

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §

Plaintiff, §

v. §

Civil Action No. 5:14-CV-801-DAE

TAPRITE FASSCO §
MANUFACTURING, INC. §

Defendant. §

**DEFENDANT TAPRITE FASSCO MANUFACTURING, INC.’S ORIGINAL ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S ORIGINAL COMPLAINT**

Defendant Taprite-Fassco Manufacturing Inc. (“Taprite” or “Defendant”) respectfully submits this Original Answer and Affirmative Defenses (“Answer”) in response to Plaintiff Equal Employment Opportunity Commission’s (“EEOC”) Original Complaint in this action and states as follows:

I.
ORIGINAL ANSWER

Except as hereinafter expressly admitted, qualified, or otherwise answered, Defendant denies each and every allegation and assertion in Plaintiff’s Original Complaint (“Complaint”).

NATURE OF THE ACTION

The first, second, third, and fourth unnumbered paragraphs of the Complaint are preliminary statements to which no response is required. To the extent any response is required, Defendant acknowledges that Plaintiff alleges claims under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), the Equal Pay Act of 1963 (“EPA”), and Title I of the

Americans with Disabilities Act of 1990, as amended (“ADA”). Plaintiff also asserts this is an action under Title I of the Civil Rights Act of 1991; however Title I is not an independent cause of action and, therefore, to the extent Plaintiff suggests otherwise, Defendant denies that Plaintiff can bring a claim thereunder. Defendant denies all remaining factual allegations and/or legal conclusions in this paragraph. Defendant specifically denies any allegation or inference that it has engaged in any unlawful employment practices and further denies that Plaintiff or Eloisa Schlaff (“Schlaff”) are entitled to any relief.

JURISDICTION AND VENUE

1. Defendant admits this Court has subject matter jurisdiction over the claims asserted by Plaintiff pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 1337, and 28 U.S.C. § 1345. Defendant denies the allegations that jurisdiction is authorized by any other statute, including 28 U.S.C. § 451. Defendant denies all remaining factual allegations and/or legal conclusions in Paragraph 1 of the Complaint.

2. Defendant admits that venue is proper in this district. Defendant denies any allegation or inference that it has engaged in unlawful employment practices and further denies that Plaintiff or Schlaff are entitled to any relief. Defendant denies all remaining factual allegations and/or legal conclusions in Paragraph 2 of the Complaint.

PARTIES

3. Defendant admits that Plaintiff EEOC is an agency of the United States of America charged with the administration, interpretation and enforcement of the EPA, Title VII, and the ADA. Defendant denies all remaining factual allegations and/or legal conclusions in this paragraph. Defendant specifically denies any allegation or inference that Plaintiff’s interpretation of the EPA, Title VII, and the ADA is legally binding, that Plaintiff has satisfied

the statutory prerequisites to bringing suit in this case including but not limited to its duties to conciliate prior to filing suit, or that Plaintiff and/or Schlaff are entitled to recover damages or injunctive relief against Defendant.

4. Admitted.

5. Defendant admits that it has continuously been an employer engaged in an industry affecting commerce within the meaning of Title VII and the ADA in relation to Schlaff. Defendant is without sufficient information to form a belief as to the truth of the factual allegations regarding other unnamed employees in Paragraph 5 of the Complaint and therefore denies the same.

6. Defendant admits that at all relevant times it has been a covered entity within the meaning of the ADA in relation to Schlaff. Defendant is without sufficient information to form a belief as to the truth of the factual allegations regarding other unnamed employees in Paragraph 6 of the Complaint and therefore denies the same.

7. Defendant admits that it acted directly or indirectly as an employer within the meaning of the Fair Labor Standards Act (“FLSA”) in relation to Schlaff. Defendant is without sufficient information to form a belief as to the truth of the factual allegations regarding other unnamed employees in Paragraph 7 of the Complaint and therefore denies the same.

8. Defendant admits that it has continuously engaged in commerce or in the production of goods for commerce or, has continuously been an enterprise engage in commerce or in the production of goods for commerce within the meaning of the FLSA in relation to Schlaff. Defendant is without sufficient information to form a belief as to the truth of the factual allegations regarding any unnamed employees in Paragraph 8 of the Complaint and therefore denies the same.

STATEMENT OF CLAIMS

9. Defendant admits that more than thirty days prior to the institution of this lawsuit, Schlