

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHRISTOPHER MIDGETT, individually)
and on behalf of similarly-situated)
persons,)
)
Plaintiffs,)
)
v.)
)
WERNER ENTERPRISES, INC.,)
)
Defendant.)

CASE NO. 8:18-CV-00238

**DEFENDANT'S ANSWER TO THIRD
AMENDED COMPLAINT, AFFIRMATIVE
DEFENSES,
AND JURY DEMAND**

COMES NOW Defendant Werner Enterprises, Inc. ("Werner") and for its Answer to Plaintiff's Third Amended Collective and Class Action Complaint, admits and denies as follows:

INTRODUCTION

1. In response to Plaintiff's ¶1, Werner denies that Plaintiff was an employee of Werner and denies that Plaintiff drove tractor trailers for Werner in 2012. Plaintiff was originally hired in April, 2013, as an employee of Drivers Management, LLC, Werner's wholly owned subsidiary, and, in that capacity, Plaintiff drove tractor trailers for Werner. Werner admits that on or about March, 2014, Plaintiff quit working for Drivers Management, LLC as an employee and chose to become an independent contractor owner operator. Plaintiff thereafter contracted with Werner to deliver freight for Werner. Werner denies that Plaintiff purchased a used truck from Werner. In January, 2015, Plaintiff purchased a used truck from Fleet Truck Sales, Inc., a wholly owned subsidiary of Werner. Fleet Truck Sales, Inc. thereafter assigned its interest in that sale to Werner. Werner denies the remaining allegations in Plaintiff's ¶1.

2. Werner denies the allegations in Plaintiff's ¶2.

3. Werner denies the allegations in Plaintiff's ¶3.

4. Werner admits Plaintiff purports to bring this lawsuit individually and as a collective action and class action on behalf of the putative class described in ¶4. Werner admits Plaintiff alleges violations of federal and Nebraska law. Werner denies that this case can be maintained as a collective or class action and denies that Werner

violated federal or Nebraska law in any respect. Werner also denies that Plaintiff is an appropriate class representative. Werner denies that Plaintiff is entitled to any relief against Werner. Werner denies the remaining allegations in ¶4.

JURISDICTION AND VENUE

5. Plaintiff's ¶5 states legal conclusions to which no response is required. To the extent a response is required, Werner denies the allegations in Plaintiff's ¶5.

6. Plaintiff's ¶6 states legal conclusions to which no response is required. To the extent a response is required, Werner denies the allegations in Plaintiff's ¶6.

7. Werner admits that its corporate headquarters are located in the District of Nebraska and admits venue is proper in the District of Nebraska.

PARTIES

8. Werner admits the allegations in Plaintiff's ¶8.

9. In response to Plaintiff's ¶9, Werner denies that Plaintiff is employed by Werner, denies that Plaintiff worked for Werner from 2012 - 2019, denies that Werner misclassified Plaintiff, and denies that Plaintiff's truck is a "Werner truck." Upon information and belief, Werner admits Plaintiff is a resident of Atlanta, Georgia. Werner admits Plaintiff attached a consent form to his original and First Amended Complaint. Werner denies the remaining allegations in ¶9 for lack of information sufficient to form a belief and because the remaining allegations are vague.

GENERAL ALLEGATIONS

10. In response to Plaintiff's ¶10, Werner admits that it is a transportation company that transports freight throughout the country. Werner denies the remaining allegations in Plaintiff's ¶10 because the allegations are vague.

11. In response to Plaintiff's ¶11, Werner admits that it employs truck drivers to transport some of its truckload shipments. Werner also contracts with various independent contractors, such as Plaintiff, to provide freight services for Werner's customers.

12. Werner denies the allegations in Plaintiff's ¶12.

13. Werner denies the allegations in Plaintiff's ¶13.

14. Werner denies the allegations in Plaintiff's ¶14.

15. The allegations in Plaintiff's ¶15 are denied as stated.

16. Werner denies the allegations in Plaintiff's ¶16.

17. In response to Plaintiff's ¶17, Werner states that the engagement letter referenced in Plaintiff's ¶17 speaks for itself. Werner denies the allegations in Plaintiff's ¶17, to the extent those allegations are inconsistent with the content of the engagement letter.

18. Werner admits that independent contractor owner operators, such as Plaintiff, are independent business owners and pay for their own insurance, worker's compensation, gas, repairs, and vehicle maintenance. Werner denies the remaining allegations in Plaintiff's ¶18.

