

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

ANTHONY CHUSS, Individually and on  
Behalf of All Other Persons Similarly Situated,

*Plaintiff,*

v.

REDNER'S MARKETS, INC., d/b/a  
REDNER'S

*Defendant.*

Civil Action No. 2:24-cv-04249

**ANSWER TO ORIGINAL  
COLLECTIVE AND CLASS ACTION  
COMPLAINT**

**INTRODUCTION**

Defendant Redner's Markets, Inc., d/b/a Redner's ("Redner's") by and through their undersigned counsel, respond to the allegations in Plaintiff's Collective and Class Action Complaint ("Complaint") as set forth below. To the extent any allegation in Plaintiff's Complaint is not expressly or specifically admitted, it is denied.

**NATURE OF THE ACTION**

1. Defendant admits that Plaintiff purports to bring a collective and class action against Defendant. Defendant denies there is any merit to the claims alleged or that Plaintiff or any collective or class member is entitled to damages and deny any remaining allegations in Paragraph 1 of the Complaint.

2. Defendant admits that this action seeks recovery under the PMWA Paragraph 2. Defendant denies there is any merit to the claims alleged or that Plaintiff or any collective or class member is entitled to damages and deny any remaining allegations in Paragraph 2 of the Complaint.

**JURISDICTION AND VENUE**

3. Denied as a conclusion of law to which no responsive pleading is required.
4. Denied as a conclusion of law to which no responsive pleading is required.
5. Admitted.
6. Denied as a conclusion of law to which no responsive pleading is required.

**THE PARTIES**

7. Admitted, on information and belief.
8. Admitted.
9. Denied.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Denied.

**FACTUAL ALLEGATIONS**

20. Defendant admits employing Plaintiff as a DM but denies that with regard to the putative class members, regardless of who Plaintiff purports to bring this action on behalf of, there is no basis to certify a collective action, and thus denies the allegation in Paragraph 20 of the Complaint.

21. It is admitted that Defendant maintains control, oversight, and discretion over the operation of its retail grocery stores, including the employment of Plaintiff. Defendant denies allegations with respect to a punitive Collective and Pennsylvania Class for the reason that there is no basis to certify a class action in this matter.

22. It is admitted that Plaintiff performed work that was integrated into the normal course of Defendant's business. Defendant denies allegations with respect to a punitive Collective and Pennsylvania Class for the reason that there is no basis to certify a class action in this matter.

23. It is admitted that Plaintiff regularly, but not always, worked in excess of 40 hours per work week. It is denied that Defendant was obligated to compensate Plaintiff with "premium overtime wages." Defendant denies allegations with respect to a punitive Collective and Pennsylvania Class for the reason that there is no basis to certify a class action in this matter.

24. It is admitted that Plaintiff regularly, but not always, worked in excess of 40 hours per work week. It is denied that Defendant failed to make all payments to Plaintiff for work performed by Plaintiff. It is specifically denied that the Plaintiff is owed overtime premiums for hours worked in excess of 40.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Admitted.

31. Denied.

32. Denied

- 33. Denied
- 34. Denied.
- 35. Denied in all subparts.
- 36. Denied.
- 37. Denied.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

- 38. Denied.
- 39. Denied.
- 40. Denied.
- 41. Denied.

**PENNSYLVANIA CLASS ALLEGATIONS**

42. It is admitted that Plaintiff seeks to pursue an action as described in Paragraph 42. It is denied that Defendant is owed any monies under the PMWA or that there is a basis to certify a class action and thus denies the allegations of Paragraph 42.

- 43. Denied.
- 44. Denied.
- 45. Denied.
- 46. Denied.

**FIRST CAUSE OF ACTION**  
**(FLSA: UNPAID OVERTIME WAGES)**  
**(Brought on Behalf of Plaintiff and All Collective Action Members)**

47. Defendant incorporates by reference the responses to Paragraphs 1 through 46 above, as though they are set forth at length herein.

- 48. Admitted.
- 49. Admitted.

- 50. Denied.
- 51. Denied.
- 52. Admitted.
- 53. Denied.
- 54. Denied.
- 55. Denied.
- 56. Denied.
- 57. Denied.
- 58. Denied.
- 59. Denied.

**SECOND CAUSE OF ACTION**  
**(PMWA: UNPAID OVERTIME WAGES)**  
**(Brought on Behalf of Plaintiff and the Pennsylvania Class)**

60. Defendant incorporates by reference the responses to Paragraphs 1 through 60 above, as though they are set forth at length herein.

61. It is admitted that Plaintiff was an employee of Defendant within the meaning of the PMWA. With respect to those Plaintiffs purports to bring this action on behalf of, there is no basis to certify collective action, and thus Defendant denies the allegations of Paragraph 61 of the Complaint as to purported class members.

- 62. Admitted.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. Denied.
- 67. Denied.

**DEFENDANT’S AFFIRMATIVE DEFENSES**

In asserting these defenses, Defendant does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff’s burden to prove. Defendant has not completed its investigation of the facts of this case, have not completed discovery in this matter, and have not completed their preparation for trial. Defendant does not presently know all the facts and circumstances respecting Plaintiff’s claims and therefore reserves the right to amend this Answer should Defendant later discover facts demonstrating the existence of additional defenses.

