

The Honorable John C. Coughenour

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DONALD CARLSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNITED NATURAL FOODS, INC. and
SUPERVALU, INC.,

Defendants.

Case No. 3:20-cv-05476-JCC

**DEFENDANTS’ ANSWER TO
PLAINTIFF’S FIRST AMENDED
COMPLAINT**

Defendants United Natural Foods, Inc. (“UNFI”) and SUPERVALU INC. (“SUPERVALU”) (collectively, “Defendants”), by their attorneys and pursuant to Federal Rules of Civil Procedure 8 and 12, hereby file their Answer to Plaintiff Donald Carlson’s First Amended Complaint (“Amended Complaint”) as follows:

PRELIMINARY STATEMENT

AMENDED COMPLAINT ¶1:

This is an action brought pursuant to the Fair Labor Standards Act of 1938, §§ 201, *et seq.* (“FLSA”) and Washington state law seeking payment of back wages, including overtime compensation. Plaintiff, individually and on behalf of the Classes defined below, also seeks liquidated damages, exemplary damages, attorneys’ fees and costs, and all other relief the Court deems proper.

1 **ANSWER:**

2 Defendants admit that Plaintiff purports to bring an action under the FLSA and Washington
3 state law seeking payment of back wages, including overtime compensation. Defendant further
4 admits that Plaintiff purports, individually and on behalf of the classes defined in his Amended
5 Complaint, to seek liquidated damages, attorneys' fees, costs, and all other relief the Court deems
6 proper. Defendants deny, however, that the claims asserted in Plaintiff's Amended Complaint
7 have merit, that Plaintiff asserts any claims on behalf of any class or collective that may be properly
8 certified, and that Plaintiff has the authority to seek damages on behalf of any other individual
9 under the FLSA. Defendants deny all remaining allegations in Paragraph 1.

10 **AMENDED COMPLAINT ¶2:**

11 Plaintiff alleges that Defendants knowingly and improperly misclassified him and other
12 similarly situated employees as exempt employees, and, as a result, did not pay overtime compensation
13 to them for hours worked in excess of forty (40) in a workweek.

14 **ANSWER:**

15 Defendants deny the allegations in Paragraph 2.

16 **AMENDED COMPLAINT ¶3:**

17 Plaintiff further alleges that after UNFI reclassified Plaintiff and other similarly situated
18 employees as non-exempt, UNFI suffered and permitted those employees to work off the clock and
19 failed to pay them any compensation for unrecorded overtime hours.

20 **ANSWER:**

21 Defendants deny the allegations in Paragraph 3.

22 **JURISDICTION AND VENUE**

23 **AMENDED COMPLAINT ¶4:**

24 This action arises under the FLSA, 29 U.S.C. §§ 201-219. As a federal law claim, the Court
25 has original jurisdiction to hear this complaint and to adjudicate the claims stated herein pursuant
26 to 28 U.S.C. § 1331.

1 **ANSWER:**

2 Defendants admit that Plaintiff asserts claims under the FLSA, which is a federal law, and
3 that the Court therefore has subject matter jurisdiction over Plaintiff's FLSA claim. Defendants
4 deny, however, that Plaintiff's claims have merit and deny all remaining allegations in Paragraph
5 4.

6 **AMENDED COMPLAINT ¶5:**

7 This Court has supplemental jurisdiction over Plaintiff's Washington state law claims
8 under 28 U.S.C. § 1367 because the state law claims share a common nucleus of operative facts
9 with the federal law claim.

10 **ANSWER:**

11 Defendants admit that this Court has supplemental subject matter jurisdiction over
12 Plaintiff's Washington state law claims under 28 U.S.C. § 1367. Defendants deny, however, that
13 Plaintiff's Washington state law claims have any merit and deny all remaining allegations in
14 Paragraph 5.

15 **AMENDED COMPLAINT ¶6:**

16 Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because
17 Defendants maintain offices in this judicial district and because a substantial part of the events giving
18 rise to the claims occurred in this district.

19 **ANSWER:**

20 Defendants admit that venue is proper for Plaintiff's claims in the Western District of
21 Washington. Defendants further admit that UNFI maintains an office in this judicial district.
22 Defendants deny all remaining allegations in Paragraph 6.

PARTIES

AMENDED COMPLAINT ¶7:

Plaintiff is an individual who resides in McKenna, Washington. Plaintiff has been employed by Defendants since approximately September 2010. In accordance with 29 U.S.C. § 216(b), Plaintiff has consented to be a plaintiff in this action. *See* Dkt. Nos. 1, 32, 32-1.

ANSWER:

Defendants are without information sufficient to admit or deny the allegations in the first sentence of Paragraph 7, and therefore deny the same. Defendants admit that Plaintiff has consented to be a plaintiff in this action, but deny that he did so at all of the docket numbers cited by Plaintiff. Defendants deny all remaining allegations in Paragraph 7.

AMENDED COMPLAINT ¶8:

Defendant SuperValu is a registred [sic] Delaware corporation with its corporate headquarters located at 11840 Valley View Rd, Eden Prairie, Minnesota 55344. Defendant SuperValu is registered to conduct business in Washington, and maintains its Registered Agent at 711 Capitol Way S, Suite 204, Olympia, Washington 98501.

ANSWER:

Defendants admit the allegations in Paragraph 8.

AMENDED COMPLAINT ¶9:

Defendant UNFI is a registered Delaware corporation and is headquartered at UNFI's corporate office located at 313 Iron Horse Way, Providence, Rhode Island 02908. Defendant maintains distribution centers across Washington, is registered to conduct business in Washington, and maintains its Registered Agent at 711 Capitol Way S, Suite 204, Olympia, Washington 98501.

ANSWER:

Defendants admit that UNFI is a registered Delaware corporation; is headquartered at 313 Iron Horse Way, Providence Rhode Island 02908; maintains a distribution center in Washington; is registered to conduct business in Washington; and maintains a registered agent at 711 Capitol

1 Way S, Suite 204, Olympia, Washington 98501. Defendants deny all remaining allegations in
2 Paragraph 9.

3 **AMENDED COMPLAINT ¶10:**

4 In or around October 2018, Defendant UNFI completed an acquisition of Defendant
5 SuperValu, which then became a wholly-owned subsidiary of UNFI.

6 **ANSWER:**

7 Defendants admit the allegations in Paragraph 10.

8 **AMENDED COMPLAINT ¶11:**

9 Defendant SuperValu employed Plaintiff from September 2010 to approximately October
10 2018 in its International Division. Since its acquisition of SuperValu, Defendant UNFI has
11 employed Plaintiff until August 2020.

12 **ANSWER:**

13 Defendants deny the allegations in Paragraph 11.

14 **AMENDED COMPLAINT ¶12:**

15 During his employment with SuperValu, Plaintiff worked out of SuperValu's Tacoma,
16 Washington office. After UNFI acquired SuperValu, UNFI transferred Plaintiff to UNFI's distribution
17 site in Centralia, Washington, where he worked until August 2020.

