

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION**

	)	
<b>AMANDA FOSTER, on behalf of</b>	)	
<b>herself and similarly situated employees,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>C/A No. 0:16-cv-03705-BHH</b>
<b>vs.</b>	)	
	)	
<b>NEW APPLE, INC., d/b/a APPLE</b>	)	
<b>GOLD GROUP,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**DEFENDANT’S ANSWER TO PLAINTIFF’S AMENDED COMPLAINT**

Defendant Green Apple, LLC, improperly identified as “New Apple, Inc. d/b/a Apple Gold Group,” (“Defendant”), by and through its undersigned counsel, files its Answer to the Amended Complaint of Plaintiff Amanda Foster (“Plaintiff”) (ECF Doc. No. 5), and shows the Court:

Answering the introductory paragraph of Plaintiff’s Amended Complaint, Defendant acknowledges that Plaintiff seeks to bring this action as a collective action on behalf of herself and others allegedly “similarly situated,” and that she seeks all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Defendant denies that Plaintiff is “similarly situated” to any other employees of Defendant and denies that Plaintiff is entitled to any relief under the FLSA.

**ALLEGATIONS AS TO JURISDICTION AND VENUE**

1. Defendant admits only that this Court has jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331. Defendant denies all of the remaining allegations contained in paragraph 1 of Plaintiff’s Amended Complaint.

2. Defendant admits the allegations contained in paragraph 2 of Plaintiff's Amended Complaint.

**ALLEGATIONS AS TO PARTIES**

3. Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff resides in Rock Hill, South Carolina.

4. Defendant admits that it is a limited liability company organized and existing pursuant to the laws of the State of North Carolina, with its principal place of business in Raleigh, North Carolina. Defendant further admits that it owns property and conducts business in York County, South Carolina, and is registered to do business in South Carolina. Defendant denies all of the remaining allegations contained in paragraph 4 of Plaintiff's Amended Complaint.

5. Defendant admits only that it is an Applebee's franchisee that operates multiple restaurants in several states, including North Carolina, South Carolina, Georgia, Kentucky, Indiana, Oklahoma, and Arkansas. Defendant denies all of the remaining allegations contained in paragraph 5 of Plaintiff's Amended Complaint.

6. Defendant admits the allegations contained in paragraph 6 of Plaintiff's Amended Complaint, except that Defendant denies that it currently employs Plaintiff.

7. Defendant admits the allegations contained in paragraph 7 of Plaintiff's Amended Complaint.

**ALLEGATIONS AS TO FACTS**

8. Defendant admits the allegations contained in paragraph 8 of Plaintiff's Amended Complaint.

9. Defendant admits only that Plaintiff was employed by Defendant as a Server at its Applebee's restaurant located in Rock Hill, South Carolina from approximately November 2015

until August 2016. Defendant denies all of the remaining allegations contained in paragraph 9 of Plaintiff's Amended Complaint.

10. Defendant admits only that it paid Plaintiff as a Server an hourly wage of \$2.13 plus tips earned and paid by restaurant patrons. Defendant denies all of the remaining allegations contained in paragraph 10 of Plaintiff's Amended Complaint.

11. Defendant admits only that it pays most Servers an hourly wage of \$2.13, plus any tips earned and paid by restaurant patrons. Defendant denies all of the remaining allegations contained in paragraph 11 of Plaintiff's Amended Complaint.

12. Defendant admits only that it utilizes a "tip credit" in the amount of \$5.12 for most servers, as authorized by the FLSA. Defendant denies all of the remaining allegations contained in paragraph 12 of Plaintiff's Amended Complaint.

13. Defendant denies the allegations contained in paragraph 13 of Plaintiff's Amended Complaint.

14. Defendant denies the allegations contained in paragraph 14 of Plaintiff's Amended Complaint.

15. Defendant is without knowledge or information sufficient to form a belief as to how much time Plaintiff estimates she spent performing non-tip-producing work. Defendant denies that Plaintiff's estimates are accurate and denies all other allegations contained in paragraph 15 of Plaintiff's Amended Complaint.

16. Defendant denies the allegations contained in paragraph 16 of Plaintiff's Amended Complaint.

17. Defendant denies the allegations contained in paragraph 17 of Plaintiff's Amended Complaint.

18. Defendant denies the allegations contained in paragraph 18 of Plaintiff's Amended Complaint.

19. Defendant denies the allegations contained in paragraph 19 of Plaintiff's Amended Complaint.

**ALLEGATIONS AS TO COLLECTIVE ACTION**

20. Defendant admits only that Plaintiff purports to bring this action on behalf of herself and certain other servers employed by Defendant. Defendant denies that Plaintiff can proceed collectively on behalf of any other current or former employees of Defendant. Defendant denies any remaining allegations contained in paragraph 20 of Plaintiff's Amended Complaint.

21. Defendant admits only that Plaintiff purports to bring this action on behalf of herself and others who opt-in to this action pursuant to 29 U.S.C. 216(b) and that a document that purports to be Plaintiff's consent to join this action was attached to the Amended Complaint. Defendant denies that Plaintiff can proceed collectively on behalf of any others who opt-in to this action. Defendant denies any remaining allegations contained in paragraph 21 of Plaintiff's Amended Complaint.

22. Defendant denies the allegations contained in paragraph 22 of Plaintiff's Amended Complaint.

**ALLEGATIONS AS TO COUNT I**  
**(Alleging Violations of the FLSA)**

23. Defendant re-alleges and incorporates by reference each and every response set forth in paragraphs 1-22 of this Answer.

24. Defendant admits only that Plaintiff is an employee and that some FLSA provisions apply to her. Defendant denies that Plaintiff can proceed collectively on behalf of any other employees of Defendant and denies all remaining allegations of paragraph 24 of Plaintiff's

Amended Complaint.

