

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SIRINA ROBINETT

PLAINTIFF

V.

4:11CV670 JMM

**C.L.A. INCORPORATED, d/b/a
SUBWAY/PIZZA PRO; ALAN
COVINGTON and MICHELLE
COVINGTON, each Individually
and d/b/a SUBWAY/PIZZA PRO**

DEFENDANTS

ORDER

Pending is the Plaintiff's Motion to Strike Certain Affirmative Defenses. The Defendants have responded and the Plaintiff has replied.

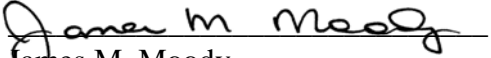
Plaintiff asks the Court to strike certain affirmative defenses listed by the Defendants in the Answer to Plaintiff's Complaint. These defenses include estoppel, unclean hands, release, waiver, indemnification, good faith compliance with the Fair Labor Standards Act and the Arkansas Minimum Wage Act, lack of malice, failure to mitigate, statutes of limitation, failure to state a claim, and de minimus tasks. Plaintiff claims that these defenses should be stricken in light of the heightened pleading requirements promulgated by *Ashcroft v. Iqbal*, 556 U.S. ____, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2009).

As acknowledged in the pleadings, the majority of courts that have considered the issue have applied the *Iqbal-Twombly* standard to affirmative defenses listed in the Answer. The Eighth Circuit has not yet ruled on the issue. This Court, however, is persuaded by the reasoning of Judge Holmes in *Ash Grove Cement Co. v. MMR Constructors, Inc.*, 2011 WL 3811445 (W.D. Ark. 2011) and adopts the view that the "plausibility" standard imposed by *Twombly* and

Iqbal on claims for relief do not apply to affirmative defenses raised under Rule 8(c).

In conclusion, Plaintiff's Motion to Strike (Docket # 7) is DENIED.

IT IS SO ORDERED this 9th day of November, 2011.


James M. Moody
United States District Judge