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19 THE NEWS GROUP, INC., a Delaware Corporation;
20 THE NEWS GROUP, L.P., a Delaware partnership;
21 SELECT MEDIA SERVICES, L.L.C., a Delaware
22 Limited Liability Company

23 **UNITED STATES DISTRICT COURT**
24 **EASTERN DISTRICT OF CALIFORNIA**

25 JEANNETTE COOKS, an individual;
26 ALWENA FRAZIER, an individual;
27 AUDREY L. BROWN, an individual for
28 themselves and on behalf of all others
similarly situated,

Plaintiffs,

v.

TNG GP, a Delaware General Partnership;
THE NEWS GROUP, INC., a Delaware
Corporation; THE NEWS GROUP, L.P., a
Delaware partnership; SELECT MEDIA
SERVICES, L.L.C., a Delaware Limited
Liability Company, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 2:16-CV-01160-KJM-AC

**DEFENDANTS' ANSWER TO FIRST
AMENDED CLASS ACTION COMPLAINT**

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1 Defendants THE NEWS GROUP, INC., THE NEWS GROUP, L.P., SELECT MEDIA
2 SERVICES, L.L.C. (“Defendants”), by and through the undersigned counsel, hereby answer for
3 themselves only the First Amended Class Action Complaint (“FACAC”) filed by Plaintiffs
4 JEANNETTE COOKS, ALWENA FRAZIER, and AUDREY L. BROWN (“Plaintiffs”) as follows:

5 **INTRODUCTION**

6 1. Answering paragraph 1 of Plaintiffs’ FACAC, Defendants admit that Plaintiffs are
7 non-exempt merchandisers who service retail stores, and that they brought this lawsuit which
8 asserts the referenced claims. Except as expressly admitted, Defendants deny the allegations of
9 paragraph 1 of the FACAC.

10 **JURISDICTION AND VENUE**

11 2. Answering paragraph 2 of Plaintiffs’ FACAC, Defendants admit that business is
12 conducted in Solano and Sacramento Counties. Except as expressly admitted, Defendants deny the
13 remaining allegations of paragraph 2 of the FACAC.

14 3. Answering paragraph 3 of Plaintiffs’ FACAC, Defendants admit that they removed
15 this action to this Court as alleged. Except as expressly admitted, Defendants deny the remaining
16 allegations of paragraph 3 of the FACAC.

17 4. Defendants admit the allegations of paragraph 4 of Plaintiffs’ FACAC.

18 5. Answering paragraph 5 of Plaintiffs’ FACAC, Plaintiffs merely state legal
19 conclusions which require no response.

20 **PARTIES**

21 6. Answering paragraph 6 of Plaintiffs’ FACAC, Defendants admit that Plaintiff
22 JEANNETTE COOKS is employed as a non-exempt merchandiser in Solano County, California.
23 Defendants lack sufficient information regarding the remainder of the allegations in paragraph 6,
24 and therefore deny those allegations.

25 7. Answering paragraph 7 of Plaintiffs’ FACAC, Defendants admit that Plaintiff
26 ALWENA FRAZIER is employed as a non-exempt merchandiser in Solano County, California.
27 Defendants lack sufficient information regarding the remainder of the allegations in paragraph 7,
28 and therefore deny those allegations.

1 8. Answering paragraph 8 of Plaintiffs' FACAC, Defendants admit that Plaintiff
2 AUDREY BROWN is employed as a non-exempt merchandiser in Sacramento County, California.
3 Defendants lack sufficient information regarding the remainder of the allegations in paragraph 8,
4 and therefore deny those allegations.

5 9. Answering paragraph 9 of Plaintiffs' FACAC, Defendants admit that one of its
6 general partners, Select Media Services, is engaged in business in Solano and Sacramento
7 Counties, and that TNG operates under the name TNG. Except as expressly admitted, Defendants
8 deny the allegations of paragraph 9 of the FACAC.

9 10. Defendants deny the allegations of paragraph 10 of the FACAC.

10 11. Defendants deny the allegations of paragraph 11 of the FACAC.

11 12. Defendants admit the allegations of paragraph 12 of the FACAC.

12 13. Answering paragraph 13 of Plaintiffs' FACAC, Plaintiffs merely state legal
13 conclusions which require no response.

14 14. Answering paragraph 14 of Plaintiffs' FACAC, Plaintiffs merely state legal
15 conclusions which require no response.

