

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

JOSHUA KING, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

BEACON SALES ACQUISITION, INC., a
Delaware corporation,

Defendant.

No. 22-2-14226-0 SEA

**DEFENDANT'S ANSWER TO
PLAINTIFF'S CLASS ACTION
COMPLAINT**

Defendant Beacon Sales Acquisition, Inc. ("Beacon" or "Defendant") hereby files its Answer, Defenses and Affirmative Defenses to the Class Action Complaint for Damages ("Complaint") filed by Plaintiff Joshua King ("Plaintiff"). Answers to each paragraph of the Complaint are made without waiving, but expressly reserving, all rights that Defendant may have to seek relief by appropriate motions directed to the allegations of the Complaint. Defendant responds to the Complaint as follows:

I. INTRODUCTION

1.1 Answering Paragraph 1.1 of the Complaint, Defendant is a publicly traded distributor of building materials in the United States and Canada. Except as specifically admitted, Defendant denies each and every allegation contained in Paragraph 1.1 of the Complaint.

1 Defendant lacks sufficient knowledge or information to form a belief as to the truth of the
2 allegation regarding Plaintiff or his counsel's interests, and on that basis denies the allegation.
3 Defendant lacks sufficient knowledge or information to form a belief as to the truth of the
4 allegation regarding the experience and/or competency of Plaintiff's counsel and on that basis
5 denies the allegation. Except as specifically admitted, Defendant denies each and every allegation
6 contained in Paragraph 4.5 of the Complaint.

7 4.6 Answering Paragraph 4.6 of the Complaint, Defendant denies any claim or
8 implication by Plaintiff that this action is appropriately maintained as a class action. Paragraph 4.6
9 contains legal conclusions regarding the predominance of issues that do not require a response. To
10 the extent Paragraph 4.6 requires a response, Defendant denies each and every allegation contained
11 in Paragraph 4.6.

12 4.7 Answering Paragraph 4.7 of the Complaint, Defendant denies any claim or
13 implication by Plaintiff that this action is appropriately maintained as a class action. Paragraph 4.7
14 contains legal conclusions regarding the superiority of the class action that do not require a
15 response. Paragraph 4.7 contains legal conclusions regarding the manageability of this action as a
16 class action that do not require a response. To the extent Paragraph 4.7 requires a response,
17 Defendant denies each and every allegation contained in Paragraph 4.7.

18 **V. SUMMARY OF FACTUAL ALLEGATIONS**

19 5.1 Answering Paragraph 5.1 of the Complaint, Defendant denies each and every
20 allegation contained in Paragraph 5.1 of the Complaint.

21 5.2 Answering Paragraph 5.2 of the Complaint, Defendant denies any claim or
22 implication by Plaintiff that this action is appropriately maintained as a class action based on a
23 common course of action towards Plaintiff and alleged putative Class members. To the extent
24 Paragraph 5.2 is intended to assert any factual allegations, Defendant denies each and every
25 allegation contained in Paragraph 5.2. Except as specifically admitted, Defendant denies each and
26 every allegation contained in Paragraph 5.2 of the Complaint.

1 5.3 Answering Paragraph 5.3 of the Complaint, Defendant denies any claim or
2 implication by Plaintiff that this action is appropriately maintained as a class action based on a
3 common course of action towards Plaintiff and alleged putative Class members. Defendant further
4 denies each and every allegation contained in Paragraph 5.3 of the Complaint.

5 5.4 Answering Paragraph 5.4 of the Complaint, Defendant denies any claim or
6 implication by Plaintiff that this action is appropriately maintained as a class action based on a
7 common course of action towards Plaintiff and alleged putative Class members. Defendant further
8 denies each and every allegation contained in Paragraph 5.4 of the Complaint.

