

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:16-cv-00654-BO**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

BOJANGLES' RESTAURANTS, INC.,

Defendant.

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S STATEMENT OF
UNDISPUTED MATERIAL FACTS
ACCOMPANYING EEOC'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

1. At all relevant times, Defendant has continuously been a Delaware corporation authorized to conduct business in North Carolina; has conducted business in North Carolina and the City of Fayetteville, North Carolina; and has continuously had at least 15 employees. [ECF 1 ¶4; ECF 6 ¶4].

DEFENDANT'S RESPONSE: Admitted.

2. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e (b), (g), and (h). [ECF 1 ¶5; ECF 6 ¶5].

DEFENDANT'S RESPONSE: Bojangles' admits that it has been an "employer" for purposes of coverage by Title VII at all times relevant to this action. (*Dkt.* 6, ¶ 5.)

3. Wolfe began her employment with Defendant on or around May 9, 2012 as a Biscuit Maker at Defendant's Owen Drive store in Fayetteville, North Carolina. [ECF 1 ¶13; ECF 6 ¶13].

DEFENDANT'S RESPONSE: Admitted.

4. As a Biscuit Maker, Wolfe was supervised by the Owen Drive restaurant Assistant Unit Directors and Unit Director. [ECF 1 ¶15; ECF 6 ¶15].

DEFENDANT'S RESPONSE: Admitted.

5. At all times relevant, Ella Riggins was the Unit Director of Defendant's Owen Drive restaurant. [App'x 1, Riggins 9:12-14].

DEFENDANT'S RESPONSE: Admitted.

6. Unit Directors report to Area Directors, who oversee multiple restaurants within a geographic region. [ECF 1 ¶15; ECF 6 ¶15].

DEFENDANT'S RESPONSE: Admitted.

7. At all times relevant, Sharon Irwin (formerly Sharon McCollough) was the Area Director over the region that included Defendant's Owen Drive restaurant, two restaurants located on Raeford Road, one restaurant located on Corporation Drive in Hope Mills, and one restaurant located on North Main Street in Hope Mills. [App'x 2, Irwin 49:18-50:12].

DEFENDANT'S RESPONSE: Admitted.

8. Both Defendant's Unit Director (Riggins) and Area Director (Irwin) had authority to take tangible employment actions against Wolfe. [ECF 1 ¶16; ECF 6 ¶16].

DEFENDANT'S RESPONSE: Bojangles' admits that the Unit Director and Area Director for the Owen Drive Store had authority to take employment actions as to Wolfe while she worked at the Owen Drive store. (*Dkt.* 6, ¶ 16.)

9. Wolfe was transferred from Defendant's Owen Drive restaurant to one of Defendant's restaurants located on Raeford Road on February 21, 2013. [ECF 1 ¶45; ECF 6 ¶45].

DEFENDANT'S RESPONSE: Bojangles' admits that its Area Director spoke with Wolfe on or around February 21, 2013 and that the two agreed that Wolfe would transfer to Bojangles' Raeford Road store in Fayetteville. (*Dkt.* 6, ¶ 45.)

10. Wolfe did not request and was against the transfer. [App'x 3, Wolfe 88:19-20; 94:2-12].

DEFENDANT'S RESPONSE: Bojangles' evidence disputes this contention. Wolfe requested and did not object to the transfer. (Irwin Dep. at 39:8-40:11; Singleton Dep. at 60:16-61:7; Bowden Dec. ¶ 13.)

11. Wolfe was terminated on February 27, 2013. [See ECF 1 ¶48; ECF 6 ¶48].

DEFENDANT'S RESPONSE: Bojangles' admits that its Area Director informed Wolfe that her employment with Bojangles' was terminated on or about February 27, 2013, as a result of Wolfe's misconduct on February 27, 2013. (Dkt. 6 ¶ 48.)

12. On May 2, 2013, Wolfe filed Charge of Discrimination 433-2013-01334 ("Charge") with the EEOC. [App'x 4, Charge].

DEFENDANT'S RESPONSE: Admitted.

13. Wolfe's written and signed charge met all *Holowecki* indicia. [*Id.*]

DEFENDANT'S RESPONSE: Paragraph 13 is a legal conclusion and is not a material fact properly included in the Movant's Statement pursuant to L.C.R. 56.1(a)(1). To the extent a response is required, Bojangles' denies the legal conclusion asserted in paragraph 13.

