

**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.

ANSWER

FIRST DEFENSE

The Complaint should be dismissed for failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6).

ANSWER AND SECOND DEFENSE

Answering the correspondingly numbered paragraphs of the Complaint, Defendant Bojangles' Restaurants, Inc. ("Bojangles'") states:

NATURE OF THE ACTION

Bojangles' admits that Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") has filed this action under Title VII of the Civil Rights Act of 1964 seeking relief on behalf of Jonathan Wolfe in connection with certain alleged employment practices. Bojangles' expressly denies it has subjected Wolfe to sexual harassment or discrimination in violation of Title VII and expressly denies that Wolfe was terminated in retaliation for purported complaints of sexual harassment or discrimination. Bojangles' denies the allegations of this paragraph except as expressly admitted.

JURISDICTION AND VENUE

1. This paragraph contains conclusions of law that require no response. Bojangles' admits that this Court has jurisdiction over the subject matter of this action. To the extent any additional response is required, Bojangles' denies the allegations of paragraph 1.

2. Bojangles' admits that the Complaint alleges certain events occurred within the Eastern District of North Carolina. Bojangles' expressly denies that it committed any unlawful employment practices. Bojangles' denies the allegations of paragraph 2 except as expressly admitted.

PARTIES

3. Bojangles' admits that the EEOC is a federal agency charged with the enforcement of certain federal anti-discrimination laws, including Title VII, and that any statutory references cited by the EEOC in this paragraph speak for themselves. Bojangles' denies the allegations of paragraph 3 except as expressly admitted.

4. Bojangles' admits that it is a Delaware corporation authorized to conduct business in North Carolina and that it has conducted business in this state, including in Fayetteville, North Carolina, at all times relevant to this action. Bojangles' admits that it employs at least 15 employees. Bojangles' denies the allegations of paragraph 4 except as expressly admitted.

5. Bojangles' admits that it has been an "employer" for purposes of coverage by Title VII at all times relevant to this action. Bojangles' denies the allegations of paragraph 5 except as expressly admitted.

CONDITIONS PRECEDENT

6. Bojangles' admits the allegations of paragraph 6.

7. Bojangles' admits that the EEOC issued to Bojangles' a Letter of Determination on July 1, 2015, the contents of which speak for themselves and are the best evidence of their content. Bojangles' denies the allegations of paragraph 7 except as expressly admitted.

8. Bojangles' admits that it communicated with the EEOC about the EEOC's Letter of Determination. Bojangles' expressly denies that it engaged in any of the discriminatory practices described in the Letter of Determination. Bojangles' denies the allegations of paragraph 8 except as expressly admitted.

9. Bojangles' admits the allegations of paragraph 9.

10. Bojangles' admits the allegations of paragraph 10.

11. This paragraph contains conclusions of law that require no response. To the extent any additional response is required, Bojangles' denies the allegations of paragraph 11.

STATEMENT OF CLAIMS

12. Bojangles' lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12, and therefore denies those allegations.

13. Bojangles' admits the allegations of paragraph 13.

14. Bojangles' admits that Wolfe wore its gender-neutral uniform, which consisted of a polo-style shirt, shoes, and a visor while employed with Bojangles'. Bojangles' admits that Wolfe wore her hair in a short "afro" hairstyle at the time she interviewed and was hired. Bojangles' denies that Wolfe wore makeup or artificial fingernails at the time she interviewed and was hired. Bojangles' lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 14 regarding Wolfe's use of makeup, artificial fingernails and women's slacks and therefore denies those allegations. Bojangles' denies the allegations of paragraph 14 except as expressly admitted.

15. Bojangles' admits the allegations of paragraph 15.

16. Bojangles' admits that the Unit Manager 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. Bojangles' denies the allegations of paragraph 16 except as expressly admitted.

