

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

PRISCILLA JIBOWU, Individually and on
Behalf of All Other Persons Similarly Situated,

Plaintiff,

- v -

TARGET CORPORATION and TARGET
CORPORATION OF MINNESOTA,

Defendants.

No. 17-cv-03875 (PKC)(CLP)

**ANSWER AND AFFIRMATIVE
DEFENSES**

DEMAND FOR JURY

Pursuant to Rules 8(b) and 12(a), Federal Rules of Civil Procedure, defendant Target Corporation, also doing business as “Target Corporation of Minnesota” in New Jersey and Louisiana (“Target”), sets forth its objection, answer and defenses to the complaint of plaintiff Priscilla Jibowu (the “Complaint”) as follows:

STAY OF ACTION

This action should be stayed in favor of the first-filed action raising the same claim under the Fair Labor Standards Act (“FLSA”) entitled *Pattilee Tempelmeyer v. Target Corporation*, U.S.D.C., W.D. Ark., No. 2:17-cv-02070-PKH, until the earlier of (1) denial of conditional collective certification under the FLSA, (2) denial of final collective certification under the FLSA, or (3) disposition of the action.

Subject to and without waiving this objection to maintenance of this action, Target also sets forth the following answer and affirmative defenses to the Complaint.

NATURE OF ACTION

1. Target admits that plaintiff purports to assert claims on behalf of herself and other current and former Target Executive Team Leaders classified as exempt (“ETLs”), and similarly

situated current and former employees holding comparable positions but different titles, who were employed by Target in the United States, who opt into this action pursuant to the FLSA, 29 U.S.C. § 216(b), and who, plaintiff alleges, worked more than forty hours in a work week, were not paid overtime, and are entitled to liquidated damages under FLSA. Except as so admitted, Target denies paragraph 1 of the Complaint.

2. Target admits that plaintiff purports to assert claims pursuant to the New York Labor Law on behalf of herself and other current and former ETLs who allegedly worked more than forty hours in a work week in New York between June 28, 2011, and the date of judgment in this matter without receiving overtime payments for that work. Except as so admitted, Target denies paragraph 2 of the Complaint.

3. Target admits that plaintiff purports to assert claims pursuant to the Illinois Minimum Wage Act and the Illinois Wage Payment and Collection Act on behalf of herself and other current and former ETLs who allegedly worked more than forty hours in a work week in Illinois between June 28, 2007, and the date of judgment in this matter without receiving overtime for that work. Except as so admitted, Target denies paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. Target admits that jurisdiction is proper in this Court, but denies any wrongdoing. Except as so admitted and denied, Target denies paragraph 4 of the Complaint.

5. Target admits that venue is proper in this District, but denies any wrongdoing. Except as so admitted and denied, Target denies paragraph 5 of the Complaint.

6. Target admits that it regularly conducts business in this District. Except as so admitted, Target denies paragraph 6 of the Complaint.

7. Target admits that this Court is empowered to issue a declaratory judgment, but denies that declaratory judgment in favor of plaintiff or any of the proposed collective or classes is justified. Except as so admitted or denied, Target denies paragraph 7 of the Complaint.

THE PARTIES

I. The Plaintiff

8. Target lacks sufficient knowledge or information to admit or deny the allegations in paragraph 8 of the Complaint and, therefore, denies those allegations.

9. Target admits that plaintiff was employed by Target from on or about August 7, 2016, to the present as a Sales Floor ETL at its Store No. 1401, located at Bronx, New York, from March 30, 2014, to July 2016 at its Store No. 1889, located at Chicago, Illinois, as an ETL Replenishment. Except as so admitted or denied, Target denies paragraph 9 of the Complaint.

10. Target admits that Exhibit A to the Complaint is purported to be the written consent of plaintiff to participate as a party to this action, but lacks sufficient knowledge or information to so admit or deny. Except as so admitted or denied, Target denies paragraph 10 of the Complaint.

11. Target lacks sufficient knowledge or information to admit or deny the allegations in paragraph 11 of the Complaint and, therefore, denies those allegations. To the extent plaintiff worked in excess of 40 hours in any workweek while employed as an ETL, Target admits that she did not receive overtime pay because she was classified as exempt. Except as so admitted or denied, Target denies paragraph 11 of the Complaint.

