

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DISTRICT**

David Meller and Kerstin Robinson,)
individually and on behalf of all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
Wings Over Spartanburg, LLC; Wings Over)
America, Inc.; Aetius Companies, LLC; Aetius)
Franchising, LLC; Aetius Holdings, LLC;)
Aetius Restaurant Holdings, LLC, Aetius)
Restaurant Group, LLC,)
)
Defendants.)

Civil Action No.: 2:15-2094-PMD

**DEFENDANTS’ ANSWER TO
PLAINTIFFS’ AMENDED
COMPLAINT**

Defendants Wings Over Spartanburg, LLC; Wings Over America, Inc.; Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Holdings, LLC; Aetius Restaurant Holdings, LLC; Aetius Restaurant Group, LLC (collectively “Defendants”) hereby answer and respond to Plaintiffs David Meller and Kerstin Robinson’s (collectively “Plaintiffs”) Amended Complaint as follows:

Each and every allegation of the Amended Complaint not specifically admitted herein is denied and strict proof thereof is demanded.

IN RESPONSE TO ALLEGATIONS REGARDING PARTIES AND JURISDICTION

1. Defendants admit the allegations in Paragraph 1 of the Amended Complaint upon information and belief.

2. Defendants admit the allegations in Paragraph 2 of the Amended Complaint upon information and belief.

3. Paragraph 3 of the Amended Complaint calls for a legal conclusion to which no response is required. To the extent that any response is required, the allegations of Paragraph 3 are denied.

4. In response to the allegations in Paragraph 4 of the Amended Complaint, Defendants admit only that Defendant Wings Over Spartanburg, LLC is a South Carolina Limited Liability company that operates a restaurant under the trade name Wild Wing Café that is located in Spartanburg, South Carolina. All remaining allegations contained in Paragraph 4 are denied.

5. Defendants deny the allegations in Paragraph 5 of the Amended Complaint.

6. In response to the allegations in Paragraph 6 of the Amended Complaint, Defendants admit that Aetius Companies, LLC, Aetius Franchising, LLC, Aetius Restaurant Holdings, LLC, and Aetius Restaurant Group, LLC are Delaware limited liability companies with a principal place of business in South Carolina. Aetius Holdings, LLC is a Delaware limited liability company with a principal place of business in North Carolina. Except as expressly admitted herein, the allegations contained in Paragraph 6 are denied.

7. In response to the allegations in Paragraph 7 of the Amended Complaint, Defendants state that, as a result of a series of transactions, Wings Over America, Inc. became a minority unit holder in Aetius Companies, LLC. Defendants further state that Aetius Restaurant Group, LLC, the entity which owns Wings Over Spartanburg, LLC and 12 other subsidiaries operating as “Wild Wing Café” is a second tier subsidiary of Aetius Companies, LLC. Except as expressly admitted herein, the allegations in Paragraph 7 are denied.

8. Defendants deny the allegations in Paragraph 8 of the Amended Complaint.

9. In response to the allegations in Paragraph 9 of the Amended Complaint, Defendants state that Wings Over Spartanburg, LLC; Greenville Wings, LLC; Bluffton Wings,

LLC; Columbiana Wings, LLC; Vista Wings, LLC; Mt. Pleasant Wings, LLC; and SW Charlotte, LLC are subsidiaries of Aetius Restaurant Group, LLC. Except as expressly admitted herein, the allegations in Paragraph 9 are denied.

10. Defendants deny the allegations in Paragraph 10 of the Amended Complaint.

11. Defendants deny the allegations in Paragraph 11 of the Amended Complaint.

12. Defendants deny the allegations in Paragraph 12 of the Amended Complaint.

13. Defendants deny the allegations in Paragraph 13 of the Amended Complaint.

14. Defendants deny the allegations in Paragraph 14 of the Amended Complaint.

15. Defendants deny the allegations in Paragraph 15 of the Amended Complaint.

16. Paragraph 16 of the Amended Complaint contains conclusions of law to which no answer is required. To the extent a response is required, Defendants admit that this Court has subject matter jurisdiction.

17. In response to Paragraph 17 of the Amended Complaint, Defendants admit that Plaintiffs purport to assert state law causes of action under the South Carolina Payment of Wages Act and for unjust enrichment. Defendants deny that Plaintiffs or any other purportedly similarly situated individuals are entitled to any relief pursuant to the South Carolina Payment of Wages Act or for alleged unjust enrichment. Except as expressly admitted herein, the allegations in Paragraph 17 are denied.