STATEMENT OF CLAIMS

17. Bojangles' denies the allegations of paragraph 17.

18. Bojangles' lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 18 and therefore denies those allegations.

19. Bojangles' lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 19 and therefore denies those allegations.

20. Bojangles' lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 20 and therefore denies those allegations.

21. Bojangles' lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 21 and therefore denies those allegations.

22. Bojangles' denies the allegations of paragraph 22.

23. Bojangles' denies the allegations of paragraph 23.

24. Bojangles' denies the allegations of paragraph 24.

25. Bojangles' denies the allegations of paragraph 25.

26. Bojangles' denies the allegations of paragraph 26.

27. Bojangles' denies the allegations of paragraph 27.

28. Bojangles' admits the allegations of paragraph 28.

29. Bojangles' denies the allegations of paragraph 29.

30. Bojangles' denies the allegations of paragraph 30.

31. Bojangles' denies the allegations of paragraph 31.

32. Bojangles' denies the allegations of paragraph 32.

33. Bojangles' admits that Wolfe came to its Owen Drive location on or about February 21, 2013 and began showing other Bojangles' co-workers her new hair extensions. Bojangles' denies the allegations of paragraph 33 except as expressly admitted.

34. Bojangles' denies the allegations of paragraph 34.

35. Bojangles' denies the allegations of paragraph 35.

36. Bojangles' denies the allegations of paragraph 36.

37. Bojangles' denies the allegations of paragraph 37.

38. Bojangles' denies the allegations of paragraph 38.

39. Bojangles' denies the allegations of paragraph 39.

40. Bojangles' denies the allegations of paragraph 40.

41. Bojangles' denies the allegations of paragraph 41.

42. Bojangles' denies the allegations of paragraph 42.

43. Bojangles' denies the allegations of paragraph 43.

44. Bojangles' denies the allegations of paragraph 44.

45. 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. Bojangles' denies the allegations of paragraph 45 except as expressly admitted.

46. Bojangles' admits that Wolfe went to the Owen Drive restaurant on or about February 27, 2013, at which time Wolfe became loud and disruptive and blocked Bojangles' customers from placing their orders, that as a result, Bojangles' Unit Director instructed Wolfe to leave the restaurant immediately, and that Wolfe eventually left the restaurant. Bojangles' denies the allegations of paragraph 46 except as expressly admitted.

47. Bojangles' admits that Wolfe called its customer service hotline on February 27, 2013 and stated that she was upset with the Unit Director and a comment she allegedly made about Wolfe's hair style. Bojangles' denies the allegations of paragraph 47 except as expressly admitted.

48. 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. Bojangles' denies the allegations of paragraph 48 except as expressly admitted.

49. Bojangles' denies the allegations of paragraph 49.

50. Bojangles' denies the allegations of paragraph 50.

51. Bojangles' denies the allegations of paragraph 51.

52. Bojangles' denies the allegations of paragraph 52.

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.

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.

FIFTH DEFENSE

The EEOC's claims of sexual harassment under Title VII and any damages therefrom are barred because Bojangles' exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and Wolfe unreasonably failed to take advantage of any preventive or corrective opportunities provided by Bojangles' or to avoid harm otherwise.

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.

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.

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.

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.

TENTH DEFENSE

The EEOC's claims are barred by the doctrines of laches, estoppel and waiver.

ELEVENTH DEFENSE

The EEOC's claims are barred because at all times relevant to this action Bojangles' has acted in good faith and in full compliance with all applicable laws.

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.

THIRTEENTH DEFENSE

The EEOC's claims are barred because Bojangles' actions with respect to Wolfe were based on legitimate, non-retaliatory business reasons.

FOURTEENTH DEFENSE

The EEOC's claims for punitive damages are limited or barred because Bojangles' cannot be held vicariously liable for any employment decision of managerial agents that is contrary to Bojangles' good-faith efforts to comply with applicable laws.

FIFTEENTH DEFENSE

Bojangles' did not act with malicious or reckless indifference to Wolfe's federally protected rights or commit any knowing, wanton, intentional or malicious act, and the EEOC therefore is barred from recovering any punitive damages from Bojangles'.

PRAYER FOR RELIEF

WHEREFORE, Bojangles' prays the Court for the following relief:

1. That the Court dismiss the Complaint and that the EEOC and Wolfe recover nothing from Bojangles';
2. That the Court tax the costs of this action, including reasonable attorneys' fees, against the EEOC; and
3. That the Court award Bojangles' any other relief the Court deems just and proper.

This 6th day of September, 2016.

/s/Charles E. Johnson

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Attorneys for Defendant Bojangles' Restaurants, 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
U.S. Equal Employment Opportunity Commission
129 West Trade Street, Suite 400
Charlotte, NC 28202
rachael.steenbergh@eoc.gov

This 6th day of September, 2016.

/s/ Charles E. Johnson

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