II. Defendants

12. Target admits the allegations in paragraph 12 of the Complaint.

13. Target admits that in New Jersey and Louisiana, it does business as “Target Corporation of Minnesota.” Except as so admitted, Target denies the allegations of paragraph 13 of the Complaint.

14. Target admits the allegations in paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint asserts a legal conclusion to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint asserts a legal conclusion to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint asserts a legal conclusion to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 18 of the Complaint.

19. Target admits that it issued paychecks to plaintiff and its employees, but denies that plaintiff was similarly situated to other employees. Except as so admitted or denied, Target denies paragraph 19 of the Complaint.

20. Target admits that it employed plaintiff and its former and current employees, but lacks sufficient knowledge or information to form a belief about to what extent it benefited from their work and on that basis denies the allegation. Target further denies that plaintiff was

similarly situated to other employees. Except as so admitted or denied, Target denies paragraph 20 of the Complaint.

21. To the extent plaintiff, while she worked as an ETL, or other ETLs worked in excess of 40 hours in any work week, Target admits that they did not receive overtime pay because they were classified as exempt. Target further denies that plaintiff was similarly situated to other employees. Except as so admitted or denied, Target denies paragraph 21 of the Complaint.

FACTUAL ALLEGATIONS

22. Target admits that it employed plaintiff as an ETL. Target lacks sufficient knowledge or information to form a belief as to whether members of the proposed collective or classes are or were ETLs in light of the vague definition offered of the proposed collective and classes and on that basis denies the allegation. Except as so admitted or denied, Target denies paragraph 22 of the Complaint.

23. Target lacks sufficient knowledge or information to form a belief as to the truth or falsity of the vague allegations contained in paragraph 23 of the Complaint and on that basis denies the allegation.

24. Target lacks sufficient knowledge or information to form a belief as to the truth or falsity of the vague allegations contained in paragraph 24 of the Complaint and on that basis denies the allegation.

25. Target lacks sufficient knowledge or information to form a belief about whether plaintiff or members of the proposed collective or classes worked in excess of 40 hours per work week and on that basis denies the allegation. To the extent plaintiff or members of the proposed collective or classes who were ETLs worked in excess of 40 hours in any work week, Target

admits that they did not receive overtime pay because they were classified as exempt. Except as so admitted or denied, Target denies paragraph 25 of the Complaint.

26. Target lacks sufficient knowledge or information to form a belief about whether plaintiff as an ETL was scheduled to work 50 hours per work week or whether, on occasion, she worked 55 to 60 hours in a work week and on that basis denies the allegation. Target also lacks sufficient knowledge or information to form a belief about whether, during the weeks of November 22-29, 2015, and December 18-25, 2016, plaintiff worked more than 55 hours. However, to the extent plaintiff as an ETL worked in excess of 40 hours in any work week, Target admits that she did not receive overtime pay because she was classified as exempt. Except as so admitted or denied, Target denies paragraph 26 of the Complaint.

27. Target lacks sufficient knowledge or information to form a belief as to the truth or falsity of the vague allegation contained in paragraph 27 of the Complaint and on that basis denies the allegation.

28. Target lacks sufficient knowledge or information to form a belief as to the truth or falsity of the vague allegation contained in paragraph 28 of the Complaint and on that basis denies the allegation.

29. Target denies that, to the extent it assigned work to the plaintiff and members of the proposed collective or classes, that work required little skill and that it did not include managerial responsibilities, or the exercise of meaningful independent judgment and discretion. Except as so admitted or denied, Target denies paragraph 29 of the Complaint.

30. Target denies paragraph 30 of the Complaint.

31. Target denies paragraph 31 of the Complaint.

32. Target denies paragraph 32 of the Complaint.

33. Target admits that it classifies ETLs as exempt. Except as so admitted or denied, Target denies paragraph 33 of the Complaint.

34. Target lacks sufficient knowledge or information to understand the meaning of the vague phrase “person-by-person analysis,” and therefore denies paragraph 34 of the Complaint.

