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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

JENNIFER HARRISON,

Plaintiff,

v.

HARRY & DAVID OPERATIONS, INC., and
HARRY AND DAVID, LLC,

Defendants.

Case No. 1:18-cv-00410-CL

**DEFENDANTS HARRY & DAVID
OPERATIONS, INC. AND HARRY AND
DAVID, LLC'S ANSWER TO
PLAINTIFF'S CLASS AND
COLLECTIVE ACTION ALLEGATION
COMPLAINT**

Defendants Harry & David Operations, Inc. and Harry and David, LLC (collectively, “Defendants”),¹ for their Answer to Plaintiff Jennifer Harrison’s Class and Collective Action Allegation Complaint (“Complaint”), state as follows:

1. Defendants state that the allegations contained in Paragraph 1 of the Complaint constitute a purported description of this action, to which no answer is required. To the extent an answer may be required, Defendants admit that Plaintiff purports to bring claims under the Fair Labor Standards Act (“FLSA”) and the Oregon wage statutes and implementing regulations, but deny that any such claims are valid and/or that Defendants engaged in unlawful or wrongful conduct relative to Plaintiff or anyone else.

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint.

4. Defendants state that the allegations contained in Paragraph 4 of the Complaint constitute a purported description of this action, to which no answer is required. To the extent an answer may be required, Defendants admit that Plaintiff purports to seek relief in this action, but deny that any such relief is warranted; that Defendants engaged in unlawful or wrongful conduct relative to Plaintiff or anyone else; and/or that Plaintiff is an adequate representative of the class she seeks to represent.

¹ Pursuant to the Parties’ Joint Stipulation, which was approved and ordered by the Court on May 3, 2018 (Dkt. # 36), Defendants Harry & David Operations, Inc. and Harry and David, LLC have been substituted for previously-named Defendants 1-800-Flowers Team Services, Inc., 1-800-Flowers Service Support Center, Inc. and 1-800-Flowers.com, Inc. Accordingly, all references to “Defendants” and/or “1-800 Flowers” in Plaintiff’s Complaint and in this Answer refer to Harry & David Operations, Inc. and Harry and David, LLC, collectively.

ANSWER TO JURISDICTION AND VENUE

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.
6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.
7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

ANSWER TO PARTIES

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore deny them, except admit that Plaintiff worked for Harry & David Operations, Inc. from November 23, 2014-February 20, 2015 and from April 21, 2015-July 18, 2015, and she worked for Harry and David, LLC from November 2, 2015-January 9, 2016 and from October 17, 2016-December 21, 2016.

9. In response to the allegations contained in Paragraph 9 of the Complaint, Defendants aver that Harry & David Operations, Inc. is a Delaware corporation with its principal place of business in Medford, Oregon, and that Harry and David, LLC is an Oregon limited liability company with its principal place of business in Medford, Oregon. Defendants deny the remaining allegations contained in Paragraph 9.

10. In response to the allegations contained in Paragraph 10 of the Complaint, Defendants aver that Harry & David Operations, Inc. is a Delaware corporation with its principal place of business in Medford, Oregon, and that Harry and David, LLC is an Oregon limited liability company with its principal place of business in Medford, Oregon. Defendants deny the remaining allegations contained in Paragraph 10.

11. In response to the allegations contained in Paragraph 11 of the Complaint, Defendants aver that Harry & David Operations, Inc. is a Delaware corporation with its principal place of business in Medford, Oregon, and that Harry and David, LLC is an Oregon limited liability company with its principal place of business in Medford, Oregon. Defendants deny the remaining allegations contained in Paragraph 11.

