



**PARTIES**

4. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint and therefore denies same.

5. Admitted.

6. Denied. The allegations of paragraph 6 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

**FACTS**

7. Denied.

8. Denied.

9. Denied. The allegations of paragraph 9 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied. The allegations of paragraph 15 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

16. Denied. The allegations of paragraph 16 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

**COLLECTIVE AND CLASS ACTION ALLEGATIONS**

17. Denied. The allegations of paragraph 17 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

18. Denied. The allegations of paragraph 18 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

19. Denied. The allegations of paragraph 19 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

20. Denied. The allegations of paragraph 20 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

21. Denied. The allegations of paragraph 21 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

22. Denied. The allegations of paragraph 22 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

23. Denied. The allegations of paragraph 23 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

24. Denied. The allegations of paragraph 24 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

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

25. Defendant incorporates its answers to paragraphs 1-24 as if set forth fully herein.

26. Denied. The allegations of paragraph 26 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

27. Denied. The allegations of paragraph 27 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

28. Denied. The allegations of paragraph 28 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

29. Denied. The allegations of paragraph 29 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

30. Denied. The allegations of paragraph 30 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

31. Denied. The allegations of paragraph 31 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

32. Denied. The allegations of paragraph 32 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

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

33. Defendant incorporates its answers to paragraphs 1-32 as if set forth fully herein.

34. Denied. The allegations of paragraph 34 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

35. Denied. The allegations of paragraph 35 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

36. Denied. The allegations of paragraph 36 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

37. Denied. The allegations of paragraph 37 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

38. Denied. The allegations of paragraph 38 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

39. Denied. The allegations of paragraph 39 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

40. Denied. The allegations of paragraph 40 are conclusions of law to which no response is required or given, and strict proof thereof is required at trial.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim for which relief may be granted.
2. Plaintiff lacks standing to sue Defendant and/or to seek relief from Defendant.
3. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or by the doctrine of laches.
4. Plaintiff's claims are barred in whole or in part by the doctrine of waiver and/or estoppel.
5. To the extent Plaintiff suffered any injury or incurred any damages, which is denied, then said injury and/or damages were caused by others who are not in Defendant's control.
6. Plaintiff's claims are barred in whole or in part by the doctrine of *de minimis non curat lex*.
7. Plaintiff's claims are barred to the extent Plaintiff and/or any purported class member misrepresented to Defendant the number of hours actually worked.
8. The putative collective action members cannot proceed collectively under 29 U.S.C. § 216(b) because they are not similarly situated.
9. Defendant had no knowledge of, nor should it have had knowledge of, any alleged uncompensated work or overtime by Plaintiff or any persons allegedly "similarly

situated” to her, and Defendant did not authorize, require, request, suffer or permit such activity by Plaintiff or any persons allegedly “similarly situated” to her.

10. Plaintiff’s claims are barred in whole or in part to the extent that Plaintiff’s own conduct resulted in her not being paid for all hours worked or otherwise compensated in accordance with the FLSA or Pennsylvania state laws.

11. Defendant has at all times acted in good faith and has reasonable grounds for believing its pay practices complied with applicable law.

12. At no time material hereto did Defendant act in a willful, wanton, reckless, and/or malicious manner.

13. Plaintiff was fully compensated in accordance with applicable law for work performed for Defendant.

14. Plaintiff has been paid and/or received all amounts due to her by virtue of her employment with Defendant.

15. Plaintiff does not, and cannot, fairly adequately represent the interests of any putative class or purported collective group.

16. Plaintiff is not entitled to attorneys’ fees or costs.

17. Plaintiff’s claims cannot properly be joined with the claims of any potential opt-ins.

18. Any amounts properly excluded from the calculation of the regular rate of pay pursuant to 29 U.S.C. § 207(e) must likewise be excluded from the calculation of any overtime pay rate which may be found to be due Plaintiff and alleged other similarly situated employees.

19. Plaintiff's FLSA claims are barred to the extent Plaintiff and/or alleged similarly situated employees did not work more than forty (40) hours in any given work week and, therefore, are not entitled to overtime under § 207 of the FLSA.

20. Defendant has not willfully failed to pay Plaintiff or any other putative class or collective members any wages, and there is a bona fide, good faith dispute with respect to Defendant's obligation to pay any wages that may be found to be due.

21. At all times, Defendant acted in good faith with respect to Plaintiff and the putative class and did not willfully or intentionally violate the Pennsylvania state wage and hour laws regarding payment of wages.

22. Plaintiff's claims and those of the putative class members are barred by the doctrine of *res judicata* and/or collateral estoppel to the extent that Plaintiff, any members of the putative class or collective action, or any other putative beneficiary of this action has asserted in any prior legal or administrative proceeding that he or she was entitled to any additional payment to which Plaintiff claims that she, or members of the putative collective action, are entitled.

23. Defendant states, in the alternative if necessary, that if, in fact, it has failed to pay any non-exempt employee for work in excess of 40 hours in a work week, the uncompensated time is *de minimis*.

24. Plaintiff's claims should be dismissed because the Complaint does not allege dates and periods worked and/or amounts of compensation owed, and/or does not allege that Plaintiff's wages for any work week fell below the minimum wage based on the number of hours worked during that work week.

25. Plaintiff's claims are barred in whole or in part by the provisions of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, because actions taken in connection with Plaintiff's

compensation were done in good faith in conformity with and reliance upon written administrative regulations, orders, rulings, approvals, or interpretations, and written and unwritten administrative practices or enforcement policies, of the Administrator of the Wage and Hour Division of the United States Department of Labor with respect to the class of employers to which Defendant belonged.

26. Plaintiff's claims are barred in part by the provisions of Section 11 of the Portal-to-Portal Act, 29 U.S.C. § 260, because any acts or omissions giving rise to this action were done in good faith and with reasonable grounds for believing that the acts or omissions were not a violation of the FLSA.

Defendant expressly reserves the right to amend this Answer and to assert additional affirmative defenses, and to supplement, alter or change this Answer and affirmative defenses upon revelation of more definitive facts by Plaintiff and/or upon Defendant's undertaking of discovery and investigation of this matter. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE, H&J Restaurant Management, Inc. demands that this action be dismissed with prejudice and that judgment be entered in its favor, along with reasonable attorneys' fees, experts' fees, costs and expenses, and such other and further relief as the Court may deem just and proper.

Dated: December 3, 2018

/s/ Katharine V. Hartman

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**CERTIFICATE OF SERVICE**

I, Katharine V. Hartman, Esquire, certify that on this 3rd day of December, 2018, I caused the foregoing Answer and Affirmative Defenses to be served on the following counsel of record:

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/s/ Katharine V. Hartman  
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