UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DAWN NICOSIA, Individually and on Behalf of All Other Persons Similarly Situated,

Plaintiff,

vs.

HY-VEE, INC.,

Defendant.

Court File No. 4:26-cv-00259-SHL-SBJ

ANSWER AND AFFIRMATIVE AND ADDITIONAL DEFENSES TO PLAINTIFF'S COLLECTIVE AND CLASS ACTION COMPLAINT AND AFFIRMATIVE AND ADDITIONAL DEFENSES

Defendant Hy-Vee, Inc. ("Defendant" or "Hy-Vee"), as and for its Answer and Affirmative and Additional Defenses to the Collective and Class Action Complaint (Dkt. 1) of Plaintiff Dawn Nicosia ("Plaintiff"), states and alleges as follows:

INTRODUCTION

To the extent Plaintiff's introductory paragraph sets forth conclusions of law, no response is required. To the extent a response is required, Defendant admits that Plaintiff purports to bring this action pursuant to the Fair Labor Standards Act ("FLSA"), and the Illinois Minimum Wage Act ("IMWL") to address alleged overtime violations, but denies any legal wrongdoing and that Plaintiff is entitled to any relief whatsoever. Defendant denies all remaining allegations in Plaintiff's introductory paragraph.

NATURE OF THE ACTION

1. Paragraph 1 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiff purports to bring this action under the FLSA to recover, among other things, alleged unpaid overtime under various statutes on behalf of various exempt management-level employees, but Defendant denies all legal

wrongdoing and denies that Plaintiff and any putative collective member is entitled to any relief whatsoever. Defendant denies all remaining allegations in Paragraph 1 of the Complaint.

2. Paragraph 2 sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiff purports to bring this action on a class basis under various state laws to recover, among other things, alleged unpaid overtime and related monies on behalf of various exempt management-level employees. Defendant denies all legal wrongdoing and denies that Plaintiff and any putative class member is entitled to any relief whatsoever. Defendant denies all other allegations in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Paragraph 3 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits this Court has jurisdiction over the claims in this action. Defendant denies all remaining allegations in Paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this Court.

5. Defendant admits the allegations in Paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits federal district courts are empowered to issue declaratory judgments, but denies Plaintiff is entitled to a declaratory judgment or any other form of relief whatsoever. Defendant denies all remaining allegations in Paragraph 6 of the Complaint.

THE PARTIES

7. Defendant admits, upon information and belief, that Plaintiff resides in the State of Illinois. Defendant denies all other allegations in Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it employed Plaintiff as Bakery Department Manager at one of its Peoria, Illinois location from January 22, 2024, to May 6, 2025.

9. Paragraph 9 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits Plaintiff and other individuals appear to have consented in writing to join the action. Defendant denies all remaining allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Paragraph 11 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it is an employer within the meanings of the FLSA and IMWL.

12. Paragraph 12 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it is an enterprise as defined under Section 3(r) of the FLSA.

13. Paragraph 13 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits the allegations in Paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiff and the putative collective members, during their employment with Defendant, were engaged in commerce or in the production of goods for commerce.

15. Defendant admits the allegations in Paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it employed Plaintiff and all Department Managers ("DMs"). Defendant denies all other allegations in Paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits that it classified Plaintiff as an exempt employee and paid Plaintiff a salary for all hours worked. Defendant denies all remaining allegations in Paragraph 17 of the Complaint.

FACTUAL ALLEGATIONS

18. Paragraph 18 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it employed Plaintiff and the putative collective and class members. Defendant denies all remaining allegations in Paragraph 18 of the Complaint.

19. Defendant admits the allegations in Paragraph 19 of the Complaint.

20. Defendant admits Plaintiff and the putative class or collective members performed work that was integrated into the normal course of its business. Defendant denies all other allegations in Paragraph 20 of the Complaint.

21. Paragraph 21 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits that it classified Plaintiff as an exempt employee and paid Plaintiff a salary for all hours worked. Defendant denies all remaining allegations in Paragraph 21 of the Complaint.

22. Defendant admits that it classified Plaintiff as an exempt employee and paid Plaintiff a salary for all hours worked. Defendant denies all remaining allegations in Paragraph 22 of the Complaint.

23. Defendant denies all allegations in Paragraph 23 of the Complaint.

24. Defendant denies all allegations in Paragraph 24 of the Complaint.

25. Defendant denies all allegations in Paragraph 25 of the Complaint.

26. Defendant denies all allegations in Paragraph 26 of the Complaint.

27. Defendant denies all allegations in Paragraph 27 of the Complaint.

28. Defendant denies all allegations in Paragraph 28 of the Complaint.

29. Defendant denies all allegations in Paragraph 29 of the Complaint.

30. Defendant denies all allegations in Paragraph 30 of the Complaint.

31. Defendant denies all allegations in Paragraph 31 of the Complaint.

32. Paragraph 32 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 32 of the Complaint.

33. Paragraph 33 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 34 of the Complaint.

35. Paragraph 35 of the Complaint (including subparts a through d) set forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 35 of the Complaint and each subpart.

