

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KAREN BRANDELIK and LISA KNISPEL,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

CHRYSLER GROUP LLC,

Defendant.

Case No. 11-cv-11886
Hon. Sean F. Cox
Magistrate R. Steven Whalen

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DEFENDANT CHRYSLER GROUP LLC'S
ANSWER TO FIRST AMENDED COMPLAINT
AND AFFIRMATIVE DEFENSES

Defendant Chrysler Group LLC, by its attorneys, responds to Plaintiffs' First Amended Complaint (hereafter referred to as "Plaintiffs' Complaint" or "the Complaint") as follows:

PRELIMINARY STATEMENT

1. In answer to paragraph 1 of Plaintiffs' Complaint, Defendant denies Karen Brandelik was a senior buyer for Defendant Chrysler Group LLC. Defendant admits that Karen Brandelik performed work at a Chrysler facility as a non-union contract worker employed by Bartech. Defendant denies that it was the employer of any employees of Bartech Enterprises or any other contract house. Defendant can neither admit nor deny whether Plaintiff Brandelik was paid by the hour for the reason that she was not paid by or employed by Chrysler. Defendant neither admits nor denies whether Plaintiff Brandelik's position was "not exempt" from the overtime provisions of the Fair Labor Standards Act ("FLSA") because the same constitutes a conclusion of law. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 1 of Plaintiffs' Complaint.

2. In answer to paragraph 2 of Plaintiffs' Complaint, Defendant admits that Plaintiff Lisa Knispel performed work, including customer satisfaction audits, in the Auburn Hills, Chrysler as non-union, contract worker. Defendant denies that Knispel was an employee of Chrysler because it is untrue. Defendant can neither admit nor deny whether Plaintiff Knispel was paid by the hour for the reason that she was not paid by or employed by Chrysler. Defendant neither admits nor denies whether Plaintiff Knispel's position was "not exempt" from the overtime provisions of the Fair Labor Standards Act ("FLSA") because the same constitutes a conclusion of law. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 2 of Plaintiffs' Complaint.

3. In answer to paragraph 3 of Plaintiffs' Complaint, Defendant admits Plaintiffs purport to assert claims on behalf of themselves and an alleged group of similarly-situated employees, the existence of which is expressly denied. Defendant further denies that it was the

employer of any non-union contract workers from various contract houses. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 3 of Plaintiffs' Complaint.

4. In answer to paragraph 4 of Plaintiffs' Complaint, Defendant denies the existence of any purported "class." In further answer, Defendant states that to the extent Plaintiffs or others were due overtime pay, such payment would have been paid by their respective employers, which was not Chrysler Group LLC. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 4 of Plaintiffs' Complaint.

5. In answer to paragraph 5 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

6. In answer to paragraph 6 of Plaintiffs' Complaint, Defendant denies all of the allegations therein.

7. In answer to paragraph 7 of Plaintiffs' Complaint, Defendant denies the existence of any purported "class." Defendant further denies that Plaintiffs are entitled to an injunction, declaratory relief, compensation or credit as alleged, because such allegations are untrue. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 7 of Plaintiffs' Complaint.

8. In answer to paragraph 8 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

9. In answer to paragraph 9 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

10. In answer to paragraph 10 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

JURISDICTION AND VENUE

11. In answer to paragraph 11 of Plaintiffs' Complaint, Defendant does not object to jurisdiction and venue in this Honorable Court, but states the proper Defendant is Chrysler Group LLC. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 11 of Plaintiffs' Complaint.

PARTIES

12. In answer to paragraph 12 of Plaintiffs' Complaint, Defendant denies Plaintiff Karen Brandelik was ever employed by Chrysler. Defendant admits that Plaintiff Brandelik performed work for Chrysler as a non-union contract worker employed by a contract house from approximately March 2010 until approximately October, 2010. Defendant neither admits nor denies the remaining allegations because is without sufficient information upon which to form a belief and leaves Plaintiffs to their proofs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 12 of Plaintiffs' Complaint.

13. In answer to paragraph 13 of Plaintiffs' Complaint, Defendant neither admits nor denies the place of Plaintiff Lisa Knispel's residence because it is without sufficient information to form a belief and, therefore, leaves Plaintiffs to their proofs. Defendant denies Plaintiff Lisa Knispel was ever employed by Chrysler for the reason that Knispel was an employee of her contract house. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 13 of Plaintiffs' Complaint.

14. In answer to paragraph 14 of Plaintiffs' Complaint, Defendant denies the allegations as stated, but Chrysler Group LLC admits it is a limited liability company doing business in the State of Michigan, and that its resident agent is located in Bingham Farms,

Oakland County, Michigan. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 14 of Plaintiffs' Complaint.

