.

6.1 Confidentiality. (a) At all times during and/or after the term of this Agreement, Consultant will not do or permit any employee or independent contractor of Consultant to do any of the following:

(i) disclose to any person or entity, without Company's prior written consent, any confidential or secret information (as herein defined) whether prepared by Consultant or others;

(ii) directly or indirectly use any such information other than as directed by Company in writing; or

(iii) except in the furtherance of the business of Company, remove confidential or secret information from the premises of Company without the prior written consent of Company.

(b) Upon termination of this Agreement for whatever reason, with or without cause, Consultant will promptly deliver, and cause all employees and independent contractors of Consultant to promptly deliver, to the Company all originals and copies (whether in note, memo or other document form or on video, audio or computer tapes or discs or otherwise) of confidential or secret information that is in the possession, custody or control of Consultant or its employees or independent contractors, whether prepared by Consultant, such individuals, or others.

(c) For purposes of this Agreement, "confidential" or "secret" information includes, but is not limited to:

(i) Business pricing and management methods;

(ii) Finances, strategies, systems, research, surveys, plans, reports, recommendations and conclusions and processes, including, without limitation, purchasing, roasting and flavoring processes;

(iii) Names, arrangements with, or other information relating to Company's customers, suppliers and other persons who have business relationships with Company or who are prospects for business relationships with Company; and

(iv) Technical information, work products and know-how, including software and programming.

(d) Confidential or secret information does not include:

(i) Information that was already known to the recipient prior to the receipt of such information from Consultant;

(ii) Information that is public knowledge; or

(iii) Information that was disclosed by Company to a third party without restriction on disclosure or use.

6.2 Non-compete Provisions. (a) Except to the extent provided for in Section 6.2(c) below, during the Restricted Period (as hereinafter defined), Consultant will not directly or indirectly solicit any customer of the Company during the Restricted Period or the two (2) year period prior to the Restricted Period, or any entity that the Company has solicited as a potential customer during the Restricted Period or the two (2) year period prior to the Restricted Period, nor will Consultant enter the employ of or directly or indirectly own any interest in any entity which competes with the Company. The "*Restricted Period*" means the period commencing on the date hereof and ending on the calendar year two (2) years after the termination of this Agreement.

(b) Except to the extent provided for in Section 6.2(c) below, during the Restricted Period, the Consultant will not anywhere directly or indirectly:

(i) Solicit or accept the business of any person or entity who or which is or was a customer who has a business relationship with the Company; *provided, however*, that the products of said person or entity compete with the products sold by the Company;

(ii) Approve, solicit or retain or discuss the employment or retention (whether as an employee, consultant or otherwise) of any person who was an employee of Company at any time during the term of this Agreement;

(iii) Solicit or encourage any person to leave the employ of Company;

(iv) Call upon or assist in the acquisition of any company which was, during the term of this Agreement, either called upon by an employee of Company for possible acquisition by the Company or for which an employee of the Company made an acquisition analysis for Company; or

(v) Own any interest in or be employed by or provide any service to any person or entity which engages in any conduct which is prohibited by Consultant under this Section 6.2(b).

(c) All time periods in this Agreement shall be computed by excluding from such computation any time during which the Consultant is in violation of any provision of this Agreement and any time during which there is pending in any court of competent jurisdiction any action (including any appeal from any final judgment) brought by any person, whether or not a party to this Agreement, in which action Company seeks to enforce this Agreement and covenants in this Agreement or in which any person contests the validity of such agreements and covenants or their enforceability or seeks to avoid their performance or enforcement.

(d) Consultant understands that the provisions of this Agreement have been carefully designed to restrict Consultant's activities to the minimum extent. Consultant has carefully considered these restrictions, and Consultant confirms that they will not unduly restrict Consultant's business activities. **CONSULTANT HAS DISCUSSED THIS AGREEMENT AND ITS REASONABLENESS WITH CONSULTANT'S ATTORNEY.**

(e) Since monetary damages will be inadequate and Company will be irreparably damaged if the provisions of this Agreement are not specifically enforced, Company shall be entitled, among other remedies (i) to an injunction restraining any violation of this Agreement (without any bond or other security being required) by Consultant, any employee or independent contractor of Consultant, and by any person or entity to whom Consultant provides or proposes to provide any services in violation of this Agreement, and (ii) requires Consultant to account for and pay over to Company, all compensation and other benefits which Consultant shall derive as a result of any action or omission which is a violation of any provision of this Agreement.

(f) If any provision contained in this Agreement is determined to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision which was determined to be void, illegal or unenforceable had not been contained herein. The courts enforcing this Agreement shall be entitled to modify the duration and scope of any restriction contained herein to the extent such restriction would otherwise be unenforceable, and such restriction as modified shall be enforced.

