

Karen L. O'Connor, OSB No. 953710
karen.oconnor@stoel.com
Timothy W. Snider, OSB No. 034577
timothy.snider@stoel.com
Ryan S. Kunkel, OSB No. 154671
ryan.kunkel@stoel.com
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: 503.224.3380
Facsimile: 503.220.2480

Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

TAYLOR LEMONS, individually and on
behalf of all similarly situated individuals,

Plaintiff,

v.

WALGREEN PHARMACY SERVICES
MIDWEST, LLC, WALGREEN
PHARMACY SERVICES EASTERN,
LLC, and WALGREEN PHARMACY
SERVICES WESTERN, LLC,

Defendants.

Case No.: 3:21-cv-00511-MO

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
SECOND AMENDED CLASS
ACTION ALLEGATION
COMPLAINT**

In response to the allegations in Plaintiff Taylor Lemons' ("Plaintiff") Second Amended Class Action Allegation Complaint, Defendants Walgreen Pharmacy Services Midwest, LLC, Walgreen Pharmacy Services Eastern, LLC and Walgreen Pharmacy Services Western, LLC ("Defendants") admit, deny, and allege as follows:

PARTIES

1. Defendants lack sufficient information to admit or deny whether Plaintiff resides, is domiciled, and is a citizen of Oregon and therefore denies the allegations in Paragraph 1.

2. Defendants admit that Walgreen Pharmacy Services Midwest, LLC is an Illinois limited liability company, and that prior to December 1, 2017, there were three members of this LLC, including Bond Drug Company of Illinois, LLC, Walgreen Louisiana Co., Inc., and Happy Harry's, Inc., and that after December 1, 2017, Duane Reade Inc. became the fourth member of Walgreen Pharmacy Services Midwest. Defendants further admit that Walgreen Co. is a wholly owned subsidiary of Walgreens Boots Alliance, Inc., a holding company incorporated in Delaware that has issued shares to the public listed on NASDAQ. Except as expressly admitted, Defendants deny the allegations in Paragraph 2.

3. Paragraph 3 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants state that Walgreen Pharmacy Services Eastern was an Illinois LLC. Except as expressly admitted, Defendants deny the allegations in Paragraph 3.

4. Defendants admit that WPSE was an indirect, wholly owned subsidiary of Walgreen Co. until January 2016. Except as expressly admitted, Defendants deny the allegations in Paragraph 4.

5. Paragraph 5 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants state that Walgreen Pharmacy Services Western was an Illinois LLC. Except as expressly admitted, Defendants deny the allegations in Paragraph 5.

6. Defendants admit that WPSW was an indirect, wholly owned subsidiary of Walgreen Co. until January 2016. Except as expressly admitted, Defendants deny the allegations in Paragraph 6.

7. Defendants admit that WPSM, WPSE, and WPSW were separate legal entities through January 2016. Except as expressly admitted, Defendants deny the allegations in Paragraph 7.

8. Defendants admit Plaintiff is a former employee of WPSM, WPSE and/or WPSW. Except as expressly admitted, Defendants deny the allegations in Paragraph 8.

9. The allegations in Paragraph 9 assert legal conclusions as to individuals who may or may not be classified as “employees” of Defendants or who may or may not have been subject to “Oregon wage and hour provisions,” and do not require a response. To the extent a response is required, Defendants deny those allegations. By way of further answer, Defendants admit that Plaintiff is a former employee of at least one of Defendants and was subject to Oregon wage and hour provisions. Except as expressly admitted, Defendants deny the allegations in Paragraph 9.

10. Defendants admit that WPSW, WPSE and/or WPSM have or had employees working in Multnomah County Oregon. Except as expressly admitted, Defendants deny the allegations in Paragraph 10.

JURISDICTION

11. Defendants admit that no Defendant is a state, officer of a state, or a government agency. The remaining allegations in Paragraph 11 state a legal conclusion and do not require a response. To the extent a response is required, Defendants deny.

12. Defendants admit that Plaintiff is a citizen of a state different from at least one defendant. The remaining allegations in Paragraph 12 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny.

13. Defendants lack sufficient information to admit or deny Plaintiff’s own estimations as to the potential class size and therefore deny the allegations in Paragraph 13.

14. Defendants lack sufficient information to admit or deny Plaintiff's estimations as to total alleged damages and therefore deny that allegation. Plaintiff's remaining allegations in Paragraph 14 state a legal conclusion and do not require a response. To the extent a response is required, Defendants deny the allegations in Paragraph 14.

