

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division**

WILLIAM DEMARSE,)	
)	
Plaintiff,)	
)	Case No. 8:07-cv-00981-SDM-MSS
v.)	
)	
CRACKER BARREL OLD)	
COUNTRY STORE, INC.,)	
)	
Defendant.)	

**CRACKER BARREL OLD COUNTRY STORE, INC.’S ANSWER TO PLAINTIFF’S
COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW, Cracker Barrel Old Country Store, Inc. (“Defendant” or “Cracker Barrel”), and hereby responds to the Complaint filed by Plaintiff William DeMarse (“Plaintiff”) as follows:

PRELIMINARY STATEMENT

1.

Defendant admits that Plaintiff purports to seek declaratory and injunctive relief, costs and attorneys fees for purported age discrimination against Plaintiff “and those applicants.” Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 1 of the Complaint.

2.

Defendant admits that Plaintiff alleges violations of the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621, *et. seq.* (“ADEA”), but denies that any such

violations occurred. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 2 of the Complaint.

PURPORTED EXHAUSTION OF ADMINISTRATIVE REMEDIES

3.

Upon information and belief, Plaintiff filed a Charge of Discrimination alleging age discrimination against Defendant with the Equal Opportunity Employment Commission (“EEOC”) on or about June 29, 2005. Also upon information and belief, the EEOC issued Plaintiff a Notice of Right to Sue on or about March 29, 2007. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 3 of the Complaint.

4.

Defendant admits that this Court has subject matter jurisdiction over this proceeding. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 4 of the Complaint.

5.

Defendant admits that Plaintiff seeks declaratory, injunctive, and equitable relief pursuant to 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 2000e-5(k), but denies that Plaintiff is entitled to such relief under these statutes, or under any other laws. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 5 of the Complaint.

6.

Defendant admits that Plaintiff seeks costs and attorneys’ fees pursuant 42 U.S.C. § 2000e-5(k) and Federal Rule of Civil Procedure 54, but denies that Plaintiff is entitled to such

relief under this statute, or under any other law. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 6 of the Complaint.

VENUE

7.

Defendant admits that venue is appropriate with respect to those allegations concerning the restaurants it owns and operate within the Middle District of Florida. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 7 of the Complaint.

ALLEGED NATURE OF THIS ACTION

8.

Defendant admits that Plaintiff purports in this lawsuit to seek declaratory and injunctive relief on behalf of Plaintiff and “all applicants of Defendant who are similarly-situated,” and “restitution” on behalf of Plaintiff and “all applicants,” but denies that Plaintiff is entitled to such relief. Defendant expressly denies the existence of any purported group of individuals similarly-situated to Plaintiff. Defendant further denies that Plaintiff’s claims are appropriate for collective treatment. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 8 of the Complaint.

PLAINTIFF

9.

Upon information and belief, Defendant admits Plaintiff is a citizen and resident of the United States of America. Defendant denies that Plaintiff may properly act as a “representative Plaintiff” in this action, and it expressly denies the existence of any group of individuals

purportedly similarly-situated to Plaintiff. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 9 of the Complaint.

DEFENDANT

10.

Defendant admits that it is an “employer” as defined by the ADEA, that it engages in an industry affecting commerce and that it employs 15 or more regular employees. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 10 of the Complaint.

ALLEGED FACTUAL BACKGROUND

11.

Defendant admits that Plaintiff completed Cracker Barrel’s Management Assessment Test on or about November 17, 2004, and that this test was a part of Defendant’s interview process for managerial applicants. Defendant further admits that a series of voluntary “Demographic Information” questions appeared at the end of the Management Assessment Test completed by Plaintiff, on which Plaintiff opted to provide information about himself, including his approximate age. Defendant further admits that it later informed Plaintiff that he had not been selected to join Defendant’s Management-In-Training Program. Defendant admits that the italicized excerpt from its position statement included in Paragraph 11 of the Complaint is accurate. Defendant further admits that a redacted copy of the Background Verification Form completed by Plaintiff appears on page four of the Complaint, and that a redacted copy of the “Demographic Information” questions completed by Plaintiff appear on page 5 of the Complaint.

Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 11 of the Complaint.

12.

Defendant admits that Plaintiff alleges in this lawsuit that Defendant has engaged in a pattern or practice of age discrimination in its hiring practices, but explicitly denies any such wrongdoing. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 12 of the Complaint.

ALLEGED COLLECTIVE ACTION CLAIMS

13.

Defendant expressly denies that Plaintiff is similarly-situated to the alleged class of persons he purports to represent, the existence of which is expressly denied. Except as expressly admitted herein, Defendant denies the remaining allegations set forth in Paragraph 13 of the Complaint.

COUNT I: AGE DISCRIMINATION IN EMPLOYMENT ACT

14.

Defendant denies each and every allegation contained in Paragraph 14 of the Complaint. Defendant further denies Plaintiff is entitled to any of the relief sought in subparagraphs (A) through (G) following Paragraph 14 of the Complaint.

PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief sought in the Complaint, subparagraphs (A) through (D) inclusive, or to any relief of any nature whatsoever.

