

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

JAYSON CONTINO, ET AL.)	CASE NO. 3-14-cv-550
)	
Plaintiffs)	
)	CHIEF JUDGE FRANK D. WHITNEY
vs.)	
)	
FRONTIER ADJUSTERS, INC., ET AL.)	ANSWER OF DEFENDANTS
)	
Defendants)	

NOW COME Defendants Frontier Adjusters, Inc.; Frontier Adjusters of Arizona, Inc.; Frontier Adjusters of America, Inc.; Merrymeeting, Inc.; John M. Davies; Edward Ferrie; Patrick Enthoven; Jeffrey Harcourt; and Milo Bolender (collectively, “Defendants”) and for their Answer to the Verified Complaint and Jury Demand (“Complaint”) of Plaintiffs Jayson Contino and Mamye Contino (collectively, “Plaintiffs”), admit, deny and aver as follows.

FIRST DEFENSE

1. Without intending to deny that the instant action arises from franchise agreements entered into with Defendant Frontier Adjusters, Inc. (“Frontier Adjusters”), Defendants deny the allegations contained in Paragraph 1 of the Complaint.

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint.

4. Defendants admit that Plaintiff Jayson Contino (“Jayson”) is a resident of the State of North Carolina. Defendants further admit that Jayson is a guarantor of the obligations of non-party Southern Claims Adjusting, Inc., a North Carolina corporation owned by Jayson (“Southern Claims”), under and pursuant to six (6) separate franchise agreements (the “Franchise Agreements”) entered into between Frontier Adjusters, as the franchisor, and Southern Claims, as the franchisee. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 4 of the Complaint.

5. Defendants admit that Plaintiff Mamyé Contino (“Mamyé”) is a resident of the State of North Carolina and that she is the spouse of Jayson. Defendants further admit that Mamyé is a guarantor of the obligations of Southern Claims, under and pursuant to one (1) of the six (6) Franchise Agreements entered into between Frontier Adjusters, as the franchisor, and Southern Claims, as the franchisee. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit that Defendant Frontier Adjusters, Inc. is a Colorado corporation. Defendants further admit that at the time of the execution of the Franchise Agreements, Defendant Frontier Adjusters, Inc.’s principal place of business was located at 4745 N. 7th Street, Suite 320, Phoenix, Arizona 85014. Further answering, Defendants aver that Defendant Frontier Adjusters, Inc.’s current principal place of business is located at 7100 East Pleasant Valley Road, Suite 300, Independence, Ohio 44131. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit that Defendant Frontier Adjusters of America, Inc. is an Arizona corporation with its principal place of business at 4745 N. 7th Street, Suite 320, Phoenix,

Arizona 85014. Defendants further admit that Defendant Frontier Adjusters of Arizona, Inc. is a wholly-owned subsidiary of Frontier Adjusters of America, Inc. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 7 of the Complaint.

8. Defendants admit that Defendant Merrymeeting, Inc. is a Delaware corporation whose principal place of business is located at 7100 E. Pleasant Valley Road, Suite 300, Independence, Ohio 44131. Defendants further admit that Frontier Adjusters of America, Inc. is a wholly-owned subsidiary of Merrymeeting, Inc. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 8 of the Complaint.

9. Defendants admit that Defendant John M. Davies is a resident of the State of Ohio and the Chairman of the Board, Chief Executive Officer and President of Merrymeeting, Inc.; Frontier Adjusters of America, Inc.; Frontier Adjusters of Arizona, Inc.; and Frontier Adjusters. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit that Defendant Edward Ferrie is a resident of the State of Arizona and the National Account Manager for Frontier Adjusters. Defendants further admit that Mr. Ferrie owns WA Browning, Inc., an Arizona corporation, that is a franchisee of Frontier Adjusters. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit that Defendant Patrick Enthoven is a resident of the State of California. Defendants deny the remaining allegations contained in Paragraph 11 of the Complaint.

12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. Defendants admit that Frontier Adjusters transacts business in North Carolina. Defendants deny the remaining allegations contained in Paragraph 14 of the Complaint.

15. Without intending to deny that there is diversity of citizenship between Plaintiffs and Defendants, Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants admit that Frontier Adjusters has been in operation since 1959 and that its franchise system consists of hundreds of independently owned and operated insurance adjusting businesses. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants admit that Frontier Adjusters' franchisees perform services for insurance companies and self-insured entities, including insurance-related claims investigations, appraisals and other services. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants admit the allegations contained in Paragraph 19 of the Complaint.

20. Defendants admit the allegations contained in Paragraph 20 of the Complaint.

21. Without intending to deny that approximately fifteen (15) years ago, Frontier Adjusters entered into franchise agreements that provided franchisees with exclusive

territories (as defined in the franchise agreement), Defendants deny the allegations contained in Paragraph 21 of the Complaint and affirmatively aver that neither Plaintiffs, nor any entity owned by them, was ever a party to what Plaintiffs refer to as “The Original Agreements.”

