

The Honorable Maureen McKee

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF KING

DAN KWATE, on his own behalf and on the
behalf of all others similarly situated,

Plaintiff,

v.

REECE CONSTRUCTION COMPANY, a For-
Profit Corporation; and STEVEN REECE and
the marital community thereof,

Defendants.

NO. 23-2-02124-0 SEA

ANSWER AND DEFENSES TO
PLAINTIFFS' SECOND
AMENDED COMPLAINT FOR
DAMAGES

Defendants collectively, by and through their attorneys of record, in answer to the
Plaintiffs' Second Amended Complaint for Damages ("Complaint") brought by Plaintiffs Dan
Kwate and David Ingraham, individually and on behalf of all others similarly situated
("Plaintiffs"), admit, deny, and defend as follows:

ANSWER

1. In response to Paragraph 1.1, Defendants admit that Reece Construction Company
is a Tulalip tribal company engaged in the construction business; the company, at various times,
does work on tribal land, federal land, or in Washington State; and Steven Reece is the President
and owner of the company. Defendants otherwise deny the allegations in Paragraph 1.1.

1 2. In response to Paragraph 1.2, Defendants admit that the company has employed
2 drivers and laborers; drivers' primary duty is to drive vehicles; and laborers perform manual labor.
3 Defendants otherwise deny the allegations in Paragraph 1.2.

4 3. Defendants deny the allegations in Paragraph 1.3.

5 4. Defendants deny the allegations in Paragraph 1.4.

6 5. Defendants deny the allegations in Paragraph 1.5.

7 6. Defendants deny the allegations in Paragraph 1.6.

8 7. Defendants deny the allegations in Paragraph 1.7.

9 8. In response to Paragraph 2.1, Defendants admit that the company does some limited
10 business in King County. The allegations otherwise constitute legal conclusions or arguments that
11 do not require a response. To the extent a response is required, Defendants deny the remaining
12 allegations in Paragraph 2.1.
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14 9. In response to Paragraph 2.2, Defendants admit that the company does business in
15 the State of Washington. The allegations otherwise constitute legal conclusions or arguments that
16 do not require a response. To the extent a response is required, Defendants deny the remaining
17 allegations in Paragraph 2.2.
18

19 10. In response to Paragraph 2.3, Defendants admit that the company is a tribal
20 company that is registered to do business in the State of Washington. The allegations otherwise
21 constitute legal conclusions or arguments that do not require a response. To the extent a response
22 is required, Defendants deny the remaining allegations in Paragraph 2.3.

23 11. In response to Paragraph 2.4, Defendants admit that Mr. Reece is an owner and
24 officer of the company. The allegations otherwise constitute legal conclusions or arguments that
25 do not require a response. To the extent a response is required, Defendants deny the remaining
26 allegations in Paragraph 2.4.

1 12. Defendants deny the allegations in Paragraph 2.5.

2 13. In response to Paragraph 2.6, Defendants admit that Mr. Kwate worked for the
3 company in the State of Washington at times from approximately April 2021 to approximately
4 October 2022. Defendants otherwise deny the allegations in Paragraph 2.6.

5 14. In response to Paragraph 2.7, Defendants admit that Mr. Ingraham resided in the
6 State of Washington and worked as a driver and laborer for the company in the State of Washington
7 at times from approximately 2014 to approximately September 2023. Defendants otherwise deny
8 the allegations in Paragraph 2.7.

9 15. The allegations in Paragraph 2.8 constitute legal conclusions or arguments that do
10 not require a response. To the extent a response is required, Defendants deny the allegations in
11 Paragraph 2.8.

12 16. In response to Paragraph 3.1, Defendants reallege their responses to the preceding
13 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
14 paragraph 3.1.

15 17. In response to Paragraph 3.2, Defendants lack sufficient knowledge or information
16 to form a belief as to the truthfulness of the allegations relating to how or who Plaintiffs bring this
17 case and thus deny the same. Defendants otherwise deny the allegations in Paragraph 3.2.