18 **ANSWER:**

19 Defendants admit that Plaintiff worked out of the Tacoma, Washington distribution center.
20 Defendants further admit that, at some time after UNFI acquired SUPERVALU, Plaintiff was
21 transferred to the distribution center in Centralia, Washington. Defendants deny all remaining
22 allegations in Paragraph 12.

23 **AMENDED COMPLAINT ¶13:**

24 Throughout his employment, Plaintiff routinely performed non-exempt customer account
25 coordination activities (i.e., coordinating the loading and unloading of food containers; assisting
26

1 with the logistics of transporting goods to the domestic distribution centers; facilitating customer
2 returns; and completing inventory and logistics-related paperwork and data entry).

3 **ANSWER:**

4 Defendants deny the allegations in Paragraph 13.

5 **AMENDED COMPLAINT ¶14:**

6 At all times material to this action, Defendants have employed individuals engaged in
7 commerce or in the production of goods for commerce and/or handling, selling, or otherwise
8 working on goods or materials that have been moved in or produced in commerce by any person,
9 as defined by the FLSA, 29 U.S.C. §§ 206-207.

10 **ANSWER:**

11 Defendants admit the allegations in Paragraph 14.

12 **AMENDED COMPLAINT ¶15:**

13 Defendants' annual gross volume of sales made or business done exceeds \$500,000.

14 **ANSWER:**

15 Defendants admit that their or their subsidiaries' gross volume of sales exceeds \$500,000.
16 Defendants deny the remaining allegations in Paragraph 15.

17 **AMENDED COMPLAINT ¶16:**

18 Defendants are not independently owned and controlled local enterprises within the meaning
19 of 29 U.S.C. § 207(b)(3).

20 **ANSWER:**

21 Defendants admit the allegation in Paragraph 16.

22 **COLLECTIVE AND CLASS DEFINITIONS**

23 **AMENDED COMPLAINT ¶17:**

24 Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf
25 of himself and the following collective of potential FLSA opt-in litigants:
26

1 All current or former employees of SuperValu or UNFI in the United States who at
2 any time between September 2017 and February 2020 performed customer account
3 coordination activities while classified as exempt from overtime laws (the “FLSA
Collective”).

4 **ANSWER:**

5 Defendants admit that Plaintiff purports to bring a collective action on behalf of himself
6 and the FLSA Collective, as defined in Paragraph 17. Defendants deny, however, that such
7 collective may be properly certified and deny all remaining allegations in Paragraph 17.

8 **AMENDED COMPLAINT ¶18:**

9 The statute of limitations for each member of the FLSA Collective was tolled from August
10 26, 2020 to February 5, 2021, a period of 163 days.

11 **ANSWER:**

12 Defendants admit that they entered into a tolling agreement with Plaintiff on August 26,
13 2020. Defendants deny, however, that Plaintiff’s proposed collective was defined identically at
14 the time, and therefore deny the remaining allegations in Paragraph 18.

15 **AMENDED COMPLAINT ¶19:**

16 Plaintiff also brings this lawsuit for Counts II to V as a class action pursuant to Fed. R. Civ.
17 P. 23, on behalf of himself and the following class:

18 All current or former employees of SuperValu and UNFI in Washington state who
19 at any time between March 2016 and February 2020 performed customer account
20 coordination activities while classified as exempt from overtime laws (the
“Washington Class”).

21 **ANSWER:**

22 Defendants admit that Plaintiff purports to bring a class action on behalf of himself and the
23 Washington Class, as defined in Paragraph 19. Defendants deny, however, that such class may be
24 properly certified and deny all remaining allegations in Paragraph 19.

1 **AMENDED COMPLAINT ¶20:**

2 The FLSA Collective and the Washington Class are together referred to as the “Classes,”
3 and the members of the Classes are referred to collectively as “Class Members.”

4 **ANSWER:**

5 Defendants admit that Plaintiff refers to the FLSA Collective and Washington Class
6 together as the “Classes,” and to the alleged members of the same as “Class Members.”
7 Defendants deny, however, that the “Classes” may be properly certified and deny all remaining
8 allegations in Paragraph 20.

9 **AMENDED COMPLAINT ¶21:**

10 Plaintiff reserves the right to re-define the Classes prior to notice or class certification, and
11 thereafter, as necessary.

12 **ANSWER:**

13 Defendants admit that Plaintiff purports to reserve the right to redefine the Classes, but
14 denies that Plaintiff can establish that certification is warranted or that notice should issue.
15 Defendants deny all remaining allegations in Paragraph 21.

16 **FACTUAL ALLEGATIONS**

17 **AMENDED COMPLAINT ¶22:**

18 SuperValu is a food wholesaler and retailer that supplies its own grocery store brands as well as
19 those of other food retailers, including by importing food from outside the United States.

20 **ANSWER:**

21 Defendants admit the allegations in Paragraph 22.

22 **AMENDED COMPLAINT ¶23:**

23 UNFI is a wholesale food and meat distributor of bulk foods and products for the grocery stores
24 within its chain. UNFI delivers products to customer locations throughout North America including
25 natural product superstores, independent retailers, conventional supermarket chains, ecommerce
26

1 retailers, and food service customers. *See* About Us, <https://www.supervalu.com/about.html> (last
2 visited May 7, 2020).

3 **ANSWER:**

4 Defendants deny the allegations in Paragraph 23.

5 **AMENDED COMPLAINT ¶24:**

6 On or about October 22, 2018, UNFI acquired Supervalu for “approximately \$2.9 billion,
7 including the assumption of outstanding debt and liabilities.” *See* UNFI Completes Transformative
8 Acquisition of SUPERVALU, dated October 22, 2018, *available at* [https://ir.unfi.com/news/press-](https://ir.unfi.com/news/press-release-details/2018/UNFI-Completes-Transformative-Acquisition-Of-SUPERVALU/default.aspx)
9 [release-details/2018/UNFI-Completes-Transformative-Acquisition-Of-SUPERVALU/default.aspx](https://ir.unfi.com/news/press-release-details/2018/UNFI-Completes-Transformative-Acquisition-Of-SUPERVALU/default.aspx)
10 (last visited May 7, 2020).

11 **ANSWER:**

12 Defendants admit the allegations in Paragraph 24.

13 **AMENDED COMPLAINT ¶25:**

14 UNFI and SuperValu operate as joint employers, with SuperValu operating as a wholly
15 owned subsidiary of UNFI.

16 **ANSWER:**

17 Defendants deny the allegations in Paragraph 25.

18 **AMENDED COMPLAINT ¶26:**

19 Combined with SuperValu, UNFI is the largest publicly-traded grocery distributor in America
20 with expected annual sales of over \$21 billion. *See* About Us, <https://www.supervalu.com/about.html>
21 (last visited May 7, 2020).

22 **ANSWER:**

23 Defendants admit that UNFI is the largest publicly-traded grocery distributor in America
24 and that its expected annual sales exceed \$21 billion. Defendants deny all remaining allegations
25 in Paragraph 26.

