

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

SAUL GUZMAN,)
) No: 20-CV-1877
 Plaintiff)
)
 v.)
)
 ABBEY ROAD CONTROL, INC.,)
)
 Defendant)

ANSWER AND AFFIRMATIVE DEFENSES OF THE DEFENDANT
ABBHEY ROAD CONTROL INC.

Defendant Abbey Road Control, Inc., by its attorneys, Gross McGinley, LLP, hereby files this Answer and Affirmative Defenses to Plaintiff's Complaint and in support thereof avers:

JURISDICTION AND VENUE

1. Denied as conclusions of law.
2. Denied as conclusions of law.
3. Denied as conclusions of law.

PARTIES

4. Admitted upon information and belief.
5. Admitted.
6. Denied as conclusions of law.
7. Denied as conclusions of law.

FACTS

8. Admitted in part, denied in part. It is admitted that Defendant provides flagging services at road construction sites. The remaining allegations of the corresponding paragraph are denied.

9. Admitted.

10. Admitted that Plaintiff was employed as a flagger for Defendant.

11. Denied.

12. Denied.

13. Admitted. Defendant admits that it has paid Plaintiff an hourly wage.

14. Admitted in part, denied in part. Defendant admits that it has paid Plaintiff and other flaggers hourly wages. Defendant further admits that it pays eligible employees for time and one-half. The remaining allegations of the corresponding paragraph are denied.

15. Denied.

CLASS/COLLECTIVE ACTION ALLEGATIONS

16. Denied as conclusions of law.

17. Denied as conclusions of law.

18. Denied as conclusions of law.

19. Denied as conclusions of law. Defendant denies that Plaintiff can satisfy the prerequisites for class action treatment under Federal Rule of Civil Procedure 23, and that his claims are suitable for class action treatment.

20. Denied as conclusions of law. Defendant denies that Plaintiff can satisfy the prerequisites for class action treatment under Federal Rule of Civil Procedure 23, and that his claims are suitable for class action treatment.

21. Denied.

22. Denied as conclusions of law.

23. Denied as conclusions of law.

COUNT 1- FSLA

24. Denied as conclusions of law.

25. Denied.

COUNT II- PMWA

26. Denied as conclusions of law.

27. Denied.

WHEREFORE, Defendant Abbey Road Construction, Inc. prays Your Honorable Court to enter judgment in its favor and dismiss Plaintiff's Complaint with prejudice.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred as Defendant has fully complied with the provisions of the FLSA, PMWA, and applicable law.

SECOND AFFIRMATIVE DEFENSE

Collective or Class Action relief is not appropriate as Plaintiff is not similarly situated to putative collection individual whom he purports to represent.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to meet the requirements of Federal Rule of Civil Procedure 23 to certify the class.

FOURTH AFFIRMATIVE DEFENSE

Defendant subjectively acted in good faith and denies liability and/or had reasonable grounds to believe it was not violating the FLSA or PMWA, therefore, liquidated damages should be reduced or denied under 29 U.S. § 260.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff has failed to institute this action within the time required under the applicable Statute of Limitations, his claims for relief are barred.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive damages fails to state a claim upon which relief can be granted.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive damages fails because Defendant did not act with malice or reckless indifference to Plaintiff's federally protected rights, or engage in willful, deliberate, malicious or outrageous conduct.

NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has made any claims for special damages or other damages, he has failed to state such claim with the requisite specificity. Therefore, Plaintiff's claims are barred and should be dismissed.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth facts sufficient to establish a prima facie case for violations of the FLSA.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth facts sufficient to establish a prima facie case for violations of the PMWA.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Equitable Estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Unclean Hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Waiver.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Laches.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Accord and Satisfaction.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Justification.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Release.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Fraud.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Illegality.

TWENTY- FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Payment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Consent.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff is seeking to recover costs or damages that are unreasonable, duplicative or otherwise inappropriate. Plaintiff has incurred no damages cognizable by law.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to join indispensable parties to this action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff would be unjustly enriched if permitted to recover against Defendant on the claims set forth in the Complaint.

Defendant reserves the right to assert additional affirmative defenses are established by the facts of the case.

WHEREFORE, Defendant Abbey Road Construction, Inc. prays Your Honorable Court to enter judgment in its favor and dismiss Plaintiff's Complaint with prejudice.

GROSS MCGINLEY, LLP

A handwritten signature in blue ink, appearing to be 'SE', is written over a horizontal line.

By: _____

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Date: February 12, 2021

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CERTIFICATE OF SERVICE

SALLY A. MOLINA hereby certifies that she has electronically filed a true and correct document entitled *Answer and Affirmative Defenses of the Defendant, Abbey Road Control Inc.*, which is available for viewing and downloading from the United States District Court for the Middle District of Pennsylvania Electronic Case Filing System (ECF), on February 12, 2021.

GROSS MCGINLEY, LLP

Sally A Molina

BY: _____
SALLY A. MOLINA
Legal Administrative Assistant