36. Paragraph 36 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 36 of the Complaint.

37. Paragraph 37 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 37 of the Complaint.

38. Paragraph 38 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 38 of the Complaint.

FLSA COLLECTIVE ACTION ALLEGATIONS

39. Paragraph 39 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits Plaintiff purports to bring her FLSA claim as a collective action. Defendant denies all other allegations in Paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 40 of the Complaint.

41. Paragraph 41 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 41 of the Complaint.

42. Paragraph 42 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 42 of the Complaint.

ILLINOIS SUPPLEMENTAL STATE LAW AND CLASS ALLEGATIONS

43. Paragraph 43 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits Plaintiff seeks to represent a Rule 23 class of employees for alleged violations of the IMWL.

44. Paragraph 44 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 44 of the Complaint.

45. Paragraph 45 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 45 of the Complaint.

46. Paragraph 46 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 47 of the Complaint.

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

48. Defendant restates its responses to the allegations contained in Paragraphs 1 through 47 of the Complaint as if fully set forth herein.

49. Paragraph 49 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits the allegations in Paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it employed Plaintiff and the putative collective members. Defendant denies all other allegations in Paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 52 of the Complaint.

53. Paragraph 53 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 54 of the Complaint.

55. Paragraph 55 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 55 of the Complaint.

56. Paragraph 56 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 56 of the Complaint.

57. Paragraph 57 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 58 of the Complaint and further denies Plaintiff or any putative collective member is entitled to any relief whatsoever.

59. Paragraph 59 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 59 of the Complaint.

SECOND CAUSE OF ACTION
(IMWL: UNPAID OVERTIME WAGES)
(Brought on Behalf of Plaintiff, all Individuals Who Join or are Joined to the Action, and the Illinois Class)

60. Defendant restates its responses to the allegations contained in Paragraphs 1 through 58 of the Complaint as if fully set forth herein.

61. Defendant admits Plaintiff and other individuals purport to assert IMWL claims in this case. Defendant denies all other allegations in Paragraph 61 of the Complaint.

62. Paragraph 62 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant admits it was an employer and employed Plaintiff and the putative class members at times during the Relevant Time Period, as defined in Plaintiff's Complaint. Defendant denies all other allegations in Paragraph 62 of the Complaint.

63. Paragraph 63 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 63 of the Complaint.

64. Paragraph 64 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 64 of the Complaint.

65. Paragraph 65 of the Complaint sets forth conclusions of law to which no response is required. To the extent a response is required, Defendant denies all allegations in Paragraph 65 of the Complaint and further denies that Plaintiff or any Illinois Class Member is entitled to any relief whatsoever.

66. Plaintiff's PRAYER FOR RELIEF and WHEREFORE provision contains allegations to which a response is not required, but to the extent that a response may be required, Defendant denies that Plaintiff is entitled to any relief whatsoever and further denies that it has committed any unlawful or wrongful act with respect to Plaintiff or any putative class or collective member.

67. Unless otherwise and expressly admitted or otherwise qualified in this Answer, Defendant denies each and every allegation contained in Plaintiff's Complaint.

DEMAND FOR TRIAL BY JURY

Defendant admits that Plaintiff seeks a trial by jury but denies any issue of material fact exists that would preclude the grant of summary judgment in favor of Defendant.

AFFIRMATIVE AND ADDITIONAL DEFENSES

Defendant asserts the following affirmative and additional defenses to Plaintiff's claims, which may also apply to the claims of the individuals Plaintiff seeks to represent, although Plaintiff is not similarly situated to any other individuals. For any individual other than Plaintiff who is part

of the putative class or collective or who files a consent to join in this action, Defendant reserves the right to assert any of these or any additional defenses as to each such individual. By asserting these defenses, Defendant does not concede it has the burden of proof as to any such defense and does not hereby assume any such burden. To the extent any defenses or legal theories asserted herein may be interpreted as being inconsistent, such defenses or legal theories are pleaded in the alternative. Defendant also reserves the right to raise any and all other defenses that may become evident during discovery and during any other proceedings in this action. Subject to and without waiving the foregoing, Defendant states:

1. Plaintiff's Complaint fails in whole or in part to state a claim upon which relief may be granted.

2. Plaintiff was exempt from overtime pursuant to 29 U.S.C. § 213(a)(1) and Illinois law, including, but not limited to, the executive, administrative, or other exemptions, and as such any claims for unpaid overtime are meritless.

3. Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations, including that of the FLSA and the IMWL. Specifically, the statute of limitation under the FLSA is two years, unless the cause of action arose out of a willful violation. 29 U.S.C. § 255. Plaintiff's claims do not arise out of a willful violation, so the applicable statute of limitations under the FLSA is two years prior to the filing of the Complaint as to Plaintiff and two years prior to filing of each other party-plaintiff's notice of consent.

4. To the extent Defendant is found to have violated the IMWL (or any other state law), such violation was not dilatory or unjust.