25. Defendant admits that it is an employer and that some FLSA provisions apply to it. Defendant denies all of the remaining allegations contained in paragraph 25 of Plaintiff's Amended Complaint.

26. Defendant admits that some, but not all, employees are required to be paid \$7.25 per hour for hours worked under 40 in a week and \$10.875 for hours worked over 40 in a week under the FLSA. Defendant denies any implication that it is obligated to pay Plaintiff or any other "tipped employee" direct wages of \$7.25 per hour for hours worked under 40 in a week or \$10.875 for hours worked over 40 in a week. Defendant denies all of the remaining allegations contained in paragraph 26 of Plaintiff's Amended Complaint.

27. Defendant denies the allegations contained in paragraph 27 of Plaintiff's Amended Complaint.

28. Defendant denies the allegations contained in paragraph 28 of Plaintiff's Amended Complaint.

29. Defendant denies the allegations contained in paragraph 29 of Plaintiff's Amended Complaint.

**RESPONSE TO JURY TRIAL DEMAND**

Defendant acknowledges that Plaintiff has demanded a jury trial, but denies that Plaintiff's claims are legally or factually viable so as to permit a jury trial and further denies that Plaintiff is entitled to any judgment or relief whatsoever.

**RESPONSE TO PRAYER FOR RELIEF**

Defendant denies that Plaintiff or any person who Plaintiff purports to represent are entitled to any of the relief sought in subparagraphs (a) through (e) of Plaintiff's prayer for relief, or any relief whatsoever.

**GENERAL DENIAL**

To the extent not expressly and specifically admitted herein, Defendant denies the allegations set forth in Plaintiff's Complaint.

**AFFIRMATIVE OR OTHER DEFENSES**

**FIRST DEFENSE**

Plaintiff has failed to plead a *prima facie* case under the FLSA.

**SECOND DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred to the extent that they seek damages beyond the applicable limitations period.

**THIRD DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred, in whole or in part, because they cannot establish that any acts or omissions of Defendant were willful under the FLSA.

**FOURTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred to the extent that they have submitted false or inaccurate time records. In such situations, the claims would be barred in whole or in part by estoppel, unclean hands, and other doctrines.

**FIFTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred because they were paid all wages due under the FLSA.

**SIXTH DEFENSE**

Any recovery by Plaintiff and any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA should be limited to the extent that they have failed to mitigate any of the damages alleged in the Amended Complaint.

**SEVENTH DEFENSE**

Plaintiff's claims are barred to the extent that Plaintiff seeks to assert claims on behalf of other employees who are not similarly situated for purposes of the FLSA.

**EIGHTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred to the extent that Defendant's actions have been taken in good faith, in conformity with, and reliance upon established rulings, administrative regulations, and interpretations of the FLSA within the meaning of 29 U.S.C. § 259.

**NINTH DEFENSE**

Defendant's actions have been in good faith and based upon reasonable grounds for believing that such actions were not in violation of the FLSA, within the meaning of 29 U.S.C. § 260. Thus, even if Defendant is found to have violated the FLSA, Plaintiff is not entitled to liquidated damages under the FLSA.

**TENTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred, in whole or in part, by the doctrine of payment, as

Plaintiff and all other employees of Defendant have been properly compensated.

**ELEVENTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred because Plaintiff worked at all relevant times in a tipped occupation; Plaintiff cannot establish that she performed tasks unrelated and not incidental to tipped service.

**TWELFTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred because Plaintiff's claim that the tip credit should be invalidated for periods where Plaintiff or any other tipped employee spent more than 20% of their time performing allegedly non-tipped duties fails to state a claim for which relief can be granted.

**THIRTEENTH DEFENSE**

Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA, are barred because Plaintiff has failed to allege and cannot prove sufficient facts that he or any other server were employed by Defendant in "dual jobs."

**FOURTEENTH DEFENSE**

Plaintiff's Amended Complaint should be dismissed, in whole or in part, for failure to state a cause of action upon which relief can be granted.

**FIFTEENTH DEFENSE**

Defendant has not engaged in any act constituting willful misconduct, demonstrating wantonness, oppression, want of care, or any other conduct of any type whatsoever which could support an award of liquidated damages under applicable law.



**SIXTEENTH DEFENSE**

Any award of damages to Plaintiff should be limited or precluded pursuant to the after-acquired evidence doctrine as may be applicable.

**SEVENTEENTH DEFENSE**

Any award of damages should be barred or limited to the extent that the relief demanded by Plaintiff is improper, inappropriate, exceeds the scope of permissible damages and remedies, and/or otherwise is not available under the laws upon which her claims rest. Alternatively, in the event that Plaintiff or any others are granted relief, such relief should be limited by the applicable provisions of any law upon which Plaintiff's claims rest.

Defendant reserves the right to amend its Answer or add further defenses that may become known after filing of the pleading. Because the Amended Complaint is phrased in conclusory terms, Defendant cannot fully anticipate all defenses which may be applicable to this action. Accordingly, Defendant reserves the right to assert additional defenses or counterclaims in this action.

WHEREFORE, Defendant denies that Plaintiff or any other persons on whose behalf Plaintiff seeks to assert a claim under the FLSA are entitled to any remedy or relief in this action; Defendant requests that the Court dismiss Plaintiff's claims with prejudice; and Defendant requests that it be awarded their attorneys' fees, costs and such further relief as the Court may deem appropriate.

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Respectfully submitted this 22<sup>nd</sup> day of August 2017.

JACKSON LEWIS P.C.

*s/ Wm. Robert Gignilliat, IV*

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