



representatives (“CSRs”) at Independence. The remaining allegations in this paragraph are denied.

4. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

#### **CLASS AND COLLECTIVE DEFINITIONS**

5. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

6. Admitted in part; denied in part. It is admitted only that Plaintiffs purport to bring claims on behalf of others. Plaintiffs’ claims themselves are denied.

#### **PARTIES**

7. Denied. Independence is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, therefore, those allegations are denied.

8. Admitted in part; denied in part. It is admitted only that a Consent to Sue Form has been filed on behalf of Plaintiff. Independence is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, therefore, those allegations are denied.

9. Denied as stated. Plaintiff, Moore was employed from August 23, 2021 through December 21, 2022.

10. Admitted.

11. Denied. Independence is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, therefore, those allegations are denied.

12. Admitted in part; denied in part. It is admitted only that a Consent to Sue Form has been filed on behalf of Plaintiff. Independence is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, therefore, those allegations are denied.

13. Denied as stated. Plaintiff, Aiken was employed from August 20, 2018 through July 8, 2021, and then again from August 3, 2021 through July 29, 2022.

14. Admitted.

15. Admitted.

16. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

17. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

### **JURISDICTION AND VENUE**

18. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

19. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

20. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

**FACTUAL ALLEGATIONS**

21. Denied as stated. It is admitted only that Independence is a leading health insurance company in southeastern Pennsylvania, and with affiliates, serves people nationwide.

22. Denied as stated. It is admitted only that Independence employs hourly-paid CSRs to assist members, among other individuals.

23. Denied as stated. To the extent that this paragraph is referencing the job descriptions of CSRs, those documents speak for themselves and any characterizations inconsistent with those documents are denied.

24. Denied.

25. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

26. Denied as stated. It is admitted only that, among other things, CSRs use a computer provided by Independence to perform work.

27. Denied. It is admitted only that Independence maintains policies, practices and procedures that apply to its employees regarding timekeeping, compensation, and computer use; and that CSRs are required to use software applications in the course of their work. The remaining allegations in this paragraph, and its subparts, are denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is admitted only that a work-week for CSRs was 37.5 hours. The remaining allegations in this paragraph are denied.

32. Denied.

**CLASS AND COLLECTIVE ACTION ALLEGATIONS**

33. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

34. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, and strict proof thereof is demanded at trial.

35. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, and strict proof thereof is demanded at trial.

36. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, and strict proof thereof is demanded at trial.

37. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

38. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

39. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, and strict proof thereof is demanded at trial.

40. Denied. The allegations contained in this paragraph and its subparts constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

41. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

42. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

43. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence acted willfully or with a lack of good faith in violation of federal and/or state laws, and strict proof thereof is demanded at trial.

**COUNT I**  
**FAIR LABOR STANDARDS ACT (“FLSA”): OVERTIME WAGE VIOLATIONS**  
**(On Behalf of Plaintiffs and the Collective)**

44. Independence incorporates the paragraphs above as if they were fully set forth at length herein.

45. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

46. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

47. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

48. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

49. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

50. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

51. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, and strict proof thereof is demanded at trial.

52. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

53. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is

specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

54. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**COUNT II**  
**FLSA: OVERTIME GAP TIME VIOLATIONS**  
**(On Behalf of Plaintiffs and the Collective)**

55. Independence incorporates the paragraphs above as if they were fully set forth at length herein.

56. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

57. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

58. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

59. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is



specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

60. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

61. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**COUNT III**  
**PENNSYLVANIA MINIMUM WAGE ACT (“PMWA”): OVERTIME WAGE VIOLATIONS**  
**(On Behalf of Plaintiffs and the Collective)**

62. Independence incorporates the paragraphs above as if they were fully set forth at length herein.

63. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

64. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

65. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is

specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

66. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**COUNT IV**  
**PMWA: OVERTIME GAPTIME VIOLATIONS**  
**(On Behalf of Plaintiffs and the Collective)**

67. Independence incorporates the paragraphs above as if they were fully set forth at length herein.

68. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

69. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

70. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

71. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is

specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

72. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**COUNT V**  
**VIOLATION OF PENNSYLVANIA COMMON LAW UNJUST ENRICHMENT**  
**(On Behalf of Plaintiffs and the Collective)**

73. Independence incorporates the paragraphs above as if they were fully set forth at length herein.

74. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

75. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Independence failed to pay all earned wages, willfully or otherwise, and strict proof thereof is demanded at trial.

76. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

77. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

78. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

The Complaint fails to state any claims against Independence upon which relief can be granted.

**Second Affirmative Defense**

The claims within the Complaint may be barred, in whole or in part, by the doctrines of waiver, estoppel, laches, fraud, and/or unclean hands.

**Third Affirmative Defense**

The claims within the Complaint are barred to the extent they fall beyond the applicable statute of limitations.

**Fourth Affirmative Defense**

Plaintiffs and the classes of persons Plaintiffs purport to represent, the existence of which is expressly denied, failed to take advantage of any preventive or corrective opportunities or otherwise to avoid harm.

**Fifth Affirmative Defense**

Plaintiffs and the classes of persons Plaintiffs purport to represent, the existence of which is expressly denied, are barred from pursuing the claims in the Complaint and each purported cause of action therein, by reason of their own actions and course of conduct.

**Sixth Affirmative Defense**

Plaintiffs and the classes of persons Plaintiffs purport to represent, the existence of which is expressly denied, cannot prove facts sufficient to entitle them to recover compensatory damages, liquidated damages, attorneys' fees and costs, expert fees, restitution, and/or any other damages under the FLSA or the PMWA, as a matter of law.

**Seventh Affirmative Defense**

Without admitting any violation of the FLSA or PMWA, Independence acted at all times in good faith, made good faith efforts to comply with applicable law, and reasonably believed it was in compliance with the FLSA and PMWA.

**Eighth Affirmative Defense**

Independence is entitled to a set-off for any amounts already paid as wages to which Plaintiffs and the classes of persons Plaintiffs purport to represent were not entitled.

**Ninth Affirmative Defense**

Plaintiffs lack standing to assert the legal rights or interests of others.

**Tenth Affirmative Defense**

The claims alleged by Plaintiffs on behalf of themselves and the classes of persons they purport to represent, the existence of which is expressly denied, are

matters as to which individual questions predominate and are thus not appropriate for collective treatment.

**Eleventh Affirmative Defense**

Any alleged uncompensated time is de minimis.

**Twelfth Affirmative Defense**

The claims alleged by Plaintiffs are not common to nor typical of any purported claims of the classes of persons Plaintiffs purport to represent, the existence of which is expressly denied, and are thus not appropriate for collective and/or class treatment.

**Thirteenth Affirmative Defense**

Plaintiffs are not similarly situated to other members of the classes of persons they purport to represent, the existence of which is expressly denied, and Plaintiffs are therefore inadequate representatives of the classes of persons whom they purport to represent.

**Fourteenth Affirmative Defense**

The Complaint does not comply with the requirements for a collective action under the FLSA, 29 U.S.C. § 216(b) and therefore must be dismissed.

**Fifteenth Affirmative Defense**

The Complaint does not comply with the requirements for a class action pursuant to the PMWA under Fed. R. Civ. P. 23, and therefore must be dismissed.

**Sixteenth Affirmative Defense**

The Court lacks subject matter jurisdiction under 28 U.S.C. §§ 1331, 1367, or any other section over some or all of the claims or some or all of the classes of persons Plaintiffs purport to represent, the existence of which is expressly denied.

**Seventeenth Affirmative Defense**

The claims alleging equitable relief are barred because Plaintiffs and the classes of persons Plaintiffs purport to represent, the existence of which is expressly denied, have an adequate and complete remedy at law.

