

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**YOSBEL RODRIGUEZ,**

**Plaintiff,**

**v.**

**Case No: 6:17-cv-483-Orl-31TBS**

**ALVAREZ & DE LA CRUZ SERVICES,  
LLC, MATTRESS FIRM, INC., JORGE  
SARDINAS and DIVERSE LOGISTICS  
AND DISTRIBUTION, INC.,**

**Defendants.**

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**ORDER**

This is a Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (henceforth, the “FLSA”) case that comes before the Court on the Motion to Dismiss (Doc. 40) filed by Defendants Mattress Firm, Inc. and Diverse Logistics and Distribution, Inc. (“Movants”).<sup>1</sup> Plaintiff filed a response in opposition to the motion (Doc. 46).

By their motion, Movants seek dismissal under Federal Rule of Civil Procedure 12(b)(6) for Plaintiff’s alleged failure to satisfy the pleading requirements of Fed.R.Civ.P. 8(a). Specifically, Movants complain that Plaintiff has failed to plead sufficient facts to establish that Movants were Plaintiff’s employers under the FLSA and that Plaintiff has failed to satisfy the presuit notice requirement of his state law claim under Florida Statute § 448.110.

In his Amended Complaint (Doc. 34), Plaintiff alleges that he was employed by Movants as a non-exempt delivery driver, and that Movants were enterprises engaged in commerce as

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<sup>1</sup> Defendants Alvarez & De La Cruz Services, LLC and Jorge Sardinas answered the Amended Complaint. (Doc. 39).

contemplated by 29 U.S.C. § 203. Plaintiff further alleges that Defendants violated the FLSA by paying him less than the minimum wage and by failing to properly compensate him for overtime hours worked. These allegations are sufficient to satisfy Fed.R.Civ.P. 8(a) and state an actionable claim for violation of the FLSA.<sup>2</sup> With respect to Plaintiff's state law claim (failure to pay wages pursuant to Fla. Stat. § 448), Defendants' contention that Plaintiff failed to comply with a presuit notice requirement should be raised as an affirmative defense. It is, therefore

**ORDERED** that the Motion to Dismiss (Doc. 40) is **DENIED**. Movants' answer to the Amended Complaint is due by January 12, 2018.

**DONE** and **ORDERED** in Chambers, Orlando, Florida on December 21, 2017.



  
GREGORY A. PRESNELL  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Party

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<sup>2</sup> The details sought by Defendants may be obtained through the appropriate discovery process.