9 5.5 Answering Paragraph 5.5 of the Complaint, Defendant denies any claim or
10 implication by Plaintiff that this action is appropriately maintained as a class action based on a
11 common course of action towards Plaintiff and alleged putative Class members. Defendant further
12 denies each and every allegation contained in Paragraph 5.5 of the Complaint.

13 5.6 Answering Paragraph 5.6 of the Complaint, Defendant denies each and every
14 allegation contained in Paragraph 5.6 of the Complaint.

15 5.7 Answering Paragraph 5.7 of the Complaint, Defendant denies any claim or
16 implication by Plaintiff that this action is appropriately maintained as a class action based on a
17 common course of action towards Plaintiff and alleged putative Class members. Defendant further
18 denies each and every allegation contained in Paragraph 5.7 of the Complaint.

19 5.8 Answering Paragraph 5.8 of the Complaint, Defendant denies any claim or
20 implication by Plaintiff that this action is appropriately maintained as a class action based on a
21 common course of action towards Plaintiff and alleged putative Class members. Defendant further
22 denies each and every allegation contained in Paragraph 5.8 of the Complaint.

23 5.9 Answering Paragraph 5.9 of the Complaint, Defendant denies any claim or
24 implication by Plaintiff that this action is appropriately maintained as a class action based on a
25 common course of action towards Plaintiff and alleged putative Class members. Defendant further
26 denies each and every allegation contained in Paragraph 5.9 of the Complaint.

1 7.4 Answering Paragraph 7.4 of the Complaint, Paragraph 7.4 contains legal
2 conclusions not requiring a response.

3 7.5 Answering Paragraph 7.5 of the Complaint, Paragraph 7.5 contains legal
4 conclusions not requiring a response.

5 7.6 Answering Paragraph 7.6 of the Complaint, Paragraph 7.6 contains legal
6 conclusions not requiring a response.

7 7.7 Answering Paragraph 7.7 of the Complaint, Paragraph 7.7 contains legal
8 conclusions not requiring a response.

9 7.8 Answering Paragraph 7.8 of the Complaint, Paragraph 7.8 contains legal
10 conclusions not requiring a response.

11 7.9 Answering Paragraph 7.9 of the Complaint, Paragraph 7.9 contains legal
12 conclusions not requiring a response. To the extent Paragraph 7.9 is intended to assert any factual
13 allegations, Defendant denies each and every allegation contained in Paragraph 7.9 of the
14 Complaint.

15 7.10 Answering Paragraph 7.10 of the Complaint, Paragraph 7.10 contains legal
16 conclusions not requiring a response. To the extent Paragraph 7.10 requires a response, Defendant
17 denies each and every allegation contained in Paragraph 7.10 of the Complaint.

18 **VIII. THIRD CLAIM FOR RELIEF**
19 **(Violation of RCW 49.46.130 – Failure to Pay Overtime Wages)**

20 8.1 Answering Paragraph 8.1 of the Complaint, Paragraph 8.1 contains legal
21 conclusions not requiring a response.

22 8.2 Answering Paragraph 8.2 of the Complaint, Defendant denies each and every
23 allegation contained in Paragraph 8.2 of the Complaint.

24 8.3 Answering Paragraph 8.3 of the Complaint, Paragraph 8.3 contains legal
25 conclusions not requiring a response. To the extent Paragraph 8.3 requires a response, Defendant
26 denies each and every allegation contained in Paragraph 8.3 of the Complaint.

1 8.4 Answering Paragraph 8.4 of the Complaint, Paragraph 8.4 contains legal
2 conclusions not requiring a response. To the extent Paragraph 8.4 requires a response, Defendant
3 denies each and every allegation contained in Paragraph 8.4 of the Complaint.

4 **IX. FOURTH CLAIM FOR RELIEF**
5 **(Violation of RCW 49.46.090 – Payment of Wages Less Than Entitled)**

6 9.1 Answering Paragraph 9.1 of the Complaint, Paragraph 9.1 contains legal
7 conclusions not requiring a response. To the extent Paragraph 9.1 requires a response, Defendant
8 denies each and every allegation contained in Paragraph 9.1 of the Complaint.