1 **AMENDED COMPLAINT ¶27:**

2 SuperValu hired Plaintiff as a Warehouse Coordinator in September 2010.

3 **ANSWER:**

4 Defendants deny the allegations in Paragraph 27.

5 **AMENDED COMPLAINT ¶28:**

6 From the time of his hire in September 2010, Plaintiff held several job titles, including, *inter*
7 *alia*, Warehouse Coordinator, Customer Care Coordinator–SVI, Operations Coordinator–SVI, and
8 Account Coordinator–Int’l.

9 **ANSWER:**

10 Defendants admit that Plaintiff held multiple job titles from the time of his hire through the
11 time of his termination, but deny that he did so with Defendants. Defendants deny the remaining
12 allegations in Paragraph 28.

13 **AMENDED COMPLAINT ¶29:**

14 Irrespective of the job title he held, Plaintiff’s job duties included customer account
15 coordination activities (i.e., coordinating the loading and unloading of food containers; assisting with
16 the logistics of transporting goods to the domestic distribution centers; facilitating customer returns;
17 and completing inventory and logistics-related paperwork and data entry).

18 **ANSWER:**

19 Defendants deny the allegations in Paragraph 29.

20 **AMENDED COMPLAINT ¶30:**

21 At no time during the relevant period did Plaintiff have subordinate employees who
22 reported to him or the power to hire or fire anyone.

23 **ANSWER:**

24 Defendants admit the allegations in Paragraph 30.
25
26

1 **AMENDED COMPLAINT ¶31:**

2 Before December 2019, Plaintiff worked in Tacoma, Washington at the SuperValu office
3 for international distribution.

4 **ANSWER:**

5 Defendants admit that, before December 2019, Plaintiff worked at the Tacoma,
6 Washington international distribution center. Defendants deny all remaining allegations in
7 Paragraph 31.

8 **AMENDED COMPLAINT ¶32:**

9 Plaintiff's regular work schedule was Monday through Friday, 3:00 a.m. to 1:00 p.m., with
10 an hour or two of additional work from home each day, for a total of 50-60 hours per week. With
11 the exception of weeks in which he took vacation days, Plaintiff is unable to recall a single
12 workweek in which he did not work more than 40 hours.

13 **ANSWER:**

14 Defendants deny the allegations in Paragraph 32.

15 **AMENDED COMPLAINT ¶33:**

16 Before February 2020, Defendants classified Plaintiff as an exempt employee and did not
17 pay him overtime wages.

18 **ANSWER:**

19 Defendants admit that, before February 2020, Plaintiff was classified as an exempt
20 employee and was not paid overtime wages, but deny that such classification was made by
21 Defendants. Defendants deny the remaining allegations in Paragraph 33.

22 **AMENDED COMPLAINT ¶34:**

23 Until approximately February 9, 2020, Plaintiff was paid an annual salary, starting at
24 \$38,430.

25

26

1 **ANSWER:**

2 Defendants admit that Plaintiff was paid an annual salary prior to February 9, 2020.
3 Defendants deny the remaining allegations in Paragraph 34.

4 **AMENDED COMPLAINT ¶35:**

5 Before the acquisition, SuperValu had substantial control over Plaintiff's working conditions
6 and the unlawful policies and practices alleged in this complaint.

7 **ANSWER:**

8 Defendants deny the allegations in Paragraph 35.

9 **AMENDED COMPLAINT ¶36:**

10 After the acquisition, UNFI had substantial control over Plaintiff's working conditions and the
11 unlawful policies and practices alleged in this complaint.

12 **ANSWER:**

13 Defendants deny the allegations in Paragraph 36.

14 **AMENDED COMPLAINT ¶37:**

15 On February 7, 2020, UNFI informed Plaintiff that, as part of a broader "Position Alignment,"
16 he was being reclassified as a non-exempt employee. Plaintiff's job duties remained the same after the
17 reclassification.

18 **ANSWER:**

19 Defendants admit that on or about February 7, 2020, Plaintiff was informed that he was
20 being classified as a non-exempt employee as part of position alignment. Defendants admit that a
21 number of Plaintiff's job duties remained the same after the reclassification. Defendants deny all
22 remaining allegations in Paragraph 37.

23 **AMENDED COMPLAINT ¶38:**

24 In February 2020, Defendants provided substantially similar letters to members of the
25 Classes and reclassified them as non-exempt employees. The job duties of these members
26 remained the same after the reclassification.

1 **ANSWER:**

2 Defendants admit that, in February 2020, letters were sent to some, but not all, employees
3 that reclassified them as non-exempt employees. Defendants admit that a number of those
4 individuals' job duties remained the same after the reclassification. Defendants deny all remaining
5 allegations in Paragraph 38.

6 **AMENDED COMPLAINT ¶39:**

7 Under the policy and practice of considering employees similar to Plaintiff as exempt,
8 SuperValu and subsequently UNFI, failed to pay overtime wages to Plaintiff and the Class
9 Members until at least February 9, 2020.

10 **ANSWER:**

11 Defendants deny the allegations in Paragraph 39.

12 **AMENDED COMPLAINT ¶40:**

13 Under the policy and practice of suffering and permitting off-the-clock work, UNFI failed to
14 pay Plaintiff and Class Members for all hours worked after February 9, 2020. UNFI required Plaintiff
15 and Class members to perform the same amount of work as before the reclassification but pressured
16 them to limit the number of overtime hours they recorded. As a result, Plaintiff and Class Members
17 regularly worked some overtime hours off the clock in the workweeks after February 9, 2020, and
18 UNFI failed to pay them for those hours.

19 **ANSWER:**

20 Defendants deny the allegations in Paragraph 40.

21 **AMENDED COMPLAINT ¶41:**

22 As a leading wholesaler and publicly traded company with access to human resources,
23 Defendants had no reasonable basis to believe that Plaintiff and the Classes were exempt from the
24 requirements of the FLSA and state laws. Rather, Defendants either knew or acted with reckless
25 disregard of clearly applicable wage and hour provisions in failing to pay overtime to Plaintiff and the
26

1 Class Members prior to February 9, 2020. Accordingly, Defendants operated a willful scheme to
2 deprive Plaintiff and the Classes of overtime compensation.

3 **ANSWER:**

4 Defendants deny the allegations in Paragraph 41.

5 **AMENDED COMPLAINT ¶42:**

6 Likewise, UNFI either knew or acted with reckless disregard of clearly applicable wage
7 and hour provisions in suffering and permitting Plaintiff and the Class Members to work off the
8 clock and in failing to pay them for all overtime hours worked after February 9, 2020.
9 Accordingly, UNFI operated a willful scheme to deprive Plaintiff and the Classes of overtime
10 compensation.

11 **ANSWER:**

12 Defendants deny the allegations in Paragraph 42.

13 **COLLECTIVE ACTION ALLEGATIONS**

14 **AMENDED COMPLAINT ¶43:**

15 Plaintiff brings Count I of this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action
16 on behalf of the FLSA Collective defined above.

