

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JAN MARKMAN, on his own behalf and
others similarly situated,

Plaintiff,

v.

CASE NO: 8:09-cv-1267-T-26MAP

FEEDINGBOWL TRADING, L.C., and
HANS EINSLE,

Defendants.

ORDER

Upon due consideration of the well-pleaded factual allegations of Plaintiff's complaint, which this Court must accept as true at this juncture of the proceedings, and after construing those factual allegations in the light most favorable to Plaintiff, it is ordered and adjudged that Defendants' Motion to Dismiss (Dkt. 9) is denied. Plaintiff's complaint more than adequately provides Defendants fair notice of the substance of his claim under the Fair Labor Standards Act (the FLSA) and the basis for that claim. See Curtis Inv. Co., LLC v. Bayerische Hypo-Und Vereinsbank, A.G., 2009 WL 2391409 *3 (11th Cir. August 5, 2009) (unpublished) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Cottone v. Jenne, 326 F.3d 1352 (11th Cir. 2003)). Defendants' Alternative Motion to Convert Motion to Dismiss into a Motion for Summary Judgment (Dkt. 9) is also denied. In the Court's view, Plaintiff should have the opportunity to engage in full and complete discovery in an effort to refute Defendants'

contentions that they are not amenable to suit under the FLSA. Defendants may refile their motion for summary judgment after the completion of discovery.

DONE AND ORDERED at Tampa, Florida, on August 7, 2009.

s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record