

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-CV- 22952-DPG

LIZA PRAMAN,

Plaintiff(s),

v.

ASTOR EB-5 LLC,
a Florida Limited Liability Company, and
DAVID J. HART, Individually,

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants, Astor EB-5 LLC ("Astor") and David J. Hart, by and through undersigned counsel hereby file their Answer and Affirmative Defenses to Plaintiff's Complaint and state:

GENERAL ALLEGATIONS

1. Defendants admit that Plaintiff purports to bring this action under the Fair Labor Standards Act. Defendants deny that Plaintiff is entitled to any of the relief requested in the Complaint.
2. Defendants admit the allegations in paragraph 2 for jurisdictional purposes only, but deny same for any other purpose.
3. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph 3 regarding Plaintiff's place of residence and, therefore, deny same. Defendant Astor admits that it employed Plaintiff and that it is subject to the

requirements of the FLSA and the jurisdiction of this Court. Defendants deny the remaining allegations in paragraph 3.

4. Defendants admit that Astor is a Florida Limited Liability Company located in Miami Dade County that is subject to the requirements of the FLSA. Defendants are without sufficient knowledge to admit or deny the remaining allegations in paragraph 4 and, therefore, deny same.
5. Defendants admit that David J. Hart is a corporate officer of Astor. Defendants deny the remaining allegations in paragraph 5.
6. Defendants admit the allegations in paragraph 6 for venue purposes only, but deny same for any other purpose.
7. Defendants admit the Plaintiff seeks the relief requested in paragraph 7 under the Fair Labor Standards Act, but deny that Plaintiff is entitled to any of the relief requested.
8. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph 8 and, therefore, deny same.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. Defendants admit the allegations in paragraph 9.
10. Defendants deny the allegations in paragraph 10.
11. Defendants deny the allegations in paragraph 11.
12. Defendants deny the allegations in paragraph 12.
13. Defendants deny the allegations in paragraph 13.

COUNT I

Wage & Hour Federal Statutory Violation against Astor EB-5 LLC

14. Defendants re-allege and incorporate each and every answer to paragraph 1 through 13 as if fully set forth herein.
15. Defendants admit the Plaintiff purports to bring this action under 29 U.S.C. §201 et. seq., but deny the remaining allegations in paragraph 15.
16. Defendants admit the allegations in paragraph 16 for jurisdictional purposes only, but deny same for any other purpose.
17. Defendant Astor admits that it is subject to the requirements of the FLSA. Defendants deny the remaining allegations in paragraph 17.
18. Defendant Astor admits that it is subject to the requirements of the FLSA. Defendants deny the remaining allegations in paragraph 18.
19. Defendant Astor admits that it is subject to the requirements of the FLSA. Defendants deny the remaining allegations in paragraph 19.
20. Defendants deny the allegations in paragraph 20.
21. Defendants deny the allegations in paragraph 21.
22. Defendants deny the allegations in paragraph 22.

Defendants deny that Plaintiff is entitled to any of the relief requested in the WHEREFORE paragraph in Count I of the Complaint.

COUNT II

Wage & Hour Federal Statutory Violation against David J. Hart

23. Defendants re-allege and incorporate each and every answer to paragraph 1 through 24 as if fully set forth herein.

24. Defendants admit that David J. Hart is a corporate officer of Astor. Defendants deny the remaining allegations in paragraph 24.

25. Defendants deny the allegations in paragraph 25.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

Defendants deny that Plaintiff is entitled to any of the relief requested in the WHEREFORE in Count II of the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff is not entitled to any relief under the FLSA because she is an executive-exempt employee that was paid a salary of more than \$455 per week and whose primary duties were: managing her respective Department; customarily and regularly directing the work of at least two or more full-time employees, or their equivalent; and had the authority to hire and/or fire other employees and/or her suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees was given particular weight. 29 U.S.C § 201, *et seq.*, 29 CFR 541.100.
2. Plaintiff is not entitled to any relief under the FLSA because she is an administrative-exempt employee that was paid a salary of more than \$455 per week and whose primary duties were: performing non-manual office work directly related to the management and/or general business operations of Defendant and its customers and exercising discretion and independent judgment with to matters of significance. 29 U.S.C § 201, *et seq.*, 29 CFR 541.200.

