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8 Attorney for Defendant, MY WORLD ENTERPRISES, INC. dba ALONDRA HOT WINGS

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

12 ALBINO LUGO-RODRIGUEZ, as an
13 individual, ELIZABETH VILLANUEVA, as
14 an individual, and on behalf of all similarly
15 situated employees,

16 Plaintiffs,

17 vs.

18 MY WORLD ENTERPRISES, INC. dba
19 ALONDRA HOT WINGS; and Does 1
20 through 10, inclusive

21 Defendants.

22 Case No.: BC637677

23 CLASS ACTION

24 Assigned for All Purposes to Honorable
25 Carolyn B. Kuhl, Department 309, Complex
26 Courthouse

27 **DEFENDANT’S ANSWER TO
28 PLAINTIFFS’ FIRST AMENDED
COMPLAINT**

29 Defendant, MY WORLD ENTERPRISES, INC. dba ALONDRA HOT WINGS
30 (“AHW”) hereby answers the unverified First Amended Complaint (“FAC”) filed by Plaintiffs,
31 ALBINO LUGO-RODRIGUEZ and ELIZABETH VILLANUEVA, as individuals and on behalf
32 of all similarly situated employees (collectively, “Plaintiffs”), as follows:

33 **I.**

34 **GENERAL DENIAL**

35 Pursuant to the provisions of California *Code of Civil Procedure* §431.30(d), AHW
36 denies generally and specifically each and every allegation contained in the FAC. In addition,
37 AHW denies that Plaintiffs and/or the putative class members have sustained, or will sustain, any
38

DEFENDANT’S ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT

1 loss or damage in the manner or amount alleged, or otherwise, by reason of any act or omission,
2 or any other conduct or absence thereof on the part of AHW.

3 **II.**

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 As a first, separate, and distinct affirmative defense, AHW alleges that the FAC, and each
7 and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of
8 action upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 As a second, separate, and distinct affirmative defense, AHW alleges that Plaintiffs and
11 the putative class members have failed, refused, and/or neglected to mitigate or avoid the
12 damages complained of in the FAC, if any.

13 **THIRD AFFIRMATIVE DEFENSE**

14 As a third, separate, and distinct affirmative defense, AHW alleges that the FAC, and
15 each and every alleged cause of action therein are barred, in whole or in part, by the equitable
16 doctrine of laches.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 As a fourth, separate, and distinct affirmative defense, AHW alleges that Plaintiffs and
19 the putative class members are estopped by their conduct from asserting each of the causes of
20 action upon which they seek relief.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 As a fifth, separate, and distinct affirmative defense, AHW alleges that the FAC, and
23 each and every alleged cause of action therein are barred by the doctrine of waiver.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 As a sixth, separate, and distinct affirmative defense, AHW alleges that the FAC, and
26 each and every alleged cause of action therein are barred, in whole or in part, because Plaintiffs
27 and the putative class members consented to the conduct about which they now complain.

1 SEVENTH AFFIRMATIVE DEFENSE

2 As a seventh, separate, and distinct affirmative defense, AHW alleges that the Plaintiffs
3 and the putative class members have not suffered any losses and AHW has not been unjustly
4 enriched as a result of any action or inaction by AHW or its agents. Plaintiffs and the putative
5 class members are therefore not entitled to any disgorgement or restitution.

6 EIGHTH AFFIRMATIVE DEFENSE

7 As an eighth, separate, and distinct affirmative defense, AHW alleges that Plaintiffs and
8 the putative class members have been paid and/or received all wages due to them by virtue of
9 their employment.

10 NINTH AFFIRMATIVE DEFENSE

11 As a ninth, separate, and distinct affirmative defense, AHW alleges that all or portions of
12 the claims set forth in the FAC are barred by the applicable statutes of limitation, including, but
13 not limited to, California *Code of Civil Procedure* §§337, 338, 339, 340, 343, and California
14 *Business and Professions Code* §§16750.1 and 17208.

15 TENTH AFFIRMATIVE DEFENSE

16 As a tenth, separate, and distinct affirmative defense, AHW alleges that Plaintiffs and the
17 putative class members were treated fairly and in good faith, and that all actions taken with
18 regard to them were taken for lawful business reasons and in good faith.

19 ELEVENTH AFFIRMATIVE DEFENSE

20 As an eleventh, separate, and distinct affirmative defense, AHW alleges that each
21 purported cause of action in the FAC, or some of the causes of action, are barred, or recovery
22 should be reduced pursuant to the doctrine of avoidable consequences.

