

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

TAISHA SHAW, on behalf of herself and similarly situated employees,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 2:19-cv-01620-HB
	:	
v.	:	[ELECTRONICALLY FILED]
	:	
TABOR COMMUNITY PARTNERS,	:	
	:	
Defendant.	:	

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT, TABOR COMMUNITY PARTNERS**

Defendant, Tabor Community Partners, (“Tabor”), by its attorneys, responds to the Complaint filed by Plaintiff, Taisha Shaw, according to the numbered paragraphs therein, as follows:

JURISDICTION AND VENUE

1. The allegations in paragraph 1 state conclusions of law to which no response is required. By way of further response, Tabor does not oppose this Court’s jurisdiction.
2. The allegation in paragraph 2 states a conclusion of law to which no response is required. By way of further response, Tabor does not oppose this Court’s jurisdiction.
3. The allegation in paragraph 3 states a conclusion of law to which no response is required. By way of further response, Tabor does not oppose venue in this Court.

PARTIES

4. Denied. Tabor lacks sufficient knowledge or information to form a belief as to the location of Shaw’s current residence, and, therefore, denies the allegation.
5. Admitted.

6. The allegations in paragraph 6 state conclusions of law to which no response is required.

7. The allegations in paragraph 7 state conclusions of law to which no response is required.

FACTS

8. Admitted.

9. Admitted.

10. Denied. Tabor denies that it currently employs Shaw and that her salary was \$44,990 per week.

11. Admitted in part, denied in part. Tabor admits only that the Case Manager position typically carries no supervisory responsibilities. Tabor denies that the position does not carry managerial responsibility and that it does not require involvement in or knowledge of Tabor's general business operations.

12. Admitted.

13. Admitted.

14. Denied. Tabor denies that the Case Manager position does not require specialized academic training and denies Shaw's characterization of the job description.

15. Admitted.

16. Denied. Tabor denies that Case Managers regularly work over 40 hours per week. Tabor lacks sufficient knowledge or information to form a belief as to Shaw's estimate of her average weekly hours. Tabor denies that Shaw worked an average of 45-55 hours per week.

17. Admitted in part, denied in part. Tabor admits that Case Managers employed by Tabor are not paid an overtime premium for hours worked beyond 40 in a work week. Tabor lacks

sufficient knowledge or information to form a belief as to the pay practices of the City of Philadelphia with regard to all Case Managers it employs and, therefore, Tabor denies that allegation.

CLASS/COLLECTIVE ACTION ALLEGATIONS

18. Admitted in part, denied in part. Tabor admits that Shaw purports to bring her Fair Labor Standards Act (“FLSA”) claim as a collective action and her Pennsylvania Minimum Wage Act (“PMWA”) claim as a class action on behalf of the purported collective and class identified in Paragraph 18. Tabor denies that it is liable to Shaw or to any other Case Manager under the FLSA, the PMWA, or any other provision of law, and denies that certification of the purported collective or class is appropriate.

19. Denied. The allegations in Paragraph 19 state conclusions of law to which no response is required. To the extent that a response is deemed required, Tabor denies that Shaw’s FLSA claim should proceed as a collective action.

20. Denied. The allegations in Paragraph 20 state conclusions of law to which no response is required. To the extent that a response is deemed required, Tabor denies that Shaw’s PMWA claim should proceed as a class action.

21. Admitted in part, denied in part. Tabor admits only that, during the three years preceding the filing of this lawsuit, it employed more than 100 Case Managers. The remaining allegations in Paragraph 21 state conclusions of law to which no response is required. To the extent that a response is deemed required, Tabor denies the allegations.

22. The allegations in Paragraph 22 state conclusions of law to which no response is required.

23. The allegations in Paragraph 23 state conclusions of law to which no response is required.

24. The allegations in Paragraph 24 state conclusions of law to which no response is required.

25. Denied. The allegations in Paragraph 25 state conclusions of law to which no response is required. To the extent that a response is deemed required, Tabor denies that class certification is appropriate.

COUNT I
(Alleging FLSA Violations)

26. Tabor repeats and re-alleges its responses to the foregoing paragraphs of the Complaint as if set forth at length herein.

27. The allegations in paragraph 27 are a statement of law to which no response is required.

28. Denied. The allegations in Paragraph 28 are conclusions of law. To the extent that a response is deemed required, Tabor denies the allegations.

29. Denied. The allegations in Paragraph 29 are conclusions of law. To the extent that a response is deemed required, Tabor denies the allegations.

COUNT II
(Alleging PMWA Violations)

30. Tabor repeats and re-alleges its responses to the foregoing paragraphs of the Complaint as if set forth at length herein.

31. The allegations in paragraph 31 are a statement of law to which no response is required.

32. Denied. The allegations in Paragraph 32 are conclusions of law. To the extent that a response is deemed required, Tabor denies the allegations.

The allegations following Paragraph 32 set forth a jury demand and a prayer for relief to which no response is required. To the extent that a response is deemed required, Tabor

denies that it is liable to Shaw or to putative plaintiffs and further denies that Shaw or putative plaintiffs are entitled to any relief or damages from Tabor in this lawsuit.

AFFIRMATIVE AND OTHER DEFENSES

In further answer to the Complaint, Tabor sets forth the following affirmative and other defenses:

FIRST DEFENSE

The Complaint should be dismissed, in whole or in part, for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

Tabor acted at all times in good faith in attempting to comply with its obligations under the FLSA. Accordingly, liquidated damages are not available or warranted under the provisions of the FLSA.

THIRD DEFENSE

The claims are or may be barred in whole, or in part, by the FLSA's statutes of limitations.

FOURTH DEFENSE

Without assuming the burden of proof, any violation of the FLSA by Tabor (which is denied) was not willful, and therefore all claims are limited to a two year limitations period calculated from the date Shaw filed suit.

FIFTH DEFENSE

Some of the activities for which Shaw seeks compensation were not "work" within the meaning of the FLSA or the PMWA. The activities were not integral and indispensable to the principal activities of Tabor and/or were taken for Shaw's own convenience.

SIXTH DEFENSE

At all times relevant to this action, Shaw was exempt from overtime compensation pursuant to 29 U.S.C. § 213(a) because she was employed by Tabor in a *bona fide* professional capacity.

SEVENTH DEFENSE

At all times relevant to this action, Shaw was exempt from overtime compensation pursuant to 32 Pa. Code §§ 231.81 – 231.83 because she was employed by Tabor in a *bona fide* professional capacity.

EIGHTH DEFENSE

Shaw's claims are or may be barred in whole, or in part, by the Pennsylvania Minimum Wage Act's statute of limitations.

WHEREFORE, Tabor respectfully requests that this Court enter judgment in favor of Tabor and against Shaw, dismiss the Complaint in its entirety and award Tabor all costs and expenses incurred in defending this action, including interest and attorneys' fees.

June 25, 2019

Respectfully submitted,
STEVENS & LEE

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CERTIFICATE OF SERVICE

I, Brad M. Kushner, certify that on this 25th day of June, 2019, I caused the foregoing Answer to Complaint with Affirmative Defenses to be served, via the Court's electronic filing system, on the following:

Peter Winebrake, Esq.
R. Amndrew Santillo, Esq.
Mark J. Gottesfeld
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/s/ Brad M. Kushner