

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

RONALD ZAPATA)	
)	
on behalf of himself and all others)	
similarly situated,)	
)	
Plaintiff,)	CIVIL ACTION NO. 1:18-cv-01134
)	
v.)	Judge Timothy J. Kelly
)	
B. COLEMAN FLOORING)	
INSTALLATION, LLC, et al.)	
)	
Defendants.)	
)	

**DEFENDANT CLARK CONSTRUCTION GROUP, LLC’S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Clark Construction Group, LLC (“Clark” or “Defendant”), by and through undersigned counsel, hereby Answers Plaintiff’s Complaint. Each numbered response below responds to the corresponding numbered allegation in Plaintiff’s Complaint. Any allegation not specifically admitted is denied.

JURISDICTION AND VENUE

1. Paragraph 1 sets forth a legal assertion to which no answer is required.
2. Paragraph 2 sets forth a legal assertion to which no answer is required.
3. Paragraph 3 sets forth a legal assertion to which no answer is required.

PARTIES

4. Defendant is without knowledge sufficient to admit, and therefore denies the paragraph.
5. Defendant is without knowledge sufficient to admit, and therefore denies the paragraph.
6. Admit.

7. Admit.

FACTS

8. Admit.

9. Admit.

10. Admit.

11. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.

12. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation. Deny further to the extent the allegation is so vague as to permit the formulation of a response sufficient to admit or deny the allegation.

13. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.

14. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.

15. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.

16. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.

17. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.

18. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.

19. Defendant is without knowledge or belief sufficient to admit or deny the allegations in this paragraph and therefore denies the allegation.
20. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
21. Deny. To the extent the allegation sets forth a legal assertion, no answer is required nor provided.

COLLECTIVE ACTION ALLEGATIONS

22. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
23. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
24. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.

COUNT I (FLSA)

25. This paragraph contains no factual averments and as such cannot be admitted or denied.
26. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided. Moreover, Count I is not asserted against Defendant and as such no answer is required.

27. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided. Moreover, Count I is not asserted against Defendant and as such no answer is required.
28. This paragraph sets forth legal conclusions to which no response is required. Moreover, Count I is not asserted against Defendant and as such no answer is required.
29. This paragraph sets forth legal conclusions to which no response is required. Moreover, Count I is not asserted against Defendant and as such no answer is required.
30. This paragraph sets forth legal conclusions to which no response is required. Moreover, Count I is not asserted against Defendant and as such no answer is required.
31. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided. Moreover, Count I is not asserted against Defendant and as such no answer is required.
32. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided. Moreover, Count I is not asserted against Defendant and as such no answer is required.

COUNT II (DCMWRA)

33. This paragraph contains no factual averments and as such cannot be admitted or denied.
34. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.

35. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
36. This paragraph sets forth legal conclusions to which no response is required.
37. This paragraph sets forth legal conclusions to which no response is required.
38. This paragraph sets forth legal conclusions to which no response is required.
39. This paragraph sets forth legal conclusions to which no response is required.
40. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
41. Deny. To the extent the paragraph sets forth legal conclusions, no response is required or provided.

COUNT III (DCWPCL)

42. This paragraph contains no factual averments and as such cannot be admitted or denied.
43. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
44. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.
45. This paragraph sets forth legal conclusions to which no response is required.
46. This paragraph sets forth legal conclusions to which no response is required.
47. This paragraph sets forth legal conclusions to which no response is required.

48. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.

49. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.

50. Defendant is without knowledge or belief sufficient to admit or deny the factual allegations in this paragraph and therefore denies the allegation. To the extent the allegation sets forth legal assertions, no answer is required nor provided.

51. Deny. To the extent the paragraph sets forth legal conclusions, no response is required or provided.

PRAYER FOR RELIEF

WHEREFORE, Defendant denies that Plaintiff is entitled to any of the relief requested in the Complaint, and further denies that Defendant is liable for any relief or claim. In further response, Defendant answers that:

- a. Plaintiff has not demonstrated that the individuals are similarly situated such as this matter should proceed as a collective action; and
- b. Plaintiff's FLSA claim is not raised against Defendant and as such there is no cause of action alleged against Defendant under which this matter should proceed as a collective action claim against Defendant;
- c. Plaintiff's claim for relief under federal law is not applicable to its claims against Defendant.

