

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

WILLIAM TERRY SABELLA,

Plaintiff,

v.

Case No. 6:09-cv-1180-Orl-28KRS

UNITED FORMING, INC.,

Defendant.

**DEFENDANT'S ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW, United Forming, Inc., the Defendant herein, and files this, its Answer to Plaintiff's First Amended Complaint and Demand for Jury Trial, and by way of said Answer respectfully shows the following:

FIRST DEFENSE

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

SECOND DEFENSE

Plaintiff has failed to plead facts sufficient to establish venue of this civil action.

THIRD DEFENSE

Some or all of Plaintiff's claims may be barred for insufficiency of process and/or insufficiency of service of process.

FOURTH DEFENSE

Some or all of Plaintiff's claims may be barred by the statute of limitations.

FIFTH DEFENSE

Plaintiff's claims may be barred, in whole or in part, by the doctrines of contract, accord and satisfaction, failure of consideration, payment, and/or the statute of frauds.

SIXTH DEFENSE

Plaintiff's claims may be subject to recoupment and/or setoff.

SEVENTH DEFENSE

Plaintiff has failed to mitigate damages as required by law.

EIGHTH DEFENSE

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

NINTH DEFENSE

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

1. Defendant admits that Plaintiff seeks to assert claims for damages against Defendant and to establish subject matter jurisdiction. Defendant denies the remaining allegations pled in paragraph 1 of the First Amended Complaint.

2. Defendant admits that Plaintiff is an adult and is without sufficient knowledge or information to admit or deny the remaining allegations pled in paragraph 2 of the First Amended Complaint.

3. Defendant admits that it is a Georgia corporation and that it conducts business in Florida. Defendant denies the remaining allegations pled in paragraph 3 of the First Amended Complaint.

4. Defendant admits that Plaintiff seeks to establish service of process, and denies the remaining allegations pled in paragraph 4 of the First Amended Complaint.

5. Defendant admits the allegations pled in paragraph 5 of the First Amended Complaint.

6. Defendant admits that Plaintiff was employed by Defendant, and denies the remaining allegations pled in paragraph 6 of the First Amended Complaint.

7. Defendant admits that Plaintiff was employed by Defendant, and denies the remaining allegations pled in paragraph 7 of the First Amended Complaint.

8. Defendant admits that Plaintiff was employed by Defendant, and denies the remaining allegations pled in paragraph 8 of the First Amended Complaint.

9. Defendant admits that Plaintiff was employed by Defendant, and denies the remaining allegations pled in paragraph 9 of the First Amended Complaint.

10. Defendant denies the allegations pled in paragraph 10 of the First Amended Complaint.

11. Defendant admits that Plaintiff was employed by Defendant, and denies the remaining allegations pled in paragraph 11 of the First Amended Complaint.

12. Defendant admits that Plaintiff was employed by Defendant, and denies the remaining allegations pled in paragraph 12 of the First Amended Complaint.

13. Defendant denies the allegations pled in paragraph 13 of the First Amended Complaint.

14. Defendant denies the allegations pled in paragraph 14 of the First Amended Complaint.

15. Defendant admits that Plaintiff was terminated from his employment with Defendant, and denies the remaining allegations pled in paragraph 15 of the First Amended Complaint.

16. Defendant denies the allegations pled in paragraph 16 of the First Amended Complaint.

17. Defendant denies the allegations pled in paragraph 17 of the First Amended Complaint.

Count I
BREACH OF CONTRACT

18. Defendant incorporates by reference its responses to paragraphs 1 through 17 of the First Amended Complaint as if fully set forth herein.

19. Defendant states that the content of the referenced document attached to the First Amended Complaint as Exhibit A speaks for itself and denies the remaining allegations pled in paragraph 19 of the First Amended Complaint.

