

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

ROBYN SOUSER, on her own behalf and all
others similarly situated,

Plaintiff,

v.

CASE NO: 8:10-cv-2627-T-26TGW

STRAYER SURVEYING & MAPPING, INC.,

Defendant.

ORDER

Pending before the Court is Defendant's motion seeking dismissal of Plaintiff's claim, embodied in count II of the complaint, seeking recovery of minimum wages under Florida state law pursuant to Article X, Section 24 of the Florida Constitution. Defendant contends that this count should be dismissed because Plaintiff has failed to allege that the presuit notice requirements of section 448.110(6)(a) were invoked prior to instituting this action.

After careful consideration of the well-pleaded allegations of Plaintiff's complaint, which this Court must accept as true at this early juncture of the proceedings, the Court concludes that Plaintiff's allegations with regard to count II are more than sufficient to raise a right to relief above the speculative level and to state a plausible claim for relief against Defendant for recovery of minimum wages under Florida law. The Court specifically concludes, as did another district judge of this district, "that it is not necessary for Plaintiff to fulfill the notice requirements found

in § 448.10(6)(a) (sic) in order to allege a violation of Section 24, Article X of the Florida Constitution.” Throw v. Republic Enter. Sys., Inc., 2006 WL 1823783 , *2 (M.D. Fla. 2006).¹

Accordingly, Defendant’s Motion to Dismiss Count II of Plaintiff’s Complaint (Dkt. 7) is denied.² Defendant shall file its answer and affirmative defenses to Plaintiff’s complaint within ten (10) days of this order.

DONE AND ORDERED at Tampa, Florida, on December 15, 2010.

s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

¹ The Court notes that it previously reached the same conclusion in an order entered April 1, 2009, at docket 8, in Bifulco v. Continental Foods, Inc. of Tampa, case number 8:09-cv-548-T-26TGW.

² Given this disposition of the motion, the Court needs no response from Plaintiff.