14. The allegations on the face of the Charge speak for themselves. [*Id.*]

DEFENDANT'S RESPONSE: Bojangles' admits that the Charge is a written document that is the best evidence of its contents. Bojangles' specifically denies the allegations of unlawful conduct in the Charge.

15. The Charge alleges with particularity that Wolfe was harassed based on her sex (gender identity) by her Unit Director since October 2012, and that Wolfe had reported the harassment to an Area Director. [*Id.*]

DEFENDANT'S RESPONSE: Paragraph 15 is a legal conclusion and is not a material fact properly included in the Movant's Statement pursuant to L.C.R. 56.1(a)(1). To the extent a response is required, Bojangles' denies that the Charge refers to Wolfe's gender identity. Bojangles' denies the allegations of unlawful conduct in the Charge. The Charge is a written document that is the best evidence of its contents.

16. The Charge also alleges with particularity that Wolfe was transferred on February 21, 2013 and terminated on February 27, 2013 in retaliation for complaining about the harassment. [*Id.*]

DEFENDANT'S RESPONSE: Paragraph 16 is a legal conclusion and is not a material fact properly included in the Movant's Statement pursuant to L.C.R. 56.1(a)(1). To the extent a response is required, Bojangles' denies that the Charge alleges with particularity that Wolfe was transferred and terminated in retaliation for complaining about harassment. Bojangles' denies the allegations of unlawful conduct in the Charge. The Charge is a written document that is the best evidence of its contents.

17. Wolfe's Charge was filed within 180 days of the unlawful employment practices alleged on the face of her Charge. [*Id.*; App'x 5, 30(b)(6) Dep. 16:8-17:24].

DEFENDANT'S RESPONSE: Bojangles' evidence disputes that Wolfe's charge was filed within 180 days of any unlawful conduct alleged in this litigation. Wolfe specifically alleged that only one instance of putative discrimination that occurred within 180 days of the filing of her Charge. (Wolfe Dep. at 72:16-76:8.) Bojangles' evidence disputes this allegation. (Riggins Dep. at 89:11-89:15.) Bojangles' evidence disputes the occurrence of any allegedly

harassing conduct. (Riggins Dep. at 33:14-33:17, 38:6-38:8, 29:5-40:3; Irwin Dec. ¶ 9; Bowden Dec. ¶ 11.)

18. Within ten (10) days of receiving Wolfe's Charge, EEOC sent a Notice of Charge of Discrimination and a copy of the Charge to Defendant. [App'x 6, Notice of Charge].

DEFENDANT'S RESPONSE: Admitted.

19. Defendant received the Notice of Charge of Discrimination and a copy of the Charge. [App'x 5, 30(b)(6) Dep. 17:25-20:1].

DEFENDANT'S RESPONSE: Admitted.

20. Plaintiff investigated Wolfe's Charge.

DEFENDANT'S RESPONSE: Bojangles' admits that it submitted to the EEOC a response to Wolfe's charge.

21. Defendant submitted a position statement, dated June 28, 2013, with exhibits A through E to the Commission during the Commission's administrative investigation of Wolfe's Charge. [App'x 7, Def's Pos. Stmt.].

DEFENDANT'S RESPONSE: Admitted.

22. The position statement speaks for itself, and includes the allegation that "[f]ollowing [Wolfe's] termination, Bojangles' received employee complaints and proof that Mr. [sic] Wolfe also sent inappropriate, provocative pictures of himself [sic] via text message to his [sic] Bojangles' co-workers while he [sic] was employed – in clear violation of Bojangles' sexual harassment policy and for which Mr. [sic] Wolfe would have been subject to immediate termination." [*Id.* at BOJANGLES-00000068]. One picture was attached to Defendant's position statement. [*Id.* at BOJANGLES-00000077].

DEFENDANT'S RESPONSE: Bojangles' admits that its position statement is a written document that is the best evidence of its contents. Bojangles' admits that the material quoted above appeared substantially verbatim in its position statement.

23. Although Defendant had knowledge of this picture at the time Defendant terminated Wolfe, it did not terminate Wolfe because of the picture, [App'x 5, 30(b)(6) Dep. 78:22-81:13].