18. Paragraph 18 of the Amended Complaint contains conclusions of law to which no answer is required. To the extent a response is required, Defendants admit that this Court has supplemental jurisdiction over Plaintiffs' purported state law claims. Except as expressly admitted herein, the allegations in Paragraph 18 are denied.

19. Paragraph 19 of the Amended Complaint contains conclusions of law to which no answer is required. To the extent a response is required, Defendants admit that venue is proper in this Court. Except as expressly admitted herein, the allegations in Paragraph 19 are denied.

IN RESPONSE TO ALLEGATIONS REGARDING SUMMARY OF CLAIMS

20. In response to the allegations in Paragraph 20 of the Amended Complaint, Defendants admit that Plaintiffs purport to bring this lawsuit as a collective action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§201 *et seq.* (“FLSA”). Defendants deny that Plaintiffs or any other purportedly similarly situated individuals are entitled to any relief under the FLSA and further deny that this case is suitable for collective action treatment. Defendants deny the remaining allegations in Paragraph 20 of the Amended Complaint.

21. In response to the allegations in Paragraph 21 of the Amended Complaint, Defendants admit that Plaintiffs purport to bring this lawsuit on behalf of “[a]ll current and former employees who have worked for the Defendants WOA and Aetus at their corporate owned and pay policy controlled locations in the capacity of server within the statutory period covered by this Complaint and who elect to opt-in to this action pursuant to FLSA, 29 U.S.C. §216(b).” Defendants deny that Plaintiffs or any purportedly similarly situated individuals are entitled to any relief under the FLSA and deny that this case is suitable for collective action treatment. Except as expressly admitted herein, the allegations in Paragraph 21 are denied.

22. In response to the allegations in Paragraph 22 of the Amended Complaint, Defendants admit that Plaintiffs purport to bring this lawsuit as a state class action to recover wages under the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 (“SCWPA”). Defendants deny that Plaintiffs or any purportedly similarly situated individuals are entitled to any relief under the SCWPA and deny that this case is suitable for class action treatment. Except as expressly admitted herein, the allegations in Paragraph 22 are denied.

23. Defendants deny the allegations in Paragraph 23 of the Amended Complaint.

24. In response to the allegations in Paragraph 24 of the Complaint, Defendants admit that Plaintiffs purport to bring this lawsuit on behalf of “[a]ll current and former servers who have worked for Defendants in the State of South Carolina during the statutory period covered by this Complaint.” Defendants deny that Plaintiffs or any other purportedly similarly situated individuals are entitled to any relief claimed by Plaintiffs in this lawsuit and further deny that this case is suitable for class action treatment. Defendants deny the remaining allegations in Paragraph 24 of the Amended Complaint.

25. In response to the allegations in Paragraph 25 of the Amended Complaint, Defendants admit that Plaintiffs purport to allege on behalf of themselves and purportedly similarly situated individuals that Defendants violated various Federal and South Carolina laws. Defendants deny that they violated any applicable Federal or South Carolina law and deny that Plaintiffs or any other purportedly similarly situated individuals are entitled to any relief under the FLSA, the SCPWA, or a theory of unjust enrichment. Defendants further deny that this case is suitable for collective and/or class action treatment. Except as expressly admitted herein, the allegations of Paragraph 25 are denied.

IN RESPONSE TO THE FACTUAL ALLEGATIONS

26. Defendants admit that Plaintiffs worked for Defendant Wings Over Spartanburg, LLC, located in Spartanburg, South Carolina, as servers. Except as expressly admitted herein, the allegations of Paragraph 26 are denied.

27. Defendants deny the allegations in Paragraph 27 of the Complaint.

28. Defendants deny the allegations in Paragraph 28 of the Complaint.

29. Defendants deny the allegations in Paragraph 29 of the Complaint.

30. Defendants deny the allegations in Paragraph 30 of the Complaint.

31. Defendants deny the allegations in Paragraph 31 and footnote 1 of the Complaint.

32. Defendants deny the allegations in Paragraph 32 of the Complaint.

33. Defendants deny the allegations in Paragraph 33 of the Complaint.

34. Defendants deny the allegations in Paragraph 34 of the Complaint.

35. Defendants deny the allegations in Paragraph 35 of the Complaint.

36. Defendants deny the allegations in Paragraph 36 of the Complaint.

37. The allegations in Paragraph 37 of the Amended Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendants admit that employers must calculate overtime rate at one-and-a-half (1.5) times the minimum wage for tipped employees paid pursuant to a tip credit scheme. Except as expressly admitted herein, the allegations of Paragraph 37 are denied.

