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Attorneys for Defendant  
JACK IN THE BOX INC., a Corporation of Delaware

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JESSICA GESSELE, ASHLEY ORTIZ,  
NICOLE GESSELE, TRICIA TETRAULT  
and CHRISTINA MAULDIN, and JASON  
DIAZ, both on behalf of themselves  
individually and, in addition, on behalf of  
the other similarly situated employees,

Plaintiff,

v.

JACK IN THE BOX INC., a Delaware  
corporation doing business in Oregon as  
"Jack In The Box Inc. A Corporation of  
Delaware,"

Defendant.

Case No. 3:14-cv-1092-BR

ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFFS' COMPLAINT

For its Answer to Plaintiffs Complaint, Defendant Jack in the Box Inc. ("Defendant")

hereby admits, denies, and alleges as follows:

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**INDIVIDUAL, CLASS, AND COLLECTIVE ACTION COMPLAINT**

1.

Answering Paragraph 1, the prefatory statements in this paragraph are not factual allegations to which any answer is necessary. To the extent an answer may be deemed necessary, the allegations in the Complaint speak for themselves and unless specifically admitted in response to succeeding paragraphs in this Answer, the allegations in Paragraph 1 are denied in their entirety.

2.

Answering Paragraph 2, Defendant admits that the Complaint asserts some of the same claims previously filed in District Court, Case No. 3:10-cv-960-BR and that Defendant had notice of those same claims not later than 60 days after the case was filed. Defendant further admits that Case No. 3:10-cv-960-BR was involuntarily dismissed without prejudice for lack of original jurisdiction. The contention that claims may not be subject to a dismissal calls for a legal conclusion to which no answer is necessary. Defendant denies the remaining allegations in Paragraph 2.

3.

Answering Paragraph 3, Defendant admits that the Complaint asserts certain federal and state claims, but denies that it is legally liable under any such claim to any Plaintiffs, present or absent. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 3, Defendant denies the remaining allegations in Paragraph 3.

**PARTIES**

4.

Answering Paragraph 4, Defendant admits that Plaintiffs other than Mauldin were hourly employees of Defendant, and that Mauldin was at times in a non-exempt position, and at other

times in an exempt position. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 4, Defendant denies the remaining allegations in Paragraph 4.

5.

Answering Paragraph 5, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that it is a Delaware corporation with its corporate headquarters in San Diego, California. Defendant also admits that franchised restaurants may provide financial benefits to Defendant. Defendant further admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 5, Defendant denies the remaining allegations in Paragraph 5.

6.

Answering Paragraph 6, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 6, Defendant denies the remaining allegations in Paragraph 6.

7.

Answering Paragraph 7, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 7,

Defendant denies the remaining allegations in Paragraph 7.

8.

Answering Paragraph 8, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 8, Defendant denies the remaining allegations in Paragraph 8.

9.

Answering Paragraph 9, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 9, Defendant denies the remaining allegations in Paragraph 9.

10.

Answering Paragraph 10, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 10, Defendant denies the remaining allegations in Paragraph 10.

11.

Defendant denies the allegations in Paragraph 11.

12.

The allegations in Paragraph 12 are unintelligible, therefore Defendant denies them in their entirety.

13.

Answering Paragraph 13, certain of the allegations in this paragraph are compound, ambiguous, taken out of context, and/or are purported legal conclusions, therefore Defendant can neither admit nor deny them. Defendant admits that its franchise agreement sets forth certain aspects of the franchise relationship and that the agreement speaks for itself. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 13, Defendant denies the remaining allegations in Paragraph 13.

#### **COMMON FACTS**

14.

Certain of the allegations in this paragraph such as “very near the Oregon minimum wage” are too vague and/or ambiguous to allow an admission or denial. To the extent it must answer, and otherwise, Defendant denies the allegations in Paragraph 14.

15.

Answering Paragraph 15, Defendant admits that Plaintiffs’ schedules could vary from week to week. Defendant denies the remaining allegations in Paragraph 15.

16.

Answering Paragraph 16, Defendant states that this paragraph does not allege facts and therefore no response is necessary. If deemed factual allegations, Defendant denies the allegations in Paragraph 16.

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17.

Answering Paragraph 17, Defendant responds that the circumstances, requirements and activities of the Workers' Benefit Fund as alleged are those of a third party, speak for themselves, and Defendant neither admits nor denies the allegations pertaining thereto. Defendant admits that it has at all times relevant been registered with the Oregon Secretary of State, with the same registered agent and mailing address. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 17, Defendant denies the remaining allegations in Paragraph 17.

18.