19. Werner denies the allegations in Plaintiff's ¶19.

20. Werner denies the allegations in Plaintiff's ¶20.

21. Werner denies the allegations in Plaintiff's ¶21.

22. Werner denies the allegations in Plaintiff's ¶22.

23. Werner denies the allegations in Plaintiff's ¶23.

24. Werner denies the allegations in Plaintiff's ¶24, including footnote 1 in Plaintiff's ¶24.

25. Werner denies the allegations in Plaintiff's ¶25, including all subparts.

26. In response to Plaintiff's ¶26, Werner admits Plaintiff was paid a mileage rate.

27. Werner denies the allegations in Plaintiff's ¶27.

28. Werner denies the allegations in Plaintiff's ¶28.

29. Werner denies the allegations in Plaintiff's ¶29.

30. Werner admits the allegations in Plaintiff's ¶30.

31. Werner denies the allegations in Plaintiff's ¶31.

32. Werner denies the allegations in Plaintiff's ¶32.

33. Werner denies the allegations in Plaintiff's ¶33.

34. Werner denies the allegations in Plaintiff's ¶34.

35. Werner denies the allegations in Plaintiff's ¶35.

36. Werner denies the allegations in Plaintiff's ¶36.

CLASS AND COLLECTIVE ALLEGATIONS

37. Werner admits Plaintiff purports to bring this lawsuit individually and as a collective action on behalf of the putative class described in ¶37. Werner denies that this case can be maintained as a collective action. Werner denies that Werner violated the Fair Labor Standards Act in any respect. Werner also denies that Plaintiff is an appropriate class representative. Werner denies the remaining allegations in ¶37.

38. Werner admits Plaintiff purports to bring this lawsuit individually and as a collective action on behalf of the putative class described in ¶38. Werner denies that this case can be maintained as a collective action. Werner denies that Werner violated the Fair Labor Standards Act in any respect. Werner denies that a lessee class can be treated as a subclass. Werner also denies that Plaintiff is an appropriate class representative. Werner denies the remaining allegations in ¶38.

39. Werner admits that Plaintiff purports to exclude independent contractors who own more than one truck or who employed drivers to drive their truck(s) from the putative class described in ¶38, but denies that this case can be maintained as a collective action. Werner denies that Werner violated the Fair Labor Standards Act in any respect. Werner denies any remaining allegations in ¶39.

40. Werner denies the allegations in Plaintiff's ¶40. Werner further denies that this case can be maintained as a collective action or that Plaintiff is an appropriate class representative.

41. Werner denies the allegations in Plaintiff's ¶41. Werner further denies that this case can be maintained as a collective action or that Plaintiff is an appropriate class representative.

42. Werner denies the allegations in Plaintiff's ¶42, including all subparts. Werner further denies that this case can be maintained as a collective action or that Plaintiff is an appropriate class representative.

43. Werner admits Plaintiff purports to bring this lawsuit individually and as a class action on behalf of the putative class described in ¶43. Werner denies that this case can be maintained as a class action. Werner denies that Werner violated Nebraska law in any respect. Werner denies that a lessee class can be treated as a

subclass. Werner also denies that Plaintiff is an appropriate class representative. Werner denies the remaining allegations in ¶43.

44. Werner admits that Plaintiff purports to exclude independent contractors who own more than one truck or who employed drivers to drive their truck(s) from the putative class described in ¶43, but denies that this case can be maintained as a class action. Werner denies that Werner violated Nebraska law in any respect. Werner denies any remaining allegations in ¶44.

45. Werner denies the allegations in Plaintiff's ¶45. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

46. Werner denies the allegations in Plaintiff's ¶46. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

47. Werner denies the allegations in Plaintiff's ¶47. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

48. Werner denies the allegations in Plaintiff's ¶48, including all subparts. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

49. Werner denies the allegations in Plaintiff's ¶49. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

50. Werner denies the allegations in Plaintiff's ¶50. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

51. Werner denies the allegations in Plaintiff's ¶51. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

52. Werner denies the allegations in Plaintiff's ¶52. Werner further denies that this case can be maintained as a class action or that Plaintiff is an appropriate class representative.

COUNT I - FAIR LABOR STANDARDS ACT

53. In response to Plaintiff's ¶53, Werner reasserts and restates its responses to Plaintiff's ¶¶1-52 as if fully set forth herein.

54. Werner denies the allegations in Plaintiff's ¶54.

55. Werner denies the allegations in Plaintiff's ¶55.

56. Werner denies the allegations in Plaintiff's ¶56.

57. Plaintiff's ¶57 states legal conclusions to which no response is required. To the extent a response is required, Werner denies the allegations in Plaintiff's ¶57.