DEFENDANT'S RESPONSE: Bojangles' admits that it did not terminate Wolfe because of the provocative picture. The EEOC has not, however, identified evidence indicating that Bojangles' knew of the picture at the time it terminated Wolfe. Eubanks testified that she did not know the date on which Bojangles' received the picture (Eubanks Dep. at 78:17-78:18) and merely believed and understood the picture to have been received before the termination. (*Id.* at 78:22-79:5.) Irwin was the Bojangles' employee who actually received and viewed the photograph, and the EEOC did not elicit any testimony from Irwin about when she first viewed the photograph. (Irwin Dep. at 13:2-15:6.)

24. Defendant would not have terminated Wolfe because of the picture. [App'x 5, 30(b)(6) Dep. 78:22-81:13].

DEFENDANT'S RESPONSE: Bojangles' disputes this assertion. The cited testimony acknowledged only that Bojangles' would not have terminated Wolfe if it had learned of the picture contemporaneously with Wolfe's complaint (which regarded Wolfe's yarn braids and not any unlawful discrimination) to Bojangles' ServiceCheck hotline because of the need to investigate Wolfe's complaint. Eubanks specifically denied the EEOC's assertion that Bojangles' would not have terminated Wolfe for sending the provocative photograph. (Eubanks 30(b)(6) Dep. at 80:21-81:9.) Irwin testified that sending inappropriate photographs to co-workers is a violation of Bojangles' policy. (Irwin Dep. at 14:20-14:23.)

25. The picture's recipient was not offended by the picture and "loved" receiving pictures of Wolfe. [App'x 8, Singleton 26:3-27:1].

DEFENDANT'S RESPONSE: Admitted.

26. Throughout the administrative investigation of Wolfe's Charge and this litigation, Defendant has not identified or produced any pictures other than the one attached to its position statement that Defendant contends are "inappropriate" or "provocative." [See App'x 5, 30(b)(6) Dep. 66:3-21, 67:25-68:11; App'x 2, Irwin 143:6-16; App'x 9, Def.'s Resp. to Req. 23; App'x 10, Def. Letter to EEOC dtd. 2/20/2017].

DEFENDANT'S RESPONSE: Admitted.

27. On July 1, 2015, the Commission issued its Letter of Determination following its administrative investigation of Wolfe's Charge. [App'x 11, Ltr. Of Deter.].

DEFENDANT'S RESPONSE: Admitted.

28. The Letter of Determination speaks for itself, and specifically states that the Commission determined that Wolfe was subject to harassment based on her sex, that Charging Party's supervisor was aware of and took place in the harassment, that Charging Party complained about the harassment and Defendant failed to take corrective action or to prevent further action, and that Charging Party had been transferred and ultimately terminated in retaliation for complaining about the harassment. [*Id.*]

DEFENDANT'S RESPONSE: Bojangles' admits that the Letter of Determination is a written document that is the best evidence of its content. Bojangles' denies that the statements attributed to the Letter of Determination are factually correct.

29. The Letter of Determination invited Defendant to participate in conciliation. [*Id.*]

DEFENDANT'S RESPONSE: Admitted.

30. Defendant received a copy of the Commission's Letter of Determination, and was aware of the letter's contents. [App'x 5, 30(b)(6) Dep. 110:21-113:11].

DEFENDANT'S RESPONSE: Admitted.

31. The parties engaged in conciliation efforts, but their efforts failed result in a resolution that was acceptable to the Commission. [App'x 5, 30(b)(6) Dep. 113:12-25].

DEFENDANT'S RESPONSE: Admitted.

32. The Commission issued a Notice of Conciliation Failure to Defendant dated December 4, 2015. [App'x 12, Not. Of Concil. Fail.].

DEFENDANT'S RESPONSE: Admitted.

33. Defendant received a copy of the Commission's Notice of Conciliation Failure. [App'x 5, 30(b)(6) Dep. 114:3-115:11].

DEFENDANT'S RESPONSE: Admitted.

34. EEOC satisfied its conciliation obligations with respect to Wolfe's Charge. [ECF 1 ¶¶7-10; ECF 6 ¶¶7-10; App'x 13, Church Eml to Steenbergh dtd. 7/14/2017].