7. **Return Of Company Property.** All products, records, designs, plans manuals, processing methods, receipts and methods delivered to Consultant by or on behalf of the Company and all records compiled by Consultant which pertain to the business of Company (whether or not confidential) shall be and remain the property of Company and be subject at all times to its discretion and control. Likewise, all correspondence with customers or representatives, reports, records, charts, advertising materials, and any data collected by Company or by or on behalf of Company or its representatives (whether or not confidential) shall be delivered promptly to Company without request by it upon termination of the Consultant's engagement.

8. **Right to Set-Off.** In the event that Company (as Purchaser under the Purchase Agreement) shall elect to exercise its right of set-off against Consultant (as Seller under the Purchase Agreement) under Section 13.9 of the Purchase Agreement with respect to any Losses (as such term is defined in the Purchase Agreement), Company is hereby expressly authorized by Consultant to set off against any payment of Consulting Fees, the Performance Bonus, the Customer Retention Bonus or the Annual Bonus hereunder the amount of such obligation. Upon the exercise of such right of set-off by Company, all such payments of Consulting Fees, the Performance Bonus, the Customer Retention Bonus or the Annual Bonus shall have been deemed to have been paid by Company to Consultant, and then immediately repaid by Consultant to Company in satisfaction or partial satisfaction, as the case may be, of such indemnification obligation.

9. **Notices.** Any notice or consent required or permitted by this Agreement shall be in writing and shall be delivered either in person, by nationally recognized overnight courier service, or by certified mail, postage prepaid, return receipt requested, to the addresses set forth

on the signature page to this Agreement, unless such address is changed by written notice hereunder. All notices and other communications shall be deemed effective when delivered in person, when received by overnight courier or by certified mail, or when refused by the addressee, whichever the case may be.

10. Complete Agreement. There are no oral representations, understandings or agreements with Company or any of its members, managers or representatives covering the subject matter as this Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between Company and Consultant with respect to the subject matter hereof, and of all the terms of this Agreement, and this Agreement cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous oral or written agreements. This written Agreement may not be modified except by a further writing signed by Company and Consultant, and no term of this Agreement may be waived except by writing signed by the party waiving the benefit of such terms.

11. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenants contained herein.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties thereto and their respective successors and assigns. Notwithstanding the foregoing, Company may assign this Agreement only to a person or entity who or which directly or indirectly succeeds to all or any substantial part of the Operation's assets or business. This Agreement and the Services to be provided hereunder are personal to Consultant, and Consultant may not assign any of its obligations hereunder without the prior written consent of Company.

13. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative, and so far as it is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent of this Agreement or any part hereof.

14. Governing Law; Resolution Of Disputes. This Agreement shall in all respects be construed according to the laws of the State of Delaware. All disputes relating to the interpretation and enforcement of the provisions of this Agreement shall be resolved and determined exclusively by the Court of Common Pleas of Allegheny County and/or the United States District Court for the Western District of Pennsylvania sitting in Pittsburgh, Pennsylvania, and such courts are hereby granted exclusive jurisdiction for such purpose.

15. Waiver Of Jury Trial. Company and Consultant hereby knowingly, voluntarily and intentionally waive any right they may have to demand a trial by jury in respect of any litigation arising out of, under or in connection with this Agreement.

16. Counterparts. This Agreement may be executed in one or more counterpart copies, each of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

PARTNERS COFFEE COMPANY, LLC

By: 

Title: President

Address for Notices:

Partners Coffee Company, LLC
130 Southpointe Drive
Bridgeville, PA 15017
Attn: Thomas P. Kazas, President

OCEANA SERVICE AND PRODUCTS COMPANY

By: _____

Title: _____

Address for Notices:

Oceana Service and Products Company
154 Helmswood Circle
Marietta, Georgia 30064
c/o James S. Gilson, President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

PARTNERS COFFEE COMPANY, LLC

By: _____

Title: _____

Address for Notices:

Partners Coffee Company, LLC
130 Southpointe Drive
Bridgeville, PA 15017
Attn: Thomas P. Kazas, President

OCEANA SERVICE AND PRODUCTS COMPANY

By: *James S. Gilson*

Title: *President*

Address for Notices:

Oceana Service and Products Company
154 Helmswood Circle
Marietta, Georgia 30064
c/o James S. Gilson, President

