

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
AUG 25 PM 4:32
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY

CHICO'S TACOS, INC.,

Plaintiff,

v.

CHUCOS MANAGEMENT GROUP, LLC,
and JOEL ORTEGA,

Defendants.

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Civil Action No. EP-07-CA-0429- KC

DEFENDANT CHUCOS MANAGEMENT GROUP, LLC'S AND JOEL ORTEGA'S ORIGINAL ANSWER TO PLAINTIFF CHICO'S TACOS, INC.'S FIRST AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Chucos Management Group, LLC and Joel Ortega file this Original Answer to Plaintiff Chico's Taco, Inc.'s First Amended Complaint and in support thereof show as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Amended Complaint, and therefore deny the same.
2. Defendants deny at the time suit was filed that the principal office of Chucos Management Group, LLC was in El Paso, Texas but otherwise admit the allegations in Paragraph 2 of the Amended Complaint.
3. Defendants admit the allegations in Paragraph 3 of the Amended Complaint.
4. Defendants admit the allegations in Paragraph 4 of the Amended Complaint.

5. Defendants deny at the time suit was filed that Chucos Management Group, LLC maintained its principal office in the El Paso Division but otherwise admit the allegations in Paragraph 5 of the Amended Complaint.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Amended Complaint, and therefore deny the same.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Amended Complaint, and therefore deny the same.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Amended Complaint, and therefore deny the same.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Amended Complaint, and therefore deny the same.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Amended Complaint, and therefore deny the same.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Amended Complaint, and therefore deny the same.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Amended Complaint, and therefore deny the same.

13. Defendants deny the allegations contained in Paragraph 13 of the Amended Complaint.

14. Defendants admit the allegations contained in the first sentence of Paragraph 14 of the Amended Complaint. Defendants admit that the managers have heard of Chico's Tacos, that one of the managers is acquainted with a member of the Mora family, and that the Assumed Name Certificate For Limited Liability Company executed by Jose Luis Ortega filed with the Secretary of State of Texas on August 10, 2007 by Chucos Management Group, LLC states "The initial county where business services are or are to be conducted under such assumed name is El Paso County, Texas, but such services may be provided in all Texas counties." Defendants deny the remaining allegations of Paragraph 14 of the Amended Complaint.

15. Defendants admit that Chucos Management Group, LLC opened a restaurant under the name Chucos Tacos in Austin, Texas in November, 2007. Defendants admit that the pages attached as Exhibit D show in black and white portions of Chucos Management Group, LLC's former website, restaurant, and menu including the items depicted therein. Defendants deny the remaining allegations of Paragraph 15 of the Amended Complaint.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 16 of the Amended

Complaint, and therefore deny the same. Defendants deny the remaining allegations contained in Paragraph 16 of the Amended Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Amended Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Amended Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Amended Complaint.

21. Defendants deny the allegations contained in Paragraph 21 of the Amended Complaint.

22. See Defendants' responses to Paragraphs 1-21 of the Amended Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Amended Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Amended Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Amended Complaint.

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

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

28. See Defendants' responses to Paragraphs 1-27 of the Amended Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Amended Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Amended Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Amended Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Amended Complaint.

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

34. See Defendants' responses to Paragraphs 1-33 of the Amended Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Amended Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Amended Complaint.

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

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

39. See Defendants' responses to Paragraphs 1-38 of the Amended Complaint.

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

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

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

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

44. See Defendants' responses to Paragraphs 1-43 of the Amended Complaint.

45. Defendants deny the allegations contained in the first sentence of Paragraph 45 of the Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 45 of the Amended Complaint, and therefore deny the same.

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

47. Defendants deny the allegations contained in Paragraph 47 of the Amended Complaint.

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

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

50. See Defendant's responses to Paragraphs 1-49 of the Amended Complaint.

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

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

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

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

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

56. See Defendants' responses to Paragraphs 1-55 of the Amended Complaint.

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

58. Defendants deny the allegations contained in Paragraph 58 of the Amended Complaint.

59. To the extent required, Defendants deny the matters set in out in the Prayer For Relief in the Amended Complaint.

AFFIRMATIVE DEFENSES

60. Many of the facts alleged cannot be proven and as a result Plaintiff cannot obtain most of the relief sought because as Plaintiff knows 1) Defendants did not become aware of Plaintiff's concerns until February 6, 2008 when Chucos Management Group, LLC was served with this suit (Plaintiff never sent a pre-suit demand letter); 2) in response to Plaintiff's concerns Chucos Management Group, LLC unilaterally changed the name of their Austin restaurant to "10th Street Tacos" on May 23, 2008; and 3) on

July 18, 2008 Chucos Management Group LLC's Austin restaurant was closed because it was not making money.

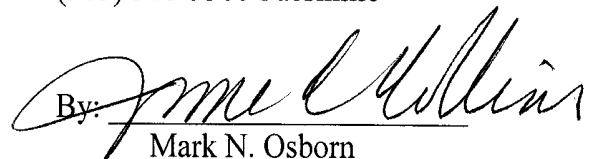
61. Plaintiff has filed to mitigate its damages by continuing to pursue this action after Chucos Management Group, LLC changed its name and after Chucos Management Group, LLC closed its Austin restaurant.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray that Plaintiff take nothing by this suit, and for such other and further relief to which they may be justly entitled.

Respectfully Submitted,

KEMP SMITH LLP
221 N. Kansas St., Ste. 1700
El Paso, Texas 79901
(915) 533-4424
(915) 546-5360 Facsimile

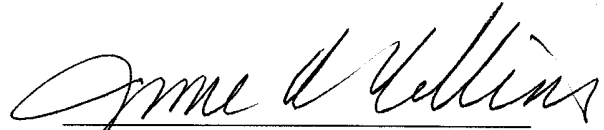
By: 

Mark N. Osborn
State Bar No. 15326700
Jeanne C. Collins
State Bar No. 04611750

ATTORNEYS FOR DEFENDANT
CHUCOS MANAGEMENT
GROUP, LLC AND JOEL
ORTEGA

Certificate of Service

I certify that a copy of the foregoing was mailed by certified mail, return receipt requested to Rene Ordonez, Blanco Ordonez & Wallace, P.C., 5715 Cromo Drive, El Paso, Texas 79912 and Hilda C. Galvan, Jones Day, 2727 North Harwood Street, Dallas, Texas 75201-1515 on this 25rd day of August, 2008.


JEANNE C. COLLINS