**Eighteenth Affirmative Defense**

Pursuant to 29 U.S.C. § 259 and other applicable law, Independence's alleged failure to pay Plaintiffs or any putative class member wages, if any, was the result of good faith conduct taken in conformity with and in reliance on an administrative regulation, order, ruling, approval, interpretation, administrative practice, and/or enforcement policy of the United States Department of Labor and/or the Pennsylvania Department of Labor.

**Nineteenth Affirmative Defense**

If Independence's alleged failure to pay any of Plaintiffs' wages they now seek is deemed unlawful, although such is not admitted, none of Independence's actions or omissions constitutes a willful violation of state or federal law.

**Twentieth Affirmative Defense**

Plaintiffs' claims and those of the putative collective action/class members are barred as to all hours allegedly worked of which Independence lacked actual or constructive knowledge.

**Twenty-First Affirmative Defense**

Plaintiffs' claims and those of the putative collective action/ class members have failed to appropriately and adequately mitigate their alleged damages, entitlement to which is expressly denied.

**Twenty-Second Affirmative Defense**

Plaintiffs' claims and those of the putative collective action/class members are barred, in whole or in part, to the extent they violated policies and guidelines or worked in violation of instructions from their supervisors or managers.

**Twenty-Third Affirmative Defense**

Plaintiffs' claims and those of the putative collective action/class members are barred as to all hours during which Plaintiffs and the putative collective action/class members were engaged in activities that were preliminary to their principal job activities.

**Twenty-Fourth Affirmative Defense**

Liquidated damages are inappropriate where Independence's actions were taken in good faith.

**Twenty-Fifth Affirmative Defense**

Plaintiffs' claims are barred to the extent that they worked, but failed to report hours, and did so in violation of Independence policy and/or concealed the facts.

**Twenty-Sixth Affirmative Defense**

While Independence denies that Plaintiffs worked uncompensated hours and overtime, it pleads alternatively that their claims should be offset by personal time they spent on the clock for which they were compensated.

**Twenty-Seventh Affirmative Defense**

Plaintiffs' unjust enrichment claims fail because Defendant has made payment for any and all benefits conferred.

**Twenty-Eighth Affirmative Defense**

Plaintiffs' unjust enrichment claims are preempted.



**Twenty-Ninth Affirmative Defense**

Plaintiffs' unjust enrichment claims fail because Independence had no knowledge of the alleged benefits.

**Thirtieth Affirmative Defense**

Plaintiffs' unjust enrichment claims fail because Defendant did not voluntarily accept the alleged benefits.

**Thirty-First Affirmative Defense**

Plaintiffs' unjust enrichment claims fail because it would be inequitable for Independence to pay for the alleged benefit under the circumstances.

**Thirty-Second Affirmative Defense**

Defendant reserves the right to assert any additional Affirmative Defenses that are made known during the litigation of this matter.

**WHEREFORE**, Defendant respectfully requests that judgment be entered in its favor and against Plaintiffs, together with all costs of and attorneys' fees permitted by law.

**JURY DEMAND**

Defendant demands a trial by jury on all issues so triable.

Respectfully submitted:

**TUCKER LAW GROUP, LLC**

Dated: April 17, 2023

/s/ Joe H. Tucker  
Joe H. Tucker, Esquire  
Jessica Rickabaugh, Esquire  
Ten Penn Center  
1801 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 875-0609

*Attorneys for Defendant, Independence Blue  
Cross, LLC*

**CERTIFICATE OF SERVICE**

I, Jessica A. Rickabaugh, Esquire hereby certify that a true and correct copy of the foregoing Answer and Affirmative Defenses of Independence Blue Cross, LLC to Plaintiffs' Class and Collective Action Complaint was served upon all counsel of record via the Court's electronic filing system.

Respectfully submitted:

*/s/ Jessica Rickabaugh*

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Jessica Rickabaugh, Esquire

Dated: April 17, 2023