

DEFENDANT’S ANSWER WITH NEW MATTER

Defendant Premier Care & Staffing Services, Inc. (“Premier” or (“Defendant”), by its undersigned counsel, hereby answers the Complaint of plaintiff Kapria Marples (“Plaintiff”) and avers as follows:

RESPONSE TO THE UNNUMBERED PREFATORY PARAGRAPH

Premier admits only that Plaintiff filed the above-captioned lawsuit Complaint purportedly asserting a claim under the Pennsylvania Minimum Wage Act of 1968 (the “PMWA”), but denies that Plaintiff is entitled to any relief and further denies that there exists any common question of law or fact concerning members of a purported class of similarly situated individuals.

RESPONSES TO THE NUMBERED PARAGRAPHS

PARTIES

1. Admitted, upon information and belief.
2. Admitted in part, denied in part. Premier’s current address is 6754 Market Street, Upper Darby, Pennsylvania 19082.

JURISDICTION AND VENUE

3. Admitted in part, denied in part. Premier admits only that this Court has subject matter jurisdiction to consider Plaintiff’s PMWA claim. Further answering, Premier denies all remaining allegations contained in this paragraph.
4. Admitted in part, denied in part. Premier admits only that it conducts business in Philadelphia County and states further that the allegations of paragraph 4 set forth legal conclusions to which no response is required from Premier.

FACTS

5. Admitted in part, denied in part. Plaintiff worked only in the homes of participant-employers under the Medicaid Home and Community-Based Services waiver program.

6. Denied as a conclusion of law to which no responsive pleading is required. By way of further response: Defendant employs some individuals on an hourly basis. Plaintiff and purported class members are not employees of Premier, however.

7. Denied. Defendant did not employ Plaintiff. The Home and Community-Based Services waiver program regulations that the Pennsylvania Department of Human Services administers mandate that the recipient of services provided by Plaintiff is the employer of Plaintiff.

8. Denied as a conclusion of law to which no responsive pleading is required.

CLASS ACTION ALLEGATIONS

9. Admitted in part, denied in part. Premier admits that Plaintiff filed the Complaint and that she purports to do so both on her own behalf and on behalf of a putative class. Premier denies that Plaintiff's claim has any merit or is suitable for class certification. This paragraph of Plaintiff's Complaint also contains conclusions of law to which no responsive pleading is required.

10. Denied as a conclusion of law to which no responsive pleading is required. Premier denies that this action is properly maintained as a class action.

11. Denied as a conclusion of law to which no responsive pleading is required. There is no class.

12. Denied as a conclusion of law to which no responsive pleading is required. There is no class or question of law or fact that is common between Plaintiff and putative class members, among other reasons because Plaintiff did not reside in the home of a family member who was also a recipient of services provided by Plaintiff.

13. Denied as a conclusion of law to which no responsive pleading is required. There is no class or claim or defense that is typical among Plaintiff and a putative class, among other reasons because putative class members reside in the home of a family member who is also the recipient of services provided by putative class members.

14. Denied as a conclusion of law to which no responsive pleading is required. There is no class and Plaintiff's interests are hers alone.

15. Denied as a conclusion of law to which no responsive pleading is required. There is no class and Plaintiff will not and cannot fairly protect anyone's interests except her own.

16. Denied as a conclusion of law to which no responsive pleading is required. There is no class or claim that is suitable for class certification.

COUNT I

17. Premier incorporates by reference its answers to the preceding paragraphs of Plaintiff's Complaint as though set forth herein.

18. Admitted in part, denied in part. Premier did not employ Plaintiff, is not subject to the PMWA, and there is no class and there are no class members.

19. Denied as a conclusion of law to which no responsive pleading is required. Premier did not employ Plaintiff, is not subject to the PMWA, and there is no class and there are no class members.

20. Denied as a conclusion of law to which no responsive pleading is required.

Premier did not employ Plaintiff, is not subject to the PMWA, and there is no class and there are no class members.