All allegations denied for calling for legal conclusions or for stating legal assertions are, to the

extent they are averments of fact, denied unless expressly admitted.

WHEREFORE, Defendant sets forth the following Affirmative Defenses:

AFFIRMATIVE DEFENSES

1. Plaintiff(s)' fail to state a claim against Defendant upon which relief may be granted.
2. Plaintiff(s)' claim should be dismissed for lack of subject matter jurisdiction.
3. Each and every one of Plaintiff(s)' claims against Defendant are subject to preclusion.
4. Defendant did not act willfully with reckless disregard of the DCMWRA or the DCWPCL, or any law.
5. Plaintiff(s)' claims are barred to the extent that Defendant's actions were undertaken at all times in good faith, and Defendant had reasonable grounds for believing their actions were taken in conformity with applicable law.
6. The action should not proceed as a collective action because the Plaintiff and other putative plaintiffs have not and cannot make a showing of being similarly situated, as the claims reflect variability.
7. Defendant is not an employer covered by the DC Minimum Wage Revision Act (DCMWRA) or the DC Payment and Wage Collection Law (DCWPCL) in this matter, and Defendant was never Plaintiff(s)'s employer in any respect.
8. Plaintiff(s)' claims are barred because Plaintiff(s)' are not employees entitled to the DCMWRA or the DCWPCL's protections.
9. To the extent that Plaintiff(s)' claimed damages were caused, in whole or in part, by their failure to follow their Employer's policies, Plaintiff(s)' claims are barred by the doctrine of *in pari delicto*.

10. To the extent that Plaintiff's claimed damages were caused, in whole or in part, by their failure to follow their employer's policies, Plaintiff(s)' claims are barred by the doctrine of unclean hands.
11. To the extent that Plaintiff(s)' claimed damages were caused, in whole or in part, by their failure to follow their employer's policies, Plaintiff(s)' claims are barred by the doctrine of avoidable consequences.
12. Plaintiff(s)' claims are barred by the doctrine of accord and satisfaction, settlement, and/or payment and release.
13. Plaintiff(s)' claims are barred by the doctrine of equitable recoupment.
14. Plaintiff(s)' claims are barred by the doctrine of off-set.
15. Plaintiff(s)' claims are barred under the principles of *quantum meruit*.
16. Plaintiff(s)' claims, or relief sought, is barred under the doctrine of double-recovery.
17. Plaintiff(s)' claims are barred under the doctrines of estoppel, waiver, and/or laches, and/or under the applicable statute of limitations.
18. Plaintiff(s)' claims are barred to the extent Plaintiff seeks recovery for non-compensable time.
19. Plaintiff(s)' claims are barred to the extent Plaintiff seeks to recover for time that is *de minimis*.
20. Defendant did not act in a manner sufficient to give rise to, meriting, or warranting punitive or liquidated damages.
21. Plaintiff(s) have been compensated for all time worked.
22. Plaintiff(s) have failed to mitigate their damages.
23. Plaintiff(s) have failed to exhaust administrative remedies.

24. Defendant's agreement with their subcontractor(s) eliminates Defendant's vicarious, joint, or several liability.
25. Defendant has no knowledge of, nor should they have had knowledge of, any alleged uncompensated work by the Plaintiff (or anyone allegedly similarly situated) as set forth in the Complaint, and Defendant did not authorize, require, request, suffer, or permit such activity.
26. Each claim against Defendant is barred, or the damages from them reduced, because Plaintiff (and anyone allegedly similarly situated) did not notify Defendant or take other reasonable action at the time any violations allegedly occurred, preventing Defendant from taking action to remedy such alleged violations.
27. The Complaint fails to state a claim upon which attorney's fees, or costs, or liquidated damages may be recovered against Defendant.
28. Defendant is not liable for the actions of Coleman because Coleman's actions fall outside the scope of Coleman's agreement or obligation to any Defendant.
29. Coleman at all times represented that all amounts owed were paid.
30. Because investigation is ongoing, Defendant reserves the right to assert further affirmative defenses as they become evident.

Dated: August 3, 2018

Respectfully Submitted,

/s/ Carol L. O'Riordan
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Clark Construction Group, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on August 3 2018, I filed a copy of the foregoing through the Court's CM/ECF system, thereby serving all parties electronically.

/s/ Carol L. O'Riordan
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