16 **GENERAL ALLEGATIONS**

17 15. Answering paragraph 15 of Plaintiffs' FACAC, Defendants admit that Plaintiffs
18 have been employed in California during the alleged Class Period. Except as expressly admitted,
19 Defendants deny the allegations of paragraph 15 of the FACAC.

20 16. Answering paragraph 16 of Plaintiffs' FACAC, Defendants admit that
21 merchandising services are provided to retailers in California. Except as expressly admitted,
22 Defendants deny the allegations of paragraph 16 of the FACAC.

23 17. Answering paragraph 17 of Plaintiffs' FACAC, Plaintiffs merely state legal
24 conclusions which require no response.

25 18. Defendants deny the allegations of paragraph 18 of the FACAC.

26 19. Defendants deny the allegations of paragraph 19 of the FACAC.

27 20. Defendants deny the allegations of paragraph 20 of the FACAC.

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CLASS ACTION ALLEGATIONS

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2 21. Answering paragraph 21 of Plaintiffs’ FACAC, Plaintiffs merely state legal
3 conclusions which require no response.

4 22. Answering paragraph 22 of Plaintiffs’ FACAC, Plaintiffs merely state legal
5 conclusions which require no response.

6 23. Answering paragraph 23 of Plaintiffs’ FACAC, Plaintiffs merely state legal
7 conclusions which require no response.

8 24. Answering paragraph 24 of Plaintiffs’ FACAC, Plaintiffs merely state legal
9 conclusions which require no response.

10 25. Answering paragraph 25 of Plaintiffs’ FACAC, Plaintiffs merely state legal
11 conclusions which require no response. To the extent a response is required, Defendants admit that
12 there are more than 100 Class Members.

13 26. Answering paragraph 26 of Plaintiffs’ FACAC, Plaintiffs merely state legal
14 conclusions which require no response. To the extent a response is required, Defendants deny that
15 there are questions of law and fact common to the alleged class that predominate over any
16 questions affecting only individual alleged class members.

17 27. Answering paragraph 27 of Plaintiffs’ FACAC, Plaintiffs merely state legal
18 conclusions which require no response. To the extent a response is required, Defendants deny the
19 allegations of paragraph 27 of the FACAC.

20 28. Answering paragraph 28 of Plaintiffs’ FACAC, Plaintiffs merely state legal
21 conclusions which require no response. To the extent a response is required, Defendants deny the
22 allegations of paragraph 28 of the FACAC.

23 29. Answering paragraph 29 of Plaintiffs’ FACAC, Plaintiffs merely state legal
24 conclusions which require no response. To the extent a response is required, Defendants deny the
25 allegations of paragraph 29 of the FACAC.

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**ANSWER TO FIRST CAUSE OF ACTION
Failure to Pay Hourly Wages
(Plaintiffs and the Off-the-Clock Subclass against each Defendant)**

- 30. Defendants incorporate their responses to the preceding paragraphs.
- 31. Defendants deny the allegations of paragraph 31 of the FACAC.
- 32. Defendants deny the allegations of paragraph 32 of the FACAC.

**ANSWER TO SECOND CAUSE OF ACTION
Failure to Pay Overtime Wages
(Plaintiffs and the Off-the-Clock Subclass against each Defendant)**

- 33. Defendants incorporate their responses to the preceding paragraphs.
- 34. Defendants deny the allegations of paragraph 34 of the FACAC.
- 35. Defendants deny the allegations of paragraph 35 of the FACAC.

**ANSWER TO THIRD CAUSE OF ACTION
Failure to Reimburse for Business Expenses
(Plaintiffs and the Expense Reimbursement Subclass against each Defendant)**

- 36. Defendants incorporate their responses to the preceding paragraphs.
- 37. Defendants deny the allegations of paragraph 37 of the FACAC.
- 38. Defendants deny the allegations of paragraph 38 of the FACAC.
- 39. Defendants deny the allegations of paragraph 39 of the FACAC.

**ANSWER TO FOURTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
(Plaintiffs and the Wage Statement Subclass against each Defendant)**

- 40. Defendants incorporate their responses to the preceding paragraphs.
- 41. Defendants deny the allegations of paragraph 41 of the FACAC.
- 42. Defendants deny the allegations of paragraph 42 of the FACAC.
- 43. Answering paragraph 43 of Plaintiffs' FACAC, Plaintiffs merely state legal

conclusions which require no response

**ANSWER TO FIFTH CAUSE OF ACTION
Failure to Timely Pay All Wages Due at Separation of Employment
(Waiting Time Subclass against each Defendant)**

- 44. Defendants incorporate their responses to the preceding paragraphs.
- 45. Answering paragraph 45 of Plaintiffs' FACAC, Plaintiffs merely state legal

conclusions which require no response

1 46. Defendants deny the allegations of paragraph 46 of the FACAC.