35. Target admits that it allocates payroll for non-exempt store employees. Except as so admitted or denied, Target denies paragraph 35 of the Complaint.

36. Target denies paragraph 36 of the Complaint.

37. Target denies paragraph 37 of the Complaint.

38. Target denies paragraph 38 of the Complaint.

39. Target denies paragraph 39 of the Complaint and all of its subparagraphs.

40. Target denies paragraph 40 of the Complaint.

41. Target denies paragraph 41 of the Complaint.

42. Target denies paragraph 42 of the Complaint.

FLSA COLLECTIVE ACTION ALLEGATIONS

43. Target admits that plaintiff purports to prosecute claims under FLSA as a collective action on behalf of herself and other current or former ETLs within the United States at any time from three years from the date of the filing of the Complaint to the entry of judgment in this case. Except as so admitted or denied, Target denies paragraph 43 of the Complaint.

44. Target denies paragraph 44 of the Complaint.

45. Target denies paragraph 45 of the Complaint.

46. Target denies paragraph 46 of the Complaint.

NEW YORK CLASS ALLEGATIONS

47. Target admits that plaintiff purports to prosecute claims under the New York Labor Law (“NYLL”) as a class action on behalf of herself and other current or former ETLs at any time from June 28, 2011, to the entry of judgment in this case. Except as so admitted or denied, Target denies paragraph 47 of the Complaint.

48. Target denies paragraph 48 of the Complaint.

49. Target denies paragraph 49 of the Complaint.

50. Target denies paragraph 50 of the Complaint.

51. Target denies paragraph 51 of the Complaint.

ILLINOIS CLASS ALLEGATIONS

52. Target admits that plaintiff purports to prosecute claims under the Illinois Minimum Wage Law (“IMWL”) and the Illinois Wage Payment and Collection Act (“IWPCA”) as a class action on behalf of herself and other current or former ETLs at any time from June 28, 2007, to the entry of judgment in this case. Except as so admitted or denied, Target denies paragraph 52 of the Complaint.

53. Target denies paragraph 53 of the Complaint.

54. Target denies paragraph 54 of the Complaint.

55. Target denies paragraph 55 of the Complaint.

56. Target denies paragraph 56 of the Complaint.

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

57. Target hereby incorporates by reference and realleges its responses to paragraphs 1 through 56 of the Complaint in response to paragraph 57 of the Complaint.

58. Target admits that at all times relevant to the Complaint, it has engaged in interstate commerce within the meaning of the FLSA. Except as so admitted, Target denies the allegations in paragraph 58 of the Complaint.

59. Target admits that it employed plaintiff and the members of the proposed collective. Except as so admitted or denied, Target denies paragraph 59 of the Complaint.

60. Target denies paragraph 60 of the Complaint.

61. Target admits that Exhibit A to the Complaint is purported to be the written consent of plaintiff to participate as a party to this action but lacks sufficient knowledge or information to admit or deny the same. Except as so admitted or denied, Target denies paragraph 61 of the Complaint.

62. Target admits that the overtime wage provisions of the FLSA apply to certain employees of Target but denies that they applied to plaintiff while she worked as an ETL or members of the proposed collective. Except as so admitted or denied, Target denies paragraph 62 of the Complaint.

63. Target admits that it classifies ETLs as exempt, and, to the extent any ETLs worked in excess of 40 hours in any work week, they did not receive overtime pay. Except as so admitted or denied, Target denies paragraph 63 of the Complaint.

64. Target denies paragraph 64 of the Complaint.

65. Target denies paragraph 65 of the Complaint.

66. Target denies paragraph 66 of the Complaint.

67. Target denies paragraph 67 of the Complaint.

68. Target denies paragraph 68 of the Complaint.

69. Target denies paragraph 69 of the Complaint.

**SECOND CAUSE OF ACTION
(NYLL: UNPAID OVERTIME WAGES)
(Brought on Behalf of Plaintiff and New York Class)**

70. Target hereby incorporates by reference and realleges its responses to paragraphs 1 through 69 of the Complaint.

71. Paragraph 71 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 71 of the Complaint.

72. Target denies paragraph 72 of the Complaint.

73. Target denies paragraph 73 of the Complaint.

74. Target denies paragraph 74 of the Complaint.

**THIRD CAUSE OF ACTION
(NYLL: FAILURE TO COMPLY WITH WAGE
STATEMENT AND RECORD KEEPING REQUIREMENTS)
(Brought on Behalf of Plaintiff and New York Class)**

75. Target hereby incorporates by reference and realleges its responses to paragraphs 1 through 74 of the Complaint in response to paragraph 75 of the Complaint.

