

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CLIVE B. HILGERT ¹ , ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	CASE NO. 7:07-cv-00094
	§	
GEORGE S. MAY INTERNATIONAL	§	
COMPANY,	§	
	§	
Defendant.	§	

DEFENDANT'S ANSWER

Defendant George S. May Company (“May”), files its answer in response to Clive B. Hilgert’s (“Plaintiff”) Complaint. May currently has a Rule 12(b)(6) motion pending before the Court, seeking dismissal of the majority of Plaintiff’s claims. Accordingly, May’s Answer addresses the remaining allegations and claims. Should the Court deny May’s Rule 12(b)(6) motion, in whole or part, or give notice that it intends to postpone its ruling, May will file an amended answer within 10 days after receiving notice, pursuant to Federal Rule of Civil Procedure 12(a)(4)(A).

Should the Court construe any of Plaintiff’s allegations as assertions of claims that are not addressed in May’s Answer or Rule 12(b)(6) motion, May respectfully denies all of the underlying allegations giving rise to those claims. Also, to the extent that any of Plaintiff’s affidavits² are considered part of his Complaint, May denies the allegations set forth in those affidavits.

¹ The docket sheet incorrectly lists the Plaintiff’s name as “Hilbert.”

² Plaintiff filed an affidavit with his Complaint on May 1, 2007 and another affidavit on July 13, 2007.

COUNTS 1 THROUGH 12

The statements made under the Headings “Count 1” through “Count 12” at the beginning of the Complaint are not allegations and thus do not require a specific admission or denial. To the extent that the statements are construed as allegations, May denies each allegation.

JURISDICTION AND VENUE

1. May admits the allegations set forth in paragraph 1.
2. May admits the allegations set forth in paragraph 2.
3. May admits the allegations set forth in paragraph 3.
4. May denies that plaintiff and all other unnamed persons have a valid claim against it, and May denies that more than one person is a plaintiff in this suit. Otherwise, May admits the allegations set forth in paragraph 4.

CLASS ACTION ALLEGATIONS

5. May denies the allegations set forth in paragraph 5.
6. May denies the allegations set forth in paragraph 6.
7. May admits that Plaintiff is not a proper class representative. Otherwise, May denies the allegations set forth in paragraph 7.
8. May denies the allegations set forth in paragraph 8.
9. May denies the allegations set forth in paragraph 9.
10. May denies the allegations set forth in paragraph 10.
11. May denies the allegations set forth in paragraph 11.
12. May denies the allegations set forth in paragraph 12.
13. May denies the allegations set forth in paragraph 13.
14. May denies the allegations set forth in paragraph 14.
15. May denies the allegations set forth in paragraph 15.

16. May denies the allegations set forth in paragraph 16.

THE PARTIES

17. May admits the allegations set forth in paragraph 17.

18. May denies the allegations set forth in paragraph 18.

19. May admits the allegations set forth in paragraph 19.

20. May admits the allegations set forth in paragraph 20.

21. May denies that any of its current or former clients have a cause of action against it, but admits that none of those clients are proper parties to this lawsuit.

22. May admits the allegations set forth in paragraph 22.

23. May denies the allegations set forth in paragraph 23.

24. May denies the allegations set forth in paragraph 24.

25. May admits that Plaintiff was once a special representative for the company. Otherwise, May denies the allegations set forth in paragraph 25.

FACTUAL BACKGROUND

26. May admits that the large majority of its employees are “at will.” Otherwise, May denies the allegations set forth in paragraph 26.

27. May admits that the large majority of its special representatives receive a car allowance and are paid on a commissions only basis. Otherwise, May denies the allegations set forth in paragraph 27.

28. May admits that the primary duty of special representatives is to sell survey services to potential client. Otherwise, May denies the allegations set forth in paragraph 28.

29. May admits that special representatives receive a commission for selling the surveys. Otherwise, May denies the allegations set forth in paragraph 29.

30. May admits the allegations set forth in paragraph 30.

31. May admits that the Employee Agreement defines, in part, the term “qualified sale.”
Otherwise, May denies the allegations set forth in paragraph 31.

32. May admits that it follows criteria for determining what constitutes a “qualified sale.”
Otherwise, May denies the allegations set forth in paragraph 32.

33. May admits the allegations set forth in paragraph 33.

34. May denies the allegations set forth in paragraph 34.

35. May denies the allegations set forth in paragraph 35.

36. May denies the allegations set forth in paragraph 36.

37. May denies the allegations set forth in paragraph 37.

38. May denies the allegations set forth in paragraph 38.

39. May denies the allegations set forth in paragraph 39.

40. May denies the allegations set forth in paragraph 40.

41. May denies the allegations set forth in paragraph 41.

42. May denies the allegations set forth in paragraph 42.

43. May denies the allegations set forth in paragraph 43.

44. May denies the allegations set forth in paragraph 44.

45. May denies the allegations set forth in paragraph 45.

46. May denies the allegations set forth in paragraph 46.

47. May denies the allegations set forth in paragraph 47.

48. May denies the allegations set forth in paragraph 48.

49. May denies the allegations set forth in paragraph 49.

50. May denies the allegations set forth in paragraph 50.

51. May denies the allegations set forth in paragraph 51.

- 52. May denies the allegations set forth in paragraph 52.
- 53. May denies that its business decisions are based on any legally protected status.
- 54. May denies the allegations set forth in paragraph 54.
- 55. May denies the allegations set forth in paragraph 55.
- 56. May admits that it only pays commissions for qualified sales. Otherwise, May denies the allegations set forth in paragraph 56.