15. Paragraph 15 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny.

VENUE

16. Defendants that venue is proper. Except as expressly admitted, Defendants deny the allegations of Paragraph 16.

FACTUAL ALLEGATIONS

17. Defendants admit the allegation in Paragraph 17.

18. Defendants admit that Walgreens operates stores in all 50 states, Puerto Rico and the U.S. Virgin Islands. Except as expressly admitted, Defendants deny the allegations in Paragraph 18.

19. Paragraph 19 alleges facts related to Claims 1 and 2, which have been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants admit that around January 2008 WPSW or WPSE employed employees in Oregon. Except as expressly admitted, Defendants deny the allegations in Paragraph 19.

20. Paragraph 20 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

21. Paragraph 21 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny the allegations in Paragraph 21.

22. Paragraph 22 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

23. Defendants admit that Plaintiff began working for WPSW or WPSE around October 2014.

24. Paragraph 24 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants admit that as of 2014, WPSM was registered to do business in Oregon. Except as expressly admitted, Defendants deny the allegations in Paragraph 24.

25. Paragraph 25 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny the allegations in Paragraph 25.

26. Paragraph 26 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants admit that around January 2016 WPSM employed employees in Oregon, including Plaintiff. Except as expressly admitted, Defendants deny the allegations in Paragraph 26.

27. Paragraph 27 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

28. Paragraph 28 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny the allegations in Paragraph 28.

29. Paragraph 29 alleges facts related to Claim 1, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny the allegations in Paragraph 29.

30. Paragraph 30 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny.

31. Paragraph 31 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

32. Paragraph 32 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

33. Paragraph 33 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

34. Paragraph 34 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

35. Paragraph 35 alleges facts related to Claims 1 and 2, which have been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

36. Paragraph 36 alleges facts related to Claims 1 and 2, which have been dismissed by this Court, and therefore Defendants deny them. Defendants lack sufficient information to admit or deny the allegation that “direct deposits stated that they were paid by Walgreens Co.” as the allegation is undated and does not identify the provider or recipient of the direct deposit, and therefore denies the allegation. Plaintiff’s W2s speak for themselves, and therefore Defendants deny the allegation related to what is stated on Plaintiff’s W2s. Except as expressly admitted, Defendants deny the allegations in Paragraph 36.

37. Paragraph 37 alleges facts related to Claim 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants admit that Walgreen Co. operates human resources, provides payroll services, maintains payroll records, and provides employees with various avenues to contact human resources. Except as expressly admitted, Defendants deny Paragraph 37.

38. Paragraph 38 alleges facts related to Claim 1 and 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

39. Paragraph 39 alleges facts related to Claim 1 and 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

40. Paragraph 40 alleges facts related to Claim 1 and 2, which has been dismissed by this Court, and therefore Defendants deny them. To the extent a further response is required, Defendants deny.

41. Plaintiff's allegation as to when wages were due is a legal conclusion to which no response is required. To the extent a response is required, Defendants deny. Except as expressly admitted, Defendants deny the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42.

43. Defendants deny the allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. The allegations in Paragraph 46 state a legal conclusion to which a response is not required. To the extent a response is required, Defendants deny.

47. The allegations in Paragraph 47 state a legal conclusion to which a response is not required. To the extent a response is required, Defendants deny.

48. Defendants admit that they pay employees at an hourly rate or salary. Except as expressly admitted, Defendants deny the allegations in Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants admit that they calculate wages due to employees. Except as expressly admitted, Defendant deny the allegations in Paragraph 54.

55. Paragraph 55 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 55.

56. Paragraph 56 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 56.

CLASS ACTION ALLEGATIONS

57. Paragraph 57 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 57.

58. Paragraph 58 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 58.

59. Paragraph 59 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 59.

60. Paragraph 60 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 60.

Fed. R. Civ. P. 23(a) Prerequisites

61. Paragraph 61 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 61.

62. Paragraph 62 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 62.

63. Paragraph 63 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 63.

64. Paragraph 64 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 64.

Fed. R. Civ. P. 23(b)(3) Factors

65. Paragraph 65 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 65.

66. Paragraph 66 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 66.

FIRST CLAIM FOR RELIEF

(Violation of ORS 648.007)

67. Paragraphs 67 through 70 relate to the First Claim for Relief, which was dismissed in this Court’s January 24, 2022 Opinion and Order (dkt 33), and therefore do not require a response. To the extent a further response is required, Defendants reassert all responses to all paragraphs above as though fully stated herein in response to Paragraph 67, and further respond as follows.