17 **ANSWER:**

18 Defendants admit that Plaintiff purports to assert Count I pursuant to 29 U.S.C. § 216(b)
19 as a collective action on behalf of the FLSA Collective, as defined by Plaintiff, but denies that
20 Count I has merit. Defendants deny all remaining allegations in Paragraph 43.

21 **AMENDED COMPLAINT ¶44:**

22 Plaintiff desires to pursue his FLSA claims on behalf of all individuals who opt-in to this
23 action pursuant to 29 U.S.C. § 216(b).
24
25
26

1 **ANSWER:**

2 Defendants admit that Plaintiff purports to pursue his FLSA claims on behalf of all
3 individuals who opt into this action pursuant to 29 U.S.C. § 216(b), but denies that the effort has
4 any merit and denies that Plaintiff may pursue the claims of FLSA opt-ins on a representative basis.

5 **AMENDED COMPLAINT ¶45:**

6 Many individuals are similarly situated to Plaintiff because they performed customer
7 account coordination activities for Defendants between May 2017 and the present.

8 **ANSWER:**

9 Defendants deny the allegations in Paragraph 45.

10 **AMENDED COMPLAINT ¶46:**

11 Like Plaintiff, the primary job duties of the FLSA Collective Members involved only non-
12 exempt work consisting of, *inter alia*, coordinating the loading and unloading of food containers;
13 assisting with the logistics of transporting goods to the domestic distribution centers; facilitating with
14 customer returns; and completing inventory and logistics-related paperwork and data entry.

15 **ANSWER:**

16 Defendants deny the allegations in Paragraph 46.

17 **AMENDED COMPLAINT ¶47:**

18 Like Plaintiff, the FLSA Collective Members regularly worked more than 40 hours per
19 week within the applicable statutory period but either failed to receive any overtime compensation
20 or, after February 9, 2020, were not paid for all overtime hours worked.

21 **ANSWER:**

22 Defendants deny the allegations in Paragraph 47.

23 **AMENDED COMPLAINT ¶48:**

24 Until February 9, 2020, Defendants classified Plaintiff and each of the FLSA Collective
25 Members as exempt from wage and hours laws; paid them a fixed salary; and did not pay them
26 overtime compensation.

1 **ANSWER:**

2 Defendants deny the allegations in Paragraph 48.

3 **AMENDED COMPLAINT ¶49:**

4 At all times relevant, Defendants did not make, keep, or preserve adequate or accurate
5 records of the hours worked by Plaintiff or the FLSA Collective Members.

6 **ANSWER:**

7 Defendants deny the allegations in Paragraph 49.

8 **AMENDED COMPLAINT ¶50:**

9 Defendants knew that Plaintiff and the FLSA Collective Members were working overtime
10 hours because Defendants required Plaintiff and the FLSA Collective Members to work overtime
11 hours and were present during those hours.

12 **ANSWER:**

13 Defendants deny the allegations in Paragraph 50.

14 **AMENDED COMPLAINT ¶51:**

15 In sum, Plaintiff and the FLSA Collective Members are similarly situated in that they had
16 substantially similar job duties and were subject to Defendants' common policies, patterns, and
17 practices, including failing to keep time records and classifying them as exempt employees before
18 February 9, 2020 and suffering and permitting them to work off the clock and without compensation
19 after February 9, 2020.

20 **ANSWER:**

21 Defendants deny the allegations in Paragraph 51.

22 **AMENDED COMPLAINT ¶52:**

23 The FLSA requires non-exempt hourly employees to be compensated at a rate of one and one-
24 half (1 1/2) times the regular hourly rate for all hours worked over 40 in a week.

25 **ANSWER:**

26 Defendants state that Paragraph 52 is a legal conclusion, to which no response is required.

1 **AMENDED COMPLAINT ¶53:**

2 Until February 9, 2020, Defendants misclassified Plaintiff and FLSA Collective Members as
3 exempt from the overtime requirements of the FLSA and failed to provide them overtime
4 compensation for hours worked in excess of 40 a week.

5 **ANSWER:**

6 Defendants deny the allegations in Paragraph 53.

7 **AMENDED COMPLAINT ¶54:**

8 After February 9, 2020, Defendants suffered and permitted Plaintiff and FLSA Collective
9 Members to work off the clock and failed to pay them any compensation for unrecorded overtime
10 hours.

11 **ANSWER:**

12 Defendants deny the allegations in Paragraph 54.

13 **AMENDED COMPLAINT ¶55:**

14 The similarly situated employees are known to Defendants, are readily identifiable, and
15 can easily be located through Defendants' business and human resources records.

16 **ANSWER:**

17 Defendants deny the allegations in Paragraph 55.

18 **AMENDED COMPLAINT ¶56:**

19 Defendants have employed many FLSA Collective Members in the United States. These
20 similarly situated employees may be readily notified of this action through electronic mail, U.S.
21 Mail, and/or other means, and allowed to opt in to this action pursuant to 29 U.S.C. § 216(b), for
22 the purpose of collectively adjudicating their claims for overtime compensation, liquidated
23 damages (or, alternatively, interest) and attorneys' fees and costs under the FLSA.

24 **ANSWER:**

25 Defendants deny the allegations in Paragraph 56.

26

CLASS ACTION ALLEGATIONS

AMENDED COMPLAINT ¶57:

Plaintiff brings Counts II-V of this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the Washington Class defined above.

ANSWER:

Defendants admit that Plaintiff purports to bring Counts II through V as class actions pursuant to Federal Rule of Civil Procedure 23 on behalf of himself and the Washington class, as he defined it, but denies that Plaintiff has specifically delineated a Count IV or V. Defendants further deny that those counts have merit and that class certification is warranted. Defendants deny all remaining allegations in Paragraph 57.

AMENDED COMPLAINT ¶58:

Like Plaintiff, the primary job duties of the Washington Class Members involved only non-exempt work consisting of customer account coordination activities including coordinating the loading and unloading of food containers; assisting with the logistics of transporting goods to the domestic distribution centers; facilitating with customer returns; and completing inventory and logistics-related paperwork and data entry.

ANSWER:

Defendants deny the allegations in Paragraph 58.

AMENDED COMPLAINT ¶59:

Like Plaintiff, the Washington Class Members regularly worked more than 40 hours per week within the applicable statutory period but failed to receive any overtime compensation or, after February 9, 2020, were not paid for all overtime hours worked.

ANSWER:

Defendants deny the allegations in Paragraph 59.

1 **AMENDED COMPLAINT ¶60:**

2 Defendants did not make, keep, or preserve adequate or accurate records of the hours
3 worked by Plaintiff or the Washington Class Members.

4 **ANSWER:**

5 Defendants deny the allegations in Paragraph 60.

6 **AMENDED COMPLAINT ¶61:**

7 Defendants knew that Plaintiff and the Washington Class Members were working overtime
8 hours because Defendants required Plaintiff and the Washington Class Members to work overtime
9 hours and were present during those hours.

