

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 1:17-cv-01382-CMA-KLM

JOSEPH SANCHEZ, on behalf of himself and all similarly situated persons,

Plaintiff,

v.

PATRIOT DRILLING FLUIDS, LLC and Q'MAX AMERICA, INC.,

Defendants.

ANSWER TO COLLECTIVE ACTION COMPLAINT

Defendant Q'Max America, Inc. ("Q'Max") files its Affirmative and Other Defenses and Answer to the Collective Action Complaint ("Complaint") filed by Plaintiff Joseph Sanchez ("Sanchez").

ANSWER

JURISDICTION AND VENUE

1. Q'Max admits that the Court has subject-matter jurisdiction over this lawsuit but denies violating any laws supporting a claim for relief by Sanchez. Except as expressly admitted, Q'Max denies the remaining allegations in Paragraph 1 of the Complaint.

2. Q'Max denies the allegations in Paragraph 2 of the Complaint.

PARTIES

3. Q'Max is without sufficient knowledge or information to admit or deny the allegations in Paragraph 3 of the Complaint, and therefore such allegations are denied.

4. Q'Max denies the allegations in Paragraph 4 of the Complaint.

5. Q'Max admits that according to Patriot's website, Patriot is a division of Q'Max. Except as expressly admitted, Q'Max denies the remaining allegations in Paragraph 5 of the Complaint.

6. Q'Max denies the allegations in Paragraph 6 of the Complaint.

7. The allegations in Paragraph 7 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

8. Q'Max admits the allegations with regard to Q'Max in Paragraph 8 of the Complaint and denies the remainder of the allegations in such paragraph.

FACTS

9. Q'Max admits the allegations with regard to Q'Max in Paragraph 9 of the Complaint and denies the remainder of the allegations in such paragraph.

10. The allegations in Paragraph 10 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

11. The allegations in Paragraph 11 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

12. The allegations in Paragraph 12 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

13. Q'Max denies the allegations in Paragraph 13 of the Complaint.

14. Q'Max denies the allegations in Paragraph 14 of the Complaint.

15. The allegations in Paragraph 15 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

16. The allegations in Paragraph 16 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

17. The allegations in Paragraph 17 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

18. The allegations in Paragraph 18 are ambiguous as to whom Sanchez refers, and therefore Q'Max is without sufficient knowledge or information to admit or deny, and therefore such allegations are denied.

19. Q'Max denies the allegations in Paragraph 19 of the Complaint.

COLLECTIVE ACTION ALLEGATIONS

20. Q'Max admits that Sanchez purports to bring his FLSA claim as a collective action under the FLSA. Q'Max denies that this case is properly maintained as a collective action and denies all remaining allegations in Paragraph 20.

21. Q'Max denies the allegations in Paragraph 21 of the Complaint.

COUNT 1
(Alleging FLSA Violations)

22. Q'Max admits that Sanchez incorporates his Complaint's previous paragraphs. Q'Max answers to the Complaint's previous paragraphs are incorporated by reference as though fully set forth herein.

23. The allegations in Paragraph 23 consist of legal conclusions that require no response.

24. Q'Max denies the allegations in Paragraph 24 of the Complaint.

PRAYER FOR RELIEF

25. Q'Max denies that Sanchez is entitled to any relief sought in the Prayer and all subparts thereto.

26. All allegations in the Complaint not expressly admitted are hereby denied.

AFFIRMATIVE AND OTHER DEFENSES

Q'Max asserts the following defenses, pleading in the alternative as necessary:

FIRST DEFENSE

Sanchez fails to state a claim upon which relief can be granted. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

SECOND DEFENSE

Sanchez's claims against Q'Max are barred because Q'Max was not Sanchez's employer and/or joint employer as defined by the FLSA. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

THIRD DEFENSE

To the extent that the period of time alluded to in Sanchez's Complaint, or the period of time alleged later in this action, predates the limitations period set forth in Section 6(a) of the Portal-to-Portal Act, 29 U.S.C. § 255(a), such claims are barred. Moreover, Q'Max did not willfully violate the statute and only a two-year limitations period is applicable. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

FOURTH DEFENSE

Sanchez's claims are barred in whole or in part by the provisions of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, because actions taken in connection with Sanchez's compensation were done in good faith in conformity with and reliance on written administrative regulations, orders, rulings, approvals, interpretations, and written and unwritten administration practices or enforcement policies of the Administrator of the Wage and Hour Division of the United States Department of Labor. This defense may apply to the claims of some or all of the class of allegedly similarly situated persons.