**FIRST AFFIRMATIVE DEFENSE**

Neither the Complaint nor any cause of action set forth in the Complaint states a cause of action against Defendant or facts sufficient to constitute a cause of action against Defendant. On information and belief, the claims of alleged collective/class members fail for the same reason.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff’s claims are not representative of the claims of the members of the representative group he claims to represent. On information and belief, the claims of putative collective/class members fail for the same reason.

**THIRD AFFIRMATIVE DEFENSE**

The types of claims alleged by Plaintiff on behalf of himself and the alleged collective/class which he purports to represent, the existence of which is expressly denied, are matters in which individual questions predominate and, accordingly, are not appropriate for class or collective treatment.

**FOURTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff and the alleged putative collective/class are barred to the extent they exceed the statute of limitations under the FLSA, the PMWA or any other applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff and the alleged putative collective/class plaintiffs were paid all compensation to which they were entitled for their services.

**SIXTH AFFIRMATIVE DEFENSE**

To the extent that a court holds that Plaintiff and/or the putative collective/class members are entitled to any damages, Defendants are entitled to an offset for any overpayments of wages to Plaintiff and/or the putative collective/class members for work never actually performed, or any damages incurred by Defendants as a result of Plaintiff's and/or putative collective/class members' own acts or omissions.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's and/or the putative collective/class members' claims are barred, in whole or in part, pursuant to accord and satisfaction.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's and/or the putative collective/class members' claims are barred to the extent that Defendant and Plaintiff and/or the putative collective/class members entered into a Mandatory Arbitration Agreement where they agreed that they will arbitrate claims of the nature being made in this case; and further that they will not assert or participate in collective or class actions against each other in arbitration or any other forum.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's and the alleged putative collective/class plaintiffs' claim for liquidated damages under the FLSA is barred because Defendant's actions were in good faith and they had reasonable grounds for believing their actions did not violate the FLSA.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff cannot satisfy the requirements of a collective action under the FLSA and some or all of the claims asserted in the Complaint are barred because Plaintiff is not similarly situated to the alleged class he purports to represent, the existence of which is expressly denied.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's class claim under the PMWA is barred because he cannot satisfy the numerosity requirement.

**TWELFTH AFFIRMATIVE DEFENSE**

Defendant at all times acted in good faith and with reasonable grounds for believing they had complied with the FLSA and state laws and Plaintiff has failed to plead facts sufficient to support the recovery of such damages on behalf of the alleged collective/class.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Prejudgment interest is not recoverable under the FLSA or PMWA in this case because liquidated damages are sought and awarding such relief would amount to double recovery.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff lacks standing to pursue the claims for relief in the Complaint on behalf of some or all of the putative class/collective members.



**FIFTEENTH AFFIRMATIVE DEFENSE**

Without admitting and specifically denying that Defendant owes a duty to Plaintiff, Defendant asserts that Plaintiff's Complaint, and each purported cause of action contained therein, is barred to the extent Defendant did not have actual or constructive knowledge, or had no reason to know, about, any alleged failure to pay wages allegedly suffered by Plaintiff or any other purportedly similarly situated current or former employees. Plaintiff, therefore, did not provide Defendant with an opportunity to correct any alleged violations and then provide the appropriate remedy, if any, to Plaintiff and/or putative collective/class prior to the litigation.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint is barred to the extent that Plaintiff and/or the putative collective/class members cannot allege any facts showing that Defendant, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays the wages, overtime wages or premium wages due an employee, willfully, knowingly and intentionally violated the provisions of FLSA or the PMWA.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Defendants deny any wrongdoing on their part and expressly deny that Plaintiff has been damaged as alleged, assert that if Plaintiff or the alleged putative collective/class members worked any unpaid hours, which Defendants expressly deny, such hours worked by Plaintiff and/or the putative collective/class members for which Plaintiff seeks restitution were de minimis and do not qualify as compensable hours worked pursuant to the FLSA and/or any other applicable law.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

To the extent that it seeks punitive or exemplary damages, the Complaint violates Defendants' rights to procedural and substantive due process under the Fourteenth Amendment to

the United States Constitution and under the Constitution of each State where putative collective/class members reside.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff unreasonably delayed in the investigation and prosecution of his claims alleged in the Complaint. Such delay is to the detriment and prejudice of the Defendants. Therefore, Plaintiff is barred from recovery against the Defendants by virtue of the doctrine of laches. On information and belief, the claims of alleged collective/class members fail for the same reason.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff and/or the putative collective/class members have engaged in conduct that bars the claims for relief in the Complaint, in whole or in part, by the doctrine of unclean hands.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff and/or the putative collective/class members are estopped by their conduct to assert any cause of action against Defendants.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because he and/or the putative collective/class members failed to mitigate their alleged damages.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Defendants reserve the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation and discovery, which is ongoing.

**PRAYER FOR RELIEF**

**WHEREFORE**, having fully answered and responded to the allegations contained in Plaintiff's Complaint, Defendants hereby pray as follows:

(a) Plaintiff shall take nothing from his Complaint, and the Complaint be dismissed, with prejudice;

- (b) That judgment be entered in favor of Redner's and against Plaintiff on all causes of action;
- (b) That Redner's be awarded the costs and expenses of this action; and
- (c) That Redner's be awarded such other and further relief as is equitable and just.

*/s/ Randall C. Schauer*

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*Counsel for Redner's Markets, Inc.*

Dated: October 25, 2024

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by cooperation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of electronic filing. Parties may view and download this filing through the Court's CM/ECF System.

*/s/ Randall C. Schauer* \_\_\_\_\_  
Randall C. Schauer, Esq.