5. To the extent Defendant is found to have violated the IMWL (or any other state law), Plaintiff is not entitled to collect treble damages because Defendant's actions were not taken in bad faith.

6. Throughout her employment, Plaintiff was paid on a salary basis for all hours worked, with the clear, mutual understanding that her salary was compensation for all hours worked each week. By accepting the regular salary for all hours worked, even if found to be entitled to overtime pay, which Defendant expressly denies, Plaintiff would be entitled to no more than one-half her regular rate of pay in that workweek for any overtime hours worked during that workweek. Thus the "half time" overtime premium is the only potential measure of compensatory damages for her claims under the FLSA or any state law.

7. Plaintiff's claims are barred to the extent Plaintiff failed to perform her respective duties and/or failed to perform those duties which Defendant realistically expected her to perform.

8. Plaintiff cannot satisfy the requirements of a collective action under the FLSA, and some or all claims asserted are barred because Plaintiff is not similarly situated to the group of individuals Plaintiff seeks to represent under 29 U.S.C. § 216(b), and because the individuals Plaintiff seeks to represent are not similarly situated to one another.

9. The claims of Plaintiff and the individuals she seeks to represent are barred, in whole or in part, by the provisions of Section 10 of the Portal-to-Portal Act, 29. U.S.C. § 259, because actions taken in connection with Plaintiff's compensation and/or the compensation of the individuals Plaintiff seeks to represent were done in good faith in conformity with and reliance upon written administrative regulations, orders, rulings, approvals, interpretations, and written and unwritten administrative practices or enforcement policies of the Administrator of the Wage and Hour Division of the United State Department of Labor, under 29 U.S.C. § 259.

10. The claims of Plaintiff and the individuals she seeks to represent are barred, in whole or in part, by the provisions of Section 11 of the Portal-to-Portal Act, 29. U.S.C. § 260, because any acts or omissions giving rise to this action were done in good faith and with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA. Accordingly, the Court should exercise its discretion to eliminate and/or reduce any potential award of liquidated damages under 29 U.S.C. § 60.

11. Even if Plaintiff prevailed on any or all of her claims (which she cannot), Plaintiff and/or members of the putative collective action are not entitled to an award of any damages that are not authorized for FLSA claims, including but not limited to pre-judgment or post-judgment interest.

12. The claims of Plaintiff and the individuals Plaintiff seeks to represent are barred, in whole or in part, by Section 4 of the Portal-to-Portal Act, 29 U.S.C. § 254(a) as to all hours during which they were engaged in activities preliminary, postliminary, or incidental to their principal duties or activities.

13. Plaintiff's claims are barred in whole or in part, to the extent any activities Plaintiff and/or the individuals Plaintiff seeks to represent may have performed were (a) not compensable work, or (b) barred by the doctrine of *de minimis non curat lex.*

14. Plaintiff's Complaint, and each of the purported claims contained therein, are barred because Plaintiff is not an adequate and proper representative of the individuals Plaintiff seeks to represent, and she lacks standing to raise some or all of the claims on behalf of herself and/or some or all of the putative collective action members.

15. The class allegations should be dismissed because independent and individual analyses of Plaintiff and the putative class members' claims and Defendant's defenses to such claims are required.

16. For purposes of preserving the defense pending discovery, if Plaintiff or any of the individuals Plaintiff seeks to represent file or have filed for bankruptcy and fail or have failed to disclose with the bankruptcy court either (1) unpaid wages as an amount owed to them, or (2) employment disputes giving rise to a claim seeking monetary damages, they may be barred from pursuing their wage and/or employment claims under the doctrine of judicial estoppel and for lack of standing.

17. The Complaint is barred, in whole or in part, by the doctrines of issue preclusion and/or claim preclusion to the extent that Plaintiff and some or all of the individuals she seeks to represent have litigated issues raised by the Complaint prior to adjudication of those issues in the instant action.

18. Defendant's defenses above are likewise asserted as defenses to the claims of any and all members of any collective or class action that may be (but should not be) certified in this case.

19. Defendant has not had an opportunity to conduct a full and sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Defendant intends to act expediently to inform itself of the pertinent facts and prevailing circumstances surrounding any claimed damages and hereby gives notice of its intent to assert any affirmative defense or allegation of fact that this information-gathering process may indicate are supported by law.

20. Plaintiff's claims fail to the extent she seeks damages for unearned wages, because Plaintiff has been compensated for all wages earned.

WHEREFORE, Defendant Hy-Vee, Inc. respectfully requests the Court grant the following relief:

1. Judgment be entered dismissing Plaintiff's Complaint on the merits and with prejudice;

2. Awarding Defendant its attorneys' fees, costs, and disbursements, as appropriate; and

3. Directing such other relief as the Court deems just and equitable.

Dated: July 20, 2026

/s/ Jeannie M. DeVeney

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Attorneys for Defendant

Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 20, 2026 by:

☐ Hand Delivered ☐ United States mail
☐ Federal Express ☒ Other (CM/ECF)

Signature: */s/ Jeannie M. DeVeney*