DEFENDANT'S RESPONSE: Admitted.

35. EEOC filed the instant lawsuit on July 6, 2016. [ECF 1].

DEFENDANT'S RESPONSE: Admitted.

36. The instant lawsuit arises from Wolfe's Charge and seeks to correct unlawful employment practices on the bases of sex, and provide appropriate relief to Jonathan Wolfe, who was adversely affected by such practices. [ECF 1 p.1].

DEFENDANT'S RESPONSE: Paragraph 36 is a legal conclusion and is not a material fact properly included in the Movant's Statement pursuant to L.C.R. 56.1(a)(1). To the extent a response is required, Bojangles' denies the allegations of unlawful conduct in the Complaint.

37. More than thirty days prior to the institution of this lawsuit, Wolfe filed a charge with the Commission alleging violations of Title VII by Defendant. [ECF 1 ¶ 6; ECF 6 ¶ 6].

DEFENDANT'S RESPONSE: Admitted.

38. Defendant filed its Answer on September 5, 2016. [ECF 6].

DEFENDANT'S RESPONSE: Bojangles' admits that it filed its Answer on September 6, 2016. (*Dkt.* 6.)

39. Defendant's Answer articulates the following challenged affirmative defenses:

a. **THIRD DEFENSE:** To the extent that the EEOC seeks to assert claims under Title VII based upon alleged acts of discrimination or harassment occurring more than 180 days prior to the filing of a relevant, valid and timely charge of discrimination with the EEOC, such claims are barred by the applicable statute of limitations. [ECF 6 p.6].

b. **FOURTH DEFENSE:** The EEOC's claims are barred to the extent that they were not referred to in or developed in the course of the EEOC's reasonable investigation of any relevant, valid and timely filed charge of discrimination on which the EEOC bases this action and to the extent Wolfe has otherwise failed to exhaust her administrative remedies as required by law. [*Id.*]

c. **SIXTH DEFENSE:** The EEOC's claims are barred because the conduct alleged (which is expressly denied), even if true, was consensual and not unwelcome to Wolfe. [*Id.* at p.7]

d. **SEVENTH DEFENSE:** The EEOC's claims are barred to the extent Wolfe failed to make reasonable efforts to mitigate her damages, and the EEOC's claims for lost earnings on behalf of Wolfe must be reduced by compensation she has received or should have received. [*Id.* at p.7]

e. **EIGHTH DEFENSE:** To the extent that Wolfe has suffered damages from the conduct alleged in the EEOC's complaint, which Bojangles' denies, Bojangles' and/or its former or current agents were not the legal or proximate cause of such damages. [*Id.*]

f. **NINTH DEFENSE:** If Wolfe has been damaged as alleged, which is denied, her damage has been caused by her own intentional or negligent actions or omissions. [*Id.*]

g. **TENTH DEFENSE:** The EEOC's claims are barred by the doctrines of laches, estoppel and waiver. [*Id.*]

h. **TWELFTH DEFENSE:** Subject to a reasonable opportunity for investigation and discovery, the EEOC's claims are barred or limited by the doctrine of after-acquired evidence as it applies to Wolfe. [*Id.* at p.8]

DEFENDANT'S RESPONSE: Admitted.

40. On October 25, 2016, EEOC served its First Set of Interrogatories and First Set of Requests for Production to Defendant. [*See* App'x 14, Steenbergh Eml to Church dtd.

10/25/2016; *see also* App'x 15, Def's Resp. to EEOC Interrogs.; *see also* App'x 9, Def's Resp. to EEOC Reqs.].

DEFENDANT'S RESPONSE: Admitted.

41. The Commission's discovery and Defendant's responses thereto speak for themselves. [*See* App'x 15, Def's Resp. to EEOC Interrogs.; App'x 9, Def's Resp. to EEOC Reqs.; *see also* App'x 10, Church ltr to Steenbergh dtd. 2/20/2017].

DEFENDANT'S RESPONSE: Bojangles' admits that the EEOC's written discovery requests and its responses are written documents that are the best evidence of their contents. Bojangles' denies any contention that the discovery evidence supporting Bojangles' defenses is limited to its written discovery responses and document production.