76. Paragraph 76 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 76 of the Complaint.

77. Paragraph 77 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 77 of the Complaint.

78. Paragraph 78 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 78 of the Complaint.

79. Paragraph 79 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 79 of the Complaint.

80. Paragraph 80 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 80 of the Complaint.

81. Target denies paragraph 81 of the Complaint.

82. Target denies paragraph 82 of the Complaint.

**FOURTH CAUSE OF ACTION
(IMWL: UNPAID OVERTIME WAGES)
(Brought on Behalf of Plaintiff and Illinois Class)**

83. Target hereby incorporates by reference and realleges its responses to paragraphs 1 through 82 of the Complaint in response to paragraph 83 of the Complaint.

84. Paragraph 84 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 84 of the Complaint.

85. Target denies paragraph 85 of the Complaint.

86. To the extent plaintiff or other Illinois ETLs worked in excess of 40 hours in any work week, Target admits that they did not receive overtime pay because they were classified as exempt. Except as so admitted or denied, Target denies paragraph 86 of the Complaint.

87. Target denies paragraph 87 of the Complaint.

**FIFTH CAUSE OF ACTION
(IWPCA: UNPAID OVERTIME WAGES)
(Brought on Behalf of Plaintiff and Illinois Class)**

88. Target hereby incorporates by reference and realleges its responses to paragraphs 1 through 87 of the Complaint in response to paragraph 88 of the Complaint.

89. Paragraph 89 of the Complaint asserts legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, Target denies paragraph 89 of the Complaint.

90. Target denies paragraph 90 of the Complaint.

91. Target denies paragraph 91 of the Complaint.

PRAYER FOR RELIEF

92. Target denies that plaintiff is entitled to any of the relief described in the Prayer for Relief.

ADDITIONAL DEFENSES

To the extent not already specifically addressed above, Target denies each and every allegation in the Complaint, demanding strict proof thereof. As and for additional defenses, Target alleges, upon information and belief, as follows, without thereby assuming the burden of proof where such burden is otherwise on plaintiff under applicable substantive or procedural law:

1. The Complaint, and each of its claims for relief, fails to state a claim upon which relief can be granted.

2. At all times relevant to the Complaint that plaintiff worked as an ETL, plaintiff was properly classified as exempt from overtime compensation under the FLSA, 29 U.S.C. § 213(a)(1), 29 C.F.R. § 541.100-541.106 (executive exemption), § 541.200-541.203 (administrative exemption), § 541.708 (combination exemption), and any other applicable exemption, and corresponding state law.

3. The Complaint, and each of its claims for relief, is barred because plaintiff may have misperformed her respective duties and/or failed to perform those duties that Target realistically expected her to perform.

4. Some or all of the time allegedly worked is not compensable pursuant to the provisions of the FLSA or the Portal-to-Portal Act of 1947, and corresponding state law.

5. Some or all of the time allegedly worked is not compensable under the *de minimis* doctrine.

6. Some or all of the claims for relief brought by plaintiff are barred in whole or in part by the applicable statutes of limitations, including but not limited to 29 U.S.C. section 255(a). Target pleads all applicable limitations periods, both as bars and limitations to the claims and requests for relief asserted in the Complaint and as limitations upon the evidence to be admitted or considered in connection with any proceedings in the case.

7. Some or all of the claims in the Complaint are barred by the doctrine of laches.

8. Some or all of the claims in the Complaint are barred by the doctrines of collateral estoppel or *res judicata*.

9. The claims for relief set forth in the Complaint are barred, in whole or in part, by the doctrines of waiver and estoppel.

10. Plaintiff is barred, in whole or in part, from recovering any damages, or any recovery must be reduced, by virtue of plaintiff's failure to exercise reasonable diligence to mitigate her alleged damages.