Schedule 1

Legacy Customers

American Solutions for Business
Keith's Brands, LLC
All 1 Service
Appalachian Springs
Aramark Ref. Service
Arthur Forziati
Avalon Partnerships International
Bank and Business Solutions
Belle Coffee Service
BD Imports
Ben Hand & Associates
Better Way Marketing
Beverage Solutions Group, LLC
B-K Vending
Buckhead News and Market
Banco Nacional de Comercio
BR Bagels & More, Inc.
Broadway Office Supply
Carolina Coffee Break
Carolina Vending
Cascade Company
Central Office Solutions
Cameroon Gourmet Coffee
Christian Youth Theater
China Mist
Coffee Docs
Coffee Net
Complete Services Group
Contra Café
Costco Wholesale
Coffee Specialties.com
Diaz Foods
Director's Coffee
D&J Vending
The Dobbins Company
Dave Schulze
Eldersburg Café, Inc.
Eclipse Bank
Express Coffee Service, Inc.
Francisco Plascencia
Frontier Business Products
Five Star
Five Star Food Service
GAS
Garvey's Office Products

Larry Leger
La Selva
La Tiendita Naturista
Leisure Time Products
Magique Novelties, LLC
Mark Joseph
Marion Office Products
McGhee & Company, Inc.
M&D Coffee Service
Metanoia Missions Int.
MJC Holdings, LLC
M & M Vending
Mid South Coffee
Urette & Associates
Music Mountain Water Co., Inc.
Opelika Coffee Company LLC
Office Partners
Oliver's Java
One Point
One Stop
Paragon Coffee
Partners Coffee
Peachtree Breakroom Services
Peregrine Corporation
Pope Baseball
Pura Vida Coffee
Quick Snack
Ross Coffee Connection
Resort Services Unlimited
Reily Foods Company
R J Gile CO, Inc.
Ro-Mart
Strictly Coffee
Select Coffee
Service Group International
Stephanie Ratzlaff
Sharon Zimmerman
Stone Mountain Pecan Co.
Spa Adriana
17th Street Inn Bed & Breakfast
Standard Coffee
Stan Smith
Super Mercado Jalisco, Inc.
SYSCO Food Services of Atlanta, LLC
SYSCO ALA

OCEANA 0000206

Gerald Golia
Geneva Industries
Gould Southern
Green Palm Inn
Grand Elixir
Greenfield Office Supply
Have-A-Cup Coffee Service
Happy's of Madisonville
Harry Breeze
Herald Office Supply
Houston County
Imperial Coffee Service
Independent Stationers
Independent Stationers
Jamie Lay
JH deJong
Kroger
Larry's Beans

Tuxedo Coffee Service
The Coffee Cup
The Buckhead Coffee Company
The Inn on the Common
Tropical Island Coffee
The Sunset Inn
Urban Beverages
Valley Wide Media Group
VOYAVA
VistaPak Industries, Inc.
Walker's Office Supply, Inc.
Warner Fox
Wendy Kaufman
West-End Coffee Company
Wiles Enterprises
Wrigley's Office Supply
West Suburban Office Products

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OCEANA 000020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Oceana Services and Products Company and Anne C. Gilson, Executrix, of the Estate of James S. Gilson, (Deceased),	DEFENDANTS Hometown Coffee Company and Thomas P. Kazas,
(b) County of Residence of First Listed Plaintiff <u>Cobb County</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>Allegheny</u> (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number) Albert N. Peterlin, Esquire Morella & Associates, a Professional Corporation 706 Rochester Road, Pittsburgh, PA 15237 (412) 369-9696	Attorneys (If Known) Brian T. Must, Esquire and Bryan M. Seigworth, Esquire Metz Lewis, LLC - 11 Stanwix Street, 18th Floor Pittsburgh, PA 15222 (412) 918-1124

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input checked="" type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Recopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
					<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): _____ Brief description of cause: Breach of Contract
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ 75,000.00	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>William L. Standish</u>	DOCKET NUMBER <u>2:09-cv-236</u>
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DATE 01/12/2010	SIGNATURE OF ATTORNEY OF RECORD /s/ Albert N. Peterlin
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

JS 44AREVISED June, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (Erie Johnstown X Pittsburgh) calendar.

ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang

1.

or Warren, OR any plaintiff or defendant resides in one of said counties.

2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. X This case is related to Number 2:09-cv-236 . Short Caption Partners v. Oceana .

2. _____ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

1. () Antitrust and Securities Act Cases
2. () Labor-Management Relations
3. () Habeas Corpus
4. () Civil Rights
5. () Patent, Copyright, and Trademark
6. () Eminent Domain
7. () All other federal question cases
8. () All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. (X) Insurance indemnity, contract and other diversity cases.
10. () Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 1-12-2010

/s/ Albert N. Peterlin

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.