18 18. In response to Paragraph 3.3, Defendants deny that any class or class action is
19 appropriate. Defendants otherwise deny the allegations in Paragraph 3.3.

20 19. In response to Paragraph 3.4, Defendants deny that any class or class action is
21 appropriate. Defendants otherwise deny the allegations in Paragraph 3.4.

22 20. In response to Paragraph 3.5, Defendants deny that any class or class action is
23 appropriate. Defendants otherwise deny the allegations in Paragraph 3.5.

1 21. In response to Paragraph 3.6, Defendants deny that any class or class action is
2 appropriate. Defendants otherwise deny the allegations in Paragraph 3.6.

3 22. In response to Paragraph 3.7, Defendants deny that any class or class action is
4 appropriate. Defendants otherwise deny the allegations in Paragraph 3.7.

5 23. In response to Paragraph 3.8, Defendants deny that any class or class action is
6 appropriate. Defendants otherwise deny the allegations in Paragraph 3.8.

7 24. In response to Paragraph 3.9, Defendants deny that any class or class action is
8 appropriate. Defendants otherwise deny the allegations in Paragraph 3.9.

9 25. In response to Paragraph 3.10, Defendants deny that any class or class action is
10 appropriate. Defendants otherwise deny the allegations in Paragraph 3.10.

11 26. In response to Paragraph 3.11, Defendants deny that any class or class action is
12 appropriate. Defendants otherwise deny the allegations in Paragraph 3.11.

13 27. In response to Paragraph 4.1, Defendants reallege their responses to the preceding
14 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
15 paragraph 4.1.
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17 28. Defendants deny the allegations in Paragraph 4.2.

18 29. Defendants deny the allegations in Paragraph 4.3.

19 30. Defendants deny the allegations in Paragraph 4.4.

20 31. Defendants deny the allegations in Paragraph 4.5.

21 32. Defendants deny the allegations in Paragraph 4.6.

22 33. Defendants deny the allegations in Paragraph 4.7.

23 34. Defendants deny the allegations in Paragraph 4.8.

1 35. Defendants deny the allegations in Paragraph 4.9.

2 36. Defendants deny the allegations in Paragraph 4.10.

3 37. Defendants deny the allegations in Paragraph 4.11.

4 38. Defendants deny the allegations in Paragraph 4.12.

5 39. Defendants deny the allegations in Paragraph 4.13.

6 40. Defendants deny the allegations in Paragraph 4.14.

7 41. Defendants deny the allegations in Paragraph 4.15.

8 42. Defendants deny the allegations in Paragraph 4.16.

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11 43. In response to Paragraph 5.1, Defendants reallege their responses to the preceding
12 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
13 paragraph 5.1.

14 44. The allegations in Paragraph 5.2 constitute legal conclusions or arguments that do
15 not require a response. To the extent a response is required, Defendants deny the allegations in
16 paragraph 5.2.

17 45. The allegations in Paragraph 5.3 constitute legal conclusions or arguments that do
18 not require a response. To the extent a response is required, Defendants deny the allegations in
19 paragraph 5.3.

20 46. The allegations in Paragraph 5.4 constitute legal conclusions or arguments that do
21 not require a response. To the extent a response is required, Defendants deny the allegations in
22 paragraph 5.4.

23 47. The allegations in Paragraph 5.5 constitute legal conclusions or arguments that do
24 not require a response. To the extent a response is required, Defendants deny the allegations in
25 paragraph 5.5.
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1 48. The allegations in Paragraph 5.6 constitute legal conclusions or arguments that do
2 not require a response. To the extent a response is required, Defendants deny the allegations in
3 paragraph 5.6.

4 49. The allegations in Paragraph 5.7 constitute legal conclusions or arguments that do
5 not require a response. To the extent a response is required, Defendants deny the allegations in
6 paragraph 5.7.

7 50. The allegations in Paragraph 5.8 constitute legal conclusions or arguments that do
8 not require a response. To the extent a response is required, Defendants deny the allegations in
9 paragraph 5.8.