Answering Paragraph 18, Defendant responds that the circumstances, requirements and activities of the Workers' Benefit Fund are those of a third party, speak for themselves, and Defendant neither admits nor denies the allegations pertaining thereto. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 18, Defendant denies the remaining allegations in Paragraph 18.

19.

Answering Paragraph 19, Defendant responds that the circumstances, requirements and activities of the Workers' Benefit Fund speak for themselves, and Defendant neither admits nor denies the allegations pertaining thereto. Defendant is without knowledge sufficient to admit or deny whether the State of Oregon sent written notice of its new assessment rate to Defendant, and therefore neither admits nor denies them. Defendant denies that any such notice was sent in a manner calculated to reach the proper person or persons within Defendant's organization and avers that no such record of notice has been located, despite diligent search. Defendant admits that it inadvertently withheld amounts from employee paychecks as portrayed in the chart contained in Paragraph 19. Except as specifically admitted or to the extent this Answer differs

from the allegations of Paragraph 19, Defendant denies the remaining allegations in Paragraph 19.

20.

Defendant admits that it paid the correct rate in at least one year and denies the remaining allegations in Paragraph 20.

21.

Answering Paragraph 21, Defendant admits it provided its restaurant employees with shirts, aprons and hats, and that it required these items to be worn during work. The remaining statements in Paragraph 20 are purported legal conclusions and interpretations, and therefore Defendant neither admits nor denies them. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 20, Defendant denies the remaining allegations in Paragraph 21.

22.

Answering Paragraph 22, Defendant denies that it required employees to wear “non-slip” footwear and avers affirmatively that it required employees working in restaurant productions areas, or “behind the counter,” to wear slip resistant shoes or shoe guards with slip resistant soles. Defendant further admits that it requested slip resistance testing of certain shoes, and further admits that one of several slip resistant shoe manufacturers voluntarily paid a rebate to Defendant for certain shoe purchases. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 22, Defendant denies the remaining allegations in Paragraph 22.

23.

Answering Paragraph 23, Defendant admits that in some circumstances, employees chose the size and style of slip resistant shoe they desired from catalogs, input the information on a

paper form and a store supervisory employee would call in the employee's order, but denies that this was the case for all employees in the relevant time period. Defendant further admits that in some circumstances where employees affirmatively elected to purchase slip resistant shoes by payroll deduction, it paid the manufacturer for the shoes and deducted that price from employee wages over four paychecks, but denies that this was the case for all employees in the relevant time period, or that this was always the case for any particular employee. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 23, Defendant denies the remaining allegations in Paragraph 23.

24.

Answering Paragraph 24, Defendant admits that in some circumstances, it received a rebate from a shoe manufacturer for employee purchases of slip resistant shoes, but denies that this was the case for all employees in the relevant time period or that this was always the case for any particular employee. Certain of the statements in this paragraph are purported legal conclusions and interpretations, and Defendant neither admits nor denies them. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 24, Defendant denies the remaining allegations in Paragraph 24.

25.

Defendant denies the allegations in Paragraph 25.

26.

Defendant denies the allegations on Paragraph 26.

27.

Answering Paragraph 27, certain of the statements contained therein are purported legal conclusions and interpretations, and Defendant neither admits nor denies them. If deemed factual allegations, Defendant denies them as well as all other factual allegations in Paragraph

27.

28.

Answering Paragraph 28, the statements contained therein are purported legal conclusions and interpretations, and Defendant neither admits nor denies them. If deemed factual allegations, Defendant denies the allegations in Paragraph 28.

29.

Answering Paragraph 29, the testimony of Gene James speaks for itself. Moreover, Defendant can neither admit nor deny any knowledge held at any time by class counsel or any Plaintiff. Defendant denies all remaining allegations in Paragraph 29.

30.

Answering Paragraph 30, the statements contained therein are purported legal conclusions and interpretations, and Defendant neither admits nor denies them. If deemed factual allegations, Defendant denies the allegations in Paragraph 30.

31.

Answering Paragraph 31, Defendant admits that its standard meal periods were supposed to be 30 minutes. Defendant further admits that some of its former Oregon employees signed On-Duty Meal Policy agreements, which documents speak for themselves. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 31, Defendant denies the remaining allegations in Paragraph 31.

32.

Answering Paragraph 32, Defendant admits that it used two timekeeping systems in the relevant time period. Defendant further admits that the Kronos system tracked only the time of each employee's punch. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 32, Defendant denies the remaining allegations in Paragraph 32.

33.

Answering Paragraph 33, Defendant admits that its newer timekeeping system was referred to as Jack's Timekeeping. Defendant further admits that employees were required under the system to designate why they were clocking out, and that the system prohibited employees from clocking in from a meal period prior to 30 minutes without manager override. Except as specifically admitted or to the extent this Answer differs from the allegations of Paragraph 33, Defendant denies the remaining allegations in Paragraph 33.