GENERAL ALLEGATIONS

15. In answer to paragraph 15 of Plaintiffs' Complaint, Defendant denies it paid contract workers on an hourly basis for the reason that Plaintiffs were paid by their contract houses and not by Defendant. Defendant admits it contracted with several contract houses to provide contract workers for hourly labor at its facilities. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 15 of Plaintiffs' Complaint.

16. In answer to paragraph 16 of Plaintiffs' Complaint, Defendant denies all of the allegations as untrue because it does not employ contract workers.

17. In answer to paragraph 17 of Plaintiffs' Complaint, Defendant denies that it ever employed Karen Brandelik. Defendant admits that it contracted with Bartech Enterprises to provide an employee for a temporary assignment as a buyer for supplemental labor. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 17 of Plaintiffs' Complaint.

18. In answer to paragraph 18 of Plaintiffs' Complaint, Defendant denies that Plaintiff Brandelik was ever employed by Chrysler for the reason Brandelik was an employee of her contract house. Defendant denies that Plaintiff Brandelik had the authority to "contract with various contract houses on behalf of Defendant Chrysler" for the reason it is untrue. Defendant admits that part of Plaintiff Brandelik's contract assignment required her to have contact with contract houses that provided supplemental contract workers for assignment at Chrysler. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 18 of Plaintiffs' Complaint.

19. In answer to paragraph 19 of Plaintiffs' Complaint, Defendant denies. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 19 of Plaintiffs' Complaint.

20. In answer to paragraph 20 of Plaintiffs' Complaint, Defendant neither admits nor denies the allegations therein for the reason that Defendant does not know what Plaintiffs define as "the vast majority." Defendant denies, however, that it hired non-union contract employees through contract houses for the reason it is untrue. Unless otherwise specified, Defendant denies all other allegations in paragraph 20 of Plaintiffs' Complaint.

21. In answer to paragraph 21 of Plaintiffs' Complaint, Defendant neither admits nor denies the allegations therein because it is without sufficient information to form a belief and, therefore, leaves Plaintiffs to their proofs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 21 of Plaintiffs' Complaint.

22. In answer to paragraph 22 of Plaintiffs' Complaint, Defendant denies that contracts were in place for Plaintiffs or other unspecified non-union contract workers which set forth "specific terms and conditions of employment" for the reason that the non-union contract workers were not employees of Defendant, but rather were employees of their contract houses. Defendant further denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 22 of Plaintiffs' Complaint.

23. In answer to paragraph 23 of Plaintiffs' Complaint, Defendant denies the allegations therein.

24. In answer to paragraph 24 of Plaintiffs' Complaint, Defendant denies the allegations therein.

25. In answer to paragraph 25 of Plaintiffs' Complaint, Defendant denies the allegations therein.

26. In answer to paragraph 26 of Plaintiffs' Complaint, Defendant denies the allegations therein.

27. In answer to paragraph 27 of Plaintiffs' Complaint, Defendant denies that Karen Brandelik "commenced her employment with Defendant Chrysler" for the reason that Brandelik was never employed by Chrysler. Defendant admits that it used and uses an electronic time-keeping system known as the STEP system and that Brandelik would have been required to record her hours worked using the STEP program. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 27 of Plaintiffs' Complaint.

28. In answer to paragraph 28 of Plaintiffs' Complaint, Defendant admits that it required non-union, contract workers employed by contract houses to input their hours worked into the computer STEP program, but denies any non-union contract workers were employed by Chrysler. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 28 of Plaintiffs' Complaint.

29. In answer to paragraph 29 of Plaintiffs' Complaint, Defendant admits that Karen Brandelik entered into the STEP system what she claimed were hours that she had worked.

30. In answer to paragraph 30 of Plaintiffs' Complaint, Defendant denies that the STEP program prevents or ever prevented non-union contract workers employed by contract houses from entering a record of overtime worked, if any. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 30 of Plaintiffs' Complaint.

31. In answer to paragraph 31 of Plaintiffs' Complaint, Defendant denies that the STEP program prevents or ever prevented non-union contract workers employed by contract

houses from entering a record of overtime worked, if any. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 31 of Plaintiffs' Complaint.

32. In answer to paragraph 32 of Plaintiffs' Complaint, Defendant denies that the STEP program prevents or ever prevented non-union contract workers employed by contract houses from entering records of overtime worked, if any. Defendant further denies the existence of any purported "class."

