

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X 19-cv-09157

TERRENCE JONES, *on behalf of himself and
others similarly situated,*

ANSWER

Plaintiff,

v.

PORTABLES UNLIMITED RETAIL, LLC

Defendant.

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Defendant PORTABLES UNLIMITED RETAIL, LLC (hereinafter referred to as “Defendant”) by its attorneys, Certilman Balin Adler & Hyman, LLP, as and for its answer to the complaint filed by plaintiff TERRENCE JONES, *on behalf of himself and others similarly situated* (hereinafter referred to as “Plaintiff”), dated October 3, 2019 (hereinafter the “Complaint”) alleges as follows:

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“JURISDICTION AND VENUE”**

1. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Complaint and respectfully refers all questions of law to the Court for its determination thereof.

2. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Complaint and respectfully refers all questions of law to the Court for its determination thereof.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“PARTIES”**

3. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 3 of the Complaint.

4. Admits the allegations contained in paragraph 4 of the Complaint.

5. Admits the allegations contained in paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“FACTS”**

7. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Complaint.

9. Denies the allegations contained in paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 10 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“COLLECTIVE ACTION ALLEGATIONS”**

13. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 14 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“COUNT I- FLSA”**

15. Inasmuch as a response is required to paragraph 15 of the Complaint, the Defendant incorporates each and every prior response as if those responses were fully restated herein.

16. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 16 of the Complaint and respectfully refers all questions of law to the Court for its determination thereof.

17. Denies the allegations contained in paragraph 17 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“COUNT II-MMFWL”**

18. Inasmuch as a response is required to paragraph 18 of the Complaint, the Defendant incorporates each and every prior response as if those responses were fully restated herein.

19. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 19 of the Complaint and respectfully refers all questions of law to the Court for its determination thereof.

20. Denies the allegations contained in paragraph 20 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS/REQUESTS FOR RELIEF
UNDER THE HEADINGS “PRAYER FOR RELIEF/WHEREFORE”**

21. Denies the allegations/requests for relief contained in the Prayer for Relief/Wherefore section of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS/REQUESTS FOR RELIEF
UNDER THE HEADING “JURY TRIAL DEMANDED”**

22. Denies the allegations/request for jury trial contained in the Jury Trial Demanded section of the complaint.

ADDITIONAL AVERMENTS

23. Defendant denies all claims and allegations not unequivocally admitted herein.

* * * * *

Without assuming the burden of proof as to any of the following defenses where the law does not impose such burden, Defendant asserts the following defenses as to Plaintiff(s)' claims:

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

1. The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

2. The Complaint is barred, in whole or in part, based on the pertinent statute(s) of limitation including, but not limited to: (1) the three year statute of limitations under the Massachusetts Minimum Fair Wage Law (“MMFWL”); and (2) the two and three year statutes of limitation pertinent to claims under the Fair Labor Standards Act (“FLSA”).

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

3. The Complaint is barred, in whole or in part, due to documentary evidence, including, but not limited to, the time and/or wage records Defendant kept with respect to Plaintiff(s).

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

4. The Complaint is barred, in whole or in part, because of payment, accord and/or satisfaction. Plaintiff(s) were paid in full.

AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

5. If Defendant is found liable to Plaintiff(s) for any amounts due, which Defendant disputes, Defendant is entitled to set off any sums owed by Plaintiff(s) to Defendant.

AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff(s)' claims regarding overtime are barred due to various exceptions to the overtime requirements of, *inter alia*, the FLSA and MMFWL. Plaintiff(s) are exempt from the overtime requirements of any pertinent statutes/laws (e.g. FLSA, MMFWL). Plaintiff(s)' claims are barred in whole or in part to the extent work performed falls within exemptions, exclusions, or credits provided for in Section 3, 7, or 13 of the FLSA, 29 U.S.C. §203, 29 U.S.C. §207, 29 U.S.C. §213 and/or M.G.L. c. 151, §1A, including, but not limited to, the overtime compensation method set forth in 29 U.S.C. §207(i), the executive exemption, the outside sales exemption, the highly-compensated employee exemption, the administrative exemption, a combination of said exemptions or any other exemption or exclusion set forth in the FLSA and/or Massachusetts wage-hour laws.

AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff(s)' claims are barred due to a lack of standing.

AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE

8. At all times, Defendant acted in good faith. Any alleged unlawful actions were not willful. As such, Plaintiff(s) are not entitled to liquidated/treble damages.

AS AND FOR THE NINTH AFFIRMATIVE DEFENSE

9. Plaintiff(s) are not entitled to, and the Complaint fails to state, claims for purported damages (e.g. overtime wages, litigation costs, expenses and attorneys' fees, liquidated damages, treble damages, and/or pre-judgment interest).

AS AND FOR THE TENTH AFFIRMATIVE DEFENSE

10. Plaintiff(s) have not and cannot establish the requirements of a collective action under the FLSA because Plaintiff and the purported class alleged in the Complaint are not similarly situated.

AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff(s) cannot establish or satisfy the requirements for a collective action pursuant to the FLSA, and, therefore, the collective action allegations of the Complaint must be stricken and dismissed.

AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiff's claims are not typical of those of the purported collective action class.

AS AND FOR THE THIRTEENTH AFFIRMATIVE DEFENSE

13. At all times alleged in the Complaint, Defendant complied with all requirements concerning payment of wages, including without limitation, overtime wages pursuant to the FLSA and MMFWL.

AS AND FOR THE FOURTEENTH AFFIRMATIVE DEFENSE

14. The Complaint fails to state facts sufficient to constitute a claim for which penalties can be awarded.

AS AND FOR THE FIFTEENTH AFFIRMATIVE DEFENSE

15. At all relevant times, Defendant has acted in good faith and with reasonable grounds for believing that it had not violated the relevant provisions of federal and/or Massachusetts state law.

AS AND FOR THE SIXTEENTH AFFIRMATIVE DEFENSE

16. To the extent that discovery reveals that Plaintiff(s) falsely reported their hours and there is no evidence that Defendant required the false reporting of hours; no evidence that Defendant encouraged Plaintiff(s) to falsely report their hours; and no evidence that Defendant knew or should have known that Plaintiff(s) were providing false information as to their hours, Defendant hereby invokes the doctrines of estoppel and avoidable consequences to bar the claims asserted by the Plaintiff(s).

AS AND FOR THE SEVENTEENTH AFFIRMATIVE DEFENSE

17. Plaintiff(s)' claims are barred to the extent Plaintiff(s) failed, refused, and/or neglected to mitigate or avoid the damages complained of in Plaintiff(s)' Complaint, if any.

AS AND FOR THE EIGHTEENTH AFFIRMATIVE DEFENSE

18. Plaintiff(s)' alleged injuries were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendant.

AS AND FOR THE NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiff(s)' claims are barred by the doctrines of waiver, estoppel, unclean hands and/or laches.

AS AND FOR THE TWENTIETH AFFIRMATIVE DEFENSE

20. All or part of the time for which Plaintiff(s) seek compensation is not compensable work time, including but not limited to hours during which they were engaged in activities that were preliminary or subsequent to their alleged work activities.

AS AND FOR THE TWENTY-FIRST AFFIRMATIVE DEFENSE

21. To the extent Plaintiff(s), or any member of the collective or class they purport to represent, have suffered injury, which is denied, that injury is the result of acts or omissions of the Plaintiff(s) and/or said purported collective or class members, and not any act or omission of Defendant.

AS AND FOR THE TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Plaintiff(s) did not work the hours claimed.

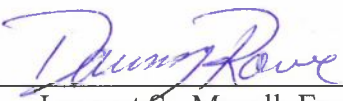
AS AND FOR THE TWENTY-THIRD AFFIRMATIVE DEFENSE

23. Defendant reserves the right to assert additional defenses or pursue any available counterclaims against Plaintiff(s) as may become known through discovery, investigation, or in preparation for trial.

WHEREFORE, Defendant respectfully requests that this Court enter judgment dismissing the Complaint in its entirety, together with the costs, disbursements and attorneys' fees incurred herein and such other and further relief as this Court deems just, proper and equitable.

Dated: East Meadow, NY
November 27, 2019

CERTILMAN BALIN ADLER & HYMAN, LLP

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