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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

THOM JENSEN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER BROADCASTING -
PORTLAND TV, LLC, now known as
SINCLAIR TELEVISION OF
PORTLAND, LLC, and FISHER
BROADCASTING COMPANY, now
known as SINCLAIR TELEVISION
MEDIA, INC., and FISHER
COMMUNICATIONS, INC., now known
as SINCLAIR BROADCAST GROUP,
INC.,

Defendants.

Case No. 3:14-cv-137-AC

**DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

Defendants Fisher Broadcasting - Portland TV, LLC, now known as Sinclair Television
of Portland, LLC; Fisher Broadcasting Company, now known as Sinclair Television Media, Inc.;

1- DEFENDANTS' ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS

00649-00517-FC-A1-20240117-1

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and Fisher Communications, Inc., now known as Sinclair Television of Seattle, Inc. (collectively, “Defendants” or “Fisher”), by and through their undersigned counsel, submit this Answer to the claims and allegations of Plaintiff’s Complaint, according to the numbering in the Complaint. Any allegation not specifically admitted is denied.

1. Preliminary Statement

1.1 Defendants admit that Plaintiff Thom Jensen (“Plaintiff”) was formerly employed by Fisher and that he purports to bring this action as a representative action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), seeking to recover overtime wages allegedly due to him and his former co-workers under FLSA. Defendants, however, deny the validity of Plaintiff’s claims and deny that this matter should proceed as a representative action under FLSA. Defendants deny all of the remaining allegations contained in paragraph 1.1 of the Complaint.

1.2 Defendants admit that Plaintiff purports to bring this action as a class action under Rule 23 for of the Federal Rules of Civil Procedure, seeking to recover under Oregon wage and hour statutes and administrative regulations. Defendants, however, deny the validity of Plaintiff’s claims, deny that Plaintiff’s claims are typical of the putative members of the purported class, deny that Plaintiff will fairly and adequately protect the interests of the putative members of the purported class, and deny that this matter should proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure. Defendants deny all of the remaining allegations contained in paragraph 1.2 of the Complaint.

1.3 Defendants admit that Plaintiff purports to bring claims under the Americans with Disabilities Act of 1990, as amended (“ADA”), FLSA, and Oregon statutes and common law. Defendants, however, deny the validity of Plaintiff’s claims, and Defendants deny all of the remaining allegations contained in paragraph 1.3 of the Complaint.

2. Jurisdiction and Venue

2.1. Defendants admit the allegations in paragraph 2.1 of the Complaint.

2.2. Defendants admit the allegations in paragraph 2.2 of the Complaint.

2.3. Defendants admit that Plaintiff filed a claim with the Equal Employment Opportunity Commission (“EEOC”) and the Oregon Bureau of Labor and Industries (“BOLI”). Defendants deny all of the remaining allegations in paragraph 2.3 of the Complaint.

3. Parties

3.1. Defendants admit that Fisher Broadcasting — Portland TV, LLC is a Delaware limited liability company registered with the Oregon Secretary of State. Defendants admit that Fisher Broadcasting Company is a corporation incorporated in the State of Washington and registered with the Oregon Secretary of State. Defendants admit that Fisher Broadcasting Company was a member of Fisher Broadcasting — Portland TV, LLC. Defendants further admit that Fisher Broadcasting Company was the sole member of Fisher Broadcasting — Portland TV, LLC, and that Fisher Broadcasting was a wholly owned subsidiary of Fisher Communications, Inc. Defendants admit that the decisions to classify employees as exempt and to terminate Plaintiff’s employment were primarily made by Fisher Communications, Inc. Except as specifically admitted, the remaining allegations of Paragraph 3.1 are denied.