10 51. The allegations in Paragraph 5.9 constitute legal conclusions or arguments that do
11 not require a response. To the extent a response is required, Defendants deny the allegations in
12 paragraph 5.9.

13 52. The allegations in Paragraph 5.10 constitute legal conclusions or arguments that do
14 not require a response. To the extent a response is required, Defendants deny the allegations in
15 paragraph 5.10.

16 53. Defendants deny the allegations in Paragraph 5.11.

17 54. Defendants deny the allegations in Paragraph 5.12.

18 55. In response to Paragraph 6.1, Defendants reallege their responses to the preceding
19 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
20 paragraph 6.1.
21

22 56. The allegations in Paragraph 6.2 constitute legal conclusions or arguments that do
23 not require a response. To the extent a response is required, Defendants deny the allegations in
24 paragraph 6.2.
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1 57. The allegations in Paragraph 6.3 constitute legal conclusions or arguments that do
2 not require a response. To the extent a response is required, Defendants deny the allegations in
3 paragraph 6.3.

4 58. The allegations in Paragraph 6.4 constitute legal conclusions or arguments that do
5 not require a response. To the extent a response is required, Defendants deny the allegations in
6 paragraph 6.4.

7 59. The allegations in Paragraph 6.5 constitute legal conclusions or arguments that do
8 not require a response. To the extent a response is required, Defendants deny the allegations in
9 paragraph 6.5.

10 60. The allegations in Paragraph 6.6 constitute legal conclusions or arguments that do
11 not require a response. To the extent a response is required, Defendants deny the allegations in
12 paragraph 6.6.

13 61. The allegations in Paragraph 6.7 constitute legal conclusions or arguments that do
14 not require a response. To the extent a response is required, Defendants deny the allegations in
15 paragraph 6.7.

16 62. The allegations in Paragraph 6.8 constitute legal conclusions or arguments that do
17 not require a response. To the extent a response is required, Defendants deny the allegations in
18 paragraph 6.8.

19 63. Defendants deny the allegations in Paragraph 6.9.

20 64. Defendants deny the allegations in Paragraph 6.10.

21 65. In response to Paragraph 7.1, Defendants reallege their responses to the preceding
22 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
23 paragraph 7.1.
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1 66. The allegations in Paragraph 7.2 constitute legal conclusions or arguments that do
2 not require a response. To the extent a response is required, Defendants deny the allegations in
3 paragraph 7.2.

4 67. The allegations in Paragraph 7.3 constitute legal conclusions or arguments that do
5 not require a response. To the extent a response is required, Defendants deny the allegations in
6 paragraph 7.3.

7 68. The allegations in Paragraph 7.4 constitute legal conclusions or arguments that do
8 not require a response. To the extent a response is required, Defendants deny the allegations in
9 paragraph 7.4.

10 69. The allegations in Paragraph 7.5 constitute legal conclusions or arguments that do
11 not require a response. To the extent a response is required, Defendants deny the allegations in
12 paragraph 7.5.

13 70. The allegations in Paragraph 7.6 constitute legal conclusions or arguments that do
14 not require a response. To the extent a response is required, Defendants deny the allegations in
15 paragraph 7.6.

16 71. The allegations in Paragraph 7.7 constitute legal conclusions or arguments that do
17 not require a response. To the extent a response is required, Defendants deny the allegations in
18 paragraph 7.7.

19 72. Defendants deny the allegations in Paragraph 7.8.

20 73. Defendants deny the allegations in Paragraph 7.9.

21 74. Defendants deny the allegations in Paragraph 7.10.

22 75. Defendants deny the allegations in Paragraph 7.11.

23 76. Defendants deny the allegations in Paragraph 7.12.

1 77. In response to Paragraph 8.1, Defendants reallege their responses to the preceding
2 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
3 paragraph 8.1.

4 78. The allegations in Paragraph 8.2 constitute legal conclusions or arguments that do
5 not require a response. To the extent a response is required, Defendants deny the allegations in
6 paragraph 8.2.