10 **ANSWER:**

11 Defendants deny the allegations in Paragraph 61.

12 **AMENDED COMPLAINT ¶62:**

13 The members of the Washington Class are so numerous that joinder of all members is
14 impracticable.

15 **ANSWER:**

16 Defendants deny the allegations in Paragraph 62.

17 **AMENDED COMPLAINT ¶63:**

18 Plaintiff will fairly and adequately represent and protect the interests of the Washington
19 Class because there is no conflict between the claims of Plaintiff and those of the Washington
20 Class, and Plaintiff's claims are typical of the claims of the Washington Class. Plaintiff's counsel
21 are competent and experienced in litigating class actions and other complex litigation matters,
22 including wage and hour cases like this one.

23 **ANSWER:**

24 Defendants admit that Plaintiff's counsel are experienced in litigating class actions and
25 other complex litigation matters, including wage and hour cases. Defendants deny all remaining
26 allegations in Paragraph 63.

1 **AMENDED COMPLAINT ¶64:**

2 There are questions of law and fact common to the proposed Washington Class, which
3 predominate over any questions affecting only individual Class Members, including, without limitation,
4 whether Defendants have violated Washington law through their policy or practice of not paying their
5 non-exempt employees overtime compensation.

6 **ANSWER:**

7 Defendants deny the allegations in Paragraph 64.

8 **AMENDED COMPLAINT ¶65:**

9 Plaintiff's claims are typical of the claims of the Washington Class Members in the following
10 ways, without limitation: (a) Plaintiff is a member of the Washington Class; (b) Plaintiff's claims arise
11 out of the same policies, practices and course of conduct that form the basis of the claims of the
12 Washington Class; (c) Plaintiff's claims are based on the same legal and remedial theories as those of
13 the Washington Class and involve similar factual circumstances; (d) there are no conflicts between the
14 interests of Plaintiff and the Washington Class Members; and (e) the injuries suffered by Plaintiff are
15 similar to the injuries suffered by the Washington Class Members.

16 **ANSWER:**

17 Defendants deny the allegations in Paragraph 65.

18 **AMENDED COMPLAINT ¶66:**

19 Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law
20 and fact common to the Washington Class predominate over any questions affecting only
21 individual Class Members.

22 **ANSWER:**

23 Defendants deny the allegations in Paragraph 66.

24 **AMENDED COMPLAINT ¶67:**

25 Class action treatment is superior to the alternatives for the fair and efficient adjudication of
26 the controversy alleged herein. Such treatment will permit a group of similarly situated persons to

1 prosecute their common claims in a single forum simultaneously, efficiently, and without the
2 duplication of effort and expense that numerous individual actions would entail. No difficulties are
3 likely to be encountered in the management of this class action that would preclude its maintenance as
4 a class action, and no superior alternative exists for the fair and efficient adjudication of this
5 controversy. The Washington Class Members are readily identifiable from Defendants' own records.
6 Prosecution of separate actions by individual members of the Washington Class would create the risk
7 of inconsistent or varying adjudications with respect to individual Washington Class Members that
8 would establish incompatible standards of conduct for Defendants.

9 **ANSWER:**

10 Defendants deny the allegations in Paragraph 67.

11 **AMENDED COMPLAINT ¶68:**

12 A class action is superior to other available methods for adjudication of this controversy
13 because joinder of all members is impractical. Further, the amounts at stake for many of the
14 Washington Class Members, while substantial, are not great enough to enable them to maintain
15 separate suits against Defendants.

16 **ANSWER:**

17 Defendants deny the allegations in Paragraph 68.

18 **AMENDED COMPLAINT ¶69:**

19 Without a class action, Defendants will retain the benefit of their wrongdoing, which will result
20 in further damages to Plaintiff and the Washington Class. Plaintiff envisions no difficulty in the
21 management of this action as a class action.

22 **ANSWER:**

23 Defendants deny the allegations in Paragraph 69.
24
25
26

1 **COUNT I**
2 **FAIR LABOR STANDARDS ACT**
3 **FAILURE TO PAY OVERTIME**
4 **(on behalf of Plaintiff and the FLSA Collective Class)**

5 **AMENDED COMPLAINT ¶70:**

6 Plaintiff restates and incorporates by reference the above paragraphs.

7 **ANSWER:**

8 Defendants restate and reincorporate by reference the responses to the above paragraphs.

9 **AMENDED COMPLAINT ¶71:**

10 Under 29 U.S.C. § 216(b), Plaintiff brings this count on behalf of himself and the FLSA
11 Collective.

12 **ANSWER:**

13 Defendants admit that Plaintiff purports to bring Count I on behalf of himself and the FLSA
14 Collective, as he has defined it. Defendants denies all remaining allegations in Paragraph 71.

15 **AMENDED COMPLAINT ¶72:**

16 Because they were hired, paid, and had their work controlled by Defendants, Plaintiff and
17 members of the FLSA Collective Class each qualifies as an “employee” under 29 U.S.C. § 203(e)(1).

18 **ANSWER:**

19 Defendants deny the allegations in Paragraph 72.

20 **AMENDED COMPLAINT ¶73:**

21 Based on their business operations in food distribution, Defendants are each an “employer”
22 engaged in interstate commerce under 29 U.S.C. § 203(d).

23 **ANSWER:**

24 Defendants deny the allegations in Paragraph 73.
25
26

1 **AMENDED COMPLAINT ¶74:**

2 At all relevant times, as part of Defendants' business operations, Plaintiff and members of
3 the FLSA Collective were engaged in commerce or the production of goods for commerce under
4 29 U.S.C. § 207(a).

5 **ANSWER:**

6 Defendants deny the allegations in Paragraph 74.

7 **AMENDED COMPLAINT ¶75:**

8 29 U.S.C. § 207 requires employers to pay non-exempt employees one and one-half times the
9 regular rate of pay for all hours worked over 40 hours per workweek.

10 **ANSWER:**

11 Defendants state that Paragraph 75 is a legal conclusion, to which no response is required.

12 **AMENDED COMPLAINT ¶76:**

13 As employers of Plaintiff and the FLSA Collective, Defendants suffered and permitted Plaintiff
14 and members of the FLSA Collective to work more than 40 hours per workweek within the statutory
15 period without paying them overtime compensation.

16 **ANSWER:**

17 Defendants deny the allegations in Paragraph 76.

18 **AMENDED COMPLAINT ¶77:**

19 Defendants' actions, policies, and practices described above violated the FLSA's overtime
20 requirement because Defendants regularly and repeatedly failed to pay required overtime
21 compensation to Plaintiffs and members of the FLSA Collective Class.

22 **ANSWER:**

23 Defendants deny the allegations in Paragraph 77.

24 **AMENDED COMPLAINT ¶78:**

25 By failing to accurately record, report, or preserve records of hours worked by Plaintiffs and
26 members of the FLSA Collective, Defendants failed to make, keep, and preserve records about each of

1 their employees sufficient to determine their wages, hours, and other conditions and practice of
2 employment, in violation of the FLSA, 29 U.S.C. § 211(c).