3.2. Defendants admit that on or about April 11, 2013, it was announced that Sinclair Broadcast Group, Inc. would acquire Fisher Communications, Inc., including the KATU television station where Plaintiff worked until December 2012. Defendants admit that the sale of Fisher Communications, Inc. to Sinclair Broadcast Group, Inc. was completed in August 2013. Defendants admit that Fisher Broadcasting — Portland TV, LLC is now known as Sinclair Television of Portland, LLC, a Delaware limited liability company registered with the Oregon Secretary of State. Defendants admit that Sinclair Television Media, Inc. is a Washington corporation registered with the Oregon Secretary of State. Defendants further admit that

- (1) Sinclair Television Media, Inc. is the sole member of Sinclair Television of Portland, LLC;
- (2) Sinclair Television Media is a wholly owned subsidiary of Sinclair Television of Seattle, Inc.;
- (3) Sinclair Television of Seattle, Inc. is a wholly owned subsidiary of Sinclair Television Group,

Inc.; and (4) Sinclair Television Group, Inc. is a wholly owned subsidiary of Sinclair Broadcast Group, Inc. Except as specifically admitted, the remaining allegations of Paragraph 3.2 are denied.

3.3. Defendants admit that Plaintiff began to work for Fisher on November 1, 2006, and that Plaintiff's employment was terminated by Fisher on or about December 18, 2012. Fisher admits that Plaintiff's starting annual salary was \$75,000.00 and his annual salary when his employment was terminated was \$88,303.00. Defendants deny all of the remaining allegations in paragraph 3.3 of the Complaint.

3.4. Defendants admit that Plaintiff was employed by Fisher as an investigative reporter between November 1, 2006, and December 18, 2012. Defendants are without sufficient information to form a belief as to the truth of the allegations regarding whether Plaintiff was a resident of Oregon during the entire period that Plaintiff was employed by Fisher, and thus Defendants deny those allegations. Defendants admit that Plaintiff is the named plaintiff in this action, but Defendants deny the validity of Plaintiff's claims, deny that Plaintiff is an appropriate class representative for the purported class, and deny that this matter should proceed as a representative action under FLSA or as a class action under Rule 23 of the Federal Rules of Civil Procedure. Defendants deny all of the remaining allegations in paragraph 3.4 of the Complaint.

4. FLSA Representative Action

4.1. Defendants admit that Plaintiff purports to bring this action as a representative action under FLSA, 29 U.S.C. § 216(b), seeking to recover overtime wages and liquidated damages on behalf of himself and other employees of Fisher under FLSA. Defendants, however, deny the validity of Plaintiff's claims and deny that this matter should proceed as a representative action under FLSA. Defendants deny all of the remaining allegations contained in paragraph 4.1 of the Complaint.

5. Class Action

5.1. Defendants admit that Plaintiff purports to seek certification under Rule 23(b)(3) of the Federal Rules of Civil Procedure of a class of current, past and future employees of Fisher who have allegedly qualified for payment of overtime wages but have not received those overtime wages. Defendants, however, deny the validity of Plaintiff's claims, deny Plaintiff is an appropriate class representative for the purported class, and deny that this matter should proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure. Defendants deny all of the remaining allegations contained in paragraph 5.1 of the Complaint.

5.2. Defendants deny the allegations in paragraph 5.2 of the Complaint.

5.3. Defendants admit that Fisher has company policies and procedures. Defendants deny all of the remaining allegations in paragraph 5.3 of the Complaint.

5.4. Defendants deny the allegations in paragraph 5.4 of the Complaint.

5.5. Defendants deny the allegations in paragraph 5.5 of the Complaint.

5.6. Defendants are without sufficient information to form a belief as to the truth of the allegations regarding the experience of Plaintiff's counsel in representing persons in representative actions and class actions of similar type and counsel's ability to adequately represent the interests of the purported putative class members, and thus deny those allegations.

6. Facts

6.1. Defendants admit that between November 1, 2006, and December 18, 2012, Fisher owned and operated approximately 22 television stations and 4 radio stations in the states of Oregon, Washington, Idaho and California, including KATU in Portland, Oregon. Defendants also admit that Plaintiff was employed by Fisher as an investigative reporter with KATU. Defendants deny all of the remaining allegations in paragraph 6.1 of the Complaint.