7 79. The allegations in Paragraph 8.3 constitute legal conclusions or arguments that do
8 not require a response. To the extent a response is required, Defendants deny the allegations in
9 paragraph 8.3.

10 80. The allegations in Paragraph 8.4 constitute legal conclusions or arguments that do
11 not require a response. To the extent a response is required, Defendants deny the allegations in
12 paragraph 8.4.

13 81. Defendants deny the allegations in Paragraph 8.5.

14 82. Defendants deny the allegations in Paragraph 8.6.

15 83. Defendants deny the allegations in Paragraph 8.7.

16 84. Defendants deny the allegations in Paragraph 8.8.

17 85. Defendants deny the allegations in Paragraph 8.9.

18 86. In response to Paragraph 9.1, Defendants reallege their responses to the preceding
19 paragraphs, which are incorporated by reference. Defendants otherwise deny the allegations in
20 paragraph 9.1.

21 87. The allegations in Paragraph 9.2 constitute legal conclusions or arguments that do
22 not require a response. To the extent a response is required, Defendants deny the allegations in
23 paragraph 9.2.
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1 88. The allegations in Paragraph 9.3 constitute legal conclusions or arguments that do
2 not require a response. To the extent a response is required, Defendants deny the allegations in
3 paragraph 9.3.

4 89. Defendants deny the allegations in Paragraph 9.4.

5 90. Defendants deny the allegations in Paragraph 9.5.

6 91. Defendants deny the allegations in Paragraph 9.6.

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8 92. Plaintiffs' "Prayer for Relief" and paragraphs A through I therein contain prayers
9 for relief to which no answer is required. To the extent an answer is required, Defendants deny
10 that Plaintiffs are entitled to any relief whatsoever.

11 93. Defendants deny each and every allegation that is not expressly admitted herein.

12 **ADDITIONAL DEFENSES**

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14 By raising additional defenses, Defendants do not assume, alter, or waive any burden of proof,
15 evidentiary obligation, or burden of persuasion that applies to Plaintiffs. By way of further answer
16 and defense, Defendants state:

17 1. The Complaint fails, in whole or in part, to state a claim upon which relief may be
18 granted.

19 2. Plaintiffs lack standing to pursue some or all claims asserted as to some or all
20 Defendants.

21 3. Improper jurisdiction and/or venue to the extent that the company is a tribal
22 company, Mr. Reece is a member of the Tulalip tribe, much of the company's work was
23 performed on tribal land, Washington courts have no jurisdiction over work performed on tribal
24 land, Plaintiffs failed to exhaust tribal remedies, some putative class members performed no work
25 in King County, and some putative class members are subject to agreements to resolve disputes
26 through alternative means, including individual arbitration.

1 4. The claims are barred, in whole or in part, by preemption and/or sovereign
2 immunity.

3 5. Lack of service or service of process.

4 6. The claims are barred, in whole or in part, by the statute of limitations and/or
5 relevant limitations periods.

6 7. The claims are barred to the extent they are intended to include or cover any
7 individual who, at any relevant time, falls within the exemptions or exceptions to wage and break
8 requirements. These exemptions include, but are not limited to, the exemptions and exceptions in
9 provisions such as RCW 49.46.010(3), RCW 49.46.130(2), WAC 296-126-002, WAC 296-128-
10 500 to -560, and DLI Admin. Policies ES.A.1, ES.A.8, ES.C.1, and ES.D.1.

11 8. The claims are barred, in whole or in part, by the doctrine of payment in that
12 Plaintiffs and/or any putative class members were paid in full and in compliance with the law.

13 9. The claims are barred, in whole or in part, because Defendants have fully
14 performed and discharged all legal obligations that Defendants have to Plaintiffs and/or any
15 putative class members.

16 10. Defendants acted in good faith and in reasonable reliance on statutory, regulatory,
17 judicial, and written administrative guidance.

18 11. Defendants did not act willfully to violate the law.

