

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

TED BROUGHTON, on his own and on)
behalf of all similarly situated individuals,)

Plaintiff,)

vs.)

Civ. No. 2:20-cv-00041-SPC-NPM

PAYROLL MADE EASY, INC. d/b/a)
CONTINUUM HR, a Florida corporation,)

Defendant.)
_____)

DEFENDANT’S ANSWER AND ADDITIONAL DEFENSES

Defendant Payroll Made Easy, Inc. d/b/a Continuum HR (“Defendant” or “Continuum HR”), by and through undersigned counsel, hereby files its Answer and Additional Defenses to the Complaint of Ted Broughton (“Plaintiff” or “Mr. Broughton”) in the above-captioned action.

ANSWER

1. The allegations contained in Paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 1 of the Complaint.

2. Defendant denies the allegations contained in Paragraph 2 of the Complaint.

3. Defendant denies the allegations contained in Paragraph 3 of the Complaint.

4. Defendant denies the allegations contained in Paragraph 4 of the Complaint.

5. Defendant admits that Plaintiff has filed a putative class action under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class

members, or that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendant admits that Plaintiff has filed a putative class action under the FCRA, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. Defendant admits that Plaintiff has filed a putative class action under the FCRA, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. Defendant admits that Plaintiff seeks the relief specified in Paragraph 8 of the Complaint, but denies that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in Paragraph 8 of the Complaint.

THE PARTIES

9. The allegations contained in Paragraph 9 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. The allegations contained in Paragraph 10 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 10 of the Complaint.

JURISDICTION AND VENUE

11. Defendant admits that this Court has subject matter jurisdiction over this action, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief.

12. Defendant admits that venue is proper in this Court, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief.

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14. The allegations contained in Paragraph 14 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17. The allegations contained in Paragraph 17 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. The allegations contained in Paragraph 18 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 18 of the Complaint

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

ALLEGATIONS SPECIFIC TO PLAINTIFF

22. Defendant admits the allegations contained in Paragraph 22 of the Complaint.

23. Upon information and belief, Defendant admits the allegations contained in Paragraph 23 of the Complaint

24. Defendant denies the allegations contained in Paragraph 24 of the Complaint.

25. Defendant denies the allegations contained in Paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of the Complaint.

27. Defendant denies the allegations contained in Paragraph 27 of the Complaint.

28. Defendant denies the allegations contained in Paragraph 28 of the Complaint.

29. Defendant denies the allegations contained in Paragraph 29 of the Complaint.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the Complaint.

CLASS ACTION ALLEGATIONS

34. Defendant admits that Plaintiff has filed a putative class action under the FCRA, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in Paragraph 34 of the Complaint.

35. Defendant admits that Plaintiff has filed a putative class action under the FCRA, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff

is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in Paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

37. Defendant denies the allegations contained in Paragraph 37 of the Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.

42. Defendant denies the allegations contained in Paragraph 42 of the Complaint.

43. Defendant denies the allegations contained in Paragraph 43 of the Complaint.

COUNT ONE

44. Defendant incorporates its responses to Paragraphs 1 – 43 of the Complaint as if set forth in full herein.

45. Defendant denies the allegations contained in Paragraph 45 of the Complaint.

46. Defendant denies the allegations contained in Paragraph 46 of the Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of the Complaint.

49. Defendant denies the allegations contained in Paragraph 49 of the Complaint.

50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.

54. Defendant denies the allegations contained in Paragraph 54 of the Complaint.

55. Answering Plaintiff's unnumbered "WHEREFORE" Paragraph, Defendant admits that Plaintiff seeks the relief specified, but denies that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in the unnumbered "WHEREFORE" Paragraph.

COUNT TWO

56. Defendant incorporates its responses to Paragraphs 1 – 54 of the Complaint as if set forth in full herein..

57. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

58. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

59. Defendant denies the allegations contained in Paragraph 58 of the Complaint.

60. Defendant denies the allegations contained in Paragraph 59 of the Complaint.

61. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

62. Defendant denies the allegations contained in Paragraph 61 of the Complaint.

63. Defendant denies the allegations contained in Paragraph 62 of the Complaint.

64. Answering Plaintiff's unnumbered "WHEREFORE" Paragraph, Defendant admits that Plaintiff seeks the relief specified, but denies that Plaintiff or any putative class members are entitled to recover any relief. Defendant denies the remaining allegations contained in the unnumbered "WHEREFORE" Paragraph.

65. Defendant admits that Plaintiff has demanded a trial by jury, but denies that any acts or omissions giving rise to a cause of action have occurred, that Plaintiff is similarly situated to any putative class members, or that Plaintiff or any putative class members are entitled to recover any relief.