2 47. Defendants deny the allegations of paragraph 47 of the FACAC.

3 48. Defendants deny the allegations of paragraph 48 of the FACAC.

4 49. Defendants deny the allegations of paragraph 49 of the FACAC.

5 **ANSWER TO SIXTH CAUSE OF ACTION**
6 **Failure to Provide Compliant Meal Periods**
7 **(Plaintiffs and the Meal Period Subclass against each Defendant)**

8 50. Defendants incorporate their responses to the preceding paragraphs.

9 51. Defendants deny the allegations of paragraph 51 of the FACAC.

10 52. Defendants deny the allegations of paragraph 52 of the FACAC.

11 53. Defendants deny the allegations of paragraph 53 of the FACAC.

12 **ANSWER TO SEVENTH CAUSE OF ACTION**
13 **Failure to Provide Compliant Rest Periods**
14 **(Plaintiffs and the Rest Period Subclass against each Defendant)**

15 54. Defendants incorporate their responses to the preceding paragraphs.

16 55. Defendants deny the allegations of paragraph 55 of the FACAC.

17 56. Defendants deny the allegations of paragraph 56 of the FACAC.

18 57. Defendants deny the allegations of paragraph 57 of the FACAC.

19 **ANSWER TO EIGHTH CAUSE OF ACTION**
20 **Violation of the Unruh Competition Law**
21 **(Plaintiffs and the UCL Subclass against each Defendant)**

22 58. Defendants incorporate their responses to the preceding paragraphs.

23 59. Defendants deny the allegations of paragraph 59 of the FACAC.

24 60. Defendants deny the allegations of paragraph 60 of the FACAC.

25 61. Defendants deny the allegations of paragraph 61 of the FACAC.

26 62. Defendants deny the allegations of paragraph 62 of the FACAC.

27 63. Defendants deny the allegations of paragraph 63 of the FACAC.

28 **PRAYER**

Plaintiffs' Prayer requires no response. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief, or any relief whatsoever.

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1 **AFFIRMATIVE DEFENSES**

2 Without assuming any burden that they would not otherwise bear, Defendants further assert
3 the separate and distinct affirmative defenses stated below to each and every cause of action
4 alleged in the FACAC, except where such affirmative defense states that it is specifically limited to
5 one or more causes of action:

6 **FIRST AFFIRMATIVE DEFENSE**

7 **Failure to State a Claim**

8 The FACAC, and each purported cause of action alleged therein, fails to state facts
9 sufficient to constitute a cause of action against Defendants.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **Statute of Limitations**

12 The FACAC, and each purported cause of action alleged therein, is barred in whole or in
13 part by the applicable statutes of limitations.

14 **THIRD AFFIRMATIVE DEFENSE**

15 **Unclean Hands**

16 Plaintiffs' claims are barred by the doctrine of unclean hands.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 **Estoppel**

19 Plaintiffs' claims are barred by the doctrine of estoppel.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 **Waiver**

22 Plaintiffs and/or the putative class members relinquished and waived any right to any of the
23 claims upon which Plaintiffs now seek relief.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 **Laches**

26 Plaintiffs' claims are barred by the doctrine of laches.

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SEVENTH AFFIRMATIVE DEFENSE

Acquiescence – Consent

Plaintiffs’ claims are barred because Plaintiffs, and each member of the putative class, acquiesced or consented to the conduct about which they now complain.

EIGHTH AFFIRMATIVE DEFENSE

Misrepresentation

Plaintiffs’ claims are barred, in whole or in part, because in doing the things alleged in the FACAC, Defendants acted in reliance on misrepresentations by Plaintiffs and the putative class members, including but not limited to misrepresentations regarding hours worked.

NINTH AFFIRMATIVE DEFENSE

Lack of Standing

The Complaint, and each purported cause of action alleged therein, is barred because Plaintiffs lack standing to state the claims alleged in the Complaint and/or to assert the legal rights or interests of others.

TENTH AFFIRMATIVE DEFENSE

Non-Certifiable Class

The Complaint, and each purported cause of action alleged therein, does not state facts sufficient to certify a class. Therefore, this action is not properly brought as a class action.