23 TWELFTH AFFIRMATIVE DEFENSE

24 As a twelfth, separate, and affirmative defense, AHW alleges that the FAC and each
25 cause of action set forth therein cannot be maintained because, without admitting that any
26 violation took place, AHW alleges that any violation of the California *Labor Code* or of a Wage
27 Order of the Industrial Welfare Commission was an act or omission made in good faith, and that
28 in any participation in such acts, AHW had reasonable grounds for believing that the act or

1 omission was not a violation of the California *Labor Code* or any Wage Order of the Industrial
2 Welfare Commission.

3 THIRTEENTH AFFIRMATIVE DEFENSE

4 As a thirteenth, separate, and distinct affirmative defense, AHW alleges that assuming,
5 *arguendo*, that Plaintiffs and the putative class members are entitled to additional compensation,
6 AHW has not willfully or intentionally failed to pay any such additional compensation to
7 Plaintiffs and the putative class members, to justify any awards of penalties or fees.

8 FOURTEENTH AFFIRMATIVE DEFENSE

9 As a fourteenth, separate, and distinct affirmative defense, AHW alleges that the FAC
10 and each cause of action set forth therein are barred because Plaintiffs and the putative class
11 members failed to timely and completely exhaust the requisite administrative remedies, statutory,
12 and/or contractual remedies available to them prior to commencing this action.

13 FIFTEENTH AFFIRMATIVE DEFENSE

14 As a fifteenth, separate, and distinct affirmative defense, AHW alleges that Plaintiffs and
15 the putative class members are barred from obtaining relief pursuant to their cause of action for
16 violation of California *Business and Professions Code* §17200, *et seq.* because California law
17 does not permit representative actions where liability can only be determined through fact-
18 intensive individualized assessments of alleged wage and hour violations.

19 SIXTEENTH AFFIRMATIVE DEFENSE

20 As a sixteenth, separate, and distinct affirmative defense, AHW alleges that Plaintiffs and
21 the putative class members lack standing to bring their claims as to all or a portion of the claims
22 alleged in the FAC.

23 SEVENTEENTH AFFIRMATIVE DEFENSE

24 As a seventeenth, separate, and distinct affirmative defense, AHW alleges that this suit
25 may not be properly maintained as a class action because: (1) Plaintiffs have failed to plead, and
26 cannot establish the necessary procedural elements for class treatment; (2) a class action is not an
27 appropriate method for the fair and efficient adjudication of the claims described in the FAC; (3)
28 common issues of fact or law do not predominate; to the contrary, individual issues predominate;

1 (4) Plaintiffs' claims are not representative or typical of the claims of the putative class; (5)
2 Plaintiffs are not proper class representatives; (6) the named Plaintiffs and alleged putative class
3 counsel are not adequate representatives for the alleged putative class; (7) Plaintiffs cannot
4 satisfy any of the requirements for class action treatment, and class action treatment is neither
5 appropriate nor constitutional; (8) there is not a well-defined community of interest in the
6 questions of law or fact affecting Plaintiffs and the members of the alleged putative class; and (9)
7 the alleged putative class is not ascertainable, nor are its members identifiable.

8 EIGHTEENTH AFFIRMATIVE DEFENSE

9 As an eighteenth, separate, and distinct affirmative defense, AHW opposes class
10 certification and disputes the propriety of class treatment. If the Court certifies a class in this
11 case over AHW's objections, then AHW asserts the affirmative defenses set forth herein against
12 each and every member of the certified class.

13 NINETEENTH AFFIRMATIVE DEFENSE

14 As a nineteenth, separate, and distinct affirmative defense, AHW alleges that the
15 adjudication of the claims of the putative class through generalized class wide proof violates
16 AHW's right to trial by jury guaranteed by the United States and California Constitutions.

17 TWENTIETH AFFIRMATIVE DEFENSE

18 As a twentieth, separate, and distinct affirmative defense, AHW alleges that the request
19 for restitution, declaratory relief, and/or injunctive relief is barred with respect to any and all
20 alleged violations of California *Business and Professions Code* §17200, *et seq.* that have
21 discontinued, ceased, and are not likely to recur.

22 TWENTY-FIRST AFFIRMATIVE DEFENSE

23 As a twenty-first, separate, and distinct affirmative defense, AHW alleges that the FAC
24 fails to properly state a claim for injunctive relief.

25 TWENTY-SECOND AFFIRMATIVE DEFENSE

26 As a twenty-second, separate, and distinct affirmative defense, AHW alleges that
27 Plaintiffs and the putative class members are not entitled to equitable relief insofar as they have
28 adequate remedies at law.