12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. Defendants admit the allegations contained in Paragraph 13 of the Complaint

14. Defendants admit the allegations contained in Paragraph 14 of the Complaint.

ANSWER TO FACTS

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants state that the allegations contained in Paragraph 16 of the Complaint constitute a purported description of this action, to which no answer is required. To the extent an answer may be required, Defendants admit that Plaintiff was an employee of Harry & David Operations, Inc.'s call center in Medford, Oregon, but denies the remaining allegations contained in Paragraph 16.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint, except admit that Plaintiff was classified as non-exempt under the FLSA during the time she worked for each of the Defendants.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

I. Answer to Off-the-Clock Pre-Shift Work

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

II. Answer to Off-the-Clock Work During 30-Minute Unpaid Meal Periods

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

III. Answer to Off-the-Clock Post-Shift Work

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

IV. Answer to Unpaid Overtime Work

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants state that the allegations contained in Paragraph 35 of the Complaint

constitute an opinion asserted by Plaintiff, to which no answer is required. To the extent an

answer may be required, Defendants deny the allegations contained in contained in Paragraph 35.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

ANSWER TO COLLECTIVE ACTION ALLEGATIONS

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint, except admit that Plaintiff purports to pursue a collective action under the FLSA on behalf of the class contained in such Paragraph. Defendants further deny that collective treatment of Plaintiff's claims is appropriate.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint, except admit that Plaintiff purports to pursue her claims on behalf of individuals who opt-in to this action. Defendants further deny that collective treatment of Plaintiff's claims is appropriate.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

ANSWER TO CLASS ACTION ALLEGATIONS PURSUANT TO FED. R. CIV. P. 23

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint, except admit that Plaintiff purports to pursue a class action under Oregon state law on behalf of the class contained in such Paragraph. Defendants further deny that class treatment of Plaintiff's claims is appropriate

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.
46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.
47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.
48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.
49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.
50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

ANSWER TO FIRST CLAIM FOR RELIEF
(FLSA Overtime Violation)

51. In response to the allegations contained in Paragraph 51 of the Complaint, Defendants incorporate by reference their admissions, denials, and defenses set forth with respect to Paragraphs 1 through 50.

52. Defendants state that the allegations contained in Paragraph 52 of the Complaint constitute a purported description of this action, to which no answer is required. To the extent an answer may be required, Defendants admit that Plaintiff purports to seek relief in this action, but deny that any such relief is warranted; that Defendants engaged in unlawful or wrongful conduct relative to Plaintiff or anyone else; and/or that Plaintiff is an adequate representative of the class she seeks to represent.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint, except admit that, at certain times during the relevant time period, Plaintiff was an employee of Harry & David Operations, Inc. or Harry and David, LLC, and that, during such time, her employment was governed in part by the FLSA.

54. Defendants admit the allegations contained in Paragraph 54 of the Complaint.

55. Defendants state that the allegations contained in Paragraph 55 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

56. Defendants state that the allegations contained in Paragraph 56 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. Defendants state that the allegations contained in Paragraph 61 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

ANSWER TO SECOND CLAIM FOR RELIEF
(Oregon Wage and Penalty Claim Pursuant to ORS 653.055)

67. In response to the allegations contained in Paragraph 67 of the Complaint, Defendants incorporate by reference their admissions, denials, and defenses set forth with respect to Paragraphs 1 through 66.

68. Defendants state that the allegations contained in Paragraph 68 of the Complaint constitute a purported description of this claim, to which no answer is required. To the extent an answer may be required, Defendants admit that Plaintiff purports to seek relief in this claim, but deny that any such relief is warranted; that Defendants engaged in unlawful or wrongful conduct relative to Plaintiff or anyone else; and/or that Plaintiff is an adequate representative of the class she seeks to represent.

69. Defendants state that the allegations contained in Paragraph 69 of the Complaint constitute a purported description of this action, to which no answer is required. To the extent an answer may be required, Defendants admit that Plaintiff purports to seek relief in this action, but deny that any such relief is warranted; that Defendants engaged in unlawful or wrongful conduct relative to Plaintiff or anyone else; and/or that Plaintiff is an adequate representative of the class she seeks to represent.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint.

71. Defendants admit the allegations contained in Paragraph 71 of the Complaint.

72. Defendants state that the allegations contained in Paragraph 72 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be

required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

73. Defendants state that the allegations contained in Paragraph 73 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

74. Defendants state that the allegations contained in Paragraph 74 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

75. Defendants state that the allegations contained in Paragraph 75 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

76. Defendants deny the allegations contained in Paragraph 76 of the Complaint.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Complaint.

82. Defendants state that the allegations contained in Paragraph 82 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

83. Defendants state that the allegations contained in Paragraph 83 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the cited statute for its contents.

84. Defendants deny the allegations contained in Paragraph 84 of the Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of the Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Complaint.

