

Lois A. Baar, #3761
H. Douglas Owens, #7762
Cecilia M. Romero, #9570
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
Telephone: (801) 799-5800
Fax: (801) 799-5700
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>JASON SWEAT and SUE RENZELLO, individually and on behalf of others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>BATTELLE MEMORIAL INSTITUTE, a non-profit corporation,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">ANSWER</p> <p style="text-align: center;">Civil Action No. 2:07cv00401</p> <p style="text-align: center;">Judge Ted Steward</p>
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Defendant, Battelle Memorial Institute (Battelle), by and through its counsel of record, answers the Complaint of Plaintiffs Jason Sweat and Sue Renzello (“Plaintiffs”) as follows:

PRELIMINARY STATEMENT

1. Battelle admits that Plaintiffs purport to assert claims under the Fair Labor Standards Act and the Utah Payment of Wages Act but otherwise denies the allegations of paragraph 1 of the Complaint.

2. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” The allegations of paragraph 2 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

3. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” The allegations in the first and second sentences of paragraph 3 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. With respect to the last sentence of paragraph 3, Battelle denies the allegations.

INTRODUCTION

4. The allegations of paragraph 4 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

5. Battelle lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint and, therefore, denies the allegations.

6. The allegations of paragraph 6 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

7. Battelle lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 7 of the Complaint, and therefore denies the allegations. Battelle admits that it has hired monitoring technicians and other non-exempt hourly employee positions but denies the remaining allegations of the second sentence in this paragraph.

8. Battelle denies the allegations contained in paragraph 8 of the Complaint.

9. Battelle denies the allegations contained in paragraph 9 of the Complaint.

JURISDICTION AND VENUE

10. The allegations contained in paragraph 10 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

11. Battelle admits that venue is proper but denies the remaining legal conclusions of the first sentence which require no response. To the extent a response is required, the remaining allegations in the first sentence are denied. With respect to the second sentence, Battelle admits that it has offices in Utah but denies the remaining allegations in the second sentence of paragraph 11 of the Complaint. Battelle admits that it has employed individuals. Battelle denies each and every remaining allegation of paragraph 11 of the Complaint.

PARTIES

12. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” Battelle denies the allegations of paragraph 12 of the Complaint. Battelle avers that Jason Sweat was employed by Battelle at the Tooele Chemical Agent Disposal Facility in Tooele, Utah from 2002 to 2004.

13. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” Battelle denies the allegations contained in paragraph 13 of the Complaint. Battelle avers that Jason Sweat worked as a Demil Technician I from October 11, 2002 to August 1, 2004 and was employed as a Demil Technician II from August 1, 2004 until his resignation on November 26, 2004.

14. Battelle admits the allegations contained in paragraph 14 of the Complaint.

15. Battelle admits the allegations contained in paragraph 15 of the Complaint.

16. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” Battelle lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and, therefore, denies the allegations.

17. Battelle admits that it is a non-profit corporation organized under the laws of the state of Ohio, with its principal place of business in the state of Ohio. Battelle admits the remaining allegations contained in paragraph 17.

18. Battelle denies the allegations contained in paragraph 18 of the Complaint. Battelle avers that it is a subcontractor responsible for monitoring and related activities for the chemical warfare agent disposal operations at the Tooele Chemical Agent Disposal Facility in Tooele, Utah.

19. Battelle admits that it is a subcontractor to EG&G Defense Materials, Inc. Battelle denies the remaining allegations contained in paragraph 19 of the Complaint.

20. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or a “Utah Class.” Battelle denies the allegations contained in paragraph 20 of the Complaint.

21. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or a “Utah Class.” Battelle denies the allegations contained in paragraph 21 of the Complaint.

CLASS ACTION ALLEGATIONS

22. The legal conclusions contained in paragraph 22 of the Complaint, including the subparts (a) and (b), require no response. To the extent a response is necessary, the allegations are denied.

23. Battelle admits that there is an attached Exhibit 1 to the Complaint, and affirmatively alleges that the document speaks for itself, and denies the remaining allegations contained in paragraph 23 of the Complaint.

24. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” Battelle lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and on that basis denies the allegations.

25. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” The legal conclusions asserted in paragraph 25 of the Complaint including all of the subparts (a) – (d), require no response. To the extent a response is necessary, the allegations are denied. Battelle denies each and every allegation contained in paragraph 25 including all of the subparts.

COMMON FACTUAL ALLEGATIONS

26. Battelle denies the allegations contained in paragraph 26 of the Complaint. Battelle avers that Sue Renzello and Jason Sweat are/were employed pursuant to a written employment agreement.

27. Battelle denies the allegations contained in paragraph 27 of the Complaint.

28. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” or “Utah Class.” The allegations contained in paragraph 28 of the Complaint are denied.

FIRST CLAIM FOR RELIEF UNLAWFUL FAILURE TO PAY OVERTIME WAGES (FLSA Class)

29. Battelle incorporates by reference the preceding paragraphs as though fully set forth herein. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle either lacks sufficient information or belief to admit or deny the allegations with respect to whether “EG&G” has been an enterprise and on that basis Battelle denies that allegation. The

remaining allegations of paragraph 29 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Battelle denies those allegations.

30. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 30 of the Complaint.

31. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 31 of the Complaint.

32. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” and that its employees are paid in compliance with applicable laws. Battelle denies the remaining allegations of paragraph 32.

33. Battelle affirmatively alleges that this Court has not certified an “FLSA Class” and that it compensates its nonexempt employees in compliance with applicable law. Battelle denies the remaining allegations contained in paragraph 33 of the Complaint.

34. Battelle denies the allegations contained in paragraph 34 of the Complaint.

35. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 35 of the Complaint.

36. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 36 of the Complaint.

37. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 37 of the Complaint.

38. Battelle denies each and every allegation of paragraph 38 of the Complaint including the subparts (a) – (c).

39. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle lacks sufficient information or belief to admit or deny the allegations with respect to whether “EG&G” has violated the regular wage and overtime provisions of the FLSA and, therefore, denies those allegations. Battelle otherwise denies the allegations contained in paragraph 39 of the Complaint.

40. Battelle denies the allegations contained in paragraph 40 of the Complaint.

41. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 41 of the Complaint.

42. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle denies the allegations contained in paragraph 42 of the Complaint.

43. Battelle denies the allegations contained in paragraph 43 of the Complaint.

44. Battelle affirmatively alleges that this Court has not certified an “FLSA Class.” Battelle admits that the Complaint purports to seek a judgment against Battelle but denies the remaining allegations contained in paragraph 44 of the Complaint.

SECOND CLAIM FOR RELIEF
UNLAWFUL FAILURE TO PAY REGULAR WAGES
(Utah Class)

45. Battelle incorporates by reference the preceding paragraphs as though fully set forth herein.

46. Battelle denies the allegations contained in paragraph 46 of the Complaint.

47. Battelle denies the allegations contained in paragraph 47 of the Complaint.

48. Battelle denies the allegations contained in paragraph 48 of the Complaint.

49. Battelle lacks sufficient information or belief to admit or deny the allegations with respect to whether “EG&G” has violated the regular wage and other provisions of the UPWA and, therefore, denies the allegations. Battelle otherwise denies the allegations of paragraph 49 of the Complaint.

50. Battelle affirmatively alleges that this Court has not certified a “Utah Class.” Battelle denies the allegations contained in paragraph 50 of the Complaint.

GENERAL DENIAL

Each and every allegation of this Complaint including, but not limited to any unnumbered paragraphs or subheadings, not specifically admitted herein is denied. Battelle denies that Plaintiffs are entitled to any relief under any theory whatsoever. Battelle further denies that this action can be promptly prosecuted as either a collective or class action.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim against Battelle upon which relief may be granted.

SECOND DEFENSE

The Complaint and each of its purported causes of action are barred in that Battelle’s actions were a just and proper exercise of management discretion, undertaken for a fair, honest and legitimate business reason, and regulated by good faith under the circumstances then existing.

THIRD DEFENSE

The Complaint and each of its causes of action fail because Battelle was privileged to take the alleged actions.

FOURTH DEFENSE

The Complaint and each of its causes of action fail because Battelle is not subject to the statute and Plaintiffs have failed to comply with the provisions of the statutes pursuant to which their claims are brought and therefore cannot obtain recovery under these acts.

FIFTH DEFENSE

Plaintiffs' claims and damages, if any, are due to their own actions or own fault.

SIXTH DEFENSE

Plaintiffs' claims are barred to the extent they have failed to mitigate their damages, if any.

SEVENTH DEFENSE

Plaintiffs' claims are barred by the equitable doctrines of estoppel, waiver and/or unclean hands.

EIGHTH DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitations.

NINTH DEFENSE

Plaintiffs' claims are barred by failure of consideration and failure of conditions precedent.

TENTH DEFENSE

Because the Complaint is couched in broad and conclusory terms, Battelle cannot fully anticipate all defenses that may be applicable to the above-entitled action. Accordingly, the right to assert additional defenses and amend this answer, if and to the extent that such defenses are applicable, is hereby reserved.

PRAYER FOR RELIEF

WHEREFORE, Battelle prays as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. That Plaintiffs be denied each and every demand and prayer for relief contained in the Complaint, including claims for liquidated or exemplary damages and attorneys' fees and costs;
4. That Battelle be awarded its fees and costs, including reasonable attorneys' fees and expert fees, in defense of this action as allowed by law; and
5. For such other and further relief as the Court may deem just and proper.

Dated July 30, 2007.

Respectfully submitted,

/s/ Cecilia M. Romero

Lois A. Baar

H. Douglas Owens

Cecilia M. Romero

HOLLAND & HART LLP

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on 7/30/2007, I have caused to be electronically filed the foregoing ANSWER with the Clerk of Court using CM/ECF system which will send notification of such filing to the following:

Jesse S. Brar
Sharon Preston
716 East 4500 South, Suite N-142
Salt Lake City, UT 84107

Mick G. Harrison, *Pro Hac Vice*
128 Main Street
P. O. Box 467
Berea, KY 40403

/s/ Barbara Thurgood

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