1 TWENTY-THIRD AFFIRMATIVE DEFENSE

2 As a twenty-third, separate, and distinct affirmative defense, AHW requests this Court to
3 determine the rights and liabilities of the parties to this action, and to determine the proportionate
4 share of fault with respect to each party, and all persons or entities not a party to the action, in
5 order that proportionate shares of liability, if any there may be, can be allocated.

6 TWENTY-FOURTH AFFIRMATIVE DEFENSE

7 As a twenty-fourth, separate, and distinct affirmative defense, AHW alleges an accord
8 and satisfaction between the parties barring the FAC in its entirety.

9 TWENTY-FIFTH AFFIRMATIVE DEFENSE

10 For a twenty-fifth, separate, and distinct affirmative defense, AHW alleges that it
11 complied with the California *Labor Code*, the Wage Orders of the Industrial Welfare
12 Commission, the United States Department of Labor, the administrative practice and
13 enforcement policies of the Department of Labor Standards Enforcement, and/or any local
14 ordinances.

15 TWENTY-SIXTH AFFIRMATIVE DEFENSE

16 For a twenty-sixth, separate, and distinct affirmative defense, AHW alleges that it
17 compensated for any overtime worked by Plaintiffs and the putative class members, as required
18 by any California *Labor Code* sections, Wage Orders of the Industrial Welfare commission,
19 and/or local ordinances.

20 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

21 For a twenty-seventh, separate, and distinct affirmative defense, AHW alleges that the
22 Plaintiffs and the putative class members are barred from recovering the damages alleged in the
23 FAC because the damages alleged are vague, uncertain, and speculative.

24 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

25 For a twenty-eighth, separate, and distinct affirmative defense, AHW alleges that
26 Plaintiffs' and the putative class members' claims are barred because the alleged practices are
27 not unfair, the public is not likely to be deceived by any alleged practices, AHW gained no
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III.

PRAYER FOR RELIEF

WHEREFORE, AHW prays for judgment from this Court as follows:

1. Plaintiffs take nothing by way of this action;
2. That the FAC be dismissed with prejudice and that judgment be entered against Plaintiffs and in favor of AHW on each cause of action;
3. That AHW be awarded its attorneys' fees and costs of suit herein to the extent permitted under applicable law;
4. That the Court award such other and further relief as it deems appropriate.

Dated: June 2, 2017

CEPKINIAN-CINAR LAW GROUP

By: 

JIBIT CINAR, ESQ.,
Attorney for Defendant

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am over the age of eighteen years and not a party to the within entitled action. My business address
4 is Spurgeon Law Building, 1113 North Spurgeon Street, Santa Ana, CA 92701.

5 On June 2, 2017 I caused to be served the foregoing document described as **DEFENDANT'S
6 ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** on the interested parties as follows:

7 Kevin Mahoney, Esq.
8 Treana Allen, Esq.
9 MAHONEY LAW GROUP, APC
10 249 E. Ocean Boulevard, Suite 814
11 Long Beach, CA 90802

12 **(BY MAIL)** – By placing the original a true copy thereof enclosed in a sealed
13 envelope(s) addressed as to the above-named counsel of record or parties in propria persona.
14 I deposited such envelop in the mail at Santa Ana, California, with postage thereon fully
15 prepaid. I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in
17 the ordinary course of business. I am aware that on motion of party served, service is
18 presumed invalid if postal cancellation date or postage meter date is more than one day after
19 date of deposit for mailing in affidavit.

20 **(BY PERSONAL DELIVERY)** – By placing the original a true copy thereof enclosed in a
21 sealed envelope(s) addressed as to the above-named counsel of record or parties in propria
22 persona. I caused such envelope to be delivered to the addressee.

23 **(BY FEDERAL EXPRESS NEXT-DAY DELIVERY)** – By placing the original a true
24 copy thereof enclosed in a sealed envelope(s) addressed as to the above-named counsel of record
25 or parties in propria persona. I caused such envelope to be deposited in the Federal Express Box
26 at _____, which is regularly maintained by Federal Express, with
27 delivery fees pre-paid and provided for, addressed to the person on whom said document is to be
28 served.

(BY FACSIMILE) – I caused said document, along with a signed copy of this Declaration, to be
transmitted to a facsimile machine telephone number as last given by said counsel or party in
propria persona as noted above.

(STATE) – I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Dated: June 2, 2017


Jibit Cinar