

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

| | | |
|----------------------------------|---|-----------------------------|
| STEVEN D. MARCRUM, |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION NO: |
| v. |) | 3:18-cv-01388-RV-CJK |
| |) | |
| HOBBY LOBBY STORES, INC., |) | |
| |) | |
| Defendant. |) | |

**ANSWER OF HOBBY LOBBY STORES, INC. TO
CLASS ACTION COMPLAINT**

Defendant, Hobby Lobby Stores, Inc. ("Hobby Lobby"), by and through its undersigned attorney, hereby submits its answer to the Class Action Complaint.

FIRST DEFENSE

This Court lacks general personal jurisdiction over Hobby Lobby, or the claims asserted against it by the named plaintiff or on behalf of the putative class, because Hobby Lobby is not incorporated in Florida nor does it have its principal place of business here. Thus, Hobby Lobby is not "at home" in Florida or in this district.

SECOND DEFENSE

This Court lacks specific personal jurisdiction over Hobby Lobby with respect to the claims asserted on behalf of the putative class members who did not transact business with Hobby Lobby in Florida or in this district. The claims of out-of-state plaintiffs, who did not transact business with Hobby Lobby in Florida or in this district, have no relationship to this forum. None of those out-of-state putative class members suffered any injury from Hobby Lobby's business practices in Florida.

THIRD DEFENSE

This Court should decline to exercise jurisdiction over this action in deference to a previously-filed class action currently pending in the United States District Court for the Northern District of Alabama brought by the same lawyers on behalf of the same or similar putative class raising the same or similar causes of action predicated on the same alleged course of conduct by Hobby Lobby. If this Court does not dismiss this action based on the first-to-file rule, then it should either stay this action or transfer it to the Northern District of Alabama. All claims asserted here could be asserted there.

FOURTH DEFENSE

For its answer to the specifically-enumerated paragraphs of the Class Action Complaint, defendant Hobby Lobby states as follows:

I. JURISDICTION AND VENUE

1. The allegations of paragraph 1 with regard to jurisdiction under 28 U.S.C. § 1332 constitute a legal conclusion to which no response is required. Hobby Lobby denies all remaining allegations in paragraph 1, and specifically denies that this action should proceed as a class action, and that plaintiff is entitled to any relief or damages whatsoever.

2. Hobby Lobby denies that this is an appropriate or convenient venue for the claims of Plaintiff or the claims of the other putative class members.

II. PARTIES

3. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 regarding the age and residency of plaintiff Steven D. Marcum, and must therefore deny same and demand strict proof thereof. Hobby Lobby denies all remaining allegations in paragraph 3.

4. Admitted.

III. NATURE OF CLASS ACTION

5. Admitted.

6. The allegations of paragraph 6 with regard to common law and state consumer protection laws in Florida constitute legal conclusions to which no response is required. Hobby Lobby denies all remaining allegations in paragraph

6, and specifically denies that this action should be maintained as a class action and that plaintiff is entitled to any relief or damages whatsoever.

7. Denied.

8. Denied.

9. Denied.

10. Hobby Lobby admits that the complaint seeks relief for plaintiff and other putative class members, but Hobby Lobby denies that they are entitled to any relief and further denies all remaining allegations of paragraph 10.

IV. FACTUAL ALLEGATIONS

A. Mr. Marcum's Purchases

11. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11, and must therefore deny same and demand strict proof thereof.

12. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12, and must therefore deny same and demand strict proof thereof.

13. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13, and must therefore deny same and demand strict proof thereof.

14. Hobby Lobby lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 14, and must therefore deny same and demand strict proof thereof.

15. Denied.

16. Denied.

B. Hobby Lobby's Signage and Advertisements Attempting to Justify the Artificial Price are, by Definition, Deceptive

17. Denied as phrased. Hobby Lobby's signs and advertisements clearly state the "marked price" and how it is derived, and its tags state the marked price for the furniture and that the reduced price the customer pays is a "discounted price." The Hobby Lobby coupon clearly states that it cannot be used to get another 40% off of an already discounted price.

18. Denied.

19. The FDUTPA speaks for itself. To the extent the allegations in paragraph 19 of the complaint accurately reflect the FDUTPA, they are admitted. Otherwise, they are denied. Hobby Lobby denies it has violated the provisions of FDUTPA.

