

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DEBORAH GEORGE, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

ACADEMY MORTGAGE
CORPORATION (UT),

Defendant.

Civil Action No.
1:16-cv-00471-CAP

ANSWER TO PLAINTIFF'S COMPLAINT

Defendant Academy Mortgage Corporation (“Defendant”) hereby answers plaintiff Deborah George’s (“Plaintiff”) Complaint as follows. Except as expressly admitted, Defendant denies each of the allegations in the Complaint. Defendant responds to the corresponding numbered paragraphs of the Complaint as follows:

1. Paragraph 1 of Plaintiff’s Complaint contains a summary of the claims being made and the relief sought for which no response is required. Defendant admits that attached to the Complaint as Exhibit 1 are consents of the Plaintiff and three other individuals. Defendant denies each and every remaining allegation contained in Paragraph 1 of Plaintiff’s Complaint.

Parties

2. Defendant admits that Plaintiff worked for Defendant as an hourly paid “Processor 3” in a location in Atlanta, Georgia from approximately September 5, 2012 until approximately April 8, 2015. Upon information and belief, Defendant admits the remaining allegations in Paragraph 2 of the Complaint.

3. Defendant objects to Paragraph 3 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Paragraph 3 of Plaintiff’s Complaint contains a summary of the claims being made and who the claims are being brought on behalf of for which no response is required. Defendant denies each and every remaining allegation contained in Paragraph 3 of Plaintiff’s Complaint.

4. Defendant admits the allegations in Paragraph 4 of Plaintiff’s Complaint.

5. Defendant admits the allegations in Paragraph 5 of Plaintiff’s Complaint.

6. Defendant admits that Plaintiff was employed by Defendant in this judicial district and that Defendant does business in this judicial district. Defendant admits that venue is proper in this Court but contends that the case should be

transferred to the District of Utah pursuant to 28 U.S.C. § 1404.

7. Defendant objects to Paragraph 7 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant admits that Plaintiff was an employee during her employment with Defendant as defined by the FLSA. Defendant denies each and every remaining allegation contained in Paragraph 7 of Plaintiff’s Complaint.

8. Defendant objects to Paragraph 8 of the Complaint on the grounds that it calls for a legal conclusion. Defendant admits the allegations in Paragraph 8 of Plaintiff’s Complaint.

9. Defendant objects to Paragraph 9 of the Complaint on the grounds that it calls for a legal conclusion. Defendant admits the allegations in Paragraph 9 of Plaintiff’s Complaint.

10. Defendant objects to Paragraph 10 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant admits Plaintiff was individually engaged in commerce and/or engaged in the production of goods for commerce on a regular and recurring basis during her employment with Defendant. Defendant denies each and every remaining allegation contained

in Paragraph 10 of Plaintiff's Complaint.

11. Defendant objects to Paragraph 11 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for "Similarly Situated Individuals" constitutes a legal conclusion. Defendant admits Plaintiff was covered by the maximum hours provisions of the FLSA throughout her employment with Defendant. Defendant denies each and every remaining allegation contained in Paragraph 11 of Plaintiff's Complaint.

12. Defendant admits the allegations in Paragraph 12 of Plaintiff's Complaint but contends that the case should be transferred to the District of Utah pursuant to 28 U.S.C. § 1404.

Facts Related to All Counts

13. Defendant admits the allegations contained in Paragraph 13 of the Complaint.

14. Defendant admits pay policies, plans, and decisions are made by corporate management in Utah. Defendant denies each and every remaining allegation contained in Paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16. Defendant objects to Paragraph 16 of the Complaint on the grounds

that it calls for a legal conclusion. Defendant admits that it paid hourly employees overtime compensation for hours worked over 40 in a workweek. On information and belief, Defendant denies each and every remaining allegation contained in Paragraph 16 of the Complaint.

17. Defendant objects to Paragraph 17 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Employees” constitutes a legal conclusion. Defendant admits that Plaintiff and certain non-exempt employees were paid an hourly rate of pay for hours worked up to 40 in a workweek and that Plaintiff and certain non-exempt employees received additional compensation, including bonuses. Defendant denies each and every remaining allegation in Paragraph 17 of the Complaint.

18. Defendant objects to Paragraph 18 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies that Plaintiff had any bonuses guaranteed. Defendant admits that Plaintiff was eligible for, and did receive, certain bonuses. Defendant denies each and every remaining allegation in Paragraph 18 of the Complaint.

19. Defendant objects to Paragraph 18 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for

“Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies that there is a “processor bonus agreement” and that Plaintiff had any bonuses guaranteed. Defendant admits that Plaintiff was eligible for certain bonuses Defendant denies each and every remaining allegation in Paragraph 19 of the Complaint.

20. Defendant objects to Paragraph 20 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant admits that Plaintiff was required to sign an offer letter before beginning employment with Defendant. Defendant denies each and every remaining allegation in Paragraph 20 of the Complaint.

21. Defendant objects to Paragraph 21 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies each and every allegation in Paragraph 21 of the Complaint.

22. Defendant objects to Paragraph 22 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies that there was any bonus payment that was required to be included in the

calculation of the overtime premiums paid to Plaintiff. Defendant admits that it did not include bonus payments in the calculation of the overtime premiums paid to Plaintiff.

23. Defendant denies that there was any bonus payment that was required to be included in the calculation of the overtime premiums paid to Plaintiff for the pay period from February 1, 2015 through February 15, 2015. Defendant admits the remaining allegations in Paragraph 23 of the Complaint.