ELEVENTH AFFIRMATIVE DEFENSE

Inadequacy of Class Representative

Plaintiffs are not proper representatives of the class they purport to represent and, accordingly, this action is not properly brought as a class action.

TWELFTH AFFIRMATIVE DEFENSE

Putative Members Not Similarly Situated

Plaintiffs cannot maintain a representative or class action because the putative plaintiffs are not similarly situated.

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THIRTEENTH AFFIRMATIVE DEFENSE

Failure to Pay Not Willful

Assuming arguendo that Defendants failed to pay Plaintiffs or putative class members all wages, Defendants cannot be held liable because the failure to pay was not willful because there is a good faith dispute whether wages were owed.

FOURTEENTH AFFIRMATIVE DEFENSE

Failure to Exhaust Administrative Remedies

The Complaint, and each purported cause of action alleged therein, is barred because Plaintiffs failed to exhaust their administrative remedies before filing suit.

FIFTEENTH AFFIRMATIVE DEFENSE

Lack of Specificity

The Eighth Cause of Action for Unfair Competition in violation of California Business and Professions Code section 17200 et seq., is barred because it fails to plead specific facts capable of stating a claim for unfair business practices.

SIXTEENTH AFFIRMATIVE DEFENSE

Legitimate Business Purpose

Defendants cannot be liable for any alleged violation of California Business and Professions Code section 17200 et seq., because any action, conduct, and/or dealings with Plaintiffs or putative class members, if any, were lawful, and were carried out in good faith and for legitimate business and economic considerations.

SEVENTEENTH AFFIRMATIVE DEFENSE

Safe Harbor

Plaintiffs' claim based upon California Business and Professions Code section 17200 et seq., is barred because the conduct alleged falls within a safe harbor.

EIGHTEENTH AFFIRMATIVE DEFENSE

Civil Penalties Unconstitutional

The penalties sought in Plaintiffs' Complaint violate the due process, equal protection, and/or excessive fines clauses of the United States and California Constitutions.

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NINETEENTH AFFIRMATIVE DEFENSE

Setoff, Offset, Recoupment

Defendants are entitled to setoff, offset, and/or recoupment for amounts paid to Plaintiffs and/or any member of the putative class.

TWENTIETH AFFIRMATIVE DEFENSE

Fault of Plaintiffs/Third Parties

Any injury or damage allegedly suffered by Plaintiffs was caused or contributed to by the negligence, fault, bad faith, breach of contract, or other wrongful or tortious conduct of Plaintiffs and/or persons or entities other than Defendants, and such conduct offsets, eliminates or comparatively reduces the liability, if any, of Defendants.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Failure to Mitigate

The Complaint, and each purported cause of action alleged therein, is barred by Plaintiffs' failure to take reasonable steps to avoid or otherwise mitigate the alleged damages, the existence of which is specifically denied.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Attorneys' Fees

The Complaint, and each and every purported claim for relief alleged therein, fails to state facts sufficient to entitle Plaintiffs to an award of attorneys' fees in any amount. Moreover, as a consequence of Plaintiffs bringing this action, Defendants have been required to retain attorneys to defend themselves, and Defendants are entitled to recover their attorneys' incurred herein.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Reasonableness and Good Faith

Defendants acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known to them at the time they so acted. Accordingly, Plaintiffs are barred, in whole or in part, from any recovery in this action.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

De Minimis

Some or all of the disputed time for which Plaintiffs and/or the members of the alleged putative group they purport to represent is not compensable as *de minimis*.

RIGHT TO AMEND AFFIRMATIVE DEFENSES

Defendants respectfully reserve the right to amend their Answer to assert additional affirmative defenses in the future and to supplement those asserted herein upon further investigation and discovery.

WHEREFORE, Defendants pray for judgment as follows:

- 1. That Plaintiffs be granted no relief in this action against Defendants;
- 2. That judgment be rendered in favor of Defendants and against Plaintiffs on each and every cause of action alleged in the Complaint;
- 3. That Defendants recover their costs of suit incurred herein, including attorneys' fees; and
- 4. For such other and further relief as this Court deems just and proper.

DATED: August 29, 2018

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Anthony J. DeCristoforo
Anthony J. DeCristoforo
Michael J. Nader

Jerome L. Rubin
WILLIAMS KASTNER

Attorneys for Defendants
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