20. The Federal Trade Commission Act and 16 C.F.R. § 1.8 speak for themselves. To the extent the allegations in paragraph 20 of the complaint accurately reflect the Federal Trade Commission Act and 16 C.F.R. § 1.8, they are

admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated this FTC Regulation.

21. 16 C.F.R § 233.2 speaks for itself. To the extent the allegations or citations in paragraph 21 of the complaint accurately reflect 16 C.F.R. § 233.2, they are admitted. Otherwise, they are denied. Hobby Lobby denies all remaining allegations in paragraph 21.

22. Denied.

23. 16 C.F.R § 233.1 speaks for itself. To the extent the allegations or citations in paragraph 23 of the complaint accurately reflect 16 C.F.R. § 233.1, they are admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated this FTC Regulation.

24. The FDUTPA speaks for itself. To the extent the allegations in paragraph 24 of the complaint accurately reflect FDUTPA, they are admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated any FTC Regulations and further denies all remaining allegations in paragraph 24.

25. Hobby Lobby denies that its advertising and sales practices are misleading, and it further denies the remaining allegations in paragraph 25.

26. Hobby Lobby admits it operates at more than 700 locations throughout the country. Hobby Lobby denies the remaining allegations in paragraph 26.

27. Denied.

28. Denied.

CLASS ALLEGATIONS

29. Defendant Hobby Lobby admits that plaintiff purports to bring this case as a class action, but Hobby Lobby denies that this case can properly be maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 29.

30. Defendant Hobby Lobby admits that plaintiff purports to bring this case as a class action on behalf of certain defined classes, but Hobby Lobby denies that this case can properly be maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 30.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Defendant Hobby Lobby admits that while plaintiff may not himself anticipate that there will be difficulties in managing this case as a class action, there will in fact arise manageability concerns that will preclude this case from

being maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 36.

COUNT I

(Alternative Class Claim for Breach of Contract)

37. Defendant Hobby Lobby responds to the allegations in paragraph 37 as fully set forth above.

38. Defendant Hobby Lobby admits that plaintiff purports to bring this case as a class action, but Hobby Lobby denies that this case can properly be maintained as a class action. Hobby Lobby denies all remaining allegations in paragraph 38.

39. Because Hobby Lobby is not at this time aware of the facts surrounding plaintiff's alleged transaction, it is unable at this time to either admit or deny this allegation. So, at this time it must deny this allegation and demand strict proof thereof.

40. Denied.

41. Denied.

42. Denied. Defendant Hobby Lobby denies that plaintiff is entitled to any judgment or relief whatsoever.

COUNT II

(Alternative Class Claim for Unjust Enrichment)

43. Defendant Hobby Lobby responds to the allegations in paragraph 43 as fully set forth above.

44. The allegations of paragraph 44 constitute a legal conclusion to which no response is required.

45. The allegations of paragraph 45 with regard to the equitable remedy of unjust enrichment constitute a legal conclusion to which no response is required. Hobby Lobby denies all remaining allegations in paragraph 45 and denies that plaintiff or any class members are entitled to recover under any unjust enrichment theory.

46. Hobby Lobby denies all allegations in paragraph 46.

47. Denied. Defendant Hobby Lobby denies that plaintiff is entitled to any judgment or relief whatsoever.

COUNT III

(Class Claim Under the Florida Deceptive and Unfair Trade Practices Act)

48. Defendant Hobby Lobby responds to the allegations in paragraph 48 as fully set forth above.

49. The FDUTPA speaks for itself. To the extent the allegations in paragraph 49 of the complaint accurately reflect the FDUTPA, they are admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated FDUTPA.

50. The FDUTPA speaks for itself. To the extent the allegations in paragraph 50 of the complaint accurately reflect the FDUTPA, they are admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated FDUTPA.

51. The allegations of paragraph 51 with regard to the "Regulations interpreting the FTC Act" constitute a legal conclusion to which no response is required. Hobby Lobby denies all remaining allegations in paragraph 51. Hobby Lobby denies that it has violated FDUTPA.

52. The FDUTPA speaks for itself. To the extent the allegations in paragraph 52 of the complaint accurately reflect the FDUTPA, they are admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated FDUTPA.