87. Defendants state that the allegations contained in Paragraph 87 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the statute for its contents.

88. Defendants state that the allegations contained in Paragraph 88 of the Complaint constitute a conclusion of law, to which no answer is required. To the extent an answer may be required, Defendants deny the allegations to the extent they differ from the cited statute itself, and Defendants further refer to the statute for its contents.

89. Defendants deny the allegations contained in Paragraph 89 of the Complaint.

90. Defendants deny the allegations contained in Paragraph 90 of the Complaint.

91. Defendants deny the allegations contained in Paragraph 91 of the Complaint.

92. Defendants specifically controvert the prayer for relief set forth below Paragraph 91 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims, or portions of Plaintiff's claims, are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff cannot satisfy the requirements for a collective action under the FLSA, thus barring collective treatment of Plaintiff's claims.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff cannot satisfy the requirements for a class action under Oregon Rule of Civil Procedure 32, thus barring class treatment of Plaintiff's claims.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff's weekly wage met the minimum weekly requirements of the FLSA and/or Oregon state law, such minimum weekly requirement being equal to the number of hours Plaintiff actually worked that week multiplied by the minimum hourly statutory requirement.

SIXTH AFFIRMATIVE DEFENSE

Defendants acted in good faith and had reasonable grounds for believing their respective actions were in compliance with the FLSA and Oregon wage laws.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to recovery because any alleged acts or omissions were made by each of the Defendants respectively in good faith in conformity with the reliance on applicable administrative regulations, orders, rulings, approvals, and/or interpretations, or administrative practices or enforcement policies with respect to the class of employers to which Defendants belong.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff received all wages, payments, and compensations to which she was entitled.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Defendants substantially complied with the applicable regulations.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is not an adequate representative of the purported classes, and, as such, the Court should not authorize certification of any purported class.

ELEVENTH AFFIRMATIVE DEFENSE

Even if the allegations contained in Plaintiff's Complaint are true (which they are not), to the extent the time for which Plaintiff alleges that she has not been compensated involves only

insubstantial or insignificant periods of time, these periods of time are *de minimis* and are not compensable.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims under the FLSA and/or Oregon state law are barred because Plaintiff has received full and proper payment for all work she performed.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's proposed class and collective definitions are vague, overbroad, and otherwise fail to satisfy the requirements for maintaining a class and/or collective action.

FOURTEENTH AFFIRMATIVE DEFENSE

Should this Court certify this matter (conditionally or otherwise) as a class action, Defendants assert each of these defenses with respect to each person filing a consent form.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants are entitled to set-offs for monies already paid to Plaintiff for time worked.

SIXTEENTH AFFIRMATIVE DEFENSE

Any claims by Plaintiff for equitable relief are barred by the doctrines of waiver, unclean hands, estoppel, and/or laches.

By pleading any matter herein, Defendants do not concede that they bear the burden of proof with regard to any such defense.

Defendants further reserve the right to assert additional affirmative defenses or defenses of which they become knowledgeable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants Harry & David Operations, Inc. and Harry and David, LLC pray that the Complaint be dismissed with prejudice, and that they be granted their costs, expenses, and reasonable attorneys' fees.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendants respectfully request a trial by jury.

DATED: May 16, 2018.

JACKSON LEWIS P.C.

BY: s/ April Upchurch Frederickson
April Upchurch Fredrickson, OSB #132027
Sarah J. Ryan, OSB # 831311

s/ Daniel L. Messeloff
Daniel L. Messeloff, *Pro Hac Vice*
Christine M. Snyder, *Pro Hac Vice*

Attorneys for Defendants

DECLARATION OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS HARRY & DAVID OPERATIONS, INC. AND HARRY AND DAVID, LLC'S ANSWER TO PLAINTIFF'S CLASS AND COLLECTION ACTION ALLEGATION COMPLAINT** via:

- Electronic Mail
- U.S. Postal Service
- CM/ECF
- Facsimile Service
- Hand Delivery
- Overnight Delivery

Service was accomplished at the parties' email addresses as recorded on the date of service in the eFiling system.

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DATED this 16th day of May, 2018.

By: s/ Sherry Rainey
Sherry Rainey

4844-2975-7272, v. 1