

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LAFAYETTE HOWARD,

Plaintiff,

v.

Case No.: 2:23-cv-62-SPC-KCD

CHILDREN'S NETWORK OF
SOUTHWEST FLORIDA, L.L.C.
and NADEREH SALIM,

Defendants.

ORDER¹

Before the Court is Defendants Children's Network of Southwest Florida, L.L.C.'s and Nadereh Salim's Request for Clarification of the Court's March 8, 2023 Opinion and Order. ([Doc. 20](#)).² Last week, the Court partially granted Defendants' motion to dismiss the Complaint. ([Doc. 19](#)). In doing so, it dismissed without prejudice Count I, but found Count II to be sufficient. It also gave Plaintiff Lafayette Howard until March 22 to file an amended complaint. But Defendants say the Court didn't deal with Counts III (breach

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² The Motion lacks a [Local Rule 3.01\(g\)](#) Certification, which could be grounds for denial. But because of the relief requested and to resolve this matter expeditiously, the Court will rule on the Motion as filed. The parties, however, should not expect future leniency on noncompliance with the Local Rules.

of contract) and IV (unjust enrichment), so they do not know when to respond to all counts. The Court now offers clarification.

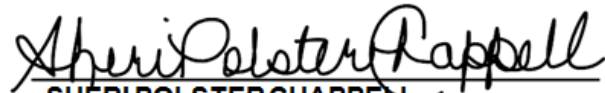
Counts III and IV are based on the same conduct as Count II, which the Court found to have been plausibly pled. Specifically, Count II alleges that Defendants did not pay her overtime and for accrued vacation and paid time off in violation of the FLSA. Counts III and IV allege Defendants had an oral agreement to pay Plaintiff overtime, accrued PTO, and vacation time, but did not do so. And their failure to do so kept money out of Plaintiff's pocket and in their pocket. At this pleading stage, the allegations for Counts III and IV are sufficient to survive dismissal.

Accordingly, it is now

ORDERED:

1. Defendants' Request for Clarification is **GRANTED**. The Court dismisses only Count I of the Complaint. Counts II, III, and IV survive as originally pled.
2. Plaintiff must file an amended complaint consistent with this Order and the prior Opinion and Order ([Doc. 19](#)) on or before **March 23, 2023**. The amended complaint must contain all counts and will be the operative pleading moving forward.
3. Defendants have **fourteen days** after Plaintiff files the amended complaint to file an answer.

DONE and **ORDERED** in Fort Myers, Florida on March 15, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record