53. The FDUTPA speaks for itself. To the extent the allegations in paragraph 53 of the complaint accurately reflect the FDUTPA, they are admitted. Otherwise, they are denied. Hobby Lobby denies that it has violated FDUTPA.

54. Denied.

55. Defendant Hobby Lobby denies that plaintiff or the putative class members have been damaged or that they are entitled to any judgment or relief

whatsoever. Defendant Hobby Lobby denies that this case can properly be maintained as a class action.

FIFTH DEFENSE

The Complaint, and each count therein, fails to state a claim upon which relief may be granted.

SIXTH DEFENSE

Plaintiff has not suffered a discrete and particularized injury needed to bestow Article III or statutory standing upon him.

SEVENTH DEFENSE

This district is not a proper or convenient venue for the claims of Plaintiff or the claims of putative class members, particularly the out-of-state putative class members. This is not a proper venue to adjudicate the claims of any out-of-state putative class members who did transact business with Hobby Lobby in this district because: (i) Hobby Lobby does not reside here since those out-of-state plaintiffs cannot obtain personal jurisdiction over Hobby Lobby here; (ii) this district is not where a substantial part of the events or omissions giving rise to the claim occurred; and (iii) there are other districts in which this action could otherwise have been brought.

EIGHTH DEFENSE

Plaintiff's and the putative class members' claims are barred in whole or in part by the doctrines of laches, waiver, estoppel and/or abandonment.

NINTH DEFENSE

Defendant's actions were performed in good faith conformity with applicable rules, regulations, and statutory interpretations.

TENTH DEFENSE

Plaintiff's and the putative class members' claims are barred because the alleged violation (if any) was not willful and because plaintiff cannot establish any actual damages.

ELEVENTH DEFENSE

Plaintiff has failed to mitigate any damages he may have suffered and failed to take reasonable precautions to avoid those damages.

TWELFTH DEFENSE

The claims of the Plaintiff and the class are barred if they used the 40% off discount coupons on other items that were not already discounted and therefore received the full value of the coupons.

THIRTEENTH DEFENSE

Plaintiff failed to comply with all applicable conditions precedent to assert some or all of the claims in the Complaint.

FOURTEENTH DEFENSE

Plaintiff has not complied with statutory prerequisites to bringing suit under the FDUTPA.

FIFTEENTH DEFENSE

Plaintiff is not an adequate class representative, he does not have typical claims, and his claims are subject to several unique defenses.

SIXTEENTH DEFENSE

Individual issues permeating plaintiff's claims, as well as those of the putative class, predominate over any alleged common issues.

SEVENTEENTH DEFENSE

The Complaint fails to satisfy the requirements for class action treatment as prescribed by Federal Rule of Civil Procedure 23.

EIGHTEENTH DEFENSE

This action cannot be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure because (i) the questions of law and fact are not common to the class, the legal issues differ from class member to class member, and the factual issues will differ depending on a number of different facts applicable to the various putative class members; (ii) the claims of the representative parties are not typical of the claims of the class; and (iii) the Plaintiffs will not fairly and adequately protect the interests of the class.

NINETEENTH DEFENSE

A class cannot be certified under the allegations of the Complaint because to do so is violative of the United States Constitution's provisions regarding due process.

TWENTIETH DEFENSE

Defendant denies each and every material allegation of the Complaint as they relate to the request for class certification, and objects to any such class action certification on the following grounds:

- a. Plaintiff has failed to join indispensable parties;
- b. The Complaint fails to adequately define any class of persons who could properly maintain this action as a class action, since the class definitions will require fact-intensive determinations;
- c. The purported class representatives have not sustained their burden of establishing standing;
- d. Defendant's time-based defenses, such as statutes of limitations and laches, mandate the denial of class certification;
- e. Individualized determinations for each class member of controlling state substantive law and the applicability of different state substantive laws to claims by purported class members defeat the Rule 23(b)(3) requirements of predominance, superiority, and manageability, and, therefore, preclude class certification;
- f. The class as defined is not ascertainable because Hobby Lobby does not ordinarily maintain customer information (such as names and addresses) on a routine basis, because the process of identifying putative class members cannot be

undertaken in an administratively efficient or feasible manner but will instead require numerous individual inquiries, and because identification relies upon third parties to produce voluminous amounts of information. All this means that the implicit requirement of ascertainability cannot possibly be met here;

g. A Rule 23(b)(3) class is inappropriate because individualized issues predominate over common questions and because of insoluble manageability issues;

