

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

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

CASE NO.: 5:22-CV-00435

Plaintiff,

v.

J.A. CROSON LLC,

Defendant.

**DEFENDANT’S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF’S COMPLAINT**

Defendant, J.A. CROSON LLC, by and through undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiff’s Complaint [Doc. 1], and states as follows:

Defendant admits this purports to be an action brought under the Title VII of the Civil Rights Act of 1964 (“Title VII”) brought by Charging Parties Ernest Hankerson (“Hankerson”) and Cyrus Hawthorne (“Hawthorne”) (collectively, “Charging Parties”), but denies any violation of the Title VII as alleged in the Complaint, denies Charging Parties are entitled to any of the relief sought in the

Complaint, and denies the remaining allegations in the unnumbered introductory paragraph beginning on the first page of the Complaint.

JURISDICTION AND VENUE

1. Defendant admits this Court has jurisdiction over this action, but denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the remaining allegations in paragraph 1 of the Complaint.

2. Defendant admits venue is proper in this Court, but denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the remaining allegations in paragraph 2 of the Complaint.

PARTIES

3. Defendant admits the allegations in paragraph 3 of the Complaint.
4. Defendant admits the allegations in paragraph 4 of the Complaint.
5. Defendant admits the allegations in paragraph 5 of the Complaint.

ALLEGED CONDITIONS PRECEDENT

6. Defendant admits more than thirty days prior to this lawsuit Charging Parties filed charges of discrimination, but denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief

sought in the Complaint and, therefore, denies the remaining allegations in paragraph 6 of the Complaint.

7. Defendant admits the Commission issued a Letter of Determination dated July 15, 2021, but denies any violation of the Title VII as alleged in the Complaint or in the Letter of Determination and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the remaining allegations in paragraph 7 of the Complaint.

8. Defendant admits that prior to initiating this lawsuit the Commission attempted to engage in conciliation with Defendant but did not secure a conciliation agreement acceptable to the Commission. Defendant denies the remaining allegations in paragraph 8 of the Complaint, and specifically denies the Commission engaged in conciliation in good faith.

9. Defendant is without sufficient knowledge or information to admit or deny the allegations in paragraph 9 of the Complaint and, therefore, denies them.

STATEMENT OF ALLEGED FACTS

General Background

10. Defendant admits the allegations in paragraph 10 of the Complaint.

11. Defendant admits the allegations in paragraph 11 of the Complaint.

12. Defendant admits the allegations in paragraph 12 of the Complaint.

13. Defendant admits the allegations in paragraph 13 of the Complaint.

14. Defendant admits the allegations in paragraph 14 of the Complaint.

Charging Parties

15. Defendant is without sufficient knowledge or information to admit or deny the allegations in paragraph 15 of the Complaint regarding what Charging Parties “heard” or learned about and, therefore, denies these allegations. Defendant denies the remaining allegations in paragraph 15 of the Complaint, and specifically denies any violation of the Title VII as alleged in the Complaint.

16. Defendant admits Heath Mercer supervised both Hawthorne and Hankerson. Defendant denies the remaining allegations in paragraph 16 of the Complaint.

17. Defendant denies the allegations in paragraph 17 of the Complaint.

18. Defendant denies the allegations in paragraph 18 of the Complaint.

19. Defendant is without sufficient knowledge or information to admit or deny the allegations in paragraph 19 of the Complaint regarding what Charging Parties “heard” and, therefore, denies these allegations. Defendant denies the remaining allegations in paragraph 19 of the Complaint, and specifically denies any violation of the Title VII as alleged in the Complaint.