24. Defendant objects to Paragraph 24 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies each and every allegation in Paragraph 24 of the Complaint.

25. Defendant objects to Paragraph 25 of the Complaint on the grounds that it calls for a legal conclusion, calls for a fail-safe class, and is not suitable for class or collective treatment. In addition, Paragraph 25 of Plaintiff’s Complaint contains a statement of on whose behalf the claims are being brought for which no response is required. Defendant denies each and every remaining allegation contained in Paragraph 25 of Plaintiff’s Complaint.

Count 1: FLSA

26. Defendant incorporates herein the responses to allegations contained

in the preceding paragraphs.

27. Defendant objects to Paragraph 27 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies each and every allegation in Paragraph 27 of the Complaint.

28. Defendant objects to Paragraph 28 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies each and every allegation in Paragraph 28 of the Complaint.

29. Defendant denies each and every allegation in Paragraph 29 of the Complaint.

30. Defendant objects to Paragraph 30 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies each and every allegation in Paragraph 30 of the Complaint.

31. Defendant objects to Paragraph 31 of the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies each and every allegation in Paragraph 31 of the Complaint.

PRAYER FOR RELIEF

Defendant objects to the Prayer for Relief in the Complaint on the grounds that it calls for a legal conclusion and the definition Plaintiff provides for “Similarly Situated Individuals” constitutes a legal conclusion. Defendant denies that Plaintiff and the alleged “Similarly Situated Individuals” are entitled to any of the relief requested in the Prayer for Relief following Paragraph 31 of the Complaint. Defendant denies each and every allegation in Plaintiff’s Complaint not expressly admitted above, including, but not limited to, all allegations regarding the propriety of this case being certified a collective action, the allegations regarding purported “Similarly Situated Individuals,” and all allegations that Defendant violated the FLSA and that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Defendant pleads the following defenses to Plaintiff’s Complaint:

1. In regard to some or all of the claims, Plaintiff’s Complaint fails to state a claim upon which relief may be granted.
2. The FLSA’s two-year statute of limitations bars any claims of alleged class members that arise more than two years from the filing of the

Complaint and/or opting into the collective action or class as defined in this Complaint.

3. Plaintiff's claims may be barred by her failure to exhaust administrative remedies.

4. Plaintiff's claims may be barred by the doctrine of settlement, release and/or accord and satisfaction.

5. Without conceding that Defendant has committed any wrongdoing, any conduct on part of Defendant that may have violated the FLSA was in good faith and there were reasonable grounds for believing this conduct was not a violation of law pursuant to 29 U.S.C. § 260.

6. Without conceding that Defendant has committed any wrongdoing, Defendant's actions or omissions were in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval, or interpretation of the U.S. Wage and Hour Administrator, or any administrative practice or enforcement policy of the Administrator.

7. Plaintiff's damages, if any, were caused by Plaintiff's own conduct.

8. Plaintiff acknowledged, ratified, consented to, and acquiesced in the alleged acts or omissions, if any, of Defendant, thus barring Plaintiff from any relief as prayed for herein.

9. Defendant did not knowingly, recklessly or willfully violate any applicable state or federal law.

10. Without admitting that Plaintiff has suffered any injury or damage, the Complaint and each of its purported causes of action are barred by Plaintiff's failure to take reasonable steps to avoid or otherwise mitigate the claimed damages.

11. Without conceding that Defendant has committed any wrongdoing, Plaintiff has waived any claim asserted here.

12. Without conceding that Defendant has committed any wrongdoing, Defendant is entitled to a set-off for any amount already paid in wages to which the employee was not entitled.

13. Defendant alleges that any alleged overtime owed was *de minimis* and thus not compensable.

14. Collective action relief is not appropriate because Defendant did not act pursuant to uniform policy or plan.

15. Plaintiff is not similarly situated to the putative collective action individuals whom she purports to represent.

16. Collective action relief is not appropriate because individual liability and damages issues predominate over issues generally applicable to the collective

action.

17. Without conceding any liability, when calculating overtime liability, if any, Defendant is entitled to exclusion of aspects of Plaintiff's compensation that are excludable from the regular rate of pay under 29 U.S.C. § 207(e).

18. Defendant lacks constructive or actual knowledge of hours worked that were not compensated for.

19. Defendant asserts laches, unclean hands and acts or omissions of Plaintiff as a defense to equitable relief.

20. Plaintiff's claims do not satisfy the requirements of 29 U.S.C. § 216(b) regarding collective actions.

21. Plaintiff's claims should be transferred to the District of Utah pursuant to the doctrine of *forum non conveniens* and 28 U.S.C. § 1404.

22. Defendant reserves the right to add additional denials, avowals, admissions, and/or affirmative defenses, pursuant to Rule 8, Federal Rules of Civil Procedure.

WHEREFORE, having answered Plaintiff's Complaint, Defendant respectfully requests that the Complaint be dismissed with prejudice, with Plaintiff to take nothing thereby; that Defendant be awarded its reasonable attorneys' fees and its costs; and that Defendant be awarded such other and further relief as the

Court may deem just and proper.

Dated this 27th day of May, 2016.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

/s/ Theresa Y. Kananen

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CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1, NDGa, the undersigned certifies that the foregoing Answer has been prepared in 14 point Times New Roman font, in accordance with LR 5.1C, NDGa.

/s/ Theresa Y. Kananen
Theresa Y. Kananen
Ga. Bar No. 478998

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2016, a true and accurate copy of the foregoing *Answer to Plaintiff's Complaint* was filed using the Court's CM/ECF filing system, which will automatically serve notice of the filing on the following counsel of record:

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