22. Defendants deny that Paragraph 22 of the Complaint fairly or accurately describes what Plaintiffs refer to as “The Original Agreements.” Defendants further aver that neither Plaintiffs, nor any entity owned by them, was ever a party to what Plaintiffs refer to as “The Original Agreements.”

23. Defendants deny that Paragraph 23 of the Complaint fairly or accurately describes what Plaintiffs refer to as “The Original Agreements.” Defendants further aver that neither Plaintiffs, nor any entity owned by them, was ever a party to what Plaintiffs refer to as “The Original Agreements.”

24. Defendants deny that Paragraph 24 of the Complaint fairly or accurately describes what Plaintiffs refer to as “The Original Agreements.” Defendants further aver that neither Plaintiffs, nor any entity owned by them, was ever a party to what Plaintiffs refer to as “The Original Agreements.”

25. Defendants deny that Paragraph 25 of the Complaint fairly or accurately describes what Plaintiffs refer to as “The Original Agreements.” Defendants further aver that neither Plaintiffs, nor any entity owned by them, was ever a party to what Plaintiffs refer to as “The Original Agreements.”

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Without intending to deny that on or about August 12, 2009, John M. Davies, in his capacity as the president of Frontier Adjusters, sent a memorandum to all Frontier Adjusters' franchisees containing, in part, the language quoted in Paragraph 27 of the Complaint, Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Without intending to deny that each franchisee of Frontier Adjusters was (and remains) free to perform its own marketing and advertising and that many franchisees develop and retain their own relationship with various clients, Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Without intending to deny that many Frontier Adjusters' franchisees developed significant and ongoing business relationships with certain clients, Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Without intending to admit that Frontier Adjusters competed with franchisees by attempting to market or sell to established clients of the franchisees with the intent of receiving assignments from that clientele and re-assigning the work to favored franchisees, Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Without intending to deny that since on or about 1999, including during all times material to this action, Frontier Adjusters' franchisees have been and are granted an exclusive "advertised location" (and not an exclusive territory), Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Without intending to deny that Frontier Adjusters established what is known as the Frontier Adjusters National and Regional Customer Program ("FANRCP"), Defendants deny the allegations contained in Paragraph 34. Further answering, Defendants aver

that by a Participation Agreement signed on or about March 14, 2012, Southern Claims (the corporation owned by Jayson) expressly and voluntarily elected to participate in FANRCP.

35. Without intending to deny that John M. Davies, Edward Ferrie, Jeffrey Harcourt and Milo Bolender, in their capacity as agents for Frontier Adjusters, together with a committee composed of approximately 12 experienced Frontier Adjusters franchisees, participated in the development of FANRCP, Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Without intending to deny that on or about October 14, 2009, John M. Davies, in his capacity as the president of Frontier Adjusters, sent a memorandum to all Frontier Adjusters' franchisees containing, in part, the language quoted in Paragraph 36 of the Complaint, Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Without intending to deny that WA Browning, Inc., an Arizona corporation owned by Edward Ferrie, is a Frontier Adjusters' franchisee, Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. In response to the allegations contained in Paragraph 58 of the Complaint, Defendants incorporate herein by reference all of the admissions, denials and averments contained in Paragraphs 1 through 57, above.

59. Defendants admit that Southern Claims, a corporation owned by Jayson, is currently a party to six (6) Franchise Agreements with Frontier Adjusters covering five (5) advertised locations in North Carolina and one (1) advertised location in Pennsylvania. Defendants further admit that Jayson is the guarantor of Southern Claims' obligations under all six (6) Franchise Agreements and that Mamye is the guarantor of Southern Claims' obligations under one (1) of the six (6) Franchise Agreements. Except as expressly admitted herein to be true, Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

62. In response to the allegations contained in Paragraph 62 of the Complaint, Defendants incorporate herein by reference all of the admissions, denials and averments contained in Paragraphs 1 through 61, above.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. In response to the allegations contained in Paragraph 69 of the Complaint, Defendants incorporate herein by reference all of the admissions, denials and averments contained in Paragraphs 1 through 68, above.

70. Without intending to deny that Frontier Adjusters is engaged in commerce, Defendants deny the allegations contained in Paragraph 70 of the Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of the Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. In response to the allegations contained in Paragraph 73 of the Complaint, Defendants incorporate herein by reference all of the admissions, denials and averments contained in Paragraphs 1 through 72, above.

74. Without intending to deny that Count Four of the Complaint purports to assert a claim under the Fair Labor Standards Act, 29 U.S.C. Section 201, *et seq.*, Defendants deny the allegations contained in Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

76. Defendants deny the allegations contained in Paragraph 76 of the Complaint.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of the Complaint.

83. Without intending to deny that Plaintiffs seek damages pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 201, *et seq.*, Defendants deny the allegations contained in Paragraph 83 of the Complaint.

84. Without intending to deny that Plaintiffs seek attorneys' fees and costs pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 201, *et seq.*, Defendants deny the allegations contained in Paragraph 84 of the Complaint.

85. In response to the allegations contained in Paragraph 85 of the Complaint, Defendants incorporate herein by reference all of the admissions, denials and averments contained in Paragraphs 1 through 84, above.