3. At all relevant times, Defendants acted in good faith and had reasonable grounds for believing that any act or omission was not a violation of the FLSA because Plaintiff's primary duty was the performance of exempt executive and/or administrative duties and Plaintiff never informed Defendants that he was not performing such work or that he was due overtime.
4. Any violation of the FLSA by Defendants was not willful and wholly unintentional because Plaintiff's primary duty was the performance of exempt executive and/or administrative duties and Plaintiff never informed Defendants that he was not performing such work or that he was due overtime.
5. Plaintiff is not entitled to any relief under the FLSA because the acts or omissions complained of, which acts are specifically denied by Defendants, were in good faith conformity with and in reliance upon a written administrative regulation, order, ruling, approval, or interpretation of the Administrator of the Wage and Hour Division of the Department of Labor and/or an administrative practice or enforcement policy of such agency with respect to the class of employees to which Plaintiff belongs.
6. Plaintiff's claims arising more than two years prior to the date upon which her Complaint was filed are barred by the limitations period contained in Section 6 of the Portal-to-Portal Act, 29 U.S.C. § 255.
7. Plaintiff was paid based on the work performed and reported by Plaintiff. Therefore, to the extent that Plaintiff worked any infrequent and insignificant periods of time which cannot be precisely reported for payroll purposes such periods of time are *de minimis* and not compensable under the FLSA.

8. Plaintiff was paid based on the work performed and reported by Plaintiff. Therefore, if Plaintiff worked more than forty (40) hours per week as alleged in the Complaint she did so without the actual or constructive knowledge or consent of Defendants and, therefore, are not entitled to extra pay for such time. Debose v. Broward Health, 2009 WL 4884535 (S.D. Fla. 2009).
9. Plaintiff was paid based on the work performed and reported by Plaintiff. Plaintiff is not entitled to additional compensation because Plaintiff failed to notify or deliberately prevented Defendant from acquiring knowledge of the alleged overtime she claims to have worked. Debose v. Broward Health, 2009 WL 4884535 (S.D. Fla. 2009). Plaintiff never informed the Defendants that she was not paid overtime or reported that he had worked any overtime hours for which he was not paid.
10. Plaintiff's Complaint fails to state a claim upon which relief can be granted because Plaintiff has not pled her claims under the FLSA with the necessary specificity, and only asserts conclusory allegations. See, Landers v. Quality Communications, No. 12-15890 (9th Cir. Nov. 12, 2014); see also Holaway v. Stratasys, Inc., No. 14-1146 (8th Cir., Nov. 6, 2014).
11. Plaintiff's Complaint fails to state a claim upon which relief can be granted against David J. Hart because Plaintiff has failed to plead sufficient facts, which if taken to be true, demonstrate that David J Hart was an Employer under the FLSA.
12. Defendant David J. Hart was not Plaintiff's "employer" as that term is defined by the FLSA 29 U.S.C. §203(d).
13. Plaintiff has failed to mitigate any alleged damages.

RESERVATION OF RIGHTS

Defendants hereby give notice that they intend to rely on such other defenses and affirmative defenses as might become available or apparent during the course of discovery, and thus, Defendants reserve the right to amend this Answer and serve such defenses and otherwise supplement the foregoing Defenses.

WHEREFORE, having fully answered and responded to the allegations in Plaintiff's complaint, Defendants respectfully request that:

1. Plaintiff's claims be dismissed with prejudice in their entirety;
2. Each and every prayer for relief in Plaintiff's complaint be denied;
3. Judgment be entered in favor of Defendants;
4. All costs be awarded to Defendants and against Plaintiff;
5. All reasonable attorney fees be awarded to Defendants and against Plaintiff;
and
6. This Court grant Defendants such other and further relief as it deems just and appropriate.

Respectfully submitted this 4th day of August, 2017.

/s/ Rodolfo Gomez
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Attorneys for Defendants

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on August 4, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Rodolfo Gomez
Counsel for Defendants

SERVICE LIST

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