9 9.2 Answering Paragraph 9.2 of the Complaint, Paragraph 9.2 contains legal
10 conclusions not requiring a response.

11 9.3 Answering Paragraph 9.3 of the Complaint, Paragraph 9.3 contains legal
12 conclusions not requiring a response. To the extent Paragraph 9.3 requires a response, Defendant
13 denies each and every allegation contained in Paragraph 9.3 of the Complaint.

14 9.4 Answering Paragraph 9.4 of the Complaint, Paragraph 9.4 contains legal
15 conclusions not requiring a response.

16 9.5 Answering Paragraph 9.5 of the Complaint, Paragraph 9.5 contains legal
17 conclusions not requiring a response. To the extent Paragraph 9.5 requires a response, Defendant
18 denies each and every allegation contained in Paragraph 9.5 of the Complaint.

19 **X. FIFTH CLAIM FOR RELIEF**
20 **(Violation of RCW 49.52.060 and WAC 296-126-028 –**
21 **Unlawful Deductions and Rebates)**

22 10.1 Answering Paragraph 10.1 of the Complaint, Paragraph 10.1 contains legal
23 conclusions not requiring a response. To the extent Paragraph 10.1 requires a response, Defendant
24 denies each and every allegation contained in Paragraph 10.1 of the Complaint.

25 10.2 Answering Paragraph 10.2 of the Complaint, Paragraph 10.2 contains legal
26 conclusions not requiring a response.

1 11.6 Answering Paragraph 11.6 of the Complaint, Paragraph 11.6 contains legal
2 conclusions not requiring a response. To the extent Paragraph 11.6 requires a response, Defendant
3 denies each and every allegation contained in Paragraph 11.6 of the Complaint.

4 **XII. RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF**

5 Answering Paragraphs A – H of Plaintiff's Prayer for Relief, Defendant denies that
6 Plaintiff and/or the alleged putative members of the Class are entitled to the relief requested or any
7 relief of any kind in this action.

8 **DEFENSES AND AFFIRMATIVE DEFENSES**

9 Defendant asserts the following separately numbered defenses and affirmative defenses
10 without assuming any burden of proof that it does not have as a matter of law. To the extent that
11 any defenses or legal theories asserted herein may be interpreted as being inconsistent, such
12 defenses or legal theories are hereby pled in the alternative. Subject to and without waiving the
13 foregoing, and without waiving Plaintiff's burden to show otherwise, Defendant pleads as follows:

- 14 1. Defendant denies all allegations not specifically admitted herein.
- 15 2. The Complaint and each and every allegation thereof fail to state a claim upon
16 which relief may be granted.
- 17 3. Plaintiff's claims are barred by payment and/or accord and satisfaction.
- 18 4. Plaintiff's claims are barred due to the express terms and requirements of his job
19 position, and his agreement to such terms and requirements.
- 20 5. Plaintiff's claims are barred by waiver and/or estoppel.
- 21 6. The Complaint and each of its purported causes of action are preempted by the
22 Motor Carrier Safety Act of 1984, 49 U.S.C. § 31141.
- 23 7. Plaintiff is barred from bringing any and all claims against Defendant by the
24 doctrine of unclean hands and/or his own conduct.
- 25 8. Any amounts due to Plaintiff are subject to offset or other deductions or
26 adjustments for amounts paid to Plaintiff to which he was not otherwise entitled, including but not

1 limited to wage overpayments.

2 9. Plaintiff's injuries and/or losses, if any, were the result of Plaintiff's failure to take
3 reasonable steps to mitigate or avoid damages.

4 10. Defendant alleges that any unlawful or other wrongful acts, if any, taken by any
5 of the officers, directors, supervisors, or employees of Defendant were outside the scope of their
6 authority and such acts, if any, were not authorized, ratified, or condoned by Defendant, nor did
7 Defendant know, nor should they have known of such conduct.