86. Defendants deny the allegations contained in Paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

SECOND DEFENSE

89. This Court lacks personal jurisdiction over Defendants Frontier Adjusters of Arizona, Inc.; Frontier Adjusters of America, Inc.; Merrymeeting, Inc.; John M. Davies; Edward Ferrie; Patrick Enthoven; Jeffrey Harcourt; and Milo Bolender.

THIRD DEFENSE

90. The Complaint fails to state a claim against Defendants upon which relief may be granted.

FOURTH DEFENSE

91. All of the claims alleged herein arise from or otherwise relate to six (6) Franchise Agreements entered into between Frontier Adjusters and Southern Claims, a corporation owned by Jayson.

92. Each of the Franchise Agreements contains an Arbitration provision providing, in relevant part, as follows:

This Agreement is a written agreement evidencing a transaction involving commerce and is, therefore, subject to the terms and provisions of the Federal Arbitration Act Title 9 of the United States Code. Except for a controversy or claim relating to the use and/or ownership of any of the Marks, or the restrictive covenants contained in Section 6, any controversies or claims arising out of this Agreement or any other agreements between the parties or with regard to their interpretation, formulation or breach, shall be settled by binding arbitration conducted in Maricopa County, Arizona, according to the commercial rules of the American Arbitration Association as modified hereinbelow.

* * *

In the event of any controversy or claim as stated above, either party shall send written notice to the other party and the Regional Office of the American Arbitration Association closest to Franchisor's offices in Phoenix, Arizona, invoking the binding arbitration provisions of this Agreement. In the event that either party shall make demand for arbitration, such arbitration shall be conducted in Maricopa County, Arizona. The American Arbitration Association shall forward to the parties a written list of proposed arbitrators, each of whom shall have established experience and knowledge in franchise law.

* * *

In the event that any controversy or claim arising from this Agreement also involves any officer, director, employee, member, partner, shareholder, representative, or agent of either party, then any such controversy or claim shall also be submitted to binding arbitration in the same manner as explained above.

93. Plaintiff Jayson has signed a Certificate, Guarantee and Assumption of Obligations by Owners agreement with respect to all six (6) of the Franchise Agreements entered

into between Frontier Adjusters and Southern Claims and Plaintiff Mamye has signed a Certificate, Guarantee and Assumption of Obligations by Owners agreement with respect to one (1) of the six (6) Franchise Agreements entered into between Frontier Adjusters and Southern Claims.

94. Each of the Certificate, Guarantee and Assumption of Obligations by Owners agreements signed by Plaintiffs provide, in relevant part, as follows:

The undersigned agree that any action, suit or proceeding to enforce this Guarantee or arising hereunder or concerning the interpretation of this Guarantee shall be subject to arbitration to the same extent as provided in Section 23 of the Agreement.

95. On October 15, 2014, Defendants filed a Commercial Arbitration Rules Demand for Arbitration with the American Arbitration Association seeking to have the claims asserted herein adjudicated by arbitration in accordance with the provisions of the Franchise Agreements.

96. By reason thereof and as required by Section 3 of the Federal Arbitration Act (9 U.S.C. §§1, *et seq.*), this case must be stayed pending the outcome of the already initiated arbitration proceedings.

FIFTH DEFENSE

97. Plaintiffs have failed to join all parties needed for a just adjudication.

SIX DEFENSE

98. Plaintiffs lack standing to bring the claims asserted herein.

SEVENTH DEFENSE

99. The claims asserted herein are barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel including, but not limited to, Franchise Termination Agreements dated October 22, 2008 containing a full and final release of all claims.

EIGHTH DEFENSE

100. The claims asserted herein are barred, in whole or in part, by the applicable statute of limitations.

WHEREFORE, having fully answered the Complaint, Defendants Frontier Adjusters, Inc.; Frontier Adjusters of Arizona, Inc.; Frontier Adjusters of America, Inc.; Merrymeeting, Inc.; John M. Davies; Edward Ferrie; Patrick Enthoven; Jeffrey Harcourt; and Milo Bolender demand that the Verified Complaint and Jury Demand of Plaintiffs Jayson Contino and Mamye Contino be dismissed and that Defendants be permitted to recover their costs herein, including attorneys' fees.

s/Andrew J. Poltorak
Andrew J. Poltorak
ULMER & BERNE LLP
Skylight Office Tower
1660 West Second Street, Suite 1100
Cleveland, Ohio 44113-1448
Phone: (216) 583-7000
Fax: (216) 583-7001
Email: Apoltorak@Ulmer.com
North Carolina Bar No. 44715

OF COUNSEL:

Stephen A. Markus, Esq.
ULMER & BERNE LLP
Skylight Office Tower
1660 West Second Street, Suite 1100
Cleveland, Ohio 44113-1448
Phone: (216) 583-7000
Fax: (216) 583-7001
smarkus@ulmer.com
Ohio Bar No. 0021906

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2014 a copy of the foregoing Answer of Defendants was filed electronically. Notice of this filing will be sent to all parties who have appeared in this action by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Andrew J. Poltorak _____
One of the Attorneys for Defendants