11. Some or all of the claims in the Complaint are barred due to payment and/or overpayment.

12. The claims for relief set forth in the Complaint are barred, in whole or in part, by the doctrines of payment and accord and satisfaction because plaintiff was compensated for all sums legally due under the FLSA.

13. Some or all of plaintiff's claims for relief are subject to offset, set-off and/or recoupment, including but not necessarily limited to the additional compensation and benefits afforded to plaintiff.

14. The damages claimed by plaintiff are barred to the extent that they are speculative in nature.

15. Some of the claims in the Complaint are barred, in whole or in part, by plaintiff's unclean hands.

16. Some of the claims in the Complaint are barred, in whole or in part, because plaintiff lacks standing to pursue the claim, or plaintiff, as a private litigant, cannot state a claim for relief.

17. Target denies that it violated any provision of the FLSA or any other federal or state law, and specifically denies that any alleged violations were willful.

18. Any acts or omissions alleged by plaintiff that give rise to this action were reasonable and not undertaken with reckless disregard to whether such acts or omissions violated the FLSA or any other federal or state law.

19. Target at all times acted in good faith and had reasonable grounds for believing that its alleged actions and omissions were in compliance with the FLSA and all other federal or state law. Accordingly, no liquidated or punitive damages should be awarded because the alleged actions or omissions were undertaken in good faith and do not constitute a willful violation of the FLSA or state law.

20. Any award of civil, regulatory, and/or statutory penalties in the circumstances of this case would be unjust, arbitrary, oppressive, and confiscatory, and would violate the due process and excessive fines clauses of the United States Constitution.

21. Plaintiff lacks standing to pursue relief on behalf of the individuals whom she purports to represent.

22. Plaintiff is not similarly situated to the members of the proposed collective or classes and, therefore, plaintiff cannot satisfy the requirements to maintain her allegations as a class or collective action.

23. Plaintiff is an inadequate representative of the members of the proposed collective and classes.

24. Plaintiff's claims are neither common to nor typical of those, if any, of the members of the proposed collective and classes.

25. Certain interests of plaintiff are in conflict with the interests of all or some of the members of the proposed collective or classes.

26. The types of claims alleged by plaintiff on behalf of herself and the members of the proposed collective and classes are matters in which individual questions predominate and, accordingly, are not appropriate for class or collective treatment.

27. Plaintiff has not shown and cannot show that class treatment of the claims alleged in the Complaint is superior to other methods of adjudicating the controversy.

28. Because liability and/or damages, if any, to each member of the proposed collective and classes may not be determined by a single jury or on a group-wide basis, allowing this action to proceed as a collective or class action would violate Target's rights under the Seventh and Fourteenth Amendments to the United States Constitution.

29. In the event that one or more of the proposed collective or classes, or any other class or sub-class, should be certified in this matter, or any individual be allowed to opt into the action, Target incorporates by reference and realleges all of its defenses to plaintiff's individual

claims in response to the claims brought on behalf of or asserted by all members of such proposed collective or classes, other class or sub-class, or opt-in plaintiff.

30. Plaintiff and members of the proposed collective and New York class may not recover for purported wage statement violations because Target made complete and timely payment of all wages due pursuant to N.Y. Lab. L. § 198(1-b) and (1-d).

31. Target hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the proceedings in this matter and hereby reserves its right to amend its answer and to assert any such defenses.

WHEREFORE, Target requests the Court:

1. dismiss the Complaint in its entirety and with prejudice;
2. deny any and all request for relief set forth in the Complaint;
3. deny Plaintiff collective and class action status;
4. award Target its attorneys' fees and costs to the extent permissible by law; and
5. grant other such further relief as the Court deems just and proper.

Dated: New York, New York
August 7, 2017

Respectfully submitted,

By: 

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TARGET CORPORATION AND TARGET
CORPORATION OF MINNESOTA

DEMAND FOR JURY

Defendant Target Corporation hereby demands trial by jury on all issues triable to a jury.

Dated: New York, New York

August 7, 2017

Respectfully submitted,

By: STG

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and Affirmative Defenses 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 operation 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 access this filing through the Court's CM/ECF System

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