

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-20267 –CIV-HUCK/SIMONTON

ROBERTO GONZALEZ, on his own
Behalf and others similarly situated,

Plaintiff,

v.

TASTI CAFÉ, INC.
A Florida corporation,
And HENRY ZABIELINSKY,
individually,

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants, Tasti Café, Inc. and Henry Zabelinsky (“Defendants”), by and through their undersigned counsel, hereby respond to the averments contained in Plaintiff Roberto Gonzalez’s (“Plaintiff”) Complaint. All allegations not specifically admitted are hereby denied.

1. Defendants admit that Plaintiff previously worked for Defendant Tasti Café, Inc. Defendants further admit that Plaintiff purports to bring an action for monetary damages on behalf of himself and others, but deny that Plaintiff and any alleged similarly situated individuals can state cause of action and deny that Plaintiff and any alleged similarly situated individuals are entitled to any relief. Defendants deny the remaining allegations contained in Paragraph 1 of Plaintiff’s Complaint.

2. Defendants admit that Tasti Café, Inc. does business as a Florida corporation and operates a business in Miami-Dade County, Florida. Defendants deny that this Court has jurisdiction and deny the remaining allegations contained in Paragraph 2 of Plaintiff’s Complaint.

3. Defendants admit that Henry Zabelinsky is an individual resident of the State of Florida. Defendants deny the remaining allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Defendants admit that Plaintiff purports to bring an action for overtime under the Fair Labor Standards Act on behalf of himself and others, but deny that Plaintiff and any alleged similarly situated individuals can state cause of action and deny that Plaintiff and any alleged similarly situated individuals are entitled to any relief. Defendants deny the remaining allegations contained in Paragraph 4 of the Complaint.

5. Defendants deny the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit that Plaintiff purports to bring an action for overtime under the Fair Labor Standards Act on behalf of himself and others, but deny that Plaintiff and any alleged similarly situated individuals can state cause of action and deny that Plaintiff and any alleged similarly situated individuals are entitled to any relief. Defendants further deny that any allegedly similarly situated individuals exist. Defendants deny the remaining allegations contained in Paragraph 6 of the Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Paragraph 9 does not contain a factual allegation to which a response is required. To the extent a response is required, Defendants state that they may have in their possession, custody or control certain documents maintained in the ordinary course of business.

10. Paragraph 10 does not contain a factual allegation to which a response is required.

**COUNT I
RECOVERY OF OVERTIME COMPENSATION**

11. Defendants readopt and reallege their responses contained in Paragraphs 1 through 9 as if fully set forth herein.

12. Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. Defendants deny the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. Defendants are without knowledge of the allegations contained in Paragraph 15 of Plaintiff's Complaint and therefore deny the same and demands strict proof thereof.

16. Plaintiff's demand for a jury trial is not a factual allegation to which a response is required.

Plaintiff's Wherefore Clause does not contain factual allegations to which a response is required. To the extent a response is required, Defendants deny any and all liability and deny that Plaintiff and any alleged similarly situated individuals are entitled to any equitable or legal relief. Furthermore, Defendants expressly reserve the right to supplement their Answer to Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff cannot state a claim upon which relief can be granted.

Second Affirmative Defense

The alleged similarly situated individuals cannot state a claim upon which relief can be granted.

Third Affirmative Defense

This Court lacks jurisdiction over Defendants and lacks jurisdiction to hear Plaintiff's claims.

Fourth Affirmative Defense

The Court lacks jurisdiction over Defendants and lacks jurisdiction to hear the alleged similarly situated individuals' claims.

Fifth Affirmative Defense

Plaintiff cannot establish a willful violation of the Fair Labor Standards Act.

Sixth Affirmative Defense

The alleged similarly situated individuals cannot establish a willful violation of the Fair Labor Standards Act.

Seventh Affirmative Defense

Plaintiff fails to state a claim for relief because Defendant Tasti Café, Inc. is not an enterprise engaged in commerce pursuant to the provisions of the Fair Labor Standards Act and therefore the Fair Labor Standards Act does not apply to Defendant Tasti Café, Inc.

Eighth Affirmative Defense

The alleged similarly situated individuals fail to state a claim for relief because Defendant Tasti Café, Inc. is not an enterprise engaged in commerce pursuant to the provisions of the Fair Labor Standards Act and therefore the Fair Labor Standards Act does not apply to Defendant Tasti Café, Inc.

Ninth Affirmative Defense

Plaintiff fails to state a claim for relief because Defendant Henry Zabelinsky is not an employer pursuant to the provisions of the Fair Labor Standards Act and therefore the Fair Labor Standards Act does not apply to Defendant Henry Zabelinsky.

Tenth Affirmative Defense

The alleged similarly situated individuals fail to state a claim for relief because Defendant Henry Zabelinsky is not an employer pursuant to the provisions of the Fair Labor Standards Act and therefore the Fair Labor Standards Act does not apply to Defendant Henry Zabelinsky.

Eleventh Affirmative Defense

At all relevant times, Defendants compensated Plaintiff as required by the Fair Labor Standards Act of 1938, as amended, and therefore is not indebted to Plaintiff for any unpaid overtime compensation.

Twelfth Affirmative Defense

At all relevant times, Defendants compensated the alleged similarly situated individuals as required by the Fair Labor Standards Act of 1938, as amended, and therefore is not indebted to the alleged similarly situated individuals for any unpaid overtime compensation.

Thirteenth Affirmative Defense

At all relevant times, Defendants acted in good faith and with reasonable grounds for believing that their acts or omissions were not in violation of the Fair Labor Standards Act.

Fourteenth Affirmative Defense

To the extent Defendants are indebted to Plaintiff for any unpaid overtime payments, the extent of Defendants' liability must be offset by the amounts paid to Plaintiff during his employment.

Fifteenth Affirmative Defense

To the extent Defendants are indebted to the alleged similarly situated individuals for any unpaid overtime payments, the extent of Defendants' liability must be offset by the amounts paid to the alleged similarly situated individuals during their employment.

Sixteenth Affirmative Defense

To the extent Defendants are indebted to Plaintiff for any unpaid overtime payments, Plaintiff's overtime compensation is limited to half-time for the overtime hours worked.

Seventeenth Affirmative Defense

To the extent Defendants are indebted to the alleged similarly situated individuals for any unpaid overtime payments, the alleged similarly situated individuals overtime compensation is limited to half-time for the overtime hours worked.

Eighteenth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations period.

Nineteenth Affirmative Defense

The alleged similarly situated individuals' claims are barred in whole or in part by the applicable statute of limitations period

Reservation of Right to Assert Affirmative Defenses

Defendants reserve the right to assert other, viable affirmative defenses as revealed during the course of discovery.

Dated: March 6, 2007

Respectfully submitted:

s/Daniel W. Courtney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 6, 2007, the foregoing was served electronically to the individual set forth on the attached service list.

s/Daniel W. Courtney
DANIEL W. COURTNEY

SERVICE LIST

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