

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

GENAIA MOJER, on behalf of herself and
similarly situated employees,

Case No.: 3:18-cv-470

Plaintiff,

vs.

JURY TRIAL DEMANDED

AMERICARE HOME SOLUTIONS, LLC,

Defendant.

**DEFENDANT AMERICARE HOME SOLUTIONS, LLC'S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Americare Home Solutions, LLC ("Americare"), by and through its undersigned counsel, files the within Answer and Affirmative Defenses to Plaintiff Genaia Mojer's Complaint and, in support thereof, states the following:

JURISDICTION AND VENUE

1. Defendant admits that jurisdiction over the FLSA claim is proper under 29 U.S.C. §216(b) and 28 U.S.C. §1331, but Defendant denies any inference of wrongdoing on its part or any liability to Plaintiff for any of the relief sought.
2. Defendant admits that jurisdiction over the PMWA claim is proper under 28 U.S.C. §1367, but Defendant denies any inference of wrongdoing on its part or any liability to Plaintiff for any of the relief sought.
3. Defendant admits that venue is proper in this Court under 28 U.S.C. §1391.

PARTIES

4. Upon information and belief, the allegation contained in Paragraph 4 of Plaintiff's Complaint is admitted.

5. The allegations contained in Paragraph 5 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, upon information and belief, Defendant admits the allegation contained in Paragraph 5.

6. Denied as stated. Defendant admits that it is a limited liability company headquartered in Avoca, Pennsylvania, which is located in Luzerne County.

7. The allegations contained in Paragraph 7 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, Defendant admits that it is an enterprise engaged in commerce and has annual gross sales of over \$500,000.

FACTS

8. Defendant admits that it is in the business of providing home care services to the elderly, the disabled, and other clients in need of such services.

9. Denied as stated. Defendant admits that on average it employs approximately 80 individuals who are paid, in whole or in-part, on an hourly basis and hold positions such as, for example, Caregiver or Home Health Aid.

10. Defendant admits that Plaintiff works for Defendant as an hourly employee.

11. Defendant admits that Plaintiff's paycheck is issued by "AMERICARE HOME SOLUTIONS LLC."

12. Denied as stated. Defendant admits that on occasion Plaintiff and other hourly employees work over 40 hours per week on an as-needed basis.

13. To the extent the allegations contained in Paragraph 13 of Plaintiff's Complaint constitute conclusions of law, no response is required. To the extent a response is deemed necessary, all such allegations are denied and strict proof thereof is demanded at trial. The remaining allegations contained in Paragraph 13 are denied and strict proof thereof demanded at trial.

CLASS/COLLECTIVE ACTION ALLEGATIONS

14. The allegations contained in Paragraph 14 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial. To the extent Paragraph 14 raises any factual allegations, Defendant denies those allegations and demands strict proof thereof at trial.

15. The allegations contained in Paragraph 15 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial. To the extent Paragraph 15 raises any factual allegations, Defendant denies those allegations and demands strict proof thereof at trial.

16. The allegations contained in Paragraph 16 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

17. The allegations contained in Paragraph 17 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

18. The allegations contained in Paragraph 18 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial. To the extent Paragraph 20 raises any factual allegations, Defendant denies those allegations and demands strict proof thereof at trial.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

COUNT I
(ALLEGING FLSA VIOLATIONS)

22. Defendant incorporates its responses to Paragraphs 1 – 21 above as if fully restated here.

23. The allegations contained in Paragraph 23 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

24. The allegation contained in Paragraph 24 of Plaintiff's Complaint constitutes a conclusion of law to which no response is required. To the extent a response is deemed necessary, such allegation is denied and strict proof thereof demanded at trial.

25. The allegations contained in Paragraph 25 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

26. The allegations contained in Paragraph 26 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

27. The allegations contained in Paragraph 27 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

COUNT II
(ALLEGING PMWA VIOLATIONS)

28. Defendant incorporates its responses to Paragraphs 1 – 27 above as if fully restated here.

29. The allegations contained in Paragraph 29 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

30. Paragraph 29 is listed twice on Plaintiff's Complaint. The allegation contained in the second Paragraph 29 of Plaintiff's Complaint constitutes a conclusion of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

31. The allegations contained in Paragraph 30 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

32. The allegations contained in Paragraph 31 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed necessary, such allegations are denied and strict proof thereof demanded at trial.

WHEREFORE, Defendant Americare Home Solutions LLC, respectfully requests that this Honorable Court dismiss Plaintiff Genaia Mojer's Complaint against it, with prejudice and that Plaintiff and the proposed class/collective take nothing thereby, that the purported class not be certified, that judgment be entered in favor of Defendant and against Plaintiff on all claims, and that Defendant be awarded costs and reasonable attorneys' fees in defending this action and such other and further relief as the Court deems proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's Complaint (as it relates to Plaintiff and the putative class members) in whole or in part, fails to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiff's claims (and the claims of the putative class members) fail as a matter of law to the extent that they are barred by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claims (and the claims of the putative class members) are barred, in whole or in part, by the doctrines of waiver, estoppel, and/or laches.

