

5. Admitted in part, denied in part. Admitted that as of September 2017, Plaintiff has been employed in a position and compensated on the basis of an hourly wage with payment for approved overtime. Denied that Plaintiff was an employee covered by the FLSA or PMWA with respect to the positions Plaintiff prior to September 2017 during the three years alleged in the complaint. To the contrary, Plaintiff was employed in an executive capacity and exempt from the minimum wage and overtime provisions of the FLSA and the PMWA pursuant to 29 U.S.C. § 213(a)(1) and 43 P.S. §333.105(5) respectively.

6. Admitted.

7. Admitted.

PARTIES

8. Denied as stated. Admitted that Defendant owns and operates eleven Snappy's brand convenience stores.

9. Admitted.

10. Introductory paragraph: Admitted in part, denied in part. Admitted that defendant employed plaintiff and approximately 30 other employees in different salaried job positions at Snappy's convenience stores, which positions were exempt from the overtime provisions of FLSA and PMWA. Denied that 50 or more employees were employed in salary positions as alleged.

Subparagraphs (a) and (b): Admitted in part, denied in part. Admitted that plaintiff worked in the position of Manager of the Centre Hall store at the salary rate and during the time period alleged, and that defendant properly paid plaintiff as a salaried employee because she was an executive exempt from overtime under both the FLSA and PMWA. The balance of the averments are denied.

Subparagraph(c): Admitted in part, denied in part. Admitted that after plaintiff's prior executive position of Training Coordinator was abolished in September 2017, plaintiff was offered reassignment to the position of Assistant Manager at the new Milesburg store scheduled to open in mid-October 2017. The parties agreed that the compensation level of the new position would be commensurate with plaintiff's prior salaried position of Training Coordinator. Due to a clerical mistake, plaintiff's new position of Assistant Manager was initially misclassified for payroll purposes as an exempt position in keeping with the spirit of the parties' agreement on compensation upon reassignment. Defendant corrected the mistake after the second payroll period ending October 7, 2017, changing plaintiff's compensation to an hourly rate, and plaintiff was paid for all overtime worked during the first two payroll periods. Defendant continues to compensate plaintiff for all approved overtime work. The balance of the averments are denied.

11. Denied. As a store manager, plaintiff's job responsibilities involved complete management of the store including but not limited to all day to day store operations, including scheduling, training and supervision of several non-managerial employees who performed the alleged non-managerial duties averred in this paragraph. Moreover, as store manager, plaintiff was responsible for maximizing the store sales and profitability, including but not limited to management over store profit, controllable expenses, labor, and inventory as well as the hiring, recruitment, training, development, discipline and firing of employees.

12. Denied. Further, defendant denies any willful and/or reckless conduct in disregard of federal law. To the contrary, at all times relevant hereto, plaintiff and the alleged collective members were exempt from the minimum wage and overtime requirements of the FSLA as executives pursuant to 29 U.S.C. § 213(a)(1). Further, defendant properly paid plaintiff

and the alleged collective members in compliance with federal and state law.

CLASS/COLLECTIVE ACTION ALLEGATIONS

13. Denied as conclusions of law. Further, denied that plaintiff and/or any other potential class members are entitled to relief as alleged under the FLSA and/or PMWA and/or that class treatment of any alleged claims is appropriate and/or proper.

14. Denied that plaintiff and/or other alleged collective members are similarly situated and/or subject to common policies as alleged therein. Further, denied that plaintiff's FLSA claim should proceed as a collective action. The balance of the averments are denied as conclusions of law.

15. Denied as conclusions of law. Further, denied that plaintiff can satisfy the class action requirements of Rule 23.

16. Denied as conclusions of law. Further, denied that plaintiff can satisfy the numerosity requirement necessary for class treatment of claims pursuant to Rule 23.

17. Denied as conclusions of law. Further, denied that plaintiff's claim is typical of any other alleged claim and/or that plaintiff can satisfy the typicality requirements necessary for class treatment of claims pursuant to Rule 23.

18. Denied as conclusions of law. Further, denied that plaintiff can satisfy the adequate representation requirement for class treatment of claims pursuant to Rule 23.

19. Denied as conclusions of law. Further, denied that plaintiff can satisfy the commonality requirement for class treatment of claims pursuant to Rule 23.

20. Denied as conclusions of law. Further, denied that class certification is appropriate under Rule 23. To the contrary, numerous individual factual and legal issues exist which are determinative of liability and damages as to individual claims and predominate over

any alleged common questions, thereby, making class treatment of claims inappropriate.

COUNT I
(Alleging FLSA Violations)

21. Defendant incorporates the responses to the preceding paragraphs in response herein.

22. Denied. To the contrary, at all times relevant hereto, plaintiff and the alleged collective members were exempt from the minimum wage and overtime requirements of the FLSA as executives pursuant to 29 U.S.C. § 213(a)(1). Further, denied as conclusions of law.

23. Admitted.

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

25. Denied. To the contrary, at all times relevant hereto, plaintiff and the alleged collective members were exempt from the minimum wage and overtime requirements of the FLSA as executives pursuant to 29 U.S.C. § 213(a)(1). Further, defendant properly paid plaintiff and the alleged collective members in compliance with federal and state law. The remaining averments are denied as conclusions of law.