66. Except as expressly admitted above, Defendant denies the allegations contained in the Complaint.

ADDITIONAL DEFENSES

1. Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

2. Plaintiff's Complaint fails, in whole or in part, because Plaintiff did not suffer an injury in fact.

3. Plaintiff's Complaint fails, in whole or in part, for lack of standing.

4. Plaintiff's Complaint fails, in whole or in part, because, with respect to Plaintiff or any alleged similarly situated individuals, Defendant is not subject to 15 U.S.C. § 1681b(b)(2)(A).

5. Plaintiff's Complaint fails, in whole or in part, because Defendant at all times acted in good faith and complied with the FCRA, and is therefore entitled to each and every defense stated in the FCRA and any and all limitations on liability.

6. Plaintiff's Complaint fails, in whole or in part, because Defendant maintained reasonable procedures designed to ensure compliance with the FCRA.

7. Plaintiff's Complaint fails, in whole or in part, because Plaintiff failed to take advantage of the preventative or corrective opportunities provided under the FCRA and by Defendant to avoid the harm he otherwise seeks damages to remedy.

8. Plaintiff's claims are barred, in whole or in part, because Defendant at all times acted in good faith and without malice or intent to injure Plaintiff.

9. Plaintiff's claim for willful violations of the FCRA is barred, in whole or in part, by the principle articulated in *Safeco Ins. Co. v. Burr*, 127 S. Ct. 2201 (2007).

10. Plaintiff's claims are barred, in whole or in part, because any alleged injuries

suffered by Plaintiff were not caused by Defendant, but by another person or entity for whom or for which Defendant is not responsible.

11. Plaintiff has failed to mitigate any alleged damages.

12. Plaintiff's claim for punitive damages is barred by the provisions of 15 U.S.C. § 1681n.

13. Plaintiff's claim for punitive damages violates the due process clause of the Fourteenth Amendment in one or more of the following respects: (a) the punitive damages claims are vastly disproportionate to the actual damages claimed or available; (b) the award of punitive damages would constitute an arbitrary and capricious taking of Defendant's property which is unjustified by any rational government interest; and/or (c) the award of punitive damages with wholly standardless discretion is inconsistent with due process.

14. Plaintiff's class claims fail, in whole or in part, because they do not meet the requirements of Fed. R. Civ. P. 23 and thus cannot be maintained as a class action.

15. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, estoppel, and/or waiver as to both the substantive claims and any other remedies available to him.

16. Because Defendant has not yet availed itself of the right to discovery, it does not fully know the circumstances of the alleged incidents described in Plaintiff's Complaint. Defendant hereby notifies Plaintiff that until Defendant can avail itself of the right to discovery, it cannot be determined whether the above-stated Additional Defenses will be asserted at trial, to provide Plaintiff with notice of Defendant's intention to assert such defenses, or to avoid waiver of any such defenses.

17. Defendant reserves the right, upon completion of its investigation and discovery, to add such other additional and/or affirmative defenses as may become apparent to it through the course of discovery.

WHEREFORE, having fully answered the Complaint and having asserted its additional defenses thereto, Defendant respectfully requests that the Court deny all relief requested in the Complaint, enter judgment in Defendant's favor, and grant Defendant such other relief as may be deemed just and appropriate

This 28th day of February, 2020.

s/Matthew R. Simpson

Matthew R. Simpson, Trial Counsel

Georgia Bar No. 540260*

msimpson@fisherphillips.com

JonVieve D. Hill

Georgia Bar No. 907946

jhill@fisherphillips.com

FISHER & PHILLIPS LLP

1075 Peachtree Street NE, Suite 3500

Atlanta, GA 30309

Telephone: (404) 231-1400

Facsimile: (404) 240-4249

**Admitted Pro Hac Vice*

Christine Howard

Florida Bar No. 872229

choward@fisherphillips.com

FISHER & PHILLIPS LLP

101 E. Kennedy Blvd., Suite 2350

Tampa, FL 33602

Telephone: (813) 769-7500

Facsimile: (813) 769-7501

Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 28, 2020, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will automatically send notice of such filing to the following attorneys of record:

Marc R. Edelman, Esq.
Morgan & Morgan, P.A.
201 N. Franklin Street, #700
Tampa, FL 33602
medelman@forthepeople.com

s/Matthew R. Simpson

Matthew R. Simpson
Georgia Bar No. 540260*
msimpson@fisherphillips.com
FISHER & PHILLIPS LLP
**Admitted Pro Hac Vice*