**COUNT 6
BREACH OF CONTRACTS**

- 124. May incorporates its responses to the allegations incorporated in paragraph 124. May denies the allegations incorporated in paragraph 124 to which it has not previously responded.
- 125. May denies the allegations set forth in paragraph 125.
- 126. May denies the allegations set forth in paragraph 126.
- 127. May admits that it may cancel an appointment. Otherwise, May denies the allegations set forth in paragraph 127.
- 128. May admits the allegations set forth in paragraph 128.
- 129. May denies the allegations set forth in paragraph 129.
- 130. May denies the allegations set forth in paragraph 130.
- 131. May denies the allegations set forth in paragraph 131.

**COUNT 11
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

- 179. May incorporates its responses to the allegations incorporated in paragraph 179. May denies the allegations incorporated in paragraph 179 to which it has not previously responded.
- 180. May denies the allegations set forth in paragraph 180.
- 181. May denies the allegations set forth in paragraph 181.
- 182. May denies the allegations set forth in paragraph 182.

183. May denies the allegations set forth in paragraph 183.

184. May denies the allegations set forth in paragraph 184.

185. May denies the allegations set forth in paragraph 185.

CLAIM AGAINST GEORGE S. MAY INTERNATIONAL COMPANY FOR MONEY DAMAGES AND INJUNCTIONS

186. May incorporates its responses to the allegations incorporated in paragraph 186. May denies the allegations incorporated in paragraph 186 to which it has not previously responded.

187. May denies the allegations set forth in paragraph 187.

188. May denies the allegations set forth in paragraph 188.

189. May denies the allegations set forth in paragraph 189.

190. May denies the allegations set forth in paragraph 190.

191. May denies the allegations set forth in paragraph 191.

192. May denies the allegations set forth in paragraph 192.

193. May denies the allegations set forth in paragraph 193.

RELIEF REQUESTED

194. May denies the allegations set forth in paragraph 194 and its subparts.

195. May denies the allegations set forth in paragraph 195 and its subparts.

196. May denies the allegations set forth in paragraph 196 and its subparts.

197. May denies the allegations set forth in paragraph 197.

198. May denies the allegations set forth in paragraph 198.

DEFENSES

1. May incorporates its grounds for dismissal as set forth in its Rule 12(b)(6) motion, and reasserts the same as defenses to this lawsuit.

2. Plaintiff cannot recover punitive damages under Title VII or the ADEA because (among other reasons) Defendant makes reasonable good faith efforts to comply with those laws. *See Kolstad v. Amer. Dental Ass'n.*, 527 U.S. 526 (1999).

3. May invokes the applicable damages caps from Title VII and Chapter 41 of the Texas Civil Practices and Remedies Code, as well as all other limitations (constitutional, statutory, and common law) on awards of compensatory and punitive damages.

4. May denies that any of its challenged decisions were motivated at all by any protected status. In the alternative, if the jury finds that May was motivated at all by a protected status, then May asserts that it would have taken the same actions that it did for wholly legitimate and nondiscriminatory reasons. *See, e.g., Garcia v. City of Houston*, 201 F.3d 672, 676 (5th Cir. 2000).

5. Plaintiff is not a proper representative of the putative class, because, among other reasons (a) as a former employee, he cannot represent the interest of current employees; and (b) his claims are based on his individualized circumstances which are separate and distinct from issues involving other employees.

6. Plaintiff's breach of contract claim fails for lack of consideration.

7. Plaintiff's breach of contract claim fails because the conditions precedent to May's promise to pay a commission were not satisfied. Specifically, Plaintiff failed to produce qualified sales (*e.g.*, the prospective client had less than seven employees or less than \$500,000 in sales volume), the surveys in question were not conducted, and/or the survey fee was not collected from the prospective client. Each of these conditions precedent are listed in the Employment Agreement between May and Plaintiff.

PRAYER

Defendant, George S. May International Company, prays that Plaintiff's Complaint be dismissed in its entirety with prejudice, and that Defendant be awarded its costs, attorneys' fees, and such further relief as the court may determine appropriate.

Respectfully submitted

/s John L. Collins
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the counsel of record listed below by the Southern District of Texas ECF method or by certified mail, return receipt requested on the 23rd day of July, 2007.

Clive B. Hilgert
2500 N. 32nd Street
Apt. 2
McAllen, TX 78501

/s John L. Collins
John L. Collins