RESPONSE TO “PRAYER FOR RELIEF” IN THE COMPLAINT

Premier denies that Plaintiff is entitled to any of the relief identified in Plaintiff’s Prayer for Relief.

DEFENDANT’S PRAYER FOR RELIEF

WHEREFORE, having answered and responded to the allegations set forth in the Complaint, Premier denies that Plaintiff is entitled to the relief requested and respectfully requests that:

- a. Plaintiff’s claim be dismissed with prejudice in its entirety;
- b. Each and every prayer for relief contained in the Complaint be denied;
- c. Judgment be entered in favor of Premier;
- d. All costs, including reasonable attorneys’ fees, that may be awarded to Premier and against Plaintiff be awarded to Premier; and that
- e. Premier be awarded such other and further relief as this Court may deem just and proper.

NEW MATTER

21. Plaintiff’s Complaint fails to state a claim upon which relief may be granted, among other reasons because Premier is not an employer of Plaintiff under the PMWA.

22. Plaintiff’s claim asserted in the Complaint is barred by the applicable statute of limitations.

23. Defendant is justified and acted reasonably and legally in not paying the wage amounts claimed due in Plaintiff's Complaint.

24. Defendant has a good faith dispute or contest as to the amount of wages that Plaintiff claims are due and owing to her and/or a good faith assertion of a right of set-off or counter-claim that accounts for the alleged non-payment of wages.

25. Plaintiff's claims are barred or should be reduced by the doctrines of set-off and recoupment.

26. Plaintiff's claims are barred, in whole or in part, by the doctrine of unjust enrichment.

27. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver, by the doctrine of estoppel, by the doctrine of unclean hands, and/or by the doctrine of laches.

28. Plaintiff's claim is barred because it conflicts with the federal statutory scheme and applicable regulations under the applicable Medicaid Programs designating Medicaid recipients as employers.

29. Plaintiff's claim is preempted by the aforementioned federal statutory and regulatory schemes.

30. Plaintiff failed to mitigate her alleged damages.

31. Plaintiff's claim is barred because all acts or omission of Premier were made in good faith conformity with and reliance on written administrative regulations, orders, rulings, approvals, and/or interpretations of the United States Department of Labor, the Pennsylvania Department of labor, the Center for Medicaid Services, and the Pennsylvania Department of Human Services.

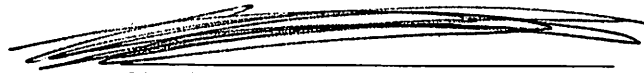
32. Putative class members are exempt from the requirement to receive overtime pay pursuant to a live-in domestic service worker exemption to the PMWA.

33. The PMWA does not authorize a trial by jury.

34. Premier reserves the right to assert any and all other defenses, both factual and legal, as may be justified by information subsequently obtained.

WHEREFORE, Premier demands judgment in its favor and against Plaintiff, together with an award of attorney fees and costs of suit and such other further relief as this Court deems just and proper.

Respectfully submitted,

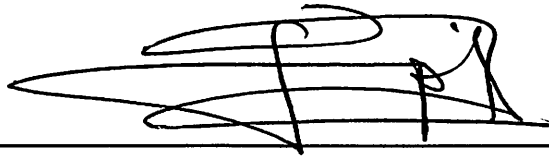


Claude I. Schoenberg
Attorney for Defendant
Premier Care & Staffing Services, Inc.

Dated: March 28, 2019

VERIFICATION

I, Steve Dennis, President of Premier Care And Staffing Services, Inc., verify that the facts set forth in Defendant's Answer with New Matter are true and correct to the best of my knowledge, information and belief. I understand that my verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Steve Dennis', is written over a horizontal line.

Steve Dennis

Dated: 03/27/2019

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that Defendant's Verified Answer with New Matter was served on all counsel of record via the ECF electronic filing notice, and via first-class mail on:

Peter Winebrake, Esquire
Winebrake & Santillo, LLC
715 Twining Road
Dresher, PA 19025
Attorney for Plaintiff

Date Filed: March 28,2019

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