h. Lack of commonality of questions of law, particularly with respect to the varying contract laws of all of the states where individual transactions occurred;

i. Lack of commonality of questions of fact;

j. Lack of typicality;

k. Lack of adequacy of representation;

l. Lack of requirements for certification under Rule 23(b)(1) or 23(b)(2) of the Federal Rules of Civil Procedure;

m. Lack of requirements for certification under Rule 23(b)(3) of the Federal Rules of Civil Procedure;

n. Individual issues predominate over common issues;

o. A class action is not superior to other available methods for the fair and efficient adjudication of this controversy; and

p. There are difficulties that are likely to be encountered in the management of a class action that cannot be resolved in a manner that will allow a class to be certified.

TWENTY-FIRST DEFENSE

The putative classes defined in the Complaint are not ascertainable because the class definitions will entail countless individual inquiries such that it is not administratively feasible to determine class membership.

TWENTY-SECOND DEFENSE

To the extent Plaintiff or any putative class member asserts a claim under the FDUTPA, that claim is barred to the extent that any of the events took place outside Florida without impact on Florida residents.

TWENTY-THIRD DEFENSE

Defendant complied with all the requirements of federal and state law regarding any transactions with Plaintiff.

TWENTY-FOURTH DEFENSE

Plaintiff lacks standing or capacity to assert his claims, in whole or in part.

TWENTY-FIFTH DEFENSE

Plaintiff's claims for equitable relief are barred, in whole or in part, because he has a plain, common, adequate, and speedy remedy at law.

TWENTY-SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because the alleged conduct of Hobby Lobby was lawful and undertaken in good faith.

TWENTY-SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because plaintiff would be unjustly enriched if he were to prevail on any of the causes of action.

TWENTY-EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent plaintiff seeks cumulative remedies.

TWENTY-NINTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because plaintiff did not and could not have reasonably or justifiably relied on the alleged misrepresentations or omissions asserted in the Complaint.

THIRTIETH DEFENSE

Plaintiff's claims are barred, in whole or in part, because plaintiff expressly and/or impliedly consented to and/or had knowledge of, all activities or conditions alleged in the Complaint to have caused him harm.

THIRTY-FIRST DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel, acceptance, acquiescence, and ratification. In particular, Plaintiff had full knowledge or awareness, or a reasonable person standing in his shoes would have gained such

knowledge or awareness, that he did not receive an additional 40% off of the already discounted price of the goods he purchased. Yet, armed with this actual or imputed knowledge or awareness, he went forward with the transactions and obtained full use and enjoyment of the products he purchased. Had plaintiff informed Hobby Lobby of his views as to the meaning to be given to the coupon, Hobby Lobby would not have gone forward with the transaction.

THIRTY SECOND DEFENSE

Plaintiff's breach of contract claim must fail as a matter of law because Defendant's advertisements do not constitute an offer.

THIRTY-THIRD DEFENSE

Plaintiff's claims are barred because, with full or sufficient knowledge of the purported legal violations and the amount he was being charged, he proceeded with the transactions and voluntarily paid for and then used the items he purchased.

THIRTY-FOURTH DEFENSE

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

THIRTY-FIFTH DEFENSE

Plaintiff's claims are barred because Plaintiff have already received the benefit of his bargain, and neither law nor equity may be invoked to obtain a windfall.

THIRTY-SIXTH DEFENSE

Plaintiff does not allege any act that would constitute any of the deceptive trade practices in FDUTPA.

THIRTY-SEVENTH DEFENSE

Plaintiff does not have standing or the legal ability to seek injunctive relief, because he is fully aware of Hobby Lobby's practices and is, therefore, not in danger of an imminent or threatened injury that is certainly impending.

RESERVATION OF DEFENSES

This defendant specifically reserves all separate or affirmative defenses that it may have against the putative class members. It also expressly reserves the right to raise such additional affirmative defenses as may be established through discovery in this case. Any specific averments in the complaint that have not been expressly admitted or denied above are hereby denied.

s/ David A. Elliott

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Defendant Hobby Lobby Stores, Inc. has been electronically filed with the Clerk of the Court using the CM/ECF system on the following CM/ECF participants, or if not a CM/ECF participant, it has been served by U.S. mail, postage prepaid, on this 27th day of June, 2018.

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