3 **ANSWER:**

4 Defendants deny the allegations in Paragraph 78.

5 **AMENDED COMPLAINT ¶79:**

6 The foregoing conduct is a willful violation of the FLSA within the meaning of 29 U.S.C.
7 § 255(a). Defendants knew or showed reckless disregard for the fact that their compensation
8 practices violated these laws.

9 **ANSWER:**

10 Defendants deny the allegations in Paragraph 79.

11 **AMENDED COMPLAINT ¶80:**

12 As the direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of
13 the FLSA Collective have suffered damages. Plaintiff and the FLSA Collective are entitled to recover
14 actual damages, liquidated damages, prejudgment interest, attorneys' fees, and costs under 29
15 U.S.C. § 216(b).

16 **ANSWER:**

17 Defendants deny the allegations in Paragraph 80.

18 **AMENDED COMPLAINT ¶81:**

19 Defendants are liable under the FLSA for failing to properly compensate Plaintiff and
20 members of the FLSA Collective. As a result, notice should be sent to the FLSA Collective. There
21 are many similarly situated current and former employees of Defendants who have suffered from
22 Defendants' practice of denying overtime pay and who would benefit from the issuance of court-
23 supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees
24 are known to Defendants and are readily identifiable through Defendants' records.

25 **ANSWER:**

26 Defendants deny the allegations in Paragraph 81.

1 **COUNT II**
2 **WASHINGTON MINIMUM WAGE ACT**
3 **FAILURE TO PAY OVERTIME**
4 **(on behalf of Plaintiff and the Washington Class)**

5 **AMENDED COMPLAINT ¶82:**

6 Plaintiff restates and incorporates by reference the above paragraphs.

7 **ANSWER:**

8 Defendants restate and incorporate by reference the responses to the above paragraphs.

9 **AMENDED COMPLAINT ¶83:**

10 Plaintiff and the Washington Class Members were at all relevant times employees under
11 RCW 49.46.010(3).

12 **ANSWER:**

13 Defendants deny the allegations in Paragraph 83.

14 **AMENDED COMPLAINT ¶84:**

15 RCW 49.46.130 requires employers to pay employees one and one-half times the regular
16 rate at which they are employed for all hours worked over 40 per workweek.

17 **ANSWER:**

18 Defendants state that Paragraph 84 is a legal conclusion, to which no response is required.

19 **AMENDED COMPLAINT ¶85:**

20 RCW 49.46.090 makes employers who violate RCW 49.46.130 liable to the affected
21 employees in the amount of unpaid wages, costs, attorneys' fees, and other appropriate relief under
22 the law.

23 **ANSWER:**

24 Defendants deny that Paragraph 85 is an accurate statement of RCW 59.46.090 and,
25 therefore, deny the allegations in Paragraph 85.
26

1 **AMENDED COMPLAINT ¶86:**

2 Defendants' actions, policies, and practices as described above violated RCW 49.46.130
3 because Defendants regularly and repeatedly failed to compensate Plaintiff and the Washington
4 Class at the required overtime rate.

5 **ANSWER:**

6 Defendants deny the allegations in Paragraph 86.

7 **AMENDED COMPLAINT ¶87:**

8 By failing to accurately record, report, or preserve records of hours worked by Plaintiff and
9 the Washington Class, Defendants have failed to make, keep, and preserve records about each of
10 its employees sufficient to determine their wages, hours, and other conditions and practice of
11 employment, in violation of Washington law. *See* WAC 296-126-050 (requiring “[e]very employer
12 shall keep for at least three years a record of the name, address, and occupation of each employee,
13 dates of employment, rate or rates of pay, amount paid each pay period to each such employee and
14 the hours worked”); WAC 296-128-010(6) (requiring employer to keep records of the “[h]ours
15 worked each workday and total hours worked each week”); WAC 296-128-020 (requiring
16 employers to maintain those records for at least three years).

17 **ANSWER:**

18 Defendants deny the allegations in Paragraph 87.

19 **AMENDED COMPLAINT ¶88:**

20 As the direct and proximate result of Defendants' unlawful conduct, Plaintiff and the
21 Washington Class have suffered damages. Plaintiff and the Washington Class are entitled to recover
22 actual damages, prejudgment interest, attorneys' fees, and costs.

23 **ANSWER:**

24 Defendants deny the allegations in Paragraph 88.
25
26

1 **COUNT III**
2 **FAILURE TO PROVIDE MEAL AND REST BREAKS AND ENSURE**
3 **THOSE BREAKS ARE TAKEN**
4 **(On Behalf of Plaintiff and the Washington Class)**

5 **AMENDED COMPLAINT ¶89:**

6 Plaintiff restates and incorporates by reference the above paragraphs.

7 **ANSWER:**

8 Defendants restate and incorporate by reference their responses to the above paragraphs.

9 **AMENDED COMPLAINT ¶90:**

10 RCW 49.12.010 provides:

11 The welfare of the state of Washington demands that all employees be protected from
12 conditions of labor which have a pernicious effect on their health. The state of
13 Washington, therefore, exercising herein its police and sovereign power declares that
14 inadequate wages and unsanitary conditions of labor exert such pernicious effect.

15 **ANSWER:**

16 Defendant admits the allegations in Paragraph 90, but denies that RCW 49.12.010 is
17 relevant to this matter.

18 **AMENDED COMPLAINT ¶91:**

19 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any industry
20 or occupation within the state of Washington under conditions of labor detrimental to their health.”

21 **ANSWER:**

22 Defendants admit that Paragraph 91 quotes a portion of RCW 49.12.020.

23 **AMENDED COMPLAINT ¶92:**

24 Pursuant to RCW 49.12.005(5) and WAC 296-126-002(9), conditions of labor “means and
25 includes the conditions of rest and meal periods” for employees.

26 **ANSWER:**

Defendants deny that Paragraph 92 completely and accurately quotes RCW 49.12.005(5)
and WAC 296-126-002(9), and therefore deny the allegations in Paragraph 92.

1 **AMENDED COMPLAINT ¶93:**

2 WAC 296-126-092 provides:

- 3 (1) Employees shall be allowed a meal period of at least thirty minutes which
4 commences no less than two hours nor more than five hours from the beginning
5 of the shift. Meal periods shall be on the employer's time when the employee is
6 required by the employer to remain on duty on the premises or at a prescribed work
7 site in the interest of the employer.
- 8 (2) No employee shall be required to work more than five consecutive hours
9 without a meal period.
- 10 (3) Employees working three or more hours longer than a normal work day shall
11 be allowed at least one thirty-minute meal period prior to or during the overtime
12 period.
- 13 (4) Employees shall be allowed a rest period of not less than ten minutes, on the
14 employer's time, for each four hours of working time. Rest periods shall be
15 scheduled as near as possible to the midpoint of the work period. No employee
16 shall be required to work more than three hours without a rest period.
- 17 (5) Where the nature of the work allows employees to take intermittent rest periods
18 equivalent to ten minutes for each four hours worked, scheduled rest periods are
19 not required.