33. In answer to paragraph 33 of Plaintiffs' Complaint, Defendant neither admits nor denies the allegations contained therein for the reason that Defendant is without sufficient information to form a belief as to the truth thereof because Defendant does not know how Plaintiffs are defining "separate records" and "security records," and does not know what "various worksites," Plaintiffs are referring to.

34. In answer to paragraph 34 of Plaintiffs' Complaint, Defendant denies that Plaintiff Knispel "commenced her employment with Defendant Chrysler," because Plaintiff Knispel was never employed by Chrysler. Defendant neither admits nor denies the remaining allegations for the reason that it is without sufficient information to form a belief as to the truth thereof, and leaves Plaintiffs to their proofs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 34 of Plaintiffs' Complaint.

35. In answer to paragraph 35 of Plaintiffs' Complaint, Defendant denies that Charlene Haynes was Plaintiff Knispel's "supervisor." Defendant neither admits nor denies the remaining allegations because it is without sufficient information to form a belief as to the truth thereof, and leaves Plaintiffs to their proofs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 35 of Plaintiffs' Complaint.

36. In answer to paragraph 36 of Plaintiffs' Complaint, Defendant neither admits nor denies the allegations because it is without sufficient information to form a belief as to the truth thereof, and leaves Plaintiffs to their proofs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 36 of Plaintiffs' Complaint.

37. In answer to paragraph 37 of Plaintiffs' Complaint, Defendant denies the allegations because they are untrue.

38. In answer to paragraph 38 of Plaintiffs' Complaint, Defendant denies the allegations because they are untrue.

39. In answer to paragraph 39 of Plaintiffs' Complaint, Defendant admits that it used and uses an electronic time-keeping system known as the STEP system. Defendant further admits that it required non-union contract workers employed by contract houses to input their hours worked into the STEP system, but denies any non-union contract workers were employed by Chrysler. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 39 of Plaintiffs' Complaint.

40. In answer to paragraph 40 of Plaintiffs' Complaint, Defendant denies all of the allegations therein.

41. In answer to paragraph 41 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and further specifically denies the existence of any purported "class."

42. In answer to paragraph 42 of Plaintiffs' Complaint, Defendant denies that it was ever Plaintiffs' employer or the employer of any non-union contract workers, denies the existence of any purported "class," and otherwise denies all of the allegations contained therein.

43. In answer to paragraph 43 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

44. In answer to paragraph 44 of Plaintiffs' Complaint, Defendant denies that Lisa Knispel was ever employed by Defendant Chrysler and, therefore, denies all of the allegations therein.

45. In answer to paragraph 45 of Plaintiffs' Complaint, Defendant denies all of the allegations therein.

46. In answer to paragraph 46 of Plaintiffs' Complaint, Defendant denies the allegations therein, denies any non-union contract workers were employed by Chrysler and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 46 of Plaintiffs' Complaint.

FLSA CLAIM-COLLECTIVE ACTION ALLEGATIONS

47. In answer to paragraph 47 of Plaintiffs' Complaint, Defendant admits that Plaintiffs' Complaint seeks to allege violations of the FLSA and purports to assert an FLSA collective action. Defendant denies there is any basis for Plaintiffs' claims and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 47 of Plaintiffs' Complaint.

48. In answer to paragraph 48 of Plaintiffs' Complaint, Defendant denies the existence of any purported "class" and the purportedly "common questions of fact and law" set forth in subparagraphs (a) through (j). Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 48 of Plaintiffs' Complaint.

49. In answer to paragraph 49 of Plaintiffs' Complaint, Defendant denies Plaintiffs are appropriate representatives of the purported "class", denies that the claims asserted by Plaintiffs are similar to those of the purported "class" and denies the existence of the purported

“class.” Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 49 of Plaintiffs’ Complaint.

50. In answer to paragraph 50 of Plaintiffs’ Complaint, Defendant denies Plaintiffs are appropriate representatives of the purported “class”, denies that the claims asserted by Plaintiffs are similar to those of the purported “class” and denies the existence of the purported “class.” Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 50 of Plaintiffs’ Complaint.

51. In answer to paragraph 51 of Plaintiffs’ Complaint, Defendant denies all of the allegations and specifically denies the existence of any purported “class” or “sub-class.” Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 51 of Plaintiffs’ Complaint.

52. In answer to paragraph 52 of Plaintiffs’ Complaint, Defendant denies that it maintains a record of the addresses of any of the putative class members. Defendant further denies that notice to the purported class, the existence of which is expressly denied, would be proper. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 52 of Plaintiffs’ Complaint.