68. Defendants lack sufficient information to admit or deny Plaintiff’s believes or determinations and therefore denies the allegations in Paragraph 68. Except as expressly admitted, Defendants deny the allegations in Paragraph 68.

69. Paragraph 69 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 69.

70. Paragraph 70 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 70.

SECOND CLAIM FOR RELIEF

(WPSE/WPSW Late Payment at Termination Claim)

71. Paragraphs 71 through 79 relate to the Second Claim for Relief, which was dismissed in this Court’s January 24, 2022 Opinion and Order (dkt 33), and therefore do not require a response. To the extent a further response is required, Defendants reassert all responses to all paragraphs above as though fully stated herein in response to Paragraph 71, and further respond as follows.

72. Paragraphs 72 through 79 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraphs 72 through 79.

THIRD CLAIM FOR RELIEF

(WPSE Late Payment at Termination Claim)

73. In response to Paragraph 80, Defendants reassert all responses to all paragraphs above as though fully stated herein.

74. Paragraphs 81 through 88 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 81 through 88.

Except as expressly admitted, Defendants deny each and every allegation in Plaintiff's Second Amended Complaint and the whole thereof. Defendants reserve the right to amend this Answer as new information is gathered during discovery in this case.

AFFIRMATIVE DEFENSES

Without assuming Plaintiff's burden of proof as to any claim or issue, Defendants assert the following affirmative defenses, incorporating and re-alleging responses above, and specifically reserving their right to amend this Answer and raise additional affirmative defenses as the case proceeds:

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

75. Plaintiff's Second Amended Complaint fails to state ultimate facts sufficient to state a claim upon which relief can be granted, in whole or in part.

SECOND AFFIRMATIVE DEFENSE

(Good Faith Efforts; Not Willful)

76. Any alleged damages, including punitive damages, are inappropriate or barred because Defendants made good faith efforts to comply with applicable law.

THIRD AFFIRMATIVE DEFENSE

(Legitimate Non-Discriminatory Reason)

77. The decisions made and actions taken of which Plaintiff complains were based solely on legitimate, non-discriminatory, and non-retaliatory business considerations.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

78. Plaintiff has failed to mitigate his alleged damages, if any, in whole or in part. Alternatively, any claim for relief must be set off and/or reduced by wages, compensation, pay and benefits, or other earnings, remunerations, profits, and benefits received by Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

(Not Entitled to Relief Requested)

79. Plaintiff is not entitled to the relief requested in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Res Judicata)

80. Plaintiff's claims are barred by the doctrine of res judicata.

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

84. Plaintiff cannot satisfy the requirements for a class action under Federal Rule of Civil Procedure 23, thus barring class treatment of Plaintiff's claims.

ELEVENTH AFFIRMATIVE DEFENSE

85. 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.

TWELTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

87. Plaintiff's and putative class members' attempt to recover penalties for alleged violations of ORS 652.140 as provided for in ORS 652.150 are grossly disproportionate to any actual harm alleged to have resulted from the alleged violations and excessive in violation of Defendants' constitutional due process rights under the United States and Oregon Constitutions.

88. Plaintiff's and putative class members' claims also are barred, in whole or in part, to the extent that certification of this action as a class action would violate Defendants' right to separate trials and/or to assert separate defenses for each claim by each putative class member.

89. Plaintiff's and putative class members' claims are further barred, in whole or in part, to the extent they seek to deprive Defendants of procedural and substantive safeguards, including, but not limited to, traditional defenses to liability, in violation of the due process rights under the United States and Oregon Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. Dismissing all of Plaintiff's claims with prejudice;
2. Awarding Defendants their costs, disbursements, and attorney fees in defending this action; and
3. For such other relief as deemed just and equitable.

DATED: February 7, 2022

STOEL RIVES LLP

s/ Ryan S. Kunkel
KAREN L. O'CONNOR, OSB No. 953710
karen.oconnor@stoel.com
TIMOTHY W. SNIDER, OSB No. 034577
timothy.snider@stoel.com
RYAN S. KUNKEL, OSB No. 154671
ryan.kunkel@stoel.com
Telephone: 503.224.3380

Attorneys for Defendants