FOURTH AFFIRMATIVE DEFENSE

4. Defendant invokes the defenses, protections, and limitations of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA") and the Pennsylvania Minimum Wage Act, 43 P.S. §§333.101, *et seq.* ("PMWA").

FIFTH AFFIRMATIVE DEFENSE

5. At all times, Defendant acted in good faith and had reasonable grounds for believing its actions were in compliance with the FLSA and the PMWA.

SIXTH AFFIRMATIVE DEFENSE

6. Defendants did not know or show reckless disregard for whether their conduct was prohibited by the FLSA and/or the PMWA.

SEVENTH AFFIRMATIVE DEFENSE

7. Defendant acted in good faith without any willful intent to deprive Plaintiff (and the putative class members) of compensation.

EIGHTH AFFIRMATIVE DEFENSE

8. To the extent that the Court may determine that Defendant's acts or omissions cast it liable under the FLSA, Plaintiff's (and the putative class members') claims are, nonetheless, barred by the provisions of the Portal-to-Portal Act, 29 U.S.C. §260, because the acts or omissions complained of were done in good faith and with reasonable grounds for believing that the acts or omissions were not in violation of the FLSA.

NINTH AFFIRMATIVE DEFENSE

9. To the extent any claim arises outside the statute of limitations, it is barred by the limitations period set forth in the Portal-to-Portal Act, 29 U.S.C. §255.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff's claims (and the claims of the putative class members) are barred, in whole or in part, to the extent Plaintiff seeks recovery for time that is not compensable time, i.e. "hours worked" under the FLSA and/or the PMWA.

ELEVENTH AFFIRMATIVE DEFENSE

11. In the alternative, Defendant is entitled to offset monies or other consideration paid or provided to Plaintiff (and the putative class members) by Defendant for periods in which Plaintiff was not engaged to work.

TWELFTH AFFIRMATIVE DEFENSE

12. To the extent Plaintiff (and the putative class members) may seek punitive damages, Plaintiff's recovery is limited by applicable provisions of the FLSA, the PMWA, and the Pennsylvania and/or United States Constitutions. Any award of punitive damages to Plaintiff in this case would be in violation of the FLSA, the PMWA, and the constitutional safeguards provided to Defendant under the Constitution of the United States and/or the laws of the Commonwealth of Pennsylvania.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff (and the putative class members) is not entitled to punitive/liquidated damages as Defendant did not act or fail to act in a manner sufficient to give rise to punitive/liquidated damages liability.

FOURTEENTH AFFIRMATIVE DEFENSE

14. To the extent Plaintiff (and the putative class members) seeks damages not recoverable under the FLSA and/or the PMWA, Plaintiff is barred from such recovery.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Without assuming the burden of proof, Defendant complied with all record keeping requirements of the FLSA and the PMWA.

SIXTEENTH AFFIRMATIVE DEFENSE

16. Plaintiff's claims (and the claims of the putative class members) are barred as to all hours allegedly worked of which Defendant lacked actual or constructive knowledge.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Plaintiff's claims (and the claims of the putative class members) fail as a matter of law to the extent that they are and/or were at any time exempt from the overtime provisions of the FLSA and its regulations.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Plaintiff's claims (and the claims of the putative class members) fail as a matter of law to the extent that they are and/or were at any time exempt from the overtime provisions of the PMWA and its regulations.

NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiff's claims (and the claims of the putative class members) are barred, in whole or in part, to the extent some or all of these individuals lack standing.

TWENTIETH AFFIRMATIVE DEFENSE

20. Plaintiff (and the putative class members) attempts to pursue this case as collective action and/or class action fail because an independent and individual analysis of Plaintiff's claims (and the claims of each putative class member) and each of Defendant's defenses is required.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. Plaintiff (and the putative class members) are not entitled to certification under 29 U.S.C. §216(b) and/or Federal Rule of Civil Procedure 23 because they are not similarly situated to those they seek to represent.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Plaintiff (and the putative class members) are not entitled to certification under 29 U.S.C. §216 (b) and/or Federal Rule of Civil Procedure 23 because they cannot adequately represent the interest of the putative class members.

TWENTY-THIRD AFFIRMATIVE DEFENSE

23. All actions taken by Defendant with respect to Plaintiff (and the putative class members) were supported by legitimate business reasons.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. Defendant reserves the right to assert further affirmative defenses as they become evident through discovery investigation.

WHEREFORE, Defendant Americare Home Solutions LLC, respectfully requests that this Honorable Court dismiss Plaintiff Genaia Mojer's Complaint against it, with prejudice and that Plaintiff and the proposed class/collective take nothing thereby, that the purported class not be certified, that judgment be entered in favor of Defendant and against Plaintiff on all claims, and that Defendant be awarded costs and reasonable attorneys' fees in defending this action and such other and further relief as the Court deems proper.

Respectfully Submitted,

BURNS WHITE LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2018, a copy of the foregoing Defendant's Answer and Affirmative Defenses was served via electronic notification through the CM/ECF system to all counsel of record listed below.

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BURNS WHITE LLC

By: /s/ Mary-Jo Rebelo
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