

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Civil Action No.: 1:20-cv-16-MR-WCM**

MATTHEW HODGE,

Plaintiff,

v.

**NORTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY and DIVISION OF
ADULT CORRECTION AND JUVENILE
JUSTICE,**

Defendants.

ANSWER

Defendants North Carolina Department of Public Safety (“NCDPS”) and Division of Adult Correction and Juvenile Justice (“DAC”) (together “Defendants”) answer the allegations of Plaintiff’s Complaint and set forth their defenses as follows:

ANSWER AND FIRST DEFENSE

Defendants answer the correspondingly numbered paragraphs of the Complaint as follows:

1. Defendants deny that they committed violations of the Fair Labor Standards Act (“FLSA”). The remaining allegations of paragraph 1 are conclusions that require no response.
2. Defendants deny that they terminated Plaintiff’s employment or that they retaliated against Plaintiff, and further deny that they learned that Plaintiff was taking steps to bring a lawsuit under the FLSA or was communicating with similarly situated Corrections Officers regarding enforcement of their rights under the FLSA. The remaining allegations of paragraph 2 are conclusions that require no response.

3. The allegations of paragraph 3 are legal conclusions that require no response. To the extent a response is required, Defendants admit that this Court has subject matter jurisdiction over claims arising under the FLSA, and Defendants deny that they have committed any violations of the FLSA.

4. Defendants admit the allegations of paragraph 4.

5. Defendants admit that DAC operates within the State of North Carolina and within this District. Defendants deny the allegations of paragraph 5 except as expressly admitted.

6. Defendants admit that venue exists in this District pursuant to 28 U.S.C. § 1391(b). Defendants deny the allegations of paragraph 6 except as expressly admitted.

7. Defendants admit that Plaintiff was employed by DPS as a Correctional Officer I from 2016 until on or around June 20, 2019 and that Plaintiff worked for Defendants primarily at Rutherford Correctional Center in Spindale, North Carolina. Defendants deny that DPS terminated Plaintiff's employment. Defendants lack sufficient knowledge or information to determine the truth or falsity of the remaining allegations of paragraph 7 and therefore deny those allegations.

8. Defendants deny the allegations of paragraph 8.

9. Defendants admit that DPS is a Department of the State of North Carolina and that it operates correctional facilities in the State of North Carolina, including Rutherford Correctional Center. Defendants deny the allegations of paragraph 9 except as expressly admitted.

10. Defendants admit that DPS is a public agency and an employer and that those terms are defined in Section 3(d) of the FLSA, 29 U.S.C. § 203(d). Defendants deny the

allegations of paragraph 10 except as expressly admitted.

11. Defendants admit that DPS has engaged in an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r). Defendants deny the allegations of paragraph 11 except as expressly admitted.

12. Defendants admit that DPS has been an enterprise engaged in commerce within the meaning of Section 3(s) of the FLSA, 29 U.S.C. § 203(s)(1). Defendants deny the allegations of paragraph 12 except as expressly admitted.

13. Defendants admit that DAC is a division of DPS and that the publication referenced in paragraph 13 speaks for itself as to its terms. Defendants deny the allegations of paragraph 13 except as expressly admitted.

14. Defendants deny the allegations of paragraph 14.

15. Defendants deny the allegations of paragraph 15.

16. Defendants deny the allegations of paragraph 16.

17. Defendants lack sufficient knowledge or information to determine the truth or falsity of the allegations of paragraph 17 and therefore deny those allegations.

18. Defendants admit that Plaintiff and five others filed a lawsuit on October 28, 2019 against DAC and DPS asserting claims under the FLSA and under North Carolina common law under the name *Hodge et al. v. North Carolina Department of Public Safety et al.*, Case No. 5:19-cv-478 (E.D. N.C.). Defendants deny the allegations of paragraph 18 except as expressly admitted.

19. Defendants admit the allegations of paragraph 19, upon and information and belief.

20. Defendants admit that Correctional Officers who work at Rutherford Correctional Center have patronized Carolina Café while wearing their DPS uniforms. Defendants deny the allegations of paragraph 20 except as expressly admitted.

21. Defendants admit that while at Carolina Cafe, Plaintiff demanded a discount on his meal as an officer in uniform. Defendants deny the allegations of paragraph 21 except as expressly admitted.

22. Defendants admit that Plaintiff was informed he could receive a discounted drink, but not a discount on his sandwich, and that Plaintiff eventually paid for his meal. Defendants deny the allegations of paragraph 22 except as expressly admitted.

23. Defendants admit the allegations of paragraph 23.

24. Defendants admit that after Plaintiff arrived at the facility, he met with Superintendent Reep, Assistant Superintendent Larry Godwin, and Administrative Specialist II Shayne Dotson. Defendants deny the allegations of paragraph 24 except as expressly admitted.

25. Defendants admit that Superintendent Reep referred to Plaintiff's visit to Carolina Café earlier that day and stated, among other things, that restaurant employees reported that Plaintiff had caused a scene while demanding a discounted meal and that he falsely stated he was a police officer, and that on a prior occasion a restaurant employee had paid for a portion of his meal when Plaintiff had wrongly demanded a discount. Defendants deny the allegations of paragraph 25 except as expressly admitted.

26. Defendants admit that Plaintiff, after wrongly demanding a discount, paid for his meal at Carolina Café on June 20, 2019. Defendants deny the allegations of paragraph 26 except as expressly admitted.

27. Defendants deny the allegations of paragraph 27.

28. Defendants admit that they obtained video footage of Plaintiff's interaction at the cash register at Carolina Café on June 20, 2019 and that such footage is in the possession of Defendants. Defendants deny the allegations of paragraph 28 except as expressly admitted.

29. Defendants admit that Plaintiff told persons at the Carolina Café that he worked for the Forest City police, which was false. Defendants lack sufficient knowledge or information to determine the truth or falsity of the remaining allegations of paragraph 29 and therefore deny those allegations.

30. Defendants deny the allegations of paragraph 30.

31. Defendants deny the allegations of paragraph 31.

32. Defendants deny the allegations of paragraph 32.

33. Defendants admit that Plaintiff voluntarily signed and submitted a written letter of resignation form. Defendants deny the allegations of paragraph 33 except as expressly admitted.

34. Defendants deny the allegations of paragraph 34.

35. Defendants deny the allegations of paragraph 35.

36. Defendants deny the allegations of paragraph 36.

37. Defendants admit that employees at Rutherford Correctional Center have visited the Carolina Café while wearing their DPS uniforms. Defendants admit that they are unaware of any employees, including Plaintiff, at Rutherford Correctional Center who have been terminated for wearing their DPS uniform at Carolina Café. Defendants expressly deny that Plaintiff was terminated from employment or that he was terminated for wearing a DPS uniform at Carolina Café. Defendants lack sufficient knowledge or information to determine the truth or falsity of the remaining allegations of paragraph 37 and therefore deny those allegations.

38. Defendants admit that an Officer Anderson was not disciplined for eating at

Carolina Café. Defendants lack sufficient knowledge or information to determine the truth or falsity of the remaining allegations of paragraph 38 and therefore deny those allegations.

39. Defendants admit that following his termination, Plaintiff submitted a grievance to challenge his alleged termination and that DPS determined that his complaint was not grievable at step one or step two because Plaintiff had resigned from employment. Defendants deny the allegations of paragraph 39 except as expressly admitted.

40. Defendants reallege and incorporate by reference their responses to paragraphs 1 through 39 of the Complaint as set forth above.

41. The allegations of paragraph 41 state conclusions that require no response. To the extent a response is required, Defendants deny any violations of the FLSA's anti-retaliation provisions and deny that Plaintiff is entitled to declaratory or injunctive relief or damages.

42. Defendants deny the allegations of paragraph 42.

43. Defendants deny the allegations of paragraph 43.

44. Defendants deny the allegations of paragraph 44.

45. Defendants deny the allegations of paragraph 45.

46. Defendants admit that N.C. Gen. Stat. § 143-300.35(a)(1) states that the sovereign immunity of the state is waived for the limited purpose of allowing certain state employees to maintain lawsuits to satisfy judgments under the FLSA and that the statute otherwise speaks for itself. Defendants deny the allegations of paragraph 46 except as expressly admitted.

47. Defendants deny the allegations of paragraph 47.

48. Defendants deny the allegations of paragraph 48.

SECOND DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted against Defendants.

THIRD DEFENSE

Plaintiff's claim is barred because he voluntarily resigned his employment with DPS and was not terminated.

FOURTH DEFENSE

Plaintiff's claim is barred because all actions taken by Defendants with respect to Plaintiff were based on legitimate business reasons and not in retaliation for alleged protected conduct by Plaintiff.

FIFTH DEFENSE

Plaintiff's claim is barred to the extent Plaintiff has failed to make reasonable efforts to mitigate his damages, and any claim for lost earnings must be reduced by compensation that he has received or should have received.

SIXTH DEFENSE

At all times relevant to this action, Defendants acted in good faith and in full compliance with all applicable laws, including the FLSA.

SEVENTH DEFENSE

Plaintiff's claim is barred by sovereign immunity to the extent that the sovereign immunity of the state has not been waived.

EIGHTH DEFENSE

Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claim for damages is barred or limited by the doctrine of after-acquired evidence.

NINTH DEFENSE

Plaintiff's claims for liquidated or punitive damages are barred because Defendants did not willfully violate the FLSA or any other law.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray the Court for the following relief:

1. That the Court dismiss the Complaint with prejudice and that Plaintiff have and recover nothing from Defendants;
2. That the Court tax the costs of this action, including reasonable attorneys' fees, against Plaintiff; and
3. That the Court award any other relief deemed just and proper.

This 13th day of March, 2020.

s/ Charles E. Johnson

Charles E. Johnson

N.C. Bar No. 9890

CEJohnson@robinsonbradshaw.com

John R. Wester

N.C. Bar No. 4660

JWester@robinsonbradshaw.com

Andrew R. Wagner

N.C. Bar No. 53649

Awagner@robinsonbradshaw.com

ROBINSON, BRADSHAW & HINSON, P.A.

101 N. Tryon St., Ste. 1900

Charlotte, North Carolina 28246

Telephone: 704.377.2536

Facsimile: 704.378.4000

Attorneys for Defendants

12942990v1