34.

Answering Paragraph 34, Defendant admits that it spent up to seven years developing and testing Jack's Timekeeping, and denies the remaining allegations in Paragraph 34.

35.

Defendant denies the allegations in Paragraph 35.

36.

Defendant denies the allegations in Paragraph 36.

37.

Defendant denies the allegations in Paragraph 37.

**FACTS SPECIFIC TO ONE OR MORE NAMED PLAINTIFF**

38.

Defendant denies the allegations in Paragraph 38.

39.

Defendant denies the allegations in Paragraph 39.

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**COLLECTIVE ACTION ALLEGATIONS**

40.

The statements in Paragraph 40 and its subparts are not factual allegations, and no answer is necessary. To the extent an answer may be deemed necessary, Defendant denies the allegations in Paragraph 40.

**CLASS ACTION ALLEGATIONS**

41.

The statements in Paragraph 41 and its subparts are not factual allegations, and no answer is necessary. To the extent an answer may be deemed necessary, Defendant denies the allegations in Paragraph 41.

42.

Defendant denies the allegations in Paragraph 42.

43.

Defendant denies the allegations in Paragraph 43, including its subparts.

44.

Defendant denies the allegations in Paragraph 44, including its subparts.

45.

Defendant denies the allegations in Paragraph 45, including its subparts.

46.

Defendant denies the allegations in Paragraph 46.

47.

Defendant denies the allegations in Paragraph 47, including its subparts.

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**FIRST CLAIM FOR RELIEF**

(Oregon Minimum Wage Claim)

48.

All previous answers are incorporated by reference herein.

49.

Answering Paragraph 49, Defendant admits that it was required to pay its Oregon employees in accordance with ORS 653.025, but denies that it failed to do so. Defendant denies the remaining allegations in Paragraph 49.

50.

Defendant denies the allegations in Paragraph 50.

**SECOND CLAIM FOR RELIEF**

(Oregon Overtime Claim)

51.

All previous answers are incorporated by reference herein.

52.

Answering Paragraph 52, Defendant admits that it was required to pay its Oregon employees in accordance with ORS 653.261, but denies that it failed to do so. Defendant denies the remaining allegations in Paragraph 52.

53.

Defendant denies the allegations in Paragraph 53.

**THIRD CLAIM FOR RELIEF**

(Oregon Unpaid Wages Upon Termination Claim)

54.

All previous answers are incorporated by reference herein.

55.

Answering Paragraph 55, Defendant admits that it was required to pay its Oregon employees in accordance with ORS 652.140, but denies that it failed to do so. Defendant denies the remaining allegations in Paragraph 55.

56.

Defendant denies the allegations in paragraph 56.

**FOURTH CLAIM FOR RELIEF**

(Oregon Wrongful Deductions Claim)

57.

All previous answers are incorporated by reference herein.

58.

Answering Paragraph 58, Defendant admits that it was required to pay its Oregon employees in accordance with ORS 652.610, but denies that it failed to do so. Defendant denies the remaining allegations in Paragraph 58.

59.

Defendant denies the allegations in Paragraph 59.

**FIFTH CLAIM FOR RELIEF**

(Oregon Unpaid Wages Claim)

60.

All previous paragraphs are incorporated by reference herein.

61.

Answering Paragraph 61, Defendant admits that it was required to pay its Oregon employees in accordance with ORS 652.120, but denies that it failed to do so. Defendant denies the remaining allegations in Paragraph 61.

62.

Defendant denies the allegations in Paragraph 62.

**SIXTH CLAIM FOR RELIEF**

(FLSA Overtime Claim)

63.

All previous answers are incorporated by reference herein.

64.

Answering Paragraph 64, Defendant admits that it was required to pay its Oregon employees in accordance with 29 U.S.C. § 207, but denies that it failed to do so. Defendant denies the remaining allegations in paragraph 64.

65.

Defendant denies the allegations in Paragraph 65.

**SEVENTH CLAIM FOR RELIEF**

(Oregon Common Law Breach of Fiduciary Duty Claim)

66.

All previous answers are incorporated by reference herein.

67.

Except as specifically admitted elsewhere in this Answer, Defendant denies the allegations in Paragraph 67.

68.

Defendant denies the allegations in Paragraph 68.

69.

Defendant denies the allegations in Paragraph 69.

**EIGHTH CLAIM FOR RELIEF**

(Equitable and Quasi-Contractual Claim)

70.

All previous answers are incorporated by reference herein.

71.

Defendant denies the allegations in Paragraph 71.

