

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

ANDREW RICCI, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

NEWREZ LLC,

Defendant.

CIVIL ACTION NO.: 5:22-CV-00650

ANSWER

Defendant Newrez LLC (“Defendant” or “Newrez”), by and through its undersigned attorneys, hereby answers the Complaint of the Plaintiff, Andrew Ricci (“Plaintiff” or “Ricci”), denying each and every allegation not specifically admitted, and providing its affirmative and other defenses as follows:

GENERAL DENIAL

Defendant denies all allegations of the Complaint not expressly admitted herein. References to the numbered paragraphs below are the numbered paragraphs in the Complaint. For ease of reference, the numbered allegations of the Complaint are set forth herein and Defendant responses to each allegation follow.

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

RESPONSE: Defendant denies that Plaintiff’s claims have any merit, but admits, upon information and belief, that this Court has jurisdiction over the action as alleged in Paragraph 1.

2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.

RESPONSE: Defendant denies that Plaintiff's claims have any merit, but admits, upon information and belief, that this Court has jurisdiction over the action as alleged in Paragraph 2.

3. Venue in this Court is proper under 28 U.S.C. § 1391.

RESPONSE: Defendant denies that Plaintiff's claims have any merit, but admits, upon information and belief, that venue is appropriate as alleged in Paragraph 3.

PARTIES

4. Plaintiff resides in Allentown, PA (Lehigh County).

RESPONSE: Defendant is without information or knowledge sufficient to form a belief about the truth of the allegations contained in Paragraph 4.

5. Defendant is headquartered in Fort Washington, PA (Montgomery County).

RESPONSE: Defendant admits the allegations contained in Paragraph 5.

6. Plaintiff is an employee covered by the FLSA and PMWA.

RESPONSE: Paragraph 6 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant admits that during Plaintiff's employment with Defendant he was an employee covered by the FLSA and PMWA.

7. Defendant is an employer covered by the FLSA and PMWA.

RESPONSE: Paragraph 7 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant admits that it is an employer covered by the FLSA and PMWA.

FACTS

8. Defendant is a corporate entity that provides financing to consumers for home mortgage loans which Defendant then sells to financial institutions.

RESPONSE: Defendant admits the allegations in Paragraph 8.

9. Plaintiff was employed by Defendant from approximately August 2020 until approximately November 2021.

RESPONSE: Defendant admits the allegations in Paragraph 9.

10. Plaintiff was paid a combination of an hourly wage for every credited work hour plus occasional commissions and non-discretionary bonuses. Other employees were paid in a similar fashion.

RESPONSE: Defendant admits the allegations in Paragraph 10 that Plaintiff was paid a combination of an hourly wage for every credited work hour plus occasional commissions...” The “discretionary” aspect of certain bonuses is a conclusion of law to which Defendant is not required to respond. To the extent a response is required, Defendant denies that all bonuses it paid to Plaintiff were non-discretionary.

11. Plaintiff occasionally worked over 40 hours per week.

RESPONSE: Defendant admits the allegations in Paragraph 11.

12. Both the FLSA and PMWA require that employees who work over 40 hours in a workweek receive 150% of their regular rate. See 29 U.S.C. § 207(a)(1) (FLSA requires overtime compensation of “not less than one and one-half times the regular rate at which he is employed.”); 43 P.S. § 333.104(c) (PMWA requires “overtime not less than one and one-half times the employe’s regular rate as prescribed in regulations promulgated by the secretary...”).

RESPONSE: Paragraph 12 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant admits

that both the FLSA and PMWA generally require an employer to pay a non-exempt employee one and one-half time the employee’s regular rate for hours worked in excess of forty (40) in a given workweek.

13. Under both the FLSA and PMWA, the “regular rate” generally is defined to include all remuneration paid to the employee. See 29 U.S.C. § 207(e) (“regular rate” generally is “deemed to include all remuneration paid to, or on behalf of, the employee.”); 34 Pa. Code § 231.43 (“regular rate” generally is “deemed to include all remuneration for employment paid to or on behalf of the employee.”).

RESPONSE: Paragraph 13 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant admits, notwithstanding various enumerated exceptions, that the regular rate under FLSA and PMWA generally includes all remuneration paid to an employee.

14. However, during weeks in which Plaintiff and similar employees are credited with working over 40 hours, Defendant fails to include all additional remuneration paid to the employee, such as commissions and non-discretionary bonuses, in the “regular rate” when calculating the time-and-one-half overtime premium pay owed.