20 **ANSWER:**

21 Defendants admit that Paragraph 93 quotes WAC 2396-126-092.

22 **AMENDED COMPLAINT ¶94:**

23 Defendants implemented a policy and practice of either failing to provide Plaintiff and the
24 Washington Class Members with the meal and rest breaks to which they were entitled, failing to
25 ensure those breaks were taken, failing to record missed breaks, and failing to pay for missed
26 breaks.

1 **ANSWER:**

2 Defendants deny the allegations in Paragraph 94.

3 **AMENDED COMPLAINT ¶95:**

4 Because Plaintiff and the Washington Class Members have failed to receive the meal and
5 rest breaks to which they were entitled, Defendants have violated WAC 296-126-092.

6 **ANSWER:**

7 Defendants deny the allegations in Paragraph 95.

8 **AMENDED COMPLAINT ¶96:**

9 Because Plaintiff and the Washington Class Members failed to receive the meal breaks to
10 which they were entitled under WAC 296-126-092, Plaintiff and the Washington Class Members
11 should be additionally compensated for thirty (30) minutes for each meal break missed. *See Hill*
12 *v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 330, 294 P.3d 390 (2017) (holding “that violating the
13 meal period requirement is a wage violation”), *reversed in part on other grounds*, 191 Wn.2d 553,
14 424 P.3d 207 (2018).

15 **ANSWER:**

16 Defendants deny the allegations in Paragraph 96.

17 **AMENDED COMPLAINT ¶97:**

18 Because Plaintiff and the Washington Class Members were constantly engaged in work
19 activities during their paid rest breaks in violation of WAC 296-126-092, Plaintiff and the Washington
20 Class Members should be additionally compensated for ten (10) minutes each for each rest break
21 missed. *See Washington State Nurses Ass’n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 287 P.3d 516
22 (2012).

23 **ANSWER:**

24 Defendants deny the allegations in Paragraph 97.
25
26

1 **AMENDED COMPLAINT ¶98:**

2 Plaintiff and the Washington Class Members are entitled to recover wages at one and one-half
3 times their regular hourly rate for all time owed by Defendants for missed rest and meal breaks that,
4 when added to the other hours worked in a week, exceeded 40 hours.

5 **ANSWER:**

6 Defendants deny the allegations in Paragraph 98.

7 **AMENDED COMPLAINT ¶99:**

8 As a result of these unlawful acts, Plaintiff and the Washington Class have been deprived
9 of compensation in amounts to be determined at trial, and Plaintiff and the Washington Class are
10 entitled to the recovery of such damages, including interest thereon, and attorneys' fees and costs
11 under RCW 49.48.030.

12 **ANSWER:**

13 Defendants deny the allegations in Paragraph 99.

14 **COUNT III [sic]**
15 **WASHINGTON WAGE REBATE ACT**
16 **WILLFUL REFUSAL TO PAY WAGES**
(On Behalf of Plaintiff and the Washington Class)

17 **AMENDED COMPLAINT ¶1: [sic]**

18 Plaintiff restates and incorporates by reference the above paragraphs.

19 **ANSWER:**

20 Defendants restate and reincorporate by reference their answers to the above paragraphs.

21 **AMENDED COMPLAINT ¶2: [sic]**

22 Plaintiff and the Washington Class Members were at all relevant times employees under
23 RCW 49.46.010(3) and RCW 49.52.050.

24 **ANSWER:**

25 Defendants deny the allegations in Paragraph 2.

26

1 **AMENDED COMPLAINT ¶3: [sic]**

2 RCW 49.52.050 provides that any employer or agent of any employer who, “[w]ilfully and
3 with intent to deprive the employee of any party of his wages, shall pay any employee a lower
4 wage than the wage such employer is obligated to pay such employee by any statute, ordinance,
5 or contract” shall be guilty of a misdemeanor.

6 **ANSWER:**

7 Defendants admit that Plaintiff quotes a portion of RCW 49.52.050, but deny that the
8 quoted language is applicable in this case.

9 **AMENDED COMPLAINT ¶4: [sic]**

10 Defendants’ violations of RCW 49.46.130, as discussed above, have been willful and thus
11 violate RCW 49.52.050.

12 **ANSWER:**

13 Defendants deny the allegation in Paragraph 4.

14 **AMENDED COMPLAINT ¶5: [sic]**

15 RCW 49.52.070 provides that any employer who violates the provisions of RCW
16 49.52.050 is liable in a civil action for twice the amount of wages withheld, attorneys’ fees, and
17 costs.

18 **ANSWER:**

19 Defendants deny that Paragraph 5 is a complete and accurate statement of RCW 49.52.070
20 and therefore deny the allegations in Paragraph 5.

21 **AMENDED COMPLAINT ¶6: [sic]**

22 As a result of the willful, wrongful acts of Defendants, Plaintiff and the Washington Class
23 have been deprived of compensation in amounts to be determined at trial and pursuant to RCW
24 49.52.070, Plaintiff and the Washington Class are therefore entitled to recover twice such damages
25 as well as attorneys’ fees and costs.

1 **ANSWER:**

2 Defendants deny the allegations in Paragraph 6.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of himself and the Classes, hereby for the following relief:

5 A. Designation of this action as a collective action on behalf of the FLSA Collective and
6 prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals informing
7 them of the pendency of this action and permitting them to assert FLSA claims in this action by
8 filing individual consent forms under 29 U.S.C. § 216(b);

9 B. An order permitting this litigation to proceed as a class action pursuant to Fed. R.
10 Civ. P. 23 on behalf of the Washington Class;

11 C. Judgment against Defendants in the amount of actual damages suffered by Plaintiff
12 and the Classes;

13 D. A finding that Defendants' violations of the FLSA were not in good faith and were
14 willful;

15 E. Liquidated damages for Plaintiff and members of the FLSA Collective under
16 federal law;

17 F. A finding that Defendants' violations of Washington law were willful;

18 G. Exemplary damages for Plaintiff and the Washington Class under Washington law;

19 H. All reasonable costs and attorneys' fees under 29 U.S.C. § 216, RCW 49.46.090,
20 RCW 49.52.070, RCW 49.48.030, and any other applicable laws;

21 I. An award of prejudgment interest on actual damages recovered under the FLSA (to
22 the extent liquidated damages are not awarded) and postjudgment interest as provided by law;

23 J. An award of prejudgment interest on actual damages recovered under Washington
24 law and postjudgment interest as provided by law; and

25 I. All further relief as the Court deems just and equitable.

1 **ANSWER:**

2 Defendants admit that Plaintiff purports to seek the relief cited in his “Prayer for Relief,”
3 but denies that Plaintiff or any putative class or collective member is entitled to any such relief.

