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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

WAYLON UNDERWOOD,

Plaintiff,

v.

HARVEST MOORESTOWN LLC,

Defendant.

Civil Action No. 1:17-cv-00550-RMB-JS

Electronically Filed

**DEFENDANT'S ANSWER TO  
COMPLAINT WITH AFFIRMATIVE DEFENSES**

Defendant Harvest Moorestown LLC (“Harvest”), by its undersigned counsel, hereby responds to the allegations set forth in Plaintiff Waylon Underwood’s (“Underwood”) Complaint and asserts affirmative defenses as follows:

**JURISDICTION AND VENUE**

1. Denied as a conclusion of law to which no response is required.
2. Denied as a conclusion of law to which no response is required.
3. Denied as a conclusion of law to which no response is required.

**PARTIES**

4. Defendant lacks information or knowledge sufficient to form a belief as to the allegations in Paragraph 4.

5. Admitted.
6. Denied as a conclusion of law to which no response is required.
7. Denied as a conclusion of law to which no response is required.

### **FACTS**

8. Admitted.
9. It is admitted only that Defendant employed more than 50 individuals who were servers or bartenders at the Moorestown Restaurant. The remaining allegations of paragraph 9 are denied.
10. It is admitted that servers and bartenders are responsible for taking customers' food and drink orders, serving drinks to customers, and otherwise waiting on customers. The remaining allegations of paragraph 10 are denied as conclusions of law to which no response is required.
11. Admitted.
12. It is admitted that Defendant paid Plaintiff, some other servers, and some bartenders at the Moorestown Restaurant an hourly wage of \$2.13, by utilizing a tip credit. By way of further response, this method of payment was entirely legal, and servers and bartenders received substantial tip income. The remaining allegations of paragraph 12 are denied as conclusions of law to which no response is required.
13. It is admitted that Defendant utilized a tip credit for each hour worked for some servers and bartenders. The remaining allegations of paragraph 13 are denied as conclusions of law to which no response is required.

14. Admitted in part; denied in part. It is admitted that expeditors participate in the tip pool much like bussers. The remaining allegations of paragraph 14 are denied as conclusions of law to which no response is required.

15. Denied as a conclusion of law to which no response is required. By way of further response, expeditors are properly permitted to participate in a tip pool under applicable law.

16. Denied. It is specifically denied that expeditors do not interact with restaurant customers.

17. Denied.

#### **COLLECTIVE AND CLASS ALLEGATIONS**

18. Denied. While plaintiff purports to bring a claim pursuant to 29 U.S.C. § 216(b), it is denied that he or the putative collective are entitled to any relief. The remaining allegations of paragraph 18 are denied as conclusions of law to which no response is required.

19. Denied as conclusions of law to which no response is required.

20. Denied. While plaintiff purports to bring a class-based claim under the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56A, *et seq.*, it is denied that he or the putative class are entitled to any relief. The remaining allegations of paragraph 20 are denied as conclusions of law to which no response is required.

21. It is admitted that Defendant employed more than 50 individuals who were servers or bartenders. The remaining allegations of paragraph 21 are denied as conclusions of law to which no response is required.

22. Denied as conclusions of law to which no response is required

23. Denied as conclusions of law to which no response is required.

24. Denied. While plaintiff purports to challenge the legality of Defendant's use of a tip credit, it is denied that there was any violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, or the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56A, *et seq.* The remaining allegations of paragraph 24 are denied as conclusions of law to which no response is required.

25. Denied as conclusions of law to which no response is required.

**COUNT 1**  
**(Alleging Violations of the FLSA)**

26. Defendant repeats and incorporates its responses to the prior allegations as if fully set forth herein.

27. Denied as conclusions of law to which no response is required.

28. Denied as conclusions of law to which no response is required.

29. It is denied that there was any violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* The remaining allegations of paragraph 29 are denied as conclusions of law to which no response is required.

30. It is denied that there was any violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* The remaining allegations in paragraph 30 are denied as conclusions of law to which no response is required.