38. Defendants deny the allegations in Paragraph 38 of the Complaint.

39. Defendants deny the allegations in Paragraph 39 of the Complaint.

40. The allegations in Paragraph 40 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs and any other purportedly similarly situated servers employed by subsidiaries of Aetius Restaurant Group, LLC were not exempt salaried employees. Except as expressly admitted herein, the allegations of Paragraph 40 are denied.

41. The allegations in Paragraph 41 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs and any other purportedly similarly situated servers employed by subsidiaries of Aetius Restaurant Group, LLC were not independent contractors. Except as admitted expressly herein, the allegations of Paragraph 41 are denied.

42. The allegations in Paragraph 42 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs and any other purportedly similarly situated servers employed by subsidiaries of Aetius Restaurant Group, LLC were not contractors. Except as expressly admitted herein, the allegations in Paragraph 42 are denied.

43. Defendants deny the allegations in Paragraph 43 of the Complaint.

44. In response to Paragraph 44 of the Complaint, Defendants admit that the Plaintiffs were at-will employees of Wings Over Spartanburg, LLC, and, as such, could be terminated by Wings Over Spartanburg, LLC, at any time, with or without cause. Except as admitted expressly herein, Defendants deny the allegations of Paragraph 44.

45. Defendants deny the allegations in Paragraph 45 of the Complaint.

46. The allegations in Paragraph 46 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs and any other purportedly similarly situated servers employed by subsidiaries of Aetius Restaurant Group, LLC, were non-exempt employees pursuant to the FLSA. Except as expressly admitted herein, the allegations in Paragraph 46 are denied.

IN RESPONSE TO THE FIRST CLAIM FOR RELIEF:
ALLEGED FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(Alleged Collective Class)

47. Defendants incorporate by reference each and every one of their responses to Paragraphs 1 through 46 above as fully as if set forth verbatim herein.

48. In response to the allegations in Paragraph 48 of the Complaint, Defendants admit that Wings Over Spartanburg, LLC has a gross revenue in excess of \$500,000.00. Except as expressly admitted herein, the allegations of Paragraph 48 are denied.

49. Defendants deny the allegations in Paragraph 49 of the Complaint.

50. Defendants deny the allegations in Paragraph 50 of the Complaint.

51. Defendants deny the allegations in Paragraph 51 of the Complaint.

52. Defendants deny the allegations in Paragraph 52 of the Complaint.

53. Defendants deny the allegations in Paragraph 53 of the Complaint.

IN RESPONSE TO THE SECOND CLAIM FOR RELIEF:
ALLEGED FAIR LABOR STANDARDS ACT OVERTIME WAGE VIOLATIONS
(Alleged Collective Class)

54. Defendants incorporate by reference each and every one of their responses to Paragraphs 1 through 53 above as fully as if set forth verbatim herein.

55. Defendants deny the allegations in Paragraph 55 of the Complaint.

56. Defendants deny the allegations in Paragraph 56 of the Complaint.

57. Defendants deny the allegations in Paragraph 57 of the Complaint.

58. Defendants deny the allegations in Paragraph 58 of the Complaint.

59. Defendants deny the allegations in Paragraph 59 of the Complaint.

60. Defendants deny the allegations in Paragraph 60 of the Complaint.

IN RESPONSE TO THE THIRD CLAIM FOR RELIEF:
SOUTH CAROLINA PAYMENT OF WAGES ACT
(Alleged SC Class)

61. Defendants incorporate by reference each and every one of their responses to Paragraphs 1 through 60 above as fully as if set forth verbatim herein.