4 **DEMAND FOR TRIAL BY JURY**

5 Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
6 jury on all questions of fact raised by the complaint.

7 **ANSWER:**

8 Defendants admit that Plaintiff purports to demand a trial by jury.

9 **AFFIRMATIVE AND OTHER DEFENSES**

10 Defendants assert the following affirmative and other defenses to Plaintiff’s FAC. These
11 defenses shall apply with equal force to any additional opt-in Plaintiffs that join this case.

12 **FIRST DEFENSE**

13 The Court lacks personal jurisdiction over Defendants with respect to the claims of all
14 members of the proposed collective Plaintiff purports to represent who did not perform any alleged
15 work in the State of Washington. Accordingly, Defendants may not properly seek certification of
16 any collective encompassing such individuals, and to the extent any such individuals opt into this
17 action, they should be dismissed.

18 **SECOND DEFENSE**

19 Some or all of the claims fail to state a claim upon which relief may be granted.

20 **THIRD DEFENSE**

21 Some or all of the claims are barred by the applicable statutes of limitations.

22 **FOURTH DEFENSE**

23 The claims of Plaintiff and/or the members of the proposed class and collective Plaintiff
24 purports to represent fail to the extent either Defendant did not employ that individual during
25 portions, or the entirety, of the time at issue.

1 **FIFTH DEFENSE**

2 The certification and/or trial of this case as a class or collective action would violate
3 Defendants' rights under the Fifth and Seventh Amendments to the United States Constitution.

4 **SIXTH DEFENSE**

5 Notice to the alleged class and collective, the existence of which is expressly denied, would
6 be a violation of Defendants' due process rights.

7 **SEVENTH DEFENSE**

8 Plaintiff and/or members of the putative collective were subject to the administrative
9 exemption.

10 **EIGHTH DEFENSE**

11 Plaintiff cannot satisfy the requirements of a collective action, and some or all of the claims
12 asserted in the Complaint are barred because Plaintiff is not similarly situated to the proposed
13 collective, and/or members of the proposed collective are not similarly situated to each other.

14 **NINTH DEFENSE**

15 With respect to some or all claims alleged by Plaintiff and/or members of the alleged class
16 and collective as defined by Plaintiff, Defendants assert that any act(s) and/or omission(s) that may
17 be found to be in violation of the rights afforded by the applicable law were not willful, intentional,
18 or reckless, but occurred in good faith and were based upon reasonable grounds that they were not
19 violations of the Fair Labor Standards Act or state law.

20 **TENTH DEFENSE**

21 Plaintiff cannot establish the requirements for class certification under Federal Rule of
22 Civil Procedure 23.

23 **ELEVENTH DEFENSE**

24 Plaintiff has failed to adequately define the class or collective he purports to represent.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TWELFTH DEFENSE

Plaintiff has failed to state a claim for which compensatory, consequential, or liquidated damages may be granted.

THIRTEENTH DEFENSE

Neither Plaintiff nor members of the proposed class or collective may recover liquidated damages, because neither Defendants nor any of their officers, directors, managers, or agents committed any oppressive, willful, wanton, fraudulent, outrageous, or malicious act or authorized or ratified any such act with respect to Plaintiff or any alleged class or collective member, and because Plaintiff cannot present facts sufficient to support recovery of such damages.

FOURTEENTH DEFENSE

Some or all of the claims asserted in the Amended Complaint are barred because all acts or omissions, if any, were in good faith conformity with and reliance on the written administrative regulations, orders, rulings, approvals, and/or interpretations of the Wage and Hour Division of the U.S. Department of Labor and/or the State of Washington.

FIFTEENTH DEFENSE

The claims of Plaintiff and members of the proposed class and collective are barred, in whole or in part, to the extent any time for which compensation is sought is *de minimis* and therefore not compensable.

SIXTEENTH DEFENSE

Plaintiff has not alleged facts sufficient to establish that venue is proper in this District or Division for the claims of all putative class and collective members.

SEVENTEENTH DEFENSE

Plaintiff and/or members of the proposed class and collective that she purports to represent, the existence of which are expressly denied, are not entitled to some or all of the relief requested in the complaint because, even if any unlawful act of omission occurred, which Defendants expressly deny, Defendants cannot be held vicariously liable for alleged misconduct that is

1 contrary to Defendants' express policies, procedures, and good faith efforts to comply with
2 applicable laws and/or regulations.

3 **EIGHTEENTH DEFENSE**

4 Some or all of the damages claimed by Plaintiff and/or members of the proposed class and
5 collective that she purports to represent may be subject to setoff, offset, and/or recoupment.

6 **NINETEENTH DEFENSE**

7 The claims of Plaintiff and/or members of the proposed class or collective are barred in
8 whole or in part because some or all of the activities alleged are not integral and indispensable to
9 principal work activities.

10 **TWENTIETH DEFENSE**

11 The claims of Plaintiff and/or other members of the proposed collective may be barred by
12 the doctrine of res judicata and/or issue preclusion.

13 **TWENTY-FIRST DEFENSE**

14 The claims of Plaintiff and/or other members are barred to the extent they received payment
15 covering the damages now claimed.

16 **TWENTY-SECOND DEFENSE**

17 The claims of Plaintiff and/or other members of the putative class that Plaintiff purports to
18 represent are barred to the extent Plaintiff waived breaks.

19 **TWENTY-THIRD DEFENSE**

20 Plaintiff and/or other members of the putative class and collective lack standing to pursue
21 the claims asserted.

22 //

23 //

24 //

25 //

26 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Respectfully submitted this 4th day of February 2021.

SEYFARTH SHAW, LLP

By: /s/ Helen M. McFarland
Helen M. McFarland, WSBA #51012
Email: hmcfarland@seyfarth.com
999 Third Avenue, Suite 3000
Seattle, Washington 98104
Telephone: (206) 946-4923
Facsimile: (206) 299-9974

James J. Swartz, Jr. (*pro hac vice*)
Email: jswartz@seyfarth.com
Andrew McKinley (*pro hac vice*)
Email: amckinley@seyfarth.com
Renate M. Walker (*pro hac vice*)
Email: rewalker@seyfarth.com
SEYFARTH SHAW, LLP
1075 Peachtree Street N.E., Suite 2500
Atlanta, Georgia 30309
Telephone: (404) 885-1500
Facsimile: (404) 892-7056

*Attorneys for Defendants United Natural
Foods, Inc. and SUPERVALU INC..*

CERTIFICATE OF SERVICE

I hereby declare that on this 4th day of March 2021, I caused a copy of the foregoing DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT to be electronically filed with the Court using the CM/ECF filing system which will send notification of such filing to the following:

Toby J. Marshall
Ryan Tack-Hooper
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, WA 98103
tmarshall@terrellmarshall.com
rtack-hooper@terrellmarshall.com

Camille Fundora Rodriguez
Alexandra K. Piazza
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
crodriguez@bm.net
apiazza@bm.net

/s/ Helen M. McFarland
Helen M. McFarland