COUNT I

FLSA CLAIMS AGAINST DEFENDANT CHRYSLER

53. In answer to paragraph 53 of Plaintiffs’ Complaint, Defendant incorporates by reference each and every answer stated in response to paragraphs 1 through 52 as if fully set forth and repeated herein. Defendant specifically denies the existence of any purported “class.”

54. In answer to paragraph 54 of Plaintiffs' Complaint, Defendant admits that it is an "employer" but denies that it employed Plaintiffs or the purported members of the "class," the existence of which is expressly denied.

55. In answer to paragraph 55 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

56. In answer to paragraph 56 of Plaintiffs' Complaint, Defendant neither admits nor denies as it relates to "all times relevant to this Complaint," for the reason that Defendant does not know what time period Plaintiffs are referring to. Defendant admits the allegation as it relates to the time period of June 10, 2009 forward.

57. In answer to paragraph 57 of Plaintiffs' Complaint, Defendant neither admits nor denies for the reason that it is without sufficient information to form a belief and, therefore, leaves Plaintiffs to their proofs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 57 of Plaintiffs' Complaint.

58. In answer to paragraph 58 of Plaintiffs' Complaint, Defendant neither admits nor denies for the reason that the provisions of the FLSA speak for themselves.

59. In answer to paragraph 59 of Plaintiffs' Complaint, Defendant denies all of the allegations therein as stated, denies it was ever Plaintiffs' or any other non-union contract house worker's employer, and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 59 of Plaintiffs' Complaint.

60. In answer to paragraph 60 of Plaintiffs' Complaint, Defendant denies all of the allegations therein as stated, denies it was ever Plaintiffs' or any other non-union contract house worker's employer, and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 60 of Plaintiffs' Complaint.

61. In answer to paragraph 61 of Plaintiffs' Complaint, Defendant denies all of the allegations therein as stated, denies it was ever Plaintiffs' or any other non-union contract house worker's employer, and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 61 of Plaintiffs' Complaint.

62. In answer to paragraph 62 of Plaintiffs' Complaint, Defendant denies all of the allegations therein as stated, denies it was ever Plaintiffs' or any other non-union contract house worker's employer, and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 62 of Plaintiffs' Complaint.

63. In answer to paragraph 63 of Plaintiffs' Complaint, Defendant denies all of the allegations therein as stated, denies it was ever Plaintiffs' or any other non-union contract house worker's employer, and denies the existence of any purported "class." Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 63 of Plaintiffs' Complaint.

64. In answer to paragraph 64 of Plaintiffs' Complaint, Defendant denies all of the allegations therein and specifically denies the existence of any purported "class."

65. In answer to paragraph 65 of Plaintiffs' Complaint, Defendant denies all of the allegation therein and specifically denies the existence of any purported "class."

66. In answer to paragraph 66 of Plaintiffs' Complaint, Defendant denies Plaintiffs and the purported they class they seek to represent, the existence of which is expressly denied, are entitled to any attorney's fees or costs. Except as expressly admitted herein, Defendant denies all of the allegations in paragraph 66 of Plaintiffs' Complaint.

PRAYER FOR RELIEF

Defendant denies that Plaintiffs and/or the purported class they seek to represent, the existence of which is expressly denied, are entitled to any damages or relief including, but not limited to, subparagraphs A through G, and asks this Honorable Court to dismiss Plaintiffs' First Amended Complaint in its entirety and award Defendant such other relief as the Court deems just and equitable.

Respectfully submitted,

s/Richard M. Tuyn

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Dated: June 29, 2011

AFFIRMATIVE DEFENSES

Defendant Chrysler Group LLC, states the following Affirmative Defenses to Plaintiffs' First Amended Complaint (hereafter referred to as "Plaintiffs' Complaint"):

1. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief can be granted as a matter of fact and/or law.
2. Plaintiffs' claims, in whole or in part, are barred by the applicable limitations period, contractual limitations period, and/or jurisdictional prerequisites.
3. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the equitable doctrines of laches, waiver, estoppel and/or unclean hands.
4. Plaintiffs and/or some or all of the members of the alleged group of individuals which Plaintiffs purport to represent, the existence of which is expressly denied, have failed to

comply with their legal duty to mitigate their claimed damages, their entitlement to which is expressly denied.

5. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' own actions.

6. Defendant was not the "employer" of Plaintiffs.

7. Plaintiffs' claims are barred to the extent that Plaintiffs' agreements with their contract houses require Plaintiffs to arbitrate any claims.

8. Plaintiffs cannot satisfy the requirements of a collective action under the Fair Labor Standards Act ("FLSA") and some or all of the claims asserted in the Complaint are barred because Plaintiffs are not similarly situated to the group of individuals they purport to represent, the existence of which is expressly denied, and/or the members of the group of individuals Plaintiffs purport to represent, the existence of which is expressly denied, are not similarly situated to each other.