6.2. Defendants are without sufficient information to form a belief as to the truth of the allegations regarding the total number of hours worked by Plaintiff or others similarly

situated on a work-week basis, and thus, Defendants deny the allegations in paragraph 6.2 of the Complaint.

6.3. Defendants admits that Fisher did not pay overtime wages to Plaintiff, an investigative reporter who is exempt from overtime. Defendants deny all of the remaining allegations in paragraph 6.3 of the Complaint.

6.4. Defendants deny the allegations in paragraph 6.4 of the Complaint.

6.5. Defendants deny the allegations in paragraph 6.5 of the Complaint.

6.6. Defendants deny the allegations in paragraph 6.6 of the Complaint.

6.7. Defendants deny the allegations in paragraph 6.7 of the Complaint.

6.8. Defendants admit that Plaintiff has hired an attorney to pursue claims against Defendants. Defendants, however, deny the validity of Plaintiffs' claims, and Defendants deny all of the remaining allegations contained in paragraph 6.8 of the Complaint.

6.9. Defendants admit that Plaintiff mentioned post-traumatic stress disorder in an email sent to Fisher dated February 11, 2012. Defendants deny all of the remaining allegations contained in paragraph 5.9 of the Complaint.

6.10. Defendants admit that while employed by Fisher, Plaintiff was supervised by other Fisher employees. Defendants deny all of the remaining allegations contained in paragraph 6.10 of the Complaint.

6.11. Defendants admit that Plaintiff mentioned post-traumatic stress disorder in an email sent to Fisher dated February 11, 2012. Defendants deny all of the remaining allegations contained in paragraph 6.11 of the Complaint.

6.12. Defendants deny that Plaintiff requested any accommodation for any disability, and thus, Defendants deny all of the remaining allegations in paragraph 6.12.

6.13. Defendants deny the allegations in paragraph 6.13 of the Complaint.

6.14. Defendants admit that in 2012, Plaintiff expressed his belief that he was entitled to overtime pay and that Fisher disagreed. Defendants deny all of the remaining allegations in paragraph 6.14.

7. Claims for Relief

FIRST CLAIM FOR RELIEF

(FLSA)

7.1. Paragraph 7.1 of the Complaint is a legal contention, characterization, and/or conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations in paragraph 7.1 of the Complaint.

7.2. Defendants deny the allegations in paragraph 7.2 of the Complaint.

SECOND CLAIM FOR RELIEF

(Oregon Wage and Hour)

7.3. Paragraph 7.3 of the Complaint is a legal contention, characterization, and/or conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations in paragraph 7.3 of the Complaint.

7.4. Defendants deny the allegations in paragraph 7.4 of the Complaint.

THIRD CLAIM FOR RELIEF

(ADA -- Disability / Perceived Disability Discrimination)

7.5. Defendants are without sufficient information to form a belief as to the truth of the allegation that Plaintiff had a disability covered by the ADA through his employment with Fisher, and thus Defendants deny the allegation. Defendants deny all of the remaining allegations in paragraph 7.5 of the Complaint.

7.6. Defendants deny the allegations in paragraph 7.6 of the Complaint.

7.7. Defendants deny the allegations in paragraph 7.7 of the Complaint.

7.8. Defendants deny the allegations in paragraph 7.8 of the Complaint.

7.9. Defendants deny the allegations in paragraph 7.9 of the Complaint.

7.10. Defendants deny the allegations in paragraph 7.10 of the Complaint.

7.11. Defendants deny the allegations in paragraph 7.11 of the Complaint.

FOURTH CLAIM FOR RELIEF

(ORS 659A.112 -- Disability / Perceived Disability Discrimination)

7.12. Defendants are without sufficient information to form a belief as to the truth of the allegation that Plaintiff had a disability covered by the ADA through his employment with Fisher, and thus Defendants deny the allegation. Defendants deny all of the remaining allegations in paragraph 7.12 of the Complaint.

