

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROBERT LAPOINTE JR., on behalf of himself  
and all other similarly situated employees,

Plaintiff,

- against -

TARGET CORPORATION,

Defendant.

No. 16 Civ. 00656(VSB)(BM)

**ANSWER AND DEFENSES**

**JURY DEMANDED**

Defendant Target Corporation (“Target”), pursuant to Rules 8(b) and 12(a) of the Federal Rules of Civil Procedure, sets forth its answers and defenses to the Complaint of plaintiff Robert LaPointe, Jr. as follows:

**NATURE OF ACTION**

1. Target admits that plaintiff purports to assert claims on behalf of himself and other current and former “Operations Group Leaders” who worked in Target’s New York-based distribution centers and who, plaintiff alleges, worked more than forty hours in a work week and were not paid overtime during the six-year period prior to filing this lawsuit and continuing until the alleged practice ends. Target also admits that it is an “employer” under New York Labor Law (“NYLL”) section 190(3) for the purposes of this action. Except as so admitted, Target denies paragraph 1 of the Complaint.

2. Target admits that plaintiff and the others he purports to seek to represent were classified as exempt in accordance with the NYLL during some or all of their tenure at Target and, therefore, were not eligible for overtime pay under the NYLL. Except as so admitted, Target denies paragraph 2 of the Complaint.

**PARTIES**

3. Target admits that plaintiff was an employee of Target during the period of time it employed him. Target lacks sufficient knowledge or information to admit or deny the allegations in paragraph 3 of the Complaint regarding plaintiff's place of residence and, therefore, denies those allegations. Except as so admitted or denied, Target denies paragraph 3 of the Complaint.

4. Target admits that it employed plaintiff in New York State. Target also admits that it is an "employer" under the NYLL for the purposes of this action, and functioned as an employer to plaintiff and the others he purports to seek to represent, to the best of its understanding of the purported class. Target is unclear as to plaintiff's meaning regarding plaintiff's allegation about Target's "County of Residence," and, therefore, denies all allegations regarding the same. Except as so admitted or denied, Target denies paragraph 4 of the Complaint.

**CLASS ACTION ALLEGATIONS**

5. Target admits that plaintiff purports to allege claims on behalf of himself and other current and former "Operations Group Leaders" according to the class definition alleged in paragraph 5 of the Complaint. Except as so admitted, Target denies paragraph 5 of the Complaint.

6. Target admits that plaintiff purports to exclude the individuals specified in paragraph 6 of the Complaint from the alleged class. Except as so admitted, Target denies paragraph 6 of the Complaint.

7. Target admits that it employed more than 40 Group Leaders in the State of New York during the purported class period. Except as so admitted, Target denies paragraph 7 of the Complaint.

8. Target denies paragraph 8 of the Complaint.

9. Target lacks sufficient knowledge or information to admit or deny the allegations in paragraph 9 of the Complaint regarding plaintiff's legal counsel and, therefore, denies those allegations. Except as so denied, Target denies paragraph 9 of the Complaint.

10. Target denies paragraph 10 of the Complaint.

11. Target denies paragraph 11 of the Complaint and all subparts thereof.

12. Target admits that "Operations Group Leaders" are identifiable from its corporate records. Except as so admitted, Target denies paragraph 12 of the Complaint.

13. Target denies paragraph 13 of the Complaint.

14. Target denies paragraph 14 of the Complaint.

15. Target lacks sufficient knowledge or information to admit or deny paragraph 15 of the Complaint, and on that basis denies it.

### **FACTS**

16. Target admits that plaintiff was employed by Target as a Group Leader from on or about April 4, 2011, until on or about May 21, 2015. Except as so admitted, Target denies paragraph 16 of the Complaint.

17. Target admits that it classified plaintiff as exempt throughout his tenure with Target. Target also admits that plaintiff's job as a Group Leader included paperwork and communicating with other team members (*i.e.*, employees), among other things. Except as so admitted, Target denies paragraph 17 of the Complaint.

18. Target admits that two levels of management, Senior Group Leader and General Manager, were above plaintiff's position at his worksite. Except as so admitted, Target denies paragraph 18 of the Complaint.

19. Target admits that, at one time, checklists were available to assist plaintiff regarding certain job duties. Except as so admitted, Target denies paragraph 19 of the Complaint.

20. Target admits that plaintiff did not receive overtime pay because he was classified as exempt. Except as so admitted, Target denies paragraph 20 of the Complaint.

21. Target admits that plaintiff's job duties included paperwork, and assisting and communicating with other team members. Except as so admitted, Target denies paragraph 21 of the Complaint.

22. Target denies allegations in paragraph 22 of the Complaint.

**PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR NONPAYMENT OF OVERTIME IN VIOLATION OF THE  
NEW YORK LABOR LAW**

23. Target hereby incorporates and realleges its responses to paragraphs 1 through 22 of the Complaint.

24. Target admits that the New York overtime wage provisions apply to Target in certain circumstances. Except as so admitted, Target denies paragraph 24 of the Complaint.

25. Target admits that it did not pay overtime to plaintiff or the purported class during the period of time they were Group Leaders. Except as so admitted, Target denies paragraph 25 of the Complaint.

26. Target denies paragraph 26 of the Complaint.

27. Target denies paragraph 27 of the Complaint.

28. Target admits that plaintiff does not seek liquidated damages under the NYLL and purports to reserve the right to do so. Except as so admitted, Target denies paragraph 28 of the Complaint.

**PLAINTIFF'S SECOND CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN  
VIOLATION OF THE NEW YORK LABOR LAW**

29. Target hereby incorporates and realleges its responses to paragraphs 1 through 28 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.

**PRAYER FOR RELIEF**

33. 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 convenience of the parties and witnesses, as well as the interests of justice, dictate that venue of this action is more appropriately laid in the Northern District of New York.

