

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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FRANCIS CREVATAS, on behalf of  
himself and similarly situated employees,

Plaintiff,

v.

SMITH MANAGEMENT AND  
CONSULTING, LLC,

Defendant.

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: Civil Action No.  
: 3:15-cv-02307  
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: (Judge Mannion)  
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: Filed Electronically  
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**ANSWER TO CLASS/COLLECTIVE ACTION COMPLAINT AND  
AFFIRMATIVE DEFENSES**

Defendant, Smith Management and Consulting, LLC (“Defendant” or “Smith”), by and through its undersigned counsel, responds to and affirmatively defends the allegations in the Class/Collective Action Complaint of Plaintiff, Francis Crevatas (“Plaintiff” or “Crevatas”), and denies that Plaintiff and any similarly situated individuals are entitled to relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and the Pennsylvania Wage Payment and Collection Law (PMWA), 42 P.S. §§ 333.101, *et seq.* as set forth below. Any allegation not expressly and explicitly admitted is denied.

**JURISDICTION AND VENUE**

1. Smith admits that Crevatas purports to bring this putative action pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. Smith denies that it has violated the FLSA, and thus denies the claim is sufficient to confer jurisdiction on this Court.
2. Smith admits that Crevatas purports to bring this putative action pursuant to 28 U.S.C. § 1367. Smith denies that it has violated the PMWA, and thus denies the claim is sufficient to confer jurisdiction on this Court.
3. Admitted.

**PARTIES**

4. Smith lacks the knowledge to admit or deny the allegations in this paragraph, and on that basis, denies them.
5. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies the allegations in this paragraph.
6. Admitted.
7. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies the allegations in this paragraph.

**FACTS**

8. Smith admits that it is an oilfield services company, that it provides experienced, dependable consultants to the oil and gas industry, and that it maintains a website (*available at* [www.smithmanagement.net](http://www.smithmanagement.net)) that contains the language quoted in this Paragraph. By way of further answer, the website is a writing which speaks for itself, and any characterization thereof is accordingly denied.

9. Smith admits that it has provided consultants to its oil and gas rig-operating clients. Smith further admits that it typically pays the consultants that it provides on a day-rate basis. Smith further admits that the consultants it provides perform work at Smith's oil and gas rig-operating clients located throughout the United States, including within this judicial district. This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Smith denies such statements. Smith denies the remaining allegations in this paragraph.

10. Smith admits that some of the consultants that it provides are referred to as "Roustabouts."

11. This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

12. Admitted.

13. Admitted.

14. Smith admits that some of the consultants that it has provided have accepted placements which entail “shifts” lasting as long as 12 hours. By way of further answer, consultants did not “work” 12 hour shifts. Smith denies the remaining allegations in this paragraph.

15. Smith admits that some of the consultants may have elected to work over 40 hours in a week. Smith denies the remaining allegations in this paragraph.

16. This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

17. This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

#### **CLASS/COLLECTIVE ACTION ALLEGATIONS**

18. Smith admits that Crevatas purports to bring a putative FLSA claim as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b). This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

19. This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

20. Smith admits that Crevatas purports to bring a putative PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23. Smith denies the remaining allegations in this paragraph.

21. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

22. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

23. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

24. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

25. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

26. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

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

27. Smith incorporates by reference its responses to Paragraphs 1-26 of Crevatas' Complaint.

28. The provisions of the FLSA speak for themselves, and, as such, no response to the statements in this paragraph is required. To the extent that a response is required, Smith denies the statements purporting to characterize the requirements of the FLSA.

29. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

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

30. Smith incorporates by reference its responses to Paragraphs 1-29 of Crevatas' Complaint.

31. The provisions of the PMWA speak for themselves, and, as such, no response to the statements in this paragraph is required. To the extent that a response is required, Smith denies the statements purporting to characterize the requirements of the PMWA.

32. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, Smith denies such statements.

### **PRAYER FOR RELIEF**

WHEREFORE, Smith denies that Crevatas, or any other person on whose behalf Crevatas seeks to assert a claim, are entitled to any relief whatsoever under the allegations set forth in the Complaint. Smith requests that the Court dismiss the claims with prejudice in their entirety and that Smith be awarded costs incurred in defending this action, and any and all other relief as the Court may deem just and proper.

### **AFFIRMATIVE DEFENSES**

Smith asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with Crevatas:

1. The Complaint fails to state a claim upon which relief can be granted.
2. Some of the putative class executed arbitration agreements with class action waivers. To the extent that Plaintiff or any other member of the putative class

and/or collective class executed an arbitration agreement and/or class action waiver, their claims must be referred to arbitration and then only on an individual basis.

3. Crevatas and the other members of the putative class and/or collective action provided consulting services as independent contractors; therefore, the provisions of the FLSA and PMWA do not apply to their claim.

4. The claims in the Complaint are barred due to the absence of an employment relationship between them and Smith.

5. The claim in the Complaint for damages under the FLSA must be offset by any other compensation received.

6. The claim in the Complaint for damages under the FLSA must be offset by any and all paid break time.

7. The claim in the Complaint for liquidated damages under the FLSA is barred because Smith acted in good faith and on reasonable grounds for believing that none of its actions taken toward Crevatas or the putative class and/or collective action violated the FLSA.

8. Crevatas and the other members of the putative class and/or collective action have been properly compensated under the FLSA.

9. Crevatas and the other members of the putative class and/or collective action have been properly compensated under the PMWA.

10. The claims in the Complaint are barred to the extent Crevatas seeks to assert claims on behalf of other employees who are not similarly situated for purposes of the FLSA, PMWA, or other state law with respect to matters alleged in the Complaint.

11. The claims in the Complaint fail to satisfy the prerequisites for class certification or a collective action; therefore, Crevatas cannot represent the interests of others.

12. Smith reserves the right to assert any other defenses as they become known to Smith.

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/s/ Sean P. McConnell

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*Attorneys for Defendant*

*Smith Management and Consulting, LLC*

Dated: March 7, 2016

**CERTIFICATE OF SERVICE**

I, Sean P. McConnell, hereby certify that on March 7, 2016, a copy of the foregoing Answer to the Class/Collective Action Complaint was made available via the Court's ECF Filing system to all counsel of record.

/s/ Sean P. McConnell  
Sean P. McConnell