20. Defendant denies the allegations in paragraph 20 of the Complaint.

21. Defendant denies the allegations in paragraph 21 of the Complaint.

22. Defendant denies the allegations in paragraph 22 of the Complaint.

23. Defendant denies the allegations in paragraph 23 of the Complaint.

24. Defendant denies the allegations in paragraph 24 of the Complaint.

25. Defendant denies the allegations in paragraph 25 of the Complaint.

26. Defendant denies the allegations in paragraph 26 of the Complaint.

Alleged Class of Black and Hispanic Employees

27. Defendant denies the allegations in paragraph 27 of the Complaint.

28. Defendant denies the allegations in paragraph 28 of the Complaint.

29. Defendant denies the allegations in paragraph 29 of the Complaint.

30. Defendant denies the allegations in paragraph 30 of the Complaint.

31. Defendant denies the allegations in paragraph 31 of the Complaint.

32. Defendant denies the allegations in paragraph 32 of the Complaint.

33. Defendant denies the allegations in paragraph 33 of the Complaint.

34. Defendant denies the allegations in paragraph 34 of the Complaint.

35. Defendant denies the allegations in paragraph 35 of the Complaint.

36. Defendant denies the allegations in paragraph 36 of the Complaint.

37. Defendant denies the allegations in paragraph 37 of the Complaint.

38. Defendant denies the allegations in paragraph 38 of the Complaint.

STATEMENT OF CLAIMS

Count 1: Alleged Hostile Work Environment (Ernest Hankerson)

39. Defendant realleges and reincorporates herein its responses to paragraphs 10 through 21 and 26 above, as if fully set forth herein, and denies the allegations in paragraph 39 of the Complaint.

40. Defendant denies the allegations and inferences in paragraph 40 of the Complaint.

41. Defendant denies the allegations and inferences in paragraph 41 of the Complaint.

Count 2: Alleged Hostile Work Environment (Cyrus Hawthorne)

42. Defendant realleges and reincorporates herein its responses to paragraphs 10 through 21 and 26 above, as if fully set forth herein, and denies the allegations in paragraph 42 of the Complaint.

43. Defendant denies the allegations and inferences in paragraph 43 of the Complaint.

44. Defendant denies the allegations and inferences in paragraph 44 of the Complaint.

Count 3: Alleged Hostile Work Environment (Alleged Class Members)

45. Defendant realleges and reincorporates herein its responses to paragraphs 10 through 12 and 27 through 38 above, as if fully set forth herein, and denies the allegations in paragraph 45 of the Complaint.

46. Defendant denies the allegations and inferences in paragraph 46 of the Complaint.

47. Defendant denies the allegations and inferences in paragraph 47 of the Complaint.

Count 4: Alleged Retaliation (Ernest Hankerson)

48. Defendant realleges and reincorporates herein its responses to paragraphs 10 through 21 and 23 through 26 above, as if fully set forth herein, and denies the allegations in paragraph 48 of the Complaint.

49. Defendant denies the allegations and inferences in paragraph 49 of the Complaint.

50. Defendant denies the allegations and inferences in paragraph 50 of the Complaint.

51. Defendant denies the allegations and inferences in paragraph 51 of the Complaint.

Count 5: Alleged Retaliation (Cyrus Hawthorne)

52. Defendant realleges and reincorporates herein its responses to paragraphs 10 through 22 and 24 through 26 above, as if fully set forth herein, and denies the allegations in paragraph 52 of the Complaint.

53. Defendant denies the allegations and inferences in paragraph 53 of the Complaint.

54. Defendant denies the allegations and inferences in paragraph 54 of the Complaint.

55. Defendant denies the allegations and inferences in paragraph 55 of the Complaint.

PRAYER FOR RELIEF

56. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 56 of the Complaint.

57. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 57 of the Complaint.

58. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 58 of the Complaint.

59. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 59 of the Complaint.

60. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 60 of the Complaint.

61. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 61 of the Complaint.

62. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 62 of the Complaint.

63. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 63 of the Complaint.

64. Defendant denies any violation of the Title VII as alleged in the Complaint and denies Charging Parties are entitled to any of the relief sought in the Complaint and, therefore, denies the allegations in paragraph 64 of the Complaint.

JURY TRIAL DEMAND

65. Defendant admits that Plaintiff requests a jury trial. Defendant denies that Plaintiff is entitled to any remedy or relief or that any issue in this case is subject to be determined by a jury.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendant asserts the following defenses, without prejudice to its rights to argue that Plaintiff bears the burden of proof regarding some or all of these defenses:

FIRST DEFENSE

The claims in Plaintiff's Complaint are barred, in whole or in part, as they fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Any actions taken with respect to Charging Parties' employment were based on legitimate non-discriminatory and non-retaliatory reasons unrelated to Charging Parties' alleged protected characteristics or any alleged protected activity.

THIRD DEFENSE

Assuming, *arguendo*, Defendant had any improper motive toward either of the Charging Parties, it would have made the same decisions with regard to Charging Parties' employment, even in the absence of such a motive.