9. Plaintiffs are inadequate purported representatives of some or all of the alleged group of individuals whom they purport to represent, the existence of which is expressly denied.

10. The types of claims alleged by Plaintiffs on behalf of themselves and the group of individuals which they purport to represent, the existence of which is expressly denied, are matters in which individual questions predominate and, accordingly, are not appropriate for collective treatment.

11. Some or all of the claims asserted in the Complaint are unsuitable for collective treatment because the prosecution of separate actions by members of the group of individuals Plaintiffs purport to represent, the existence of which is expressly denied, would not create a risk of adjudications with respect to proposed collective action members which would as a practical matter be dispositive of the interests of the other proposed collective action members

not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

12. Some or all of the claims asserted in the Complaint are barred because a collective action is not superior to other available methods for the fair and efficient adjudication of this controversy.

13. Even if Defendant was Plaintiffs' employer, which it denies, notice to the alleged group that Plaintiffs purport to represent, the existence of which is expressly denied, would be a violation of Defendant's due process rights.

14. With respect to some or all claims brought or allegedly brought by Plaintiffs, and/or members of the alleged group of individuals which they purport to represent, the existence of which is expressly denied, Defendant affirmatively pleads that, even if Defendant was Plaintiffs' employer, which it denies, any acts and/or omissions which may be found to be in violation of the rights afforded by the FLSA and/or other applicable law occurred in good faith, were based on reasonable factors, and/or were in conformity with relevant laws and regulations.

15. The damages claimed by Plaintiffs and/or the members of the alleged group which they purport to represent, the existence of which is expressly denied, are barred to the extent they are speculative in nature.

16. Even if Defendant was Plaintiffs' employer, which it denies, the Complaint fails to state a claim for which liquidated damages may be granted.

17. Neither Plaintiffs nor members of the alleged group which they purport to represent, the existence of which is expressly denied, may recover some or all of the relief requested in the Complaint because even if Defendant was their employer, which it denies, Defendant did not commit any oppressive, willful, wanton, fraudulent or malicious act or

authorize or ratify any such act with respect to Plaintiffs or any alleged group member, at all times acted in good faith and with reasonable grounds for believing it had complied with the FLSA, and Plaintiffs have failed to plead facts sufficient to support recovery of such damages.

18. Even if Defendant was Plaintiffs' employer, which it denies, all or part of the time for which Plaintiffs seek compensation for alleged unpaid hours worked does not constitute compensable time for purposes of the FLSA.

19. Even if Defendant was Plaintiffs' employer, which it denies, all or part of the time for which Plaintiff seeks compensation is non-compensable under the Portal-to-Portal Act, 29 U.S.C. 254.

20. Even if Defendant was Plaintiffs' employer, which it denies, the Complaint is barred, in whole or in part, because some or all of the time for which compensation is sought is *de minimus* and therefore is not compensable.

21. Plaintiffs' Complaint is barred, in whole or in part, because it requests relief which exceeds that available under applicable law.

22. Plaintiffs and the members of the group they purport to represent, the existence of which is expressly denied, may not recover liquidated damages and prejudgment interest because such relief would amount to a "double recovery."

23. Some or all of the claims in Plaintiffs' Complaint are barred by the doctrine of election of remedies.

24. The certification and trial of this case as a collective action would violate Defendant's rights under the Fifth and Seventh Amendments to the United States Constitution.

25. Plaintiffs lack standing to raise some or all of the claims of the alleged group of persons which they purport to represent, the existence of which is expressly denied.

26. Neither Plaintiffs nor any member of the group of persons Plaintiffs purport to represent, the existence of which is expressly denied, are entitled to some or all of the relief requested in the Complaint because, even if Defendant was their employer, which it denies, and any unlawful practice(s) occurred, which Defendant denies, such practice(s) was/were not committed, countenanced, ratified or approved by higher management in Defendant's corporate structure.

27. Defendant reserves the right to plead, assert and rely on all proper affirmative defenses lawfully available, including those which may be disclosed or discovered through further assertions by Plaintiffs or persons Plaintiffs purport to represent or otherwise through discovery.

Respectfully submitted,

s/Richard M. Tuyn

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Dated: June 29, 2011

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system will send notification of such filing to the following: Patricia A. Stamler, Esq., Steve J. Weiss, Esq., and Daniel Rucker, Esq., and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: N/A.

s/Richard M. Tuyn

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Dated: June 29, 2011

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