42. The Commission's discovery sought, *inter alia*, facts and documents supporting Defendant's sixth, ninth, and tenth defenses. [*See* App'x 15, Def's Resp. to EEOC Interrogs. 17, 18, 19; App'x 9, Def's Resp. to EEOC Reqs. 19, 20, 21].

DEFENDANT'S RESPONSE: Bojangles' admits that the EEOC's written discovery requests and its responses are written documents that are the best evidence of their contents.

43. Defendant produced no documents to support its tenth defense. [App'x 9, Def's Resp. to EEOC Req. 21; App'x 10, Church ltr to Steenbergh dtd. 2/20/2017].

DEFENDANT'S RESPONSE: Bojangles' admits that it did not produce documents to support its tenth defense. Bojangles' denies that the discovery materials supporting Bojangles' tenth defense are limited to the documents that it produced.

44. In support of its sixth defense, Defendant produced the documents marked as BOJANGLES-00000001-2, 212-216. [App'x 9, Def's Resp. to EEOC Req. 19; App'x 10, Church ltr to Steenbergh dtd. 2/20/2017; *see also* App'x 16, BOJANGLES-00000001-2, 212-220].

DEFENDANT'S RESPONSE: Bojangles' admits that it produced the documents cited in paragraph 44 to support its sixth defense. Bojangles' denies that the discovery materials supporting Bojangles' sixth defense are limited to the documents that it produced.

45. In support of its ninth defense, Defendant produced the documents marked as BOJANGLES-00000001-2, 212-220. [App'x 9, Def's Resp. to EEOC Req. 20; App'x 10, Church ltr to Steenbergh dtd. 2/20/2017; *see also* App'x 16, BOJANGLES-00000001-2, 212-220].

DEFENDANT'S RESPONSE: Bojangles' admits that it produced the documents cited in paragraph 45 to support its ninth defense. Bojangles' denies that the discovery materials supporting Bojangles' ninth defense are limited to the documents that it produced.

46. BOJANGLES-00000216 is a duplicate of BOJANGLES-00000001. [App'x 16 at BOJANGLES-00000001, BOJANGLES-00000216].

DEFENDANT'S RESPONSE: Admitted.

47. BOJANGLES-00000001 is a handwritten statement of Christy McDonald, a Bojangles' employee. [*Id.*].

DEFENDANT'S RESPONSE: Admitted.

48. BOJANGLES-00000215 is a duplicate of BOJANGLES-00000002. [App'x 16 at BOJANGLES-00000002, BOJANGLES-00000215].

DEFENDANT'S RESPONSE: Admitted.

49. BOJANGLES-00000002 is a typed, signed statement of Unit Director Riggins. [*Id.*].

DEFENDANT'S RESPONSE: Admitted.

50. BOJANGLES-00000212-214 comprises a complete set of handwritten notes created by Defendant's then-Director of Human Resources Jeannine Eubanks. [App'x 16 at BOJANGLES-00000212-214; App'x 17, Eubanks 113:9-114:2; App'x 5, 30(b)(6) Dep. 20:1023, 186:24-187:1].

DEFENDANT'S RESPONSE: Bojangles' admits, and the evidentiary citations above confirm, that BOJANGLES-00000212-214 comprises a complete set of non-privileged handwritten notes created by Bojangles' Director of Human Resources Jeannine Eubanks regarding Wolfe's employment with Bojangles'.

51. All of Eubanks' handwritten notes were created in February 2013. [App'x 5, 30(b)(6) Dep. 187:2-3].

DEFENDANT'S RESPONSE: Bojangles' admits, and the evidentiary citations above confirm, that BOJANGLES-00000212-214 comprises a complete set of non-privileged handwritten notes created in February 2013 by Bojangles' Director of Human Resources Jeannine Eubanks regarding Wolfe's employment with Bojangles'.

52. Eubanks' notes speak for themselves. [App'x 16 at BOJANGLES-00000212-214].

DEFENDANT'S RESPONSE: Bojangles' evidence disputes the assertion that the content and meaning of Eubanks' handwritten notes, which are sometimes incomplete or written in shorthand, are a complete and accurate transcription of the conversations recorded therein. The best evidence of the conversations recorded by Eubanks is her testimony regarding these conversations, about which she testified at length in deposition and by declaration. (*See* Eubanks Dep. at 103:25-106:13; 113:19-117:4; Eubanks Dec. ¶¶ 18-20.)