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

3. At all times relevant to the Complaint, plaintiff was properly classified as exempt from overtime compensation under the NYLL in accordance with its administrative exemption, executive exemption, and any other applicable exemptions.

4. The Complaint, and each of its claims for relief, is barred in whole or in part because plaintiff may have mis-performed his duties and/or failed to perform those duties that Target realistically expected him to perform.

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

6. Some or all of the claims brought by plaintiff are or may be barred in whole or in part by the applicable statutes of limitations, including, but not limited to, N.Y. Lab. Law. section 198(3). Target pleads the limitations period under N.Y. Lab. Law. section 198(3) and all other 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, in whole or in part, by the doctrine of laches.

8. Some or all of the claims in the Complaint may be barred, in whole or in part, by the doctrines of collateral estoppel or *res judicata*.

9. Some or all of the claims 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 his alleged damages.

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

12. Some or all of the claims in the Complaint are barred by the doctrines of payment and accord-and-satisfaction because plaintiff was compensated for all sums legally due under the NYLL and other applicable New York laws.

13. Some or all of the claims in the Complaint are subject to offset, including but not necessarily limited to the additional compensation and benefits afforded to plaintiff.

14. Some or all of the claims in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

15. Some of the claims in the Complaint are barred, in whole or in part, because plaintiff lacks standing to pursue the claim.

16. Plaintiff is not entitled to injunctive relief based upon the facts alleged in the Complaint.

17. Plaintiff's claims for injunctive and other equitable relief are barred because plaintiff has an adequate and complete remedy at law.

18. Plaintiff's claim for injunctive relief is barred because he is no longer employed by Target.

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

20. Any acts or omissions by Target 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 NYLL, or any other state law.

21. Target at all times acted in good faith and had reasonable grounds for believing that its alleged actions and omissions were in conformity with the NYLL and other applicable New York laws. Accordingly, no liquidated damages or penalties should be awarded because

the alleged actions or omissions were undertaken in good faith and do not constitute a willful violation of the NYLL or other applicable New York laws.

22. Plaintiff is barred from asserting a claim for liquidated damages by virtue of his election to assert class claims.

23. 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.

24. Plaintiff lacks standing to pursue relief on behalf of the individuals whom he purports to represent.

25. Plaintiff is not similarly situated to the members of the class or opt-in plaintiffs he seeks to represent (the "Proposed Class") and, therefore, plaintiff cannot satisfy the requirements to maintain this matter as a class action.

26. Plaintiff is an inadequate representative of the members of the Proposed Class.

27. Plaintiff's claims are neither common to nor typical of those, if any, of the members of the Proposed Class.

28. Certain interests of plaintiff are in conflict with the interests of all or some of the members of the Proposed Class.

29. The types of claims alleged by plaintiff on behalf of himself and the members of the Proposed Class are matters in which individual questions predominate and, accordingly, are not appropriate for class treatment.

30. 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.

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

32. In the event that the Proposed Class, 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 re-alleges 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 Class, other class or sub-class, or opt-in plaintiff.

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

**WHEREFORE**, Target requests the Court:

1. dismiss plaintiff's Complaint in its entirety and with prejudice;
2. award Target its attorneys' fees and costs to the extent permissible by law; and
3. grant such further relief as the Court deems just and proper.

Dated: New York, New York  
February 18, 2016

Respectfully submitted,

By: \_\_\_\_\_

  
SARA B. TOMEZSKO  
PAUL HASTINGS LLP  
75 East 55th Street  
New York, New York 10022  
Telephone: (212) 318-6000  
[saratomezsko@paulhastings.com](mailto:saratomezsko@paulhastings.com)

JEFFREY D. WOHL (*pro hac admission  
forthcoming*)  
PAUL HASTINGS LLP  
55 Second Street, 24th Floor  
San Francisco, California 94105  
Telephone: (415) 856-7000  
[jeffwohl@paulhastings.com](mailto:jeffwohl@paulhastings.com)

JOSEPH G. SCHMITT (*pro hac admission  
forthcoming*)  
DAVID A. JAMES (*pro hac admission  
forthcoming*)  
NILAN JOHNSON LEWIS PA  
120 South Sixth Street, Suite 400  
Minneapolis, Minnesota 55402  
Telephone: (612) 305-7500  
[jschmitt@nilanjohnson.com](mailto:jschmitt@nilanjohnson.com)

*Attorneys for Defendant*  
TARGET CORPORATION

**JURY DEMAND**

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

Dated: New York, New York  
February 18, 2016

Respectfully submitted,

By: \_\_\_\_\_

  
SARA B. TOMEZSKO  
PAUL HASTINGS LLP  
75 East 55th Street  
New York, New York 10022  
Telephone: (212) 318-6000  
[saratomezsko@paulhastings.com](mailto:saratomezsko@paulhastings.com)

JEFFREY D. WOHL (*pro hac admission  
forthcoming*)  
PAUL HASTINGS LLP  
55 Second Street, 24th Floor  
San Francisco, California 94105  
Telephone: (415) 856-7000  
[jeffwohl@paulhastings.com](mailto:jeffwohl@paulhastings.com)

JOSEPH G. SCHMITT (*pro hac admission  
forthcoming*)  
DAVID A. JAMES (*pro hac admission  
forthcoming*)  
NILAN JOHNSON LEWIS PA  
120 South Sixth Street, Suite 400  
Minneapolis, Minnesota 55402  
Telephone: (612) 305-7500  
[jschmitt@nilanjohnson.com](mailto:jschmitt@nilanjohnson.com)

*Attorneys for Defendant*  
TARGET CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2016, a copy of the foregoing Answer and 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.

/s/ Sara B. Tomezsko

Sara B. Tomezsko