**COUNT II**  
**(Alleging Violations of the NJWHL)**

31. Defendant repeats and incorporates its responses to the prior allegations as if fully set forth herein.

32. Denied as a conclusion of law to which no response is required.

33. Denied as conclusions of law to which no response is required.

34. It is denied that there was any violation of the New Jersey State Wage and Hour Law, N.J.S.A. §§ 34:11-56A, *et seq.* The remaining allegations of paragraph 34 are denied as conclusions of law to which no response is required.

35. It is denied that there was any violation of the New Jersey State Wage and Hour Law, N.J.S.A. §§ 34:11-56A, *et seq.* The remaining allegations of paragraph 35 are denied as conclusions of law to which no response is required.

### **AFFIRMATIVE DEFENSES**

Defendant incorporates by reference its responses to the foregoing paragraphs as if fully set forth herein. Defendants reserve the right to amend or support these Affirmative Defenses throughout discovery and trial in this matter. The following Affirmative Defenses are asserted herein and any inadvertent omission of an Affirmative Defense shall not be deemed an admission, and Defendant does not waive any rights herein

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint, and each claim purported to be alleged therein, fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Complaint, and each claim purported to be alleged therein, is barred in whole or in part by the equitable doctrines of laches, unclean hands, and/or avoidable consequences.

#### **THIRD AFFIRMATIVE DEFENSE**

At all times material hereto, the actions of Defendant was justified under the circumstances, and at all times material hereto, Defendant acted in a manner that was proper, reasonable, and lawful and in the exercise of good faith.

#### **FOURTH AFFIRMATIVE DEFENSE**

With respect to some or all of the claims alleged by Plaintiff on behalf of himself and/or on behalf of any putative collective or class members, any act(s) or omission(s) of Defendant that may be found to be in violation of the rights afforded under applicable law were not willful but occurred in good faith and with reasonable grounds for believing that they were in compliance with applicable law.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and each cause of action set forth therein fails to allege a sufficient legal or factual basis to enable Plaintiff to recover any liquidated damages, penalties, attorney's fees, or pre-judgment or post-judgment interest from Defendant. This defense also applies to the claims of some or all of the putative collective and/or class members.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff is precluded from recovering any amounts from Defendant where Defendant has paid Plaintiff all sums legally due under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, and the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56A, *et seq.*, and all of their implementing regulations (collectively, "Applicable Law"). This defense also applies to the claims of some or all of the putative collective and/or class members.

#### **SEVENTH AFFIRMATIVE DEFENSE**

The Court should not exercise supplemental jurisdiction over the counts in the Complaint that purport to arise under New Jersey law or other state law.

**EIGHTH AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief consisting of compensatory or liquidated damages or any other damages, interests, costs, or fees allowed by applicable law may be granted.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that the work he performed falls within exclusions, exceptions, or credits provided for under Applicable Law. This defense also applies to the claims of some or all of the putative collective and/or class members.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the statutes of limitation provided under Applicable Law. This defense also applies to the claims of some or all of the putative collective and/or class members.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff and other putative collective and/or class members are not entitled to recover liquidated damages because Defendant at all times acted in good faith and with reasonable grounds for believing it had not violated Applicable Law.

**TWELFTH AFFIRMATIVE DEFENSE**

If additional individuals other than Plaintiff should file a consent to join this action, Defendant reserves the right to assert any of the Defenses set forth in this document as to each such individual.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant acted lawfully and properly by including expeditors in the tip pool because the expeditor position may be properly included in a tip pool under applicable law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of *de minimis non curat lex*. This defense also applies to the claims of some or all of the putative collective and/or class members.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrines of accord and satisfaction, payment, settlement, consent, release, and/or discharge. This defense also applies to the claims of some or all of the putative collective and/or class members.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendant asserts every defense available to it under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, and the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56A, *et seq.*

WHEREFORE, Defendant Harvest Moorestown LLC requests that the Court dismiss Plaintiff's Complaint with prejudice, enter judgment against Plaintiff, and award Defendants its reasonable attorneys' fees and costs, and such other and further relief as this Court deems just and proper.

Respectfully submitted,

**FOX ROTHSCHILD LLP**

*s/ Steven K. Ludwig* \_\_\_\_\_

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Dated: April 11, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant's Answer to Complaint with Affirmative Defenses was served this date via the Court's electronic transmission facilities upon the following counsel of record:

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*s/ Steven K. Ludwig*  
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Dated: April 11, 2017