

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
ANDREAS PEFANIS, on behalf of himself and
others similarly situated,

08 CV 002 (DLC) (DFE)

Plaintiff,

- v. -

**ANSWER TO FIRST
AMENDED COMPLAINT**

WESTWAY DINER, INC.,

Defendant.
-----X

1. Defendant WESTWAY DINER, INC. (hereinafter, "Westway"), by its attorneys, MITCHELL & INCANTALUPO, as and for its answer to the First Amended Complaint of the plaintiff, alleges and states:

JURISDICTION AND VENUE

2. Deny the allegations set forth in paragraph "2" of the First Amended Complaint, except admit that the jurisdiction of this court is purportedly invoked as set forth therein.

3. Admit the allegations set forth in paragraph "3" of the First Amended Complaint, except deny that any acts or omissions supporting plaintiff's allegations herein took place.

PARTIES

4. Admit the allegations set forth in paragraph "4" of the First Amended Complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "5" of the First Amended Complaint, except admit that plaintiff was employed by defendant as a server until November 2007.

FLSA COLLECTIVE ALLEGATIONS

6. Deny the allegations set forth in paragraph “6” of the First Amended Complaint, except admit that plaintiff purports to proceed against defendant as set forth therein.

7. Deny the allegations set forth in paragraph “7” of the First Amended Complaint.

8. Deny the allegations set forth in paragraph “8” of the First Amended Complaint, and respectfully refer all questions of statutory construction to the Court for determination.

RULE 23 – NEW YORK

9. Deny the allegations set forth in paragraph “9” of the First Amended Complaint, except admit that plaintiff purports to proceed against defendant as set forth therein.

10. Deny the allegations set forth in paragraph “10” of the First Amended Complaint.

11. Deny the allegations set forth in paragraph “11” of the First Amended Complaint.

12. Deny the allegations set forth in paragraph “12” of the First Amended Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph “13” of the First Amended Complaint, and leave plaintiff to his proof thereof.

14. Deny the allegations set forth in paragraph “14” of the First Amended Complaint.

15. Deny the allegations set forth in paragraph "15" of the First Amended Complaint.

16. Deny the allegations set forth in paragraph "16" of the First Amended Complaint .

FACTS

17. Deny the allegations set forth in paragraph "17" of the First Amended Complaint.

18. Deny the allegations set forth in paragraph "18" of the First Amended Complaint

19. Deny the allegations set forth in paragraph "19" of the First Amended Complaint, except admit that plaintiff worked for defendant at 614 9th Avenue, New York, New York, 10036 until November 2007.

20. Deny the allegations set forth in paragraph "20" of the First Amended Complaint.

21. Deny the allegations set forth in paragraph "21" of the First Amended Complaint.

22. Deny the allegations set forth paragraph "22" of the First Amended Complaint.

23. Deny the allegations asserted in paragraph "23" of the First Amended Complaint.

24. Deny the allegations asserted in paragraph "24" of the First Amended Complaint, except admit that plaintiff was not paid for time he did not work.

25. Deny the allegations set forth in paragraph "25" of the First Amended Complaint.

26. Deny the allegations set forth in paragraph "26" of the First Amended Complaint.

27. Deny the allegations set forth in paragraph "27" of the First Amended Complaint.

28. Deny the allegations set forth in paragraph "28" of the First Amended Complaint.

FIRST CLAIM FOR RELIEF

29. Defendant reiterates and realleges each and every answer contained in paragraph "1" through "28" as if more fully set forth at length herein.

30. Deny the allegations set forth in paragraph "30" of the First Amended Complaint, and respectfully refer all questions of statutory construction to the Court for determination.

31. Deny the allegations set forth in paragraph "31" of the First Amended Complaint.

32. Deny the allegations set forth in paragraph "32" of the First Amended Complaint.

33. Deny the allegations set forth in paragraph "33" of the First Amended Complaint.

34. Deny the allegations set forth in paragraph "34" of the First Amended Complaint, except admit that plaintiff purports to proceed as stated therein.

SECOND CLAIM FOR RELIEF

35. Defendant reiterates and realleges each and every answer contained in paragraph "1" through "34" as if more fully set forth at length herein.

36. Deny the allegations set forth in paragraph "36" of the First Amended Complaint.

37. Deny the allegations set forth in paragraph "37" of the First Amended Complaint.

38. Deny the allegations set forth in paragraph “38” of the First Amended Complaint.

39. Deny the allegations set forth in paragraph “39” of the First Amended Complaint, except admit that plaintiff purports to proceed as stated therein.

THIRD CLAIM FOR RELIEF

40. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs “1” through “39” as if more fully set forth at length herein.

41. Deny the allegations set forth in paragraph “41” of the First Amended Complaint.

42. Deny the allegations set forth in paragraph “42” of the First Amended Complaint.

43. Deny the allegations set forth in paragraph “43” of the First Amended Complaint assert a statement of fact the truth of which defendant can admit or deny.

FOURTH CLAIM FOR RELIEF

44. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs “1” through “43” as if more fully set forth at length herein.

45. Deny the allegations set forth in paragraph “45” of the First Amended Complaint assert a statement of fact the truth of which defendant can admit or deny, and respectfully refer all questions of statutory construction to the Court for determination.

46. Deny the allegations set forth in paragraph “46” of the First Amended Complaint.

47. Deny the allegations set forth in paragraph “47” of the First Amended Complaint.

48. Deny the allegations set forth in paragraph “48” of the First Amended Complaint assert a statement of fact the truth of which defendant can admit or deny.

FIFTH CLAIM FOR RELIEF

49. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs "1" through "48" as if more fully set forth at length herein.

50. Deny the allegations set forth in paragraph "50" of the First Amended Complaint.

51. Deny the allegations set forth in paragraph "51" of the First Amended Complaint.

52. Deny the allegations set forth in paragraph "52" of the First Amended Complaint.

53. Deny the allegations set forth in paragraph "53" of the First Amended Complaint assert a statement of fact which defendant need admit or deny.

SIXTH CLAIM FOR RELIEF

54. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs "1" through "53" as if more fully set forth at length herein.

55. Deny the allegations set forth in paragraph "55" of the First Amended Complaint.

56. Deny the allegations set forth in paragraph "56" of the First Amended Complaint.

57. Deny the allegations set forth in paragraph "57" of the First Amended Complaint assert a statement of fact which defendant need admit or deny.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

54. The First Amended Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

55. All or part of the claims alleged in the First Amended Complaint are barred by the applicable statute of limitations.

WHEREFORE, defendant requests judgment dismissing the First Amended Complaint and denying all relief requested therein, together with the costs of defending this action, including reasonable attorney fees.

Dated: July 16, 2008
Forest Hills, New York

MITCHELL & INCANTALUPO

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