58. Plaintiff's ¶58 states legal conclusions to which no response is required. To the extent a response is required, Werner denies the allegations in Plaintiff's ¶58.

59. Plaintiff's ¶59 states legal conclusions to which no response is required. To the extent a response is required, Werner denies the allegations in Plaintiff's ¶59.

60. Werner denies the allegations in Plaintiff's ¶60.

61. Werner denies the allegations in Plaintiff's ¶61.

62. Werner denies the allegations in Plaintiff's ¶62.

63. Werner denies the allegations in Plaintiff's ¶63.

64. Werner denies the allegations in Plaintiff's ¶64.

65. Werner denies the allegations in Plaintiff's ¶65.

COUNT II - NEBRASKA WAGE AND HOUR ACT

66. In response to Plaintiff's ¶66, Werner incorporates its responses to Plaintiff's ¶¶1-65 as if fully set forth herein.

67. Werner denies the allegations in Plaintiff's ¶67.

68. Plaintiff's ¶68 states legal conclusions to which no response is required. To the extent a response is required, Werner denies the allegations in Plaintiff's ¶68.

69. Werner denies the allegations in Plaintiff's ¶69.

70. Plaintiff's ¶70 is denied as stated.

71. In response to Plaintiff's ¶71, Werner admits the minimum wage in Nebraska is currently \$9.00 per hour.

72. Werner denies the allegations in Plaintiff's ¶72.

73. Werner denies the allegations in Plaintiff's ¶73.

COUNT III - UNJUST ENRICHMENT

74. In response to Plaintiff's ¶74, Werner incorporates its responses to Plaintiff's ¶¶1-73 as if fully set forth herein.

75. Werner denies the allegations in Plaintiff's ¶75.

76. Werner denies the allegations in Plaintiff's ¶76.

77. Werner denies the allegations in Plaintiff's ¶77.

78. Werner denies the allegations in Plaintiff's ¶78.

79. Werner denies the allegations in Plaintiff's ¶79.

80. Werner denies the allegations in Plaintiff's ¶80.

DENIAL OF PRAYER FOR RELIEF

81. Werner denies that Plaintiff is entitled to the relief requested in Plaintiff's prayer for relief.

DENIAL OF ALLEGATIONS NOT ADMITTED

82. All allegations not expressly admitted herein are denied.

AFFIRMATIVE DEFENSES

1. Pursuant to Section 39 of the Contractor Operating Agreement between Plaintiff and Werner, Plaintiff is not entitled to pursue claims against Werner on a class or collective basis.

2. Some or all of Plaintiff's claims are preempted by various federal laws, including but not limited to the FAAAA, the Dormant Commerce Clause, the Federal Motor Carrier Safety regulations, and the Truth in Leasing regulations.

3. Plaintiff's claims are barred by the doctrine of ratification.

4. Plaintiff's claims are barred by the doctrines of laches, waiver, estoppel and unclean hands. Plaintiff knew of and acknowledged his status as an independent contractor, failed to timely assert otherwise, and continued to do business with Werner. Werner has been harmed as a result of Plaintiff's inequitable conduct by, among other things, continuing to do business with Plaintiff and by compensating Plaintiff in a manner consistent with his independent contractor status.

5. Some or all of Plaintiff's claims are barred by the doctrines of voluntary payment and accord and satisfaction.

6. Plaintiff's claims are barred because Plaintiff consented to the alleged conduct by Werner and continued to do business with Werner.

7. Plaintiff's claims are barred because Werner acted at all times in good faith and with reasonable grounds for believing its pay practices complied with applicable law.

8. Plaintiff's unjust enrichment claim fails to state a claim upon which relief may be granted because the parties' relationship was governed by a written contract.

9. Plaintiff failed to mitigate his alleged damages.

10. Plaintiff's claims and those of the putative class members are barred in whole or in part by applicable statutes of limitation.

11. Werner reserves the right to assert additional affirmative defenses that may become relevant through the discovery process.

WHEREFORE, having fully answered, Werner prays that Plaintiff's Third Amended Collective and Class Action Complaint be dismissed with prejudice, for Werner to recover its costs incurred herein, and for such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Werner hereby demands a trial by jury.

WERNER ENTERPRISES INC.,
Defendant

By: /s/ Elizabeth A. Culhane

Patrick S. Cooper, #22399

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the United States District Court for the District Court of Nebraska using the CM/ECF system this 10th day of May, 2021, which system sent notification of such filing to counsel of record.

/s/ Elizabeth A. Culhane

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