RESPONSE: Defendant denies the allegations of Paragraph 14.

15. As just one example, according to a payroll check issued on January 15, 2021, Plaintiff was credited with working 1.87 hours of overtime. In calculating the amount of overtime pay owed to Plaintiff, Defendant only used Plaintiff’s \$24.00 hourly rate as the “regular rate” in determining the overtime premium rate of \$36.00 (\$24.00 x 1.5). Although Defendant also paid Plaintiff \$2,900 for a non-discretionary bonus, Defendant failed to factor this bonus in calculating Plaintiff’s “regular rate” for purposes of determining his overtime compensation.

RESPONSE: Defendant denies the allegations of Paragraph 15.

16. Defendant's failure to include all of the commissions and non-discretionary bonuses paid to Plaintiff and other employees in the "regular rate" when calculating the time-and-one-half overtime premium violated the FLSA and PMWA and was undertaken willfully and with reckless disregard of clearly applicable FLSA and PMWA principles. See 29 C.F. R. § 778.117 ("commissions . . . must be included in the regular rate. This is true regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a guaranteed salary or hourly rate . . ."); 29 C.F.R. § 778.211(c) ("Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently [. . .] are regarded as part of the regular rate of pay.").

RESPONSE: Defendant denies the allegations in Paragraph 16.

CLASS/COLLECTIVE ACTION ALLEGATIONS

17. Plaintiff brings his FLSA claim as a collective action pursuant to 29 U.S.C. §216(b) and brings his PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23. He sues on behalf of all individuals employed by Defendant within the past three years who have been paid an hourly wage plus additional remuneration such as commissions and/or bonuses.

RESPONSE: Paragraph 17 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, upon information and belief, Defendant admits that Plaintiff has attempted to bring his FLSA claim as a collective action pursuant to 29 U.S.C. §216(b) and his PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23.

18. Plaintiff's FLSA claim should proceed as a collective action because he and other putative collective members, having worked pursuant to the common compensation policies

described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

RESPONSE: Paragraph 18 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 18.

19. Class action treatment of Plaintiff’s PMWA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

RESPONSE: Paragraph 19 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 19.

20. The class, upon information and belief, includes over 30 individuals, all of whom are readily ascertainable based on Defendant’s business records and are so numerous that joinder of all class members is impracticable.

RESPONSE: Paragraph 20 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 20.

21. Plaintiff is a class member, his claims are typical of the claims of other class members, and he has no interests that are antagonistic to or in conflict with the interests of other class members.

RESPONSE: Paragraph 21 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 21.

22. Plaintiff and his lawyers will fairly and adequately represent the class members and their interests.

RESPONSE: Defendant is without information or knowledge sufficient to form a belief about the truth of the allegations contained in Paragraph 22.

23. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's common compensation policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

RESPONSE: Paragraph 23 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 23.

24. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

RESPONSE: Paragraph 24 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 24.

COUNT I - FLSA

25. The FLSA requires that employees receive overtime premium compensation "not less than one and one-half times" their regular pay rate for hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

RESPONSE: Paragraph 25 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant admits that the FLSA generally requires an employer to pay a non-exempt employee one and one-half time the employee’s regular rate for hours worked in excess of forty (40) in a given workweek.

26. By failing to include all remuneration paid to Plaintiff and other collective members in determining the regular rate for purposes of calculating overtime compensation owed for hours worked over 40, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

RESPONSE: Defendant denies the allegations in Paragraph 26.

COUNT II - PMWA

27. The PMWA requires that employees receive overtime premium compensation “not less than one and one-half times” the employee’s regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

RESPONSE: Paragraph 27 sets forth one or more legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant admits that the PMWA generally requires an employer to pay a non-exempt employee one and one-half time the employee’s regular rate for hours worked in excess of forty (40) in a given workweek.

28. By failing to include all remuneration paid to Plaintiff and other collective members in determining the regular rate for purposes of calculating overtime compensation owed for hours worked over 40, Defendant violated the PMWA.

RESPONSE: Defendant denies the allegations in Paragraph 28.

RELIEF REQUESTED

Defendant denies that Plaintiff is entitled to any relief sought in the Plaintiff's Complaint. Defendant further respectfully prays for judgment against the Plaintiff and awarding Defendant's relief requested below.