20. Defendant denies the allegations pled in paragraph 20 of the First Amended Complaint.

21. Defendant denies the allegations pled in paragraph 21 of the First Amended Complaint.

22. Defendant denies the allegations pled in paragraph 22 of the First Amended Complaint.

23. Defendant denies the allegations pled in paragraph 23 of the First Amended Complaint.

24. Defendant denies the allegations pled in paragraph 24 of the First Amended Complaint.

25. Defendant admits that the law firm of Sigman & Sigman, P.A. filed the First Amended Complaint on behalf of Plaintiff, and denies the remaining allegations pled in paragraph 25 of the First Amended Complaint.

26. Defendant denies the allegations pled in paragraph 26 of the First Amended Complaint, including that Plaintiff is entitled to any of the relief set forth in Sections A through F of the unnumbered paragraph beginning “WHEREFORE” and appearing immediately after paragraph 26 of the First Amended Complaint.

Count II
QUANTUM MERUIT

27. Defendant incorporates by reference its responses to paragraphs 1 through 17 of the First Amended Complaint as if fully set forth herein.

28. Defendant admits that Plaintiff alternatively seeks recovery from Defendant based on a theory of a contract that was implied in fact, and Defendant denies the remaining allegations pled in paragraph 28 of the First Amended Complaint.

29. Defendant denies the allegations pled in paragraph 29 of the First Amended Complaint.

30. Defendant denies the allegations pled in paragraph 30 of the First Amended Complaint.

31. Defendant denies the allegations pled in paragraph 31 of the First Amended Complaint.

32. Defendant denies the allegations pled in paragraph 32 of the First Amended Complaint.

33. Defendant denies the allegations pled in paragraph 33 of the First Amended complaint.

34. Defendant admits that the law firm of Sigman & Sigman, P.A. filed the First Amended Complaint on behalf of Plaintiff, and denies the remaining allegations pled in paragraph 34 of the First Amended Complaint, including that Plaintiff is entitled to any of the relief set forth in Sections A through F of the unnumbered paragraph beginning “WHEREFORE” and appearing immediately after paragraph 34 of the First Amended Complaint.

COUNT III
CONSTRUCTIVE TRUST

35. Defendant incorporates by reference its responses to paragraphs 1 through 17 of the First Amended Complaint as if fully set forth herein.

36. Defendant admits that Plaintiff alternatively requests the Court to impose a constructive trust on the amounts allegedly owed to Plaintiff by Defendant, and denies the remaining allegations pled in paragraph 36 of the First Amended Complaint.

37. Defendant states that paragraph 37 of the First Amended Complaint is an alleged statement of law, not fact, to which no response is required from Defendant at this time. To the extent any response is required, however, Defendant denies the allegations pled in paragraph 37 of the First Amended Complaint.

38. Defendant denies the allegations pled in paragraph 38 of the First Amended Complaint.

39. Defendant denies the allegations pled in paragraph 39 of the First Amended Complaint.

40. Defendant denies the allegations pled in paragraph 30 of the First Amended Complaint.

41. Defendant admits that the law firm of Sigman & Sigman, P.A. filed the First Amended Complaint on behalf of Plaintiff, and denies the remaining allegations pled in paragraph 41 of the First Amended Complaint, including that Plaintiff is entitled to any of the relief set forth in Sections A through E of the unnumbered paragraph beginning “WHEREFORE” and appearing immediately after paragraph 41 of the First Amended Complaint.

DEMAND FOR JURY TRIAL

42. Defendant admits that Plaintiff has demanded a jury trial, and denies any remaining allegations pled in paragraph 42 of the First Amended Complaint.

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

WHEREFORE, Defendant respectfully requests that this Court:

1. Dismiss Plaintiff’s First Amended Complaint with prejudice;
2. Award Defendant its reasonable attorney’s fees, costs, and expenses as allowed by law; and
3. Award any and all other relief to Defendant that this Court may deem necessary and proper.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

s/ Mary Anne Ackourey _____
Mary Anne Ackourey
Florida Bar No. 0041459
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Georgia Bar No. 142383

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of November, 2009, I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF system which will send a notice of electronic filing to the following:

Phillip W. Sigman, Esq.
Sigman & Sigman, P.A.
211 Matland Avenue
Altamonte Springs, FL 32701

s/ Mary Anne Ackourey
Mary Anne Ackourey
Florida Bar No. 0041459