FOURTH DEFENSE

Defendant has made good faith efforts to prevent discrimination, harassment, and retaliation in its workplace, and thus cannot be liable for the decisions of its agents to the extent the challenged employment decisions were contrary to its efforts to comply with anti-discrimination, anti-harassment and anti-retaliation statutes. Defendant has a well-disseminated and consistently enforced policy against discrimination, harassment and retaliation, as well as reasonable and available procedures for receiving and investigating complaints of alleged discrimination, harassment or retaliation. Defendant did not act with malice or reckless indifference

to Charging Parties' protected rights and Charging Parties each unreasonably failed to take advantage of preventative or corrective opportunities offered by the Defendant. To the extent Charging Parties failed to use or otherwise avail themselves of these policies and procedures, their claims are barred.

FIFTH DEFENSE

All employment actions taken regarding the Charging Parties were reasonable, undertaken based on a good faith belief that the actions were in compliance with the law, and were without willfulness, malice, or reckless disregard of the law.

SIXTH DEFENSE

Charging Parties' status or rights under Title VII were not a motivating factor in Defendant's decisions relating to their employment.

SEVENTH DEFENSE

Charging Parties' claims are barred, in whole or part, because Defendant had no knowledge of any alleged protected characteristic or activity by either Charging Party when it made the decisions to terminate Charging Parties' employment.

EIGHTH DEFENSE

Charging Parties' claims are barred, in whole or in part, due to their failure to mitigate their alleged damages including, but not limited to, their failure to use reasonable diligence to seek and obtain comparable employment elsewhere. To the

extent either Charging Party seeks alleged emotional distress damages, his claims are further barred or reduced by his failure to mitigate his alleged damages by using reasonable diligence to seek treatment for any alleged emotional distress.

NINTH DEFENSE

Charging Parties' claims are barred, in whole or in part, due to the equitable doctrines of unclean hands, estoppel and/or waiver based upon their course of conduct during and/or after their employment.

TENTH DEFENSE

All or part of any damages alleged by Charging Parties for pain and suffering was the result of other personal experiences unrelated to the facts and circumstances set forth in the Complaint.

ELEVENTH DEFENSE

Charging Parties' claims are barred, in whole or in part, due to the applicable statute of limitations, and/or to the extent they have failed to exhaust their administrative remedies, failed to comply with administrative procedures and/or condition(s) precedent.

TWELTH DEFENSE

Defendant took affirmative measures to provide a workplace free from unlawful discrimination, harassment and retaliation and, therefore, Charging Parties' claims for punitive damages and other damages are barred.

THIRTEENTH DEFENSE

Defendant is entitled to a set off against Charging Parties' recovery, if any, for amounts Charging Parties' may owe to Defendant for compensation or property that either of the Charging Parties may have obtained from Defendant to which they were not entitled.

FOURTEENTH DEFENSE

Charging Parties' claims are barred, in whole or in part, due to the equitable doctrine of unjust enrichment, based upon Charging Parties' course of conduct during and/or after their employment.

FIFTEENTH DEFENSE

Charging Parties have been paid all amounts to which they are legally entitled.

SIXTEENTH DEFENSE

Any adverse employment action or detrimental changes in employment status suffered by Charging Parties was the direct and proximate result of their own misconduct in the workplace, such that Charging Parties are precluded from any recovery herein.

SEVENTEENTH DEFENSE

All employment actions taken regarding Charging Parties were reasonable, undertaken based on a good faith belief that the actions were in compliance with the law, and were without willfulness, malice, or reckless disregard of the law.

RESERVATION OF RIGHTS

Defendant reserves the right to bring any additional affirmative defenses that become known during the litigation of this matter.

WHEREFORE, Defendant respectfully requests that this Honorable Court: (i) enter judgment in its favor and against Plaintiff, (ii) award Defendant its cost of suit herein, (iii) award Defendant reasonable attorneys' fees as may be determined by the Court pursuant to any applicable law, rule, regulation, or agreement, and (iv) grant such other and further relief as this Court may deem just and proper.

DATED this 22nd day of November, 2022.

Respectfully submitted,

/s/ *Kristyne E. Kennedy*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2022, a true and correct copy of the foregoing was filed with the United States Middle District Clerk of the Court and using the CM/ECF system, which will send a Notice of Electronic Filing to Counsel of Record.

/s/ Kristyne E. Kennedy