

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL DIAZ,)
)
 Plaintiff,)
)
 v.) No. 4:16 CV 1701 CDP
)
 TTT FOODS LLC,)
)
 Defendant.)

MEMORANDUM AND ORDER

Plaintiff Michael Diaz brings this action under Section 15(a)(3) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 215(a)(3), claiming that defendant TTT Foods LLC unlawfully terminated his employment in retaliation for his complaint that he was not being paid overtime as required under the FLSA and for seeking to recover his back wages. TTT Foods seeks to dismiss Diaz's amended complaint under Fed. R. Civ. P. 12(b)(6), arguing that Diaz previously executed a release that effectively waived his right to bring this action. I will deny the motion.

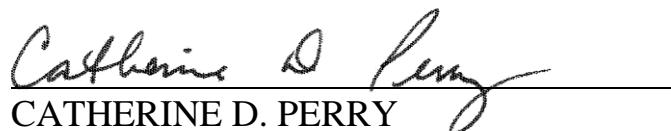
In both its motion and reply brief, TTT Foods bases its argument on matters and factual averments not embraced by the complaint, which I am prohibited from considering on a Rule 12(b)(6) motion to dismiss. *Enervations, Inc. v. Minnesota Mining & Mfg. Co.*, 380 F.3d 1066, 1069 (8th Cir. 2004). I will therefore deny the motion. The matters raised by TTT Foods are more appropriately considered on a

motion for summary judgment with proper submission of evidence relevant to the issues.

Accordingly,

IT IS HEREBY ORDERED that defendant TTT Foods LLC's Motion to Dismiss [7] is **DENIED**.

This case will be set for a Rule 16 scheduling conference by separate Order. Defendant is reminded of its obligation to answer the amended complaint within the time set by the rules.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of February, 2017.