19 12. If and to the extent that Plaintiffs and/or any putative class members allege or prove
20 that they did not take any rest or meal breaks, took such breaks in a non-compliant manner, or
21 worked any time that was not fully compensated, such events and acts were volitional and not
22 required; Defendants did not permit, know of, or have reason to know of such events and acts;
23 the individuals were already paid for all such time; and any such time is de minimis and thus non-
24 compensable.

25 13. If and to the extent the Court finds that any wages are due, such wages are limited
26 to the minimum wage and overtime. Defendants intend to rely on the alternative methods for

1 calculating minimum wage compliance, the regular rate, and overtime as provided by Washington
2 law.

3 14. Plaintiffs and putative class members entered into and are bound by 4-10 work
4 agreements, which have been authorized and recognized by the State of Washington.

5 15. Defendants intend to rely on the doctrines of waiver, laches, estoppel,
6 acquiescence, ratification, unclean hands, accord and satisfaction, and settlement and the claims
7 are barred, in whole or in part, pursuant to those doctrines.

8 16. The claims for damages are barred, in whole or in part, by Plaintiffs' failure to
9 mitigate alleged damages and failure to take advantage of opportunities to avoid alleged harm.

10 17. The claims for damages are barred, in whole or in part, due to the doctrine of offset
11 or setoff. To the extent any Defendants are found liable for any violations, unpaid compensation,
12 or other amounts, Defendants claim a credit or setoff for all amounts actually paid to Plaintiffs
13 and/or putative class members, all amounts advanced or paid to Plaintiffs and/or putative class
14 members in excess of that to which they were legally entitled, all time that Plaintiffs and/or
15 putative class members reported or claimed as work time that they did not in fact work, any
16 amounts or time to which Plaintiffs and/or putative class members were not legally entitled, and
17 any other amounts or time that Plaintiffs or putative class members took to which they were not
18 entitled.

19 18. Defendants claim an offset or credit for all amounts paid as provided under RCW
20 49.46.090.

21 19. Relief against Defendants pursuant to RCW 49.52.070 is not justified because
22 Defendants did not willfully and intentionally deprive Plaintiffs and/or putative class members of
23 compensation; any arguably improper withholding was the result of inadvertence or good faith
24 dispute; there was no consensus to deny compensation; and Plaintiffs and/or putative class
25 members knowingly agreed and submitted to any break issues or other circumstances that are
26 alleged to violate the law.

1 E. Defendants be granted such other and further relief as the Court deems just and
2 equitable.

3 DATED September 3, 2024

K&L GATES LLP

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5 By: /s/ Patrick M. Madden

6 By: /s/ Ashley E.M. Gammell

7 By: /s/ Monica A. Romero

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14 *Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 I certify that on September 3, 2024, I caused the foregoing document to be served on the
3 parties listed below in the manner indicated:

<p>4 REKHI & WOLK, P.S. 5 Gregory A. Wolk, WSBA #28946 6 Hardeep S. Rekhi, WSBA #34579 7 Erika Lane, WSBA #40854 8 Cameron K. Mease, WSBA #59550 9 529 Warren Ave N., Suite 201 10 Seattle, Washington 98109 11 Telephone: (206) 388-5887 12 Facsimile: (206) 577-3924 13 Email: greg@rekhiwolk.com 14 hardeep@rekhiwolk.com 15 erika@rekhiwolk.com 16 cameron@rekhiwolk.com</p> <p>17 TERRELL MARSHALL LAW GROUP PLLC 18 Toby J. Marshall, WSBA #32726 19 936 N. 34th Street, Suite 300 20 Seattle, Washington 98103 21 Telephone: (206) 816-6603 22 Facsimile: (206) 319-5450 23 Email: tmarshall@terrellmarshall.com</p> <p>24 <i>Attorneys for Plaintiffs</i></p>	<p><input checked="" type="checkbox"/> Via U.S. 1st Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> E-Service</p>
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18 DATED September 3, 2024, at Seattle, Washington.

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21 By: /s/ Abigail D. Belscher
22 Abigail D. Belscher, Sr. Practice Assistant
23 Abigail.Belscher@klgates.com
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