

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**FRANCISCO GOMEZ,
and others similarly situated,**

Plaintiffs,

v.

Case No. 6:09-CV-576-Orl-31-GJK

**UNITED FORMING, INC.,
a Georgia corporation,**

Defendant.

ANSWER

COMES NOW, United Forming, Inc., the Defendant herein, and files this, its Answer to Plaintiffs' Complaint.¹

For answer to the respective paragraphs of the Complaint, Defendant shows as follows:

INTRODUCTION

1.

Defendant admits that Plaintiffs purports to bring this action pursuant to the Fair Labor Standards Act ("FLSA") and denies the remaining allegations pled in Paragraph 1 of the Complaint.

¹ Defendant notes that, as of this time, six Plaintiffs have opted in to this case: Alfonso Gomez, Daniel Gomez, Jeronimo Gomez, Marcos Gomez, Jose Romero, and Marcos Velasquez. Therefore, the responses and defenses asserted herein by Defendant apply solely to Plaintiff Francisco Gomez and to the six opt-in Plaintiffs unless otherwise stated.

JURISDICTION

2.

Defendant admits that Plaintiffs purports to bring this action pursuant to the FLSA and that Plaintiffs seek to establish jurisdiction and denies the remaining allegations pled in Paragraph 2 of the Complaint.

VENUE

3.

Defendant admits that Plaintiffs seek to establish venue and denies the remaining allegations pled in Paragraph 3 of the Complaint.

THE PARTIES

4.

Defendant admits that Plaintiff Francisco Gomez was employed by Defendant and that Defendant is a Georgia corporation and denies the remaining allegations pled in Paragraph 4 of the Complaint.

5.

Defendant admits that it is a Georgia corporation and that it is an employer as defined by the FLSA and denies the remaining allegations pled in Paragraph 5 of the Complaint.

6.

Defendant admits that Plaintiffs Francisco Gomez, Alfonso Gomez, Daniel Gomez, Jeronimo Gomez, Marcos Gomez, Jose Romero, and Marcos Velasquez were employed by it and denies the remaining allegations pled in Paragraph 6 of the Complaint.

7.

Defendant admits that Plaintiff seeks to establish coverage under the FLSA and denies the remaining allegations pled in Paragraph 7 of the Complaint.

8.

Defendant admits that K.E. Pantas of the Pantas Law Firm is counsel of record for Plaintiffs and is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in Paragraph 8 of the Complaint.

**VIOLATIONS OF THE OVERTIME PROVISIONS
OF THE FAIR LABOR STANDARDS ACT UNDER FEDERAL LAW**

9.

Defendant incorporates by reference its responses to Paragraphs 1 through 8 of the Complaint as though set forth specifically herein.

10.

Defendant denies the allegations pled in Paragraph 10 of the Complaint.

11.

Defendant admits that Plaintiffs Francisco Gomez, Alfonso Gomez, Daniel Gomez, Jeronimo Gomez, Marcos Gomez, Jose Romero, and Marcos Velasquez were not exempt from the overtime provisions of the FLSA and denies the remaining allegations pled in Paragraph 11 of the Complaint.

12.

Defendant denies the allegations pled in Paragraph 12 of the Complaint.

13.

Defendant denies the allegations pled in Paragraph 13 of the Complaint.

14.

Defendant denies the allegations pled in Paragraph 14 of the Complaint.

15.

Defendant denies the allegations pled in Paragraph 15 of the Complaint.

16.

Defendant denies the allegations pled in Paragraph 16 of the Complaint.

17.

Defendant denies the allegations pled in Paragraph 17 of the Complaint.

18.

Defendant denies that Plaintiffs are entitled to any of the relief set forth in the Complaint, including, but not limited to, the Requests in Sections (a) – (h) of the Complaint.

19.

Any allegations in the Complaint not heretofore answered, qualified, or denied are here and now denied as though set forth specifically and denied.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses to the allegations in Plaintiff Bolden's Complaint.

FIRST DEFENSE

Plaintiffs' Complaint and each of its causes of action fail to state a claim upon which relief can be granted.

SECOND DEFENSE

This Court lacks personal jurisdiction over the Defendant.

THIRD DEFENSE

Plaintiffs' claims are barred for insufficiency of service of process and insufficiency of process.

FOURTH DEFENSE

Some or all of Plaintiffs' claims are barred by the applicable statute of limitations, including the failure to file the instant lawsuit within the time period required by the applicable statute.

FIFTH DEFENSE

Plaintiffs' damages are limited to those remedies and those amounts provided for by the FLSA.

SIXTH DEFENSE

Defendant's actions were in good faith in conformity with and in reliance on the written administrative regulations, orders, rulings, approvals, interpretations, and/or administrative practice or enforcement policy of the Wage and Hour Division of the Department of Labor.

SEVENTH DEFENSE

Defendant's actions were in good faith, and it had a reasonable ground for believing that it was in compliance with the Fair Labor Standards Act.

EIGHTH DEFENSE

Plaintiffs have failed to mitigate damages as required by law.

NINTH DEFENSE

Some or all of Plaintiffs' claims are barred by the doctrines of estoppel, fraud, and illegality.

TENTH DEFENSE

Plaintiffs' Complaint fails to state a claim for liquidated damages or attorney's fees and costs.

ELEVENTH DEFENSE

Defendant reserves the right to assert any additional affirmative defenses allowed by Rule 8 depending upon any evidence discovered in pursuit of this litigation.

WHEREFORE, the Defendant in the above-referenced civil action respectfully request that this Court:

1. Dismiss with prejudice Plaintiffs' Complaint;
2. Award Defendant its reasonable attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988 or otherwise; and
3. Award any and all other relief to Defendant that this Court may deem necessary and proper.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

/s/ Mary Anne Ackourey

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically submitted the foregoing **ANSWER** to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and mailed by

United States Postal Service, first-class, postage prepaid, a paper copy of the same document to
counsel of record who are non-CM/ECF participants. Counsel of record are:

K. E. Pantas, Esq.
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Eleventh Floor
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Dated this 13th day of May, 2009.

Respectfully submitted,

/s/ Mary Anne Ackourey_____

Mary Anne Ackourey
Florida Bar No. 0041459