

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE DIVISION

CASE NO.: 11-CV-61923-WPD

LORILYNN RICE, KRISTEN  
GURDAK, GABRIEL AGUILAR  
BRITTANY SOTO, and LAUREN  
TAYLOR, on their own behalves  
and other similarly situated,

Plaintiffs,

v.

LUCKY BRAND DUNGAREES  
STORES, INC., a Foreign Profit  
CorporationDefendants.  

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**DEFENDANT'S ANSWER AND STATEMENT OF  
AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT**

For its Answer and Affirmative Defenses to Plaintiffs, LORILYNN RICE, KRISTEN GURDAK, GABRIEL AGUILAR, BRITTANY SOTO, and LAUREN TAYLOR, (Collectively "Plaintiffs"), Complaint, LUCKY BRAND DUNGAREES STORES, INC. ("Defendant") states as follows:

**JURISDICTION**

1. Defendant admits that Plaintiffs purport to bring a claim under the Fair Labor Standards Act, as amended (29 U.S.C. § 201 *et seq.*, but denies any inference of wrongdoing on its part or that they are liable to Plaintiffs for any of the relief they seek.
2. Defendant admits that the Court has jurisdiction pursuant to 29 U.S.C. § 216(b).

## **PARTIES**

3. Defendant is without sufficient information to admit or deny the allegations in Paragraph 3 of the Complaint and, therefore, denies the same.

4. Defendant admits that it is a foreign profit corporation that engages in business in Florida, but denies the remaining allegations in Paragraph 4 of the Complaint.

5. Defendant denies the allegations in Paragraph 5 of the Complaint.

6. Defendant admits the allegations in Paragraph 6 of the Complaint.

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

9. Defendant admits the allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant is without sufficient information to admit or deny the allegations in Paragraph 11 of the Complaint and, therefore, denies.

12. Defendant denies the allegations in Paragraph 12 of the Complaint.

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

## **STATEMENT OF FACTS**

14. Defendant admits the allegations in Paragraph 14 of the Complaint.

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

16. Defendant denies the allegations in Paragraph 16 of the Complaint.

17. Defendant denies the allegations in Paragraph 17 of the Complaint.

18. Defendant denies the allegations in Paragraph 18 of the Complaint including its subparts.

19. Defendant is without sufficient information to admit or deny the allegations in Paragraph 19 of the Complaint and, therefore, denies the same.

**COUNT I**  
**RECOVERY OF OVERTIME COMPENSATION**

20. Defendant incorporates its responses to paragraphs 1 –19 above as if fully restated here.

21. Defendant denies the allegations in paragraph 21 of the Complaint.

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

23. Defendant denies the allegations in paragraph 23 of the Complaint.

24. Defendant denies the allegations in paragraph 24 of the Complaint.

25. Defendant denies the allegations in paragraph 25 of the Complaint.

26. Defendant denies the allegations in paragraph 26 of the Complaint.

27. Defendant denies the allegations in paragraph 27 of the Complaint.

In response to the WHEREFORE unnumbered paragraph of the Complaint following Paragraph 27, Defendants deny that they are liable to Plaintiffs for any of the relief they seek and that they are entitled to any such relief.

**COUNT I**  
**RECOVERY OF OVERTIME COMPENSATION**

28. Defendant incorporates its responses to paragraphs 1 –27 above as if fully restated here.

29. Defendant denies the allegations in paragraph 29 of the Complaint.

30. Defendant denies the allegations in paragraph 30 of the Complaint.

31. Defendant denies the allegations in paragraph 31 of the Complaint.

32. Defendant admits the allegations in paragraph 32 of the Complaint.

33. Defendant is without sufficient information to admit or deny the allegations in paragraph 33 of the Complaint and, therefore, denies the same.

34. Defendant denies the allegations in paragraph 34 of the Complaint.
35. Defendant denies the allegations in paragraph 35 of the Complaint.
36. Defendant denies the allegations in paragraph 36 of the Complaint.
37. Defendant denies the allegations in paragraph 37 of the Complaint.
38. Defendant denies the allegations in paragraph 38 of the Complaint.
39. Defendant denies the allegations in paragraph 39 of the Complaint.
40. Defendant denies the allegations in paragraph 40 of the Complaint.
41. Defendant denies the allegations in paragraph 41 of the Complaint.
42. Defendant denies there are any issues to be tried by jury in this action.

In response to the WHEREFORE unnumbered paragraph of the Complaint following Paragraph 42, Defendants deny that they are liable to Plaintiffs for any of the relief they seek and that they are entitled to any such relief.

### **STATEMENT OF AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Defendant denies any liability under or within the meaning of the FLSA as regards overtime compensation. However, to the extent that the Court may determine that Defendants' acts or omissions cast either or both in liability under such statute, Plaintiffs' claims are, nonetheless, barred by the provisions of the Portal-to-Portal Act, 29 U.S.C. § 260, because the acts or omissions complained of were done in good faith and with reasonable grounds for believing that the acts or omissions were not in violation of the FLSA.

**THIRD AFFIRMATIVE DEFENSE**

To the extent any claim arises outside the statute of limitations, it is barred by the limitations period set forth in the Portal-to-Portal Act, 29 U.S.C. § 255.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant asserts that it is not subject to liability under the FLSA and that this action should be barred because any “omission of overtime payments complained of was in good faith in conformity with and in reliance on . . . administrative practice or enforcement policy of a [United States] agency with respect to the class of employers to which [Defendants] belong[s],” in accordance with the Portal-to-Portal Act, 29 U.S.C. § 258.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant asserts that Plaintiffs’ claims are barred by payment in that Plaintiffs have received all compensation to which they is entitled under the FLSA.

**SIXTH AFFIRMATIVE DEFENSE**

Defendant asserts that any insubstantial or insignificant periods of recorded working time beyond the scheduled working hours of Plaintiffs, which as a practical administrative matter cannot be recorded precisely for payroll purposes, are *de minimis* and may be properly disregarded for payroll purposes, in accordance with 29 C.F.R. § 785.47.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant asserts that any claim for overtime compensation by Plaintiffs must be offset by any premium compensation, overpayments, bonuses, advances, commission or other job-related benefits paid or provided to Plaintiffs, including a reduction for any compensation already paid to Plaintiffs for periods not compensable under the FLSA.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant asserts that Plaintiffs are not similarly situated to any other person or persons for purposes of the FLSA.

**NINTH AFFIRMATIVE DEFENSE**

The regular rate cannot be computed based upon, and overtime compensation cannot be recovered by Plaintiffs for, periods of time during which Plaintiffs performed no work, including vacation and/or sick/medical leave, or for periods of time during which Plaintiffs were otherwise absent from the workplace during that week including during holidays and other functions voluntarily attended.

Defendant reserves the right to raise any additional affirmative defenses as discovery may reveal.

WHEREFORE, having answered Plaintiffs' Complaint and having raised affirmative defenses, Defendant respectfully requests that the Court enter an Order:

- (a) dismissing Plaintiffs' Complaint with prejudice;
- (b) awarding Defendant the costs and disbursements of this action, including attorneys' fees; and
- (c) awarding Defendant such other and further relief as the Court deems just and proper.

Dated: December \_\_, 2011

Respectfully submitted,

s/ Natalie E. Norfus \_\_\_\_\_  
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**Certificate of Service**

**I hereby certify** that a true and correct copy of the foregoing was served by CM/ECF on December 1, 2011, on all counsel or parties of record on the Service List below.

s/ Natalie E. Norfus  
Attorney

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