53. The Commission served upon Defendant interrogatory number 17, which reads, “Identify all facts that support Defendant’s Sixth Defense, as set forth in Defendant’s Answer.” [See App’x 15, Def’s Resp. to EEOC Interrog. 17].

DEFENDANT’S RESPONSE: Admitted.

54. Defendant’s full response to EEOC’s interrogatory number 17 states: “To the extent that Wolfe contends that she was subjected to any inappropriate sexual conduct, she invited and participated in the conduct. For example, during the only incident about which Wolfe complained while employed by Bojangles’, Wolfe admitted to Sharon Irwin that she began and willingly participated in a conversation with two male colleagues about her sexual preferences.” [Id.]

DEFENDANT’S RESPONSE: Admitted.

55. The Commission served upon Defendant interrogatory number 18, which reads, “Identify all facts that support Defendant’s Ninth Defense, as set forth in Defendant’s Answer.” [See App’x 15, Def’s Resp. to EEOC Interrog. 18].

DEFENDANT’S RESPONSE: Admitted.

56. Defendant’s full response to EEOC’s interrogatory number 18 states: “Bojangles’ elected to terminate Wolfe’s employments [sic] based upon Wolfe’s repeatedly insubordinate and disrespectful conduct. In addition to violating Irwin’s instructions not to return to the Owen Drive location and behaving unprofessionally at the Owen Drive location on February 27, 2013, Wolfe was insubordinate and disrespectful while speaking with Irwin during her investigation of the February 27, 2013 incident. Accordingly, Wolfe’s termination and alleged damage was caused by her own volitional acts. Bojangles’ reserves the right to supplement this response when and if additional relevant facts are discovered.” [Id.]

DEFENDANT’S RESPONSE: Admitted.

57. The Commission served upon Defendant interrogatory number 19, which reads, “Identify all facts that support Defendant’s Tenth Defense, as set forth in Defendant’s Answer.” [See App’x 15, Def’s Resp. to EEOC Interrog. 19].

DEFENDANT’S RESPONSE: Admitted.

58. Defendant’s full response to EEOC’s interrogatory number 19 states: “Bojangles’ alleges that the lawsuit is defective to the extent that it seeks to assert claims under Title VII based upon alleged acts of discrimination or harassment occurring more than 180 days prior to

the filing of a relevant, valid and timely charge of discrimination with the EEOC. Discovery is ongoing, and Bojangles' has not yet determined the specific acts of discrimination or harassment occurring more than 180 days prior to the filing of Wolfe's charge of discrimination upon which the EEOC's lawsuit is based. Bojangles' reserves the right to supplement this response when and if such acts are discovered." *Id.*.

DEFENDANT'S RESPONSE: Admitted.

59. The Commission's discovery also sought facts and documents supporting Defendant's contention that Wolfe "sent inappropriate, provocative pictures" of herself to coworkers. [App'x 9, Def's Resp. to EEOC Req. 23; App'x 10, Church ltr to Steenbergh dtd. 2/20/2017].

DEFENDANT'S RESPONSE: Admitted.

60. Defendant never supplemented its responses to EEOC's interrogatories 17, 18, or 19.

DEFENDANT'S RESPONSE: Bojangles' admits that it did not supplement its responses to EEOC's interrogatories 17, 18, or 19. Bojangles' denies that it had any obligation to supplement its responses to these interrogatories pursuant to Fed. R. Civ. P. 26(e) because "additional or corrective information [had] otherwise been made known to the other parties during the discovery process or in writing."

61. Defendant never supplemented its responses to EEOC's requests for production 19, 20, 21, or 23.

DEFENDANT'S RESPONSE: Bojangles' admits that it did not supplement its responses to EEOC's requests for production 19, 20, 21 or 23. Bojangles' denies that it had any obligation to supplement its responses to these requests for production pursuant to Fed. R. Civ. P. 26(e) because "additional or corrective information [had] otherwise been made known to the other parties during the discovery process or in writing."

62. On June 19, 2017, Bojangles' appeared for deposition pursuant to a properly-served Amended Notice of Fed. R. Civ. P. 30(b)(6) Deposition. [App'x 18, Am. Notice of FRCP 30(b)(6) Dep.; App'x 5, 30(b)(6) Dep. at pp.1-2].