72.

Defendant denies the allegations in Paragraph 72.

73.

Defendant denies the allegations in Paragraph 73.

74.

Responding to Plaintiffs' prayer for relief, Defendant denies that Plaintiffs are entitled to any relief of any kind.

75.

Except as expressly admitted herein, Defendant denies each and every allegation contained in Plaintiffs' Complaint, and the whole thereof.

**AFFIRMATIVE DEFENSES**

By way of further defenses and/or affirmative defenses, and without shifting the burden of proof on any issue for which Plaintiffs bear the burden of proof, Defendant alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

(Inadequate Notice)

76.

Plaintiffs are not entitled to recover attorney fees in this action, as they did not provide adequate notice of their claims pursuant to ORS 652.200.

**SECOND AFFIRMATIVE DEFENSE**

(De Minimis)

77.

Plaintiffs' meal and/or rest period claims fail in whole or in part because any alleged missed meal period times are *de minimis*.

**THIRD AFFIRMATIVE DEFENSE**

(Authorized Deductions)

78.

Plaintiffs' "shoe" claims fail in whole or in part because Plaintiffs authorized any and all payroll deductions for employee shoe purchases.

**FOURTH AFFIRMATIVE DEFENSE**

(Benefit to Employees)

79.

Plaintiffs' "shoe" claims fail in whole or in part because payroll deductions for shoe purchases were for Plaintiffs' benefit.

**FIFTH AFFIRMATIVE DEFENSE**

(Valid Deduction)

80.

Plaintiffs' "shoe" claims fail in whole or in part because payroll deductions for shoe purchases were compliant with ORS 652.610(3).

**SIXTH AFFIRMATIVE DEFENSE**

("Facilities")

81.

Plaintiffs' "shoe claims" are barred in whole or in part as shoes obtained by Plaintiffs

through payroll deductions qualify as “facilities” under the FLSA.

**SEVENTH AFFIRMATIVE DEFENSE**

(“Special Conditions”)

82.

Plaintiffs’ meal break claims are barred in whole or in part as any meal breaks that were under 30 minutes were due to “special conditions” including sporadic interruptions due to business needs.

**EIGHTH AFFIRMATIVE DEFENSE**

(No Private Cause of Action)

83.

There is no private cause of action for Plaintiffs’ meal period claims brought under Oregon state law.

**NINTH AFFIRMATIVE DEFENSE**

(Due Process)

84.

Plaintiffs’ claims for penalties violate Defendant’s Constitutional right to due process.

**TENTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

85.

The named Plaintiffs’ FLSA claims are barred by the applicable statutes of limitations as they failed to timely file consent forms required by 29 USC § 216(b).

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**ELEVENTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

86.

The claims brought by the named Plaintiffs as well as by certain putative collective action members are barred in whole or in part by applicable statutes of limitations as they were not saved on a class wide basis by operation of ORS 12.200, they were not previously asserted in any prior action, and/or they were abandoned by Plaintiffs in an earlier action.

**TWELFTH AFFIRMATIVE DEFENSE**

(Preemption)

87.

Plaintiffs' common law claims are preempted by the FLSA and/or state wage and hour laws.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(No Duty; No Contract)

88.

Defendant did not owe a fiduciary duty to Plaintiffs with respect to their shoe purchases, and even if it did, any obligation or duty, contractual or otherwise, which Plaintiffs claim to be owed by Defendant, has been fully performed, satisfied and/or discharged.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

89.

Plaintiffs have failed to state a claim upon which relief can be granted, including but not limited to, Plaintiffs' claim that Defendant is a joint employer and/or co-employer of the franchise employees because Defendant does not meet the economic reality test for employer

status.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Arbitration)

90.

Certain named Plaintiffs and putative collective and class action members' claims are barred from litigation in this Court pursuant to arbitration agreements with Defendant.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(No Injunctive Relief)

91.

As Jack in the Box is not presently conducting active operations within the State of Oregon as an employer of persons within the purported classes, there is no jurisdictional, factual or legal basis for injunctive relief.

Defendant reserves the right to assert additional affirmative defenses in the event additional persons, either individually or by class, become plaintiffs in the lawsuit, and/or as may be appropriate in connection with facts obtained through discovery.

WHEREFORE, Defendant respectfully requests that the Court:

1. Grant judgment in its favor as to Plaintiffs' Complaint in its entirety;
2. Deny certification of any class or subclass of putative plaintiffs or of any collective;
3. Award Defendant its costs in defending this action, including reasonable attorney fees; and
4. Grant Defendant such other relief as the Court deems equitable and just.

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Dated: July 16, 2014

*/s/ Douglas S. Parker*

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