FIFTH DEFENSE

Sanchez's claims are barred in whole or in part by the provisions of Section 11 of the Portal-to-Portal Act, 29 U.S.C. § 260, because any acts or omissions giving rise to this action were done in good faith and with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA. This defense may apply to the claims of some or all of the class of allegedly similarly situated persons.

SIXTH DEFENSE

Q'Max at all times acted in good faith to comply with the FLSA and with reasonable grounds to believe that its actions did not violate the FLSA, and Q'Max asserts a lack of willfulness or intent to violate the FLSA as a defense to any claim by Sanchez for liquidated damages and/or the applicable statute of limitations. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

SEVENTH DEFENSE

Sanchez's request for a collective action is invalid because there are no similarly situated persons and Sanchez is not an adequate representative.

EIGHTH DEFENSE

Sanchez was paid in conformity with the requirements set forth in the FLSA because Sanchez's work was not covered by the minimum and overtime wage requirements of the FLSA. Specifically, Sanchez's claims are barred because the work he performed falls within exemptions, exclusions, exceptions, or credits provided for in the FLSA. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

NINTH DEFENSE

Sanchez's claims are barred, in whole or in part, by the doctrine of *de minimis non curat lex*. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

TENTH DEFENSE

Sanchez's alleged injuries were not caused by any unlawful policy, custom, practice, and/or procedure promulgated and/or tolerated by Q'Max. This defense also may apply to the claims for some or all of the class of allegedly similarly situated persons.

ELEVENTH DEFENSE

Sanchez is not entitled to an award of prejudgment interest if he prevails on any or all of his stated claims. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

TWELFTH DEFENSE

Sanchez's claims are barred by the equitable doctrines of waiver, estoppel, laches, and/or unclean hands. This defense may also apply to the claims of some or all of the class of allegedly similarly situated persons.

THIRTEENTH DEFENSE

Sanchez has been paid and/or received all amounts due to him. All or portions of the claims set forth in the Complaint are barred because Sanchez consented to, encouraged, or voluntarily participated in all actions taken, if any. This defense may also apply to the claims of some or all of the class of allegedly similarly situated persons.

FOURTEENTH DEFENSE

To the extent liability, affirmative defenses and/or damages, if any, to each member of the alleged group Sanchez purports to represent are not determined by a single jury or is determined on a group-wide basis, permitting this action to proceed as a collective or class action violates Q'Max's rights under the Fifth, Seventh, Eighth and Fourteenth Amendments to the United States Constitution.

FIFTEENTH DEFENSE

Sanchez is entitled to only one satisfaction for any established unlawful conduct, and his claims for damages are limited by the applicable statutory maximum. This defense may also apply to the claims of some or all of the class of allegedly similarly situated persons.

SIXTEENTH DEFENSE

Q'Max is entitled to offset any and all damage amounts recovered by Sanchez by an amount equal to any overpayment of any amounts paid to him. This defense may also apply to the claims of some or all of the class of allegedly similarly situated persons.

SEVENTEENTH DEFENSE

Sanchez's claims are barred to the extent Sanchez failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Complaint, if any, and Q'Max is entitled to

an offset to the extent of any mitigation by Sanchez. This defense may also apply to the claims of some or all of the class of allegedly similarly situated persons.

Q'Max reserves the right to assert additional defenses or claims that may become known during the course of discovery.

WHEREFORE, for the foregoing reasons, Q'Max respectfully requests that this Court: (a) dismiss Sanchez's Collective Action Complaint with prejudice; (b) deny Sanchez's demands and prayer for relief; (c) award Q'Max's costs and reasonable attorneys' fees incurred in the defense of this action under the FLSA; and (d) grant such other and further relief as the Court deems just and proper.

Dated this 6th day of July 2017.

Respectfully submitted,

/s/ David B. Jordan

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ATTORNEYS FOR DEFENDANTS
PATRIOT DRILLING FLUIDS, LLC AND
Q'MAX AMERICA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2017, a true and correct copy of the foregoing **ANSWER TO COLLECTIVE ACTION COMPLAINT** was filed and served via CM/ECF which will send a copy to the following.

Brian D. Gonzales
THE LAW OFFICES OF
BRIAN D. GONZALES, PLLC
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Peter Winebrake
R. Andrew Santillo
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Dresher, Pennsylvania 19025

The duly signed original is on file at the offices of Littler Mendelson, P.C.

/s/ David B. Jordan

David B. Jordan

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