8 11. The claim for violation of RCW 49.52.050 (willful withholding of wages) is barred
9 because, at a minimum, a *bona fide* dispute exists as to the obligation to pay the wages sought in
10 this action and/or because any incorrect deductions from wages were made erroneously rather than
11 intentionally and/or because Plaintiff knowingly submitted to any alleged violations.

12 12. Plaintiff has been paid all wages and all other compensation due to him by virtue
13 of his employment, if any, with Defendant.

14 13. Defendant's defenses above are likewise asserted as defense to the claims of any
15 and all alleged putative members of any class that may be certified in this action.

16 14. This action is not properly maintainable as a class action because Plaintiff cannot
17 establish all the elements necessary for class certification in that, among other things: common
18 issues of fact or law do not predominate, to the contrary, individual issues predominate; Plaintiff's
19 claims are not representative or typical of the claims of the putative class; Plaintiff is not a proper
20 class representative; Plaintiff and alleged putative class counsel are not adequate representatives
21 for the putative class; the putative class is not so numerous that joinder of all members is
22 impracticable; there does not exist a well-defined community of interest as to the questions of law
23 and fact involved; and the alleged putative Class is sufficiently manageable without implementing
24 the class action mechanism and, therefore, it is not the superior method for adjudicating this
25 dispute.

26 15. Defendant has not yet completed a thorough investigation and study or completed

1 discovery of all facts and circumstances of the subject matter of the Complaint, and accordingly,
2 reserves the right to amend, modify, revise or supplement its Answer, and to plead such further
3 defenses and/or affirmative defenses and take such further actions as it may be deemed proper and
4 necessary in its defense upon the completion of its investigation and study.

5 **DEFENDANT'S PRAYER FOR RELIEF**

6 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully
7 requests that this Court:

- 8 a. Enter judgment in favor of Defendant;
- 9 b. Deny each and every demand, claim, and prayer for relief contained in Plaintiff's
10 Complaint, and order that Plaintiff take nothing by his claims against Defendant;
- 11 c. Deny the status of class action to the Complaint which the evidence will show fails
12 to meet the requirements therefor;
- 13 d. Dismiss all claims herein with prejudice;
- 14 e. Award Defendant its costs and attorneys' fees in defending this action pursuant to
15 applicable law;
- 16 f. Grant Defendant permission to amend its pleading to conform to the proof offered
17 at the time of trial; and
- 18 g. Grant such other and further relief as the Court may deem just and equitable under
19 the circumstances.

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Dated: November 11, 2022

s/ Douglas E. Smith

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Attorneys for Defendant

BEACON SALES ACQUISITION, INC.

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Washington, over the age of eighteen years, and not a party
3 to the within action. My business address is One Union Square, 600 University Street, Suite 3200,
4 Seattle, WA 98101. I hereby certify that on November 11, 2022, I caused to be served the
5 foregoing document via the method(s) indicated below:

<input checked="" type="checkbox"/>	ELECTRONICALLY FILED the foregoing document(s) via the King County Superior Court E-Filing System and served a copy via that system, as required by the mandatory e-service requirement.
<input type="checkbox"/>	EMAIL to the email address(es) of the person(s) set forth below, <i>pursuant to the parties' agreement to electronic service.</i>
<input type="checkbox"/>	U.S. Mail to the address(es) of the person(s) set forth below.
<input type="checkbox"/>	Hand Delivery

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11 **Attorneys for Plaintiff**

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24 I declare under the penalty of perjury under the laws of the State of Washington that the
25 above is true and correct. Executed on November 11, 2022, at Seattle, Washington.

26 /s/ Liana Natividad
Liana Natividad
LNatividad@littler.com
LITTLER MENDELSON, P.C.

4858-6260-2294.3 / 115167-1002