7.13. Defendants deny the allegations in paragraph 7.13 of the Complaint.

7.14. Defendants deny the allegations in paragraph 7.14 of the Complaint.

7.15. Defendants deny the allegations in paragraph 7.15 of the Complaint.

7.16. Defendants deny the allegations in paragraph 7.16 of the Complaint.

7.17. Defendants deny the allegations in paragraph 7.17 of the Complaint.

7.18. Defendants deny the allegations in paragraph 7.18 of the Complaint.

FIFTH CLAIM FOR RELIEF

(ADA -- Disability / Perceived Disability Retaliation)

7.19. Defendants deny the allegations in paragraph 7.19 of the Complaint.

7.20. In response to paragraph 7.20, Defendants hereby incorporate by reference their answers and responses to sections 1, 2, 3, 6, and 7.

SIXTH CLAIM FOR RELIEF

(ORS 659A.109 - Disability / Perceived Disability Retaliation)

7.21. In response to paragraph 7.21, Defendants hereby incorporate by reference their answers and responses to sections 1, 2, 3, 6, and 7.

7.22. Defendants deny the allegations in paragraph 7.22 of the Complaint.

SEVENTH CLAIM FOR RELIEF

(ADA -- Failure to Accommodate)

7.23. In response to paragraph 7.23, Defendants hereby incorporate by reference their answers and responses to sections 1, 2, 3, 6, and 7.

7.24. Defendants deny the allegations in paragraph 7.24 of the Complaint.

EIGHTH CLAIM FOR RELIEF

(ORS 659A.112 and ORS 659A.118 -- Failure to Accommodate)

7.25. In response to paragraph 7.25, Defendants hereby incorporate by reference their answers and responses to sections 1, 2, 3, 6, and 7.

7.26. Defendants deny the allegations in paragraph 7.26 of the Complaint.

NINTH CLAIM FOR RELIEF

(Wrongful Discharge)

7.27. In response to paragraph 7.27, Defendants hereby incorporate by reference their answers and responses to sections 1, 2, 3, 6, and 7.

7.28. Paragraph 7.28 of the Complaint is a legal contention, characterization, and/or conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 7.28 of the Complaint.

7.29. Paragraph 7.29 of the Complaint is a legal contention, characterization, and/or conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 7.29 of the Complaint.

7.30. Defendants deny the allegations in paragraph 7.30 of the Complaint.

7.31. Defendants deny the allegations in paragraph 7.31 of the Complaint.

TENTH CLAIM FOR RELIEF

(FLSA Retaliation)

7.32. In response to paragraph 7.32, Defendants hereby incorporate by reference their answers and responses to sections 1, 2, 3, 6, and 7.

7.33. Defendants admit that Fisher is an employer and Plaintiff is an employee within the meaning of 29 U.S.C. § 203. Defendants deny all of the remaining allegations of paragraph 7.33 of the Complaint.

7.34. Defendants deny the allegations in paragraph 7.34 of the Complaint.

7.35. Defendants deny the allegations in paragraph 7.35 of the Complaint.

Defendants deny that Plaintiff, or any member of the alleged representative class or any putative member of the purported class, are entitled to any of the relief for which they pray, and Defendants accordingly deny all the allegation contained in Plaintiff's Prayer for Relief.

Except as specifically admitted herein, Defendants deny each and every allegation in the Complaint. Defendants reserve the right to amend this Answer and to assert additional defenses based on further investigation and discovery.

AFFIRMATIVE DEFENSES

Defendants allege the following as separate affirmative defenses to the individual, representative and putative class claims without assuming the burden of proof, where such burden is otherwise on the Plaintiff under applicable procedural law. Defendants reserve the right to add additional affirmative defenses should they become aware of such during the course of discovery.

1. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, fail to state facts sufficient to constitute a cause of action against Defendants.

2. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, are barred, or limited, by the applicable statutes of limitations. Further, the applicability of the statutes of limitations require individualized determinations for each putative member of the purported class, thereby precluding class-wide resolution.

3. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, or some of them, in whole or in part, may not be litigated in court because some or all of said claims are subject to individual, mandatory, final and binding arbitration.

4. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, cannot and should not be maintained on a class-action or representative action because: those claims, and each of them, fail to meet the necessary requirements for class certification, including, class ascertainability, typicality, commonality, numerosity, manageability, superiority, and adequacy of the class representative; lack of a community of interest among the putative class; and because class certification is inappropriate due to defendants' lawful policies, pursuant to *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).

5. Defendants at all times acted in good faith and with reasonable grounds for believing that they had not violated Oregon or federal law.

6. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, are barred, in whole or in part, under the doctrines of waiver, laches, estoppel, ratification, acquiescence, or unclean hands.

7. Defendants have no knowledge of, nor should they have had knowledge of, any alleged uncompensated work by the Plaintiff or putative members of the purported class as set forth in the Complaint, and Defendants did not authorize, require, request, suffer, or permit such activity by the Plaintiff or putative members of the purported class as set forth in the Complaint.

8. The Complaint, and each cause of action thereof, is barred – or the damages flowing there from reduced – because Plaintiff and putative members of the purported class as set forth in the Complaint failed to notify Defendants of the alleged statutory violations at the time such violations allegedly occurred, which prevented Defendants from taking any action to remedy such alleged violations.

9. The Complaint fails to state a claim against Defendants upon which attorney's fees or costs can be awarded.

10. Any damages that Plaintiff or putative members of the purported class as set forth in the Complaint could recover must be eliminated or reduced by their failure to mitigate damages.

11. Plaintiff and putative members of the purported class as set forth in the Complaint have failed to exhaust administrative processes implemented by Fisher to prevent uncompensated work and to resolve any alleged claims regarding uncompensated work without resort to litigation.

12. All or some of Plaintiff's claims may be barred, in whole or in part, because Defendants exercised reasonable care and adopted and maintained effective policies and procedures to prevent and correct promptly any purportedly discriminatory behavior in the workplace. To the extent that Plaintiff unreasonably failed to utilize these policies and procedures or failed to take advantage of any preventive or corrective opportunities provided by Defendants or to otherwise avoid harm, Plaintiff's claims, or portions thereof, including any claims for punitive damages, may be barred.

13. Some of Plaintiff's claims may be barred or limited, in whole or in part, by the doctrine of after-acquired evidence.

14. Defendants deny having any wrongful or discriminating motivation with respect to Plaintiff, but assert that the actions of which Plaintiff complains would have been taken for lawful reasons independent of any alleged wrongful motivation.

15. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, are in whole or in part *de minimis*.

16. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, if allowed to be tried upon or with

so-called representative evidence, would violate the procedural and substantive Due Process clauses of the state and federal Constitutions.

17. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, that seek the imposition of multiple penalties and/or exemplary damages for the same basic wrongs are unconstitutional in that such relief violates the Due Process clauses of both federal and state Constitutions.

18. Plaintiff, and any putative members of the purported class as set forth in the Complaint, may not recover penalties pursuant to ORS 652.150 because Plaintiff, and putative members of the purported class as set forth in the Complaint, failed to comply with its conditions precedent, including applicable notice-and-cure provisions.

19. Plaintiff is not entitled to have matters of law tried to a jury, and Plaintiff's demand for a jury trial should be so limited.

Defendants reserve the right to assert additional affirmative defenses based upon further discovery.

COUNTERCLAIMS

1. Defendants incorporate all of the matters admitted and alleged above. Defendants are entitled to their reasonable attorney's fees under ORS 653.055(4), to the extent that ORS 653.055 applies, and to the extent Defendants are the prevailing party on claims under ORS 653.055.

2. Defendants are entitled to reasonable attorney's fees under ORS 20.105, to the extent it is the prevailing party on claims and grounds asserted by Plaintiff without an objectively reasonable basis.

WHEREFORE, having fully answered the Complaint, Defendants pray for relief as follows:

1. That the Complaint and each cause of action therein be dismissed with prejudice;
2. That the Plaintiff and the putative class take nothing by way of the Complaint;
3. That Defendants be awarded their reasonable costs and attorney's fees in defending this matter; and
4. That the Court order such other and further relief for Defendants as this Court deems just and proper.

DATED: March 26, 2014

s/ Calvin L. Keith

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