

employment related claim against Defendant Litowsky. To the extent that Plaintiff has failed to state any viable cause of action against this Defendant for which any relief can be granted, this suit should be dismissed.

2. Defendant is not an employer, as defined by any federal or state statute and, therefore, she has no liability for a violation of any federal or state statute, nor is such a claim authorized or permitted. *Medina v. Ramsey Steel Co.*, 238 F.3d 674 (5th Cir. 2001), *Benavides v. Moore*, 848 S.W.2d 190,198 (Tex. App.-Corpus 1992, writ denied).

3. Plaintiff has failed to file a charge of discrimination against this Defendant with the proper agency as required by statute to proceed under a claim for any federal or state employment related statute.

4. For any complaint by Plaintiff under any employment related state or federal statute not timely and properly made the subject of a charge before the proper agency against this Defendant, as required by statute, Defendant denies that Plaintiff has satisfied all procedural and administrative requirements under the law. For any such complaint under any employment related state or federal statute not timely and properly made, Plaintiff has failed to timely file a written charge of discrimination against Defendant with the proper agency. For any such complaint under any employment related state or federal statute not timely and properly made, Defendant denies that Plaintiff has timely filed a lawsuit following the receipt of a notice of rights and right to file suit from the proper agency. For any such complaint under any employment related state or federal statute, Defendant denies that this Court has jurisdiction over the Defendant to bring such an action.

5. To the extent that any of Plaintiffs' allegations relate to claims based upon matters occurring more than three hundred (300) days (180 days under state statute) prior to the filing of

a properly filed charge of discrimination, such claims are barred.

6. Plaintiffs suit against this Defendant for any employment related state or federal statute is frivolous, unreasonable and groundless and this Defendant should be awarded her reasonable attorney's fees and costs in defense of this matter pursuant to the terms of the employment related state or federal statute.

7. Defendant Litowsky is not subject to a suit by Plaintiff under the Whistle Blower act. Defendant is not an individual subject to action under such statute. Defendant Litowsky does not have the capacity to be sued under a Whistle Blowers statute and Defendant is not liable in the capacity in which she was sued. Plaintiff has failed to comply with the statutory requisites necessary to pursue a claim under the Whistle Blower statute. Plaintiff has failed to timely bring such an action and his suit is barred by the applicable statute of limitations.

8. To the extent that Plaintiff has failed to bring his action within the applicable statutes of limitation, Plaintiffs claims against Defendant Litowsky are barred.

B. General Denial

1. Pursuant to Tex. R. Civ. P. 92, Defendant denies each and every allegation in Plaintiffs Original Petition and demands strict proof thereof by a preponderance of the evidence.

WHEREFORE, PREMISES CONSIDERED, Defendant LINDA LITOWSKY prays that Plaintiff take nothing by his suit and that Defendant go hence and recover her costs on this behalf expended, and for such other and further relief, at law and in equity, to which Defendant may show herself to be justly entitled.

Respectfully submitted,

PLUNKETT & GIBSON, INC.

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ATTORNEYS FOR DEFENDANT
LINDA LITOWSKY

CERTIFICATE OF SERVICE

This is to certify that on the 23'd day of July 2009, a copy of the foregoing **Defendant Linda Litowsky's Original Answer** has been forwarded by certified mail, return receipt requested, to:

David Griffin
15406 Ulhnan Rd
Austin, Texas 78734

via CMRRR #71603901984832499021

cJQ G;@XL-

John A. Heller