

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

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION)	
)	
Plaintiff,)	
)	
KIM LYNCH AND BECKY)	
ATCHISON)	
)	
Plaintiff /Intervenors)	
)	
v.)	Civil Action No. 4 04CV00622MLM
)	
BOB EVANS FARMS, INC.,)	
)	
Defendant.)	

DEFENDANT’S ANSWER TO PLAINTIFF/INTERVENORS’ COMPLAINT

Now comes Defendant Bob Evans Farms, Inc. (“Defendant”), by and through counsel, and for its Answer to the Complaint of the Plaintiff/Intervenors Kim Lynch and Becky Atchison (“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 that allegations in Paragraph 2 of the Complaint.

3. Defendant admits that it has continuously done business in the State of Missouri and the City of Bridgeton at all times relevant to this lawsuit. Defendant denies the remaining allegations contained in Paragraph 3 of the Complaint.

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

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

6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

7. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint, including those allegations in Subsection (a) and Subsection (b).

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.

11. Defendant denies the allegations contained in Paragraph 11 of the Complaint.

12. Defendant denies the allegations contained in Paragraph 12 of the Complaint.

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

17. 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

18. 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

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

22. 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

23. 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

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

TWELFTH AFFIRMATIVE DEFENSE

25. 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/ Chris J. North

Chris J. North, *Admitted pro hac vice*
Michael J. Rusie, *Admitted pro hac vice*
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
(614) 464-6400 (telephone)
(614) 464-6350 (facsimile)

Of counsel:

Thomas E. Berry
McMAHON, BERGER, HANNA, LINIHAN,
CODY & McCARTHY
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131
(314) 567-7350
(314) 567-5968 (facsimile)

Attorneys for Defendant Bob Evans Farms, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 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:

Christopher B. Bent
5960 Howdershell Road, Suite 206
Hazelwood, MO 63042
ATTORNEY FOR PLAINTIFF/INTERVENORS

Melvin Kennedy, Esq.
Senior Trial Attorney
Equal Employment Opportunity Commission
St. Louis District Office
1222 Spruce Street, Room 8.100
St. Louis, MO 63103

/s/ Michael J. Rusie
Michael J. Rusie