26. Denied. Further, defendant denies any willful and/or reckless conduct in disregard of federal law. To the contrary, at all times relevant hereto, plaintiff and the alleged collective members were exempt from the minimum wage and overtime requirements of the FLSA as executives pursuant to 29 U.S.C. § 213(a)(1). Further, defendant properly paid plaintiff and the alleged collective members in compliance with federal and state law. The remaining averments are denied as conclusions of law.

COUNT II
(Alleging PMWA Violations)

27. Defendant incorporates the responses to the preceding paragraphs in response

herein.

28. Denied. To the contrary, at all times relevant hereto, plaintiff and the alleged putative class members were exempt from the minimum wage and overtime requirements of the PMWA as executives pursuant to 43 P.S. § 333.105(5). Further, denied as conclusions of law.

29. Admitted.

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

31. Denied. To the contrary, at all times relevant hereto, plaintiff and the alleged putative class members were exempt from the minimum wage and overtime requirements of the PMWA as executives pursuant to 43 P.S. § 333.105(5). Further, defendant properly paid plaintiff and the alleged putative class members in compliance with Pennsylvania law. The remaining averments are denied as conclusions of law.

FIRST AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class members have failed, in whole or in part, to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class members were at all times employed in an administrative, managerial and/or executive capacity and exempt from the minimum wage and overtime provisions of the FLSA and the PMWA pursuant to 29 U.S.C. § 213(a)(1) and 43 P.S. §333.105(5) respectively.

THIRD AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class members' claims are barred, in whole or in part, by the applicable statutes of limitation.

FOURTH AFFIRMATIVE DEFENSE

This action may not be maintained as a class or collective action because the claims of the plaintiff Bambi Wojtaszek are not typical of those of the putative class.

FIFTH AFFIRMATIVE DEFENSE

This action may not be maintained as a class or collective action because the purported representative and her counsel will not fairly and adequately protect the interest of the class.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek's attempt to pursue this case as a collective action or class action fails because an independent and individual analysis of plaintiff's claims and the claims of each potential opt-in and/or putative class member and/or defendant's defenses to each is required.

SEVENTH AFFIRMATIVE DEFENSE

This action may not be maintained as a class action because of failure to satisfy the requirements for class action treatment under Federal Rule of Civil Procedure 23.

EIGHTH AFFIRMATIVE DEFENSE

The claims of plaintiff Bambi Wojtaszek and the claims of any potential opt-in and/or putative class member are barred or subjected to offset or reduction to the extent they received payment for such time.

NINTH AFFIRMATIVE DEFENSE

If any of the work activities of plaintiff Bambi Wojtaszek and the claims of any potential opt-in and/or putative class member are determined to be compensable, defendant's liability to any such employee has been satisfied, in whole or in part, by defendant's payment of bonuses and/or other compensation for such activities.

TENTH AFFIRMATIVE DEFENSE

Defendant acted in good faith and had reasonable grounds for believing that it acted properly in its pay and classification practices with respect to plaintiff Bambi Wojtaszek and other employees.

ELEVENTH AFFIRMATIVE DEFENSE

Any state law claim of plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class member fails to the extent it is superseded or pre-empted by the FLSA.

TWELFTH AFFIRMATIVE DEFENSE

Defendant did not willfully deprive any person of any wages to which they may have been entitled.

THIRTEENTH AFFIRMATIVE DEFENSE

All and/or part of the time for which plaintiff Bambi Wojtaszek and any potential opt-in and/or putative class member seek compensation does not constitute compensable time for purposes of the FLSA and Pennsylvania state law.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class members' claims are barred, in whole or in part, by the doctrine of laches.

FIFTHTEENTH AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class members' claims are barred, in whole or in part, by the doctrines of waiver and/or estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff Bambi Wojtaszek and potential opt-ins and /or putative class members' claims are barred in whole or in part under the de minimis doctrine.

SEVENTEENTH AFFIRMATIVE DEFENSE

The complaint fails to state a claim against defendant upon which costs or attorney's fees can be awarded.

EIGHTEENTH AFFIRMATIVE DEFENSE

The complaint fails to state a claim against defendant upon which liquidated damages can be awarded.

NINTEENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert additional defenses of which it becomes aware during the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendant seeks dismissal of Plaintiff's class/collective action and demands judgment in its favor and against Plaintiff and that Defendant be awarded cost as allowed by law, and any other relief that the Court deems just and appropriate.

MEYERSON & O'NEILL

Dated: January 2, 2018

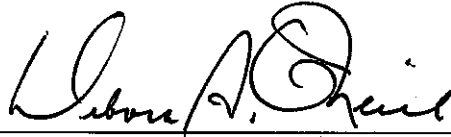
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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2018, I electronically filed the foregoing Answer to Plaintiff's Class/Collective Action Complaint with the Clerk of Court using the CM/ECF system, which shall send electronic notification of such filing to all CM/ECF participants.

A handwritten signature in black ink, appearing to read "Debora A. O'Neill", written over a horizontal line.

Debora A. O'Neill