JURY TRIAL DEMAND

Defendant acknowledges Plaintiff's demand but denies the propriety of a trial, by jury or otherwise, on any or all of Plaintiff's allegations.

GENERAL DENIAL

To the extent not already specifically addressed above, Defendant denies each and every allegation not expressly admitted herein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Some or all of Plaintiff's claims fail to state a claim upon which relief may be granted by this Court.

SECOND DEFENSE

In the event that Defendant discovers or otherwise learns of evidence to which the "after acquired" evidence doctrine applies, as per McKennon v. Nashville Banner Publishing Co., 115 S. Ct. 879 (1995), Plaintiff shall be then and thereafter barred or limited from recovery or remedy pursuant to said doctrine.

THIRD DEFENSE

To the extent Plaintiff failed to satisfy some or all of the conditions precedent and/or other statutory prerequisites required under the ADEA, such claims are barred.

FOURTH DEFENSE

Plaintiff is not entitled to some or all of the relief required in the Complaint because neither Defendant nor any of its officers, directors, or managing agents committed any act or

omission with willful, malicious, or reckless disregard for Plaintiff's rights, nor did Defendant authorize or ratify any such act or omission.

FIFTH DEFENSE

Defendant denies that Plaintiff's age played any impermissible role in the employment decision(s) relating to Plaintiff and that every action taken by Defendant with regard to Plaintiff's employment was taken for legitimate, non-discriminatory business reasons, unrelated to Plaintiff's age. Alternatively, even if some impermissible motive were a factor in any of those decisions, which Defendant denies, the same decisions would have been reached for one or more legitimate, non-discriminatory business reasons.

SIXTH DEFENSE

Even if Defendant is found to have violated the ADEA, which Defendant expressly denies, the alleged violation was not willful and was contrary to Defendant's good-faith efforts to comply with federal and/or state law such that liquidated damages may not be imposed against it. Moreover, Plaintiff failed to plead sufficient facts to support recovery of such damages.

SEVENTH DEFENSE

Some or all of Plaintiff's claims are barred or reduced by his failure to exercise reasonable diligence to mitigate his alleged damages. Alternately, any claim for damages must be reduced by any pay, benefits or other compensation earned by Plaintiff for any period in question.

EIGHTH DEFENSE

Plaintiff's recovery is barred and/or limited to the extent he failed to accept an offer of employment in Defendant's Management-In-Training program on August 25, 2006, per *Ford Motor Company v. EEOC*, 458 U.S. 219 (1982).

NINTH DEFENSE

The group of persons whom Plaintiff purports to represent, the existence of which is expressly denied, is barred from pursuing their claims by their failure to abide by all the requirements of 29 U.S.C. § 216(b).

TENTH DEFENSE

This action is not appropriate for collective treatment because the group of individuals Plaintiff purports to represent is not similarly-situated and/or the claims asserted are matters in which individual questions predominate and are not appropriate for collective treatment.

ELEVENTH DEFENSE

The damages claimed by Plaintiff and the alleged group of persons which Plaintiff purports to represent, the existence of which is expressly denied, are barred to the extent they are speculative in nature.

TWELFTH DEFENSE

Notice to the alleged group which Plaintiff purports to represent, the existence of which is expressly denied, would be a violation of Defendant's due process rights.

THIRTEENTH DEFENSE

To the extent Plaintiff and the alleged class of persons in Plaintiff's alleged collective action (the existence of which is expressly denied) have failed to comply with the statutory

prerequisites and conditions precedent to bringing a collective action complaint against Defendant under the ADEA, the claim is barred.

FOURTEENTH DEFENSE

Some or all of Plaintiff's claims are barred to the extent they exceed the scope of any charge or complaint filed by Plaintiff with the EEOC and thus exceed the scope of any investigation reasonably related thereto.

FIFTEENTH DEFENSE

Any claim of Plaintiff, including a collective claim, which was not timely commenced within the limitations period provided by law is barred; in addition, the claims of members of the alleged collective action (the existence of which is expressly denied) are barred to the extent that such claims concern events which allegedly occurred more than 300 days preceding the filing of the Plaintiff's charge of discrimination with the EEOC, and this Court therefore lacks jurisdiction with respect to those claims.

PRAYER FOR RELIEF

WHEREFORE, Cracker Barrel respectfully requests that at the conclusion of this action, the Court grant it the following relief:

- A. Dismiss all of Plaintiff's claims in their entirety and with prejudice;
- B. Deny each and every prayer for relief identified in Plaintiff's Complaint; and
- C. Award against Plaintiff, Cracker Barrel's reasonable attorneys' fees and costs associated with defending this action, along with such other and further relief as the Court may deem just and proper.

Respectfully submitted, this 16th day of July, 2007.

FORD & HARRISON LLP

By: s/Todd S. Aidman _____
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Attorneys for Defendant
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 16, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

David J. Linesch
The Linesch Firm
700 Bee Pond Road
Palm Harbor, Florida 34683

s/Todd S. Aidman
Attorney

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