62. Defendants deny the allegations in Paragraph 62 of the Complaint.

63. Defendants deny the allegations in Paragraph 63 of the Complaint.

64. Defendants deny the allegations in Paragraph 64 of the Complaint.

65. Defendants deny the allegations in Paragraph 65 of the Complaint.

66. Defendants deny the allegations in Paragraph 66 of the Complaint.

67. Defendants deny the allegations in Paragraph 67 of the Complaint.

68. Defendants deny the allegations in Paragraph 68 of the Complaint.

69. Defendants deny the allegations in Paragraph 69 of the Complaint.

IN RESPONSE TO THE FOURTH CLAIM FOR RELIEF:
SOUTH CAROLINA COMMON LAW – ALLEGED UNJUST ENRICHMENT
(Alleged SC Class)

70. Defendants incorporate by reference each and every one of their responses to Paragraphs 1 through 69 above as fully as if set forth verbatim herein.

71. Defendants deny the allegations in Paragraph 71 of the Complaint.

72. Defendants deny the allegations in Paragraph 72 of the Complaint.

73. Defendants deny the allegations in Paragraph 73 of the Complaint.

74. Defendants deny the allegations in Paragraph 74 of the Complaint.

75. Defendants deny the allegations in Paragraph 75 of the Complaint.

76. Defendants deny the allegations in Paragraph 76 of the Complaint.

IN RESPONSE TO THE PRAYER FOR RELIEF:

Defendants deny, generally and specifically, that Plaintiffs and/or any purportedly similarly situated individuals have been damaged in the amounts alleged, or in any amount at all, by reason of any act, omission or other conduct on the part of Defendants, or on the part of its agents, representatives, and/or employees. Defendants further deny, generally and specifically, that Plaintiffs and/or any other purportedly similarly situated individuals are entitled to the relief sought in the Complaint or the Prayer for Relief, or any other relief sought whatsoever. Defendant generally denies any allegations of the Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

Defendants allege the following affirmative defenses. In asserting these defenses, Defendants do not assume the burden of proof as to matters that, pursuant to law, are Plaintiffs' burden to prove.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Third and Fourth Claims for Relief in the Amended Complaint fail to state a claim for which relief can be granted because they are barred in light of the FLSA's exclusive statutory remedy.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because they are without merit as a matter of both fact and law.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have failed to plead a prima facie case arising under the FLSA as amended.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims under the FLSA, and those of any purportedly similarly situated persons, are barred to the extent that Defendants' actions were taken in good faith and in conformity with and reliance upon established rulings, administrative regulations and interpretation of the FLSA.

FIFTH AFFIRMATIVE DEFENSE

Defendants' activities have, at all relevant times, been in good faith and based upon reasonable grounds for believing that such actions were not in violation of the FLSA and/or the South Carolina Payment of Wages Act.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims under the FLSA, and those of any purportedly similarly situated persons, are barred to the extent that Plaintiffs and/or any purportedly similarly situated persons seek damages beyond the applicable limitations period.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot establish that any acts or omissions of any Defendants were willful under the FLSA.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims under the FLSA, and those of any purportedly similarly situated persons, are barred to the extent that Plaintiffs and/or any purportedly similarly situated persons failed to report all tips received.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims under the FLSA and/or the South Carolina Payment of Wages Act, and those of any purportedly similarly situated persons, are barred because Plaintiffs and any purportedly similarly situated persons, have been paid all wages due under the FLSA and/or the Wage Payment Act.

TENTH AFFIRMATIVE DEFENSE

Any recovery by Plaintiffs or any purportedly similarly situated persons should be limited to the extent they failed to mitigate any of the damages alleged in the Amended Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants deny that Plaintiffs and/or any purportedly similarly situated persons are entitled to any requested relief according to the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, and those of any purportedly similarly situated persons, are barred, in whole or in part, by the doctrines of laches, waiver and/or estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to attorneys' fees or treble damages under the Wage Payment Act because Defendants at all times acted in good faith.

RESERVATION OF RIGHTS

Defendants hereby reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise and reserve the right to amend this Answer to assert any such defenses.

WHEREFORE, Defendants pray to the Court that:

1. Plaintiffs' Amended Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Defendants;
3. Plaintiffs recover nothing from Defendants;
4. The costs of this action be taxed against Plaintiffs and that Defendants recover its costs in defending this action, including, but not limited to, attorneys' fees as allowed by law; and
5. The Court grant Defendants such other and further relief as the Court may deem just and proper.

s/Jennifer K. Dunlap

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GROUP, LLC

July 20, 2015

Charleston, South Carolina