

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4 04CV00622 MLM
	)	
BOB EVANS FARMS, INC.,	)	
	)	
Defendant.	)	

**ANSWER OF DEFENDANT BOB EVANS FARMS, INC.**

Now comes Defendant Bob Evans Farms, Inc. (“Defendant”), by and through counsel, and for its Answer to the Complaint of the Equal Employment Opportunity Commission brought on behalf of Kim Lynch, Becky Atchison, and Tiffany Green (“Plaintiffs”), hereby makes the following admissions, denials, other responses, and affirmative defenses:

1. Defendant admits that Plaintiffs are invoking jurisdiction of this Court pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345 but denies that this Court has subject matter jurisdiction over Plaintiffs’ claims as pled. Defendant denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

3. Defendant admits that the Equal Employment Opportunity Commission is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII. Defendant denies each and every remaining allegation contained in Paragraph 3 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

6. Defendant states that Kim Lynch, Becky Atchison and Tiffany Green have been employees of Bob Evans' restaurant located at 3583 Pennridge Dr., Bridgeton, Missouri 63044. Defendant denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. Defendant admits that Kim Lynch filed a charge with the Commission alleging violations of Title VII by Bob Evans more than thirty days prior to the institution of this lawsuit. Defendant denies each and every remaining allegation contained in Paragraph 7 of the Complaint.

8. Defendant denies each and every allegation contained in Paragraph 8 of the Complaint.

9. Defendant denies each and every allegation contained in Paragraph 9 of the Complaint.

10. Defendant denies each and every allegation contained in Paragraph 10 of the Complaint.

11. Defendant denies each and every allegation contained in Paragraph 11 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

12. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

13. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

14. Plaintiffs have failed to exhaust their administrative remedies with respect to some or all of their claims.

**FOURTH AFFIRMATIVE DEFENSE**

15. Some or all of Plaintiffs' claims were not the subject of, and are beyond the scope of, any charge filed with the EEOC.

**FIFTH AFFIRMATIVE DEFENSE**

16. Defendant exercised reasonable care to prevent and promptly correct any harassing behavior, and Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to avoid harm otherwise.

**SIXTH AFFIRMATIVE DEFENSE**

17. Defendant's decisions at issue were taken in good faith and based on legitimate and/or reasonable business factors.

**SEVENTH AFFIRMATIVE DEFENSE**

18. Plaintiffs have suffered no damages; in the alternative, they have failed to mitigate their damages.

**EIGHTH AFFIRMATIVE DEFENSE**

19. The claims presented in Plaintiffs' Complaint are barred by the equitable doctrines of waiver, estoppel, and/or laches.

**NINTH AFFIRMATIVE DEFENSE**

20. Plaintiffs' claim for punitive damages is barred, in whole or in part, because the amount sought may violate substantive and procedural safeguards guaranteed to Defendant by the due process clause of the Constitution of the United States of America. Plaintiffs' claim for punitive damages is further barred to the extent that the imposition of such damages is not rationally related to, or is grossly excessive in relation to, legitimate state interests.

**TENTH AFFIRMATIVE DEFENSE**

21. Plaintiffs' claim for punitive damages is barred because any allegedly discriminatory behavior was contrary to Defendant's good faith efforts to comply with all applicable anti-discrimination laws.

**ELEVENTH AFFIRMATIVE DEFENSE**

22. The Court lacks subject matter jurisdiction over some or all of the claims asserted in Plaintiffs' Complaint.

**TWELFTH AFFIRMATIVE DEFENSE**

23. Plaintiffs failed to fulfill all conditions precedent to filing suit under Title VII of the Civil Rights Act of 1964.

Defendant reserves the right to assert additional affirmative defenses based on information developed by further investigation and discovery in this matter.

WHEREFORE, Defendant demands that the Complaint against it be dismissed with prejudice; that it be awarded its costs, including reasonable attorneys' fees expended herein; and that it be awarded such other and further relief to which it may be entitled or which the Court deems necessary, in equity or law.

Respectfully submitted,

/s/ Thomas E. Berry  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 14<sup>th</sup> day of July, 2004, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Melvin D. Kennedy, Esq.  
Equal Employment Opportunity Commission  
1222 Spruce St.  
Room 8.100  
St. Louis, MO 63103

/s/ Thomas E. Berry

TEB/