AFFIRMATIVE AND OTHER DEFENSES

Defendant expressly incorporates its responses to the complaint as if set forth verbatim herein and further set forth the affirmative and other defenses below. By pleading the following as affirmative or other defenses, Defendant does not concede that they bear the burden to establish the factual bases for these defenses and do not intend to shift the burden of proof under applicable law or otherwise to relieve Plaintiff of any burden to establish the elements of her prima facie case.

**FIRST DEFENSE
(Fed. R. Civ. P. 12(b)(6))**

Plaintiff's complaint fails to state a claim upon which relief can be granted. Plaintiff's complaint should be dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P.

**SECOND DEFENSE
(Ambiguity)**

Plaintiff has not clearly stated the issues, or the amounts at issue, making it difficult for Defendant to respond. Defendant requests that the Court grant leave to amend this Answer to allow additional defenses once additional information is discovered that would allow any additional defenses to be known by the Defendant.

**THIRD DEFENSE
(Good Faith)**

Plaintiff's claims are in whole or in part barred because Defendant's actions with respect to Plaintiff's wages were taken in good faith and based on reasonable grounds for believing it was in compliance with the applicable laws including the FLSA and the PMWA.

**FOURTH DEFENSE
(Statute of Limitations)**

Plaintiff's claims are barred or limited in whole or in part by the applicable statute of limitations and to the extent that they have failed to comply with the applicable statute of limitations, including but not limited to the two-year statute of limitations under the FLSA and three-year statute of limitations under the PMWA.

**FIFTH DEFENSE
(No Liquidated/Treble Damages)**

Even if Defendant had violated the FLSA or PMWA, which is expressly denied, Plaintiff would not be entitled to liquidated damages or treble damages because Defendant acted at all times in good faith and neither knew that its conduct violated the FLSA or PMWA, nor showed reckless disregard for whether its conduct violated the FLSA or PMWA. Furthermore, to the extent applicable, which is expressly denied, Defendant asserts that the issue of liquidated damages, attorneys' fees, and costs are issues for the Court and not the jury so that Plaintiff is not entitled to a jury trial on those issues.

**SIXTH DEFENSE
(No Willful Conduct)**

To the extent a violation of the FLSA occurred, which is specifically denied, Plaintiff's damages must be limited to a two-year period prior to the filing of the instant action, as Defendant's alleged conduct was not willful.

**SEVENTH DEFENSE
(Compliance with Applicable Law)**

Defendant's actions concerning Plaintiff were at all times reasonable, lawful, and made in good faith, and Defendant has, at all times relevant to this matter, complied with the requirements of the FLSA, PMWA, and other applicable law. Defendant invokes defenses, protections and

limitations of the FLSA and PMWA.

EIGHTH DEFENSE
(Accord and Satisfaction, Settlement, Release)

Accord and satisfaction, settlement, and release bars some or all of Plaintiff's claims.

NINTH DEFENSE
(Equitable Defense)

Plaintiff's Complaint is barred in whole or in part by the doctrines of estoppel, waiver, laches, and unclean hands.

TENTH DEFENSE
(All Wages Paid)

In the event the FLSA and/or the PMWA are implicated, the allegations in Plaintiff's Complaint, which are expressly denied, cannot meet the requirements necessary to establish a violation of the FLSA or PMWA including, without limitation, because they cannot establish that Defendant failed to pay wages due to Plaintiff or those similarly situated. Defendant has paid to Plaintiff all sums due to him under the FLSA and PMWA and Plaintiff has suffered no damages related to the claims set forth in the Complaint. Moreover, all or part of the overtime pay for which Plaintiff seeks compensation is *de minimis* or is otherwise non-compensable for purposes of the FLSA and PMWA.

ELEVENTH DEFENSE
(Reservation of Rights)

Defendant reserves the right to rely upon such further other and affirmative defenses as further discovery or other developments in this litigation warrant.

REQUEST FOR RELIEF

WHEREFORE, having answered Plaintiff's Complaint, Defendant respectfully requests that the Court award Defendant the following:

1. Dismissal of Plaintiff's claims against Defendant, with prejudice;
2. Reasonable costs and attorneys' fees incurred in defending Plaintiff's claims; and
3. Any further relief deemed just and proper.

Respectfully submitted,

s/Sidney R. Steinberg
Sidney R. Steinberg, Esquire (54564)
Eric B. Meyer, Esquire (87969)
FISHERBROYLES, LLP
One Liberty Place
1650 Market Street
Philadelphia, PA 19103
Tel: (610) 806-5060
Sidney.Steinberg@fisherbroyles.com

Attorneys for Defendants

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