DEFENDANT'S RESPONSE: Admitted.

63. Defendant intends to pursue the affirmative defenses challenged by EEOC's Motion for Partial Summary Judgment. [App'x 5, 30(b)(6) Dep. 154:20-158:8].

DEFENDANT'S RESPONSE: Of those challenged by the EEOC's Motion for Partial Summary Judgment, Bojangles' intends to pursue its Third, Sixth, Seventh, Eighth, Ninth and Twelfth defenses.

64. Wolfe was deposed in this matter on April 27, 2017. [App'x 3, Wolfe at p.1].

DEFENDANT'S RESPONSE: Admitted.

65. Wolfe made numerous verbal complaints about managers and coworkers to Defendant, to which Defendant failed to respond. [App'x 3, Wolfe 81:6-86:18, 192:13-194:21].

DEFENDANT'S RESPONSE: Bojangles' evidence disputes this assertion. Wolfe never complained to anyone at Bojangles' about any form of mistreatment or harassing conduct. (Riggins Dep. at 48:3-48:6, 154:3-154:10; Irwin Dec. ¶ 9; Bowden Dec. ¶ 11; Eubanks Dec. ¶¶ 18-19; Singleton Dep. at 35:14-35:16.)

66. Wolfe applied for "numerous" jobs between her termination from Defendant and obtaining a replacement position, and stated there was no period of time in which she was not looking for work. [App'x 3, Wolfe 138:3-139:12].

DEFENDANT'S RESPONSE: The EEOC's evidence disputes the assertion that Wolfe applied for unspecified "numerous" jobs between her termination from Bojangles' and obtaining a replacement position. Neither the EEOC nor Wolfe has provided the specific date of a single of Wolfe's job applications. (*See Dkt. 25 at 176-79, 206-07.*) Nor has the EEOC sought or obtained any evidence corroborating Wolfe's claims that she applied for any job prior to the

position she obtained in 2014, despite Bojangles' discovery requests for such information. Other than Wolfe's uncorroborated assertions, there is no evidence regarding the periods during which Wolfe was actually looking for work during her period of unemployment.

67. Subsequent to Wolfe's termination from Bojangles', Wolfe obtained another position with a different fast food restaurant. [App'x 16, BOJANGLES-00000301; App'x 3, Wolfe 33:13-14; App'x 19 EEOC's Resp. to Def.'s Rog. 6].

DEFENDANT'S RESPONSE: Admitted.

68. Prior to obtaining this replacement position, Wolfe applied to at least seven additional fast food restaurants or grocery stores. [See App'x 19, EEOC's Resp. to Def.'s Rog. 6].

DEFENDANT'S RESPONSE: The EEOC's evidence does not support this assertion.

Neither the EEOC nor Wolfe has provided the specific date of a single of Wolfe's job applications. (*See Dkt. 25* at 176-79, 206-07.)

69. Records provided by the North Carolina Department of Commerce Unemployment Security Division show Wolfe was referred to numerous positions subsequent to her termination by Defendant. [App'x 20, EEOC v. Bojangles_PLT000365-366].

DEFENDANT'S RESPONSE: Bojangles' disputes this assertion, which is based on records not properly authenticated and which themselves would constitute hearsay.

70. Area Director Sharon Irwin (formerly known as Sharon McCollough) was deposed in this matter on April 25, 2017. [App'x 2, Irwin at p.1].

DEFENDANT'S RESPONSE: Admitted.

71. Unit Director Ella Riggins was deposed in this matter on April 26, 2017. [App'x 1, Riggins at p.1].

DEFENDANT'S RESPONSE: Admitted.

72. EEOC no longer seeks front pay or reinstatement, and has limited its claim to back pay through August 31, 2014. [App'x 21, Pl's 2d Supp. FRCP 26(a)(1) Discl.; App'x 22, Pl's 6th Supp. to Def's Init. Disc.].

DEFENDANT'S RESPONSE: Paragraph 72 a legal conclusion and is not a material fact properly included in the Movant's Statement pursuant to L.C.R. 56.1(a)(1).

This 17th day of August, 2017.

/Charles E. Johnson

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Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Rachael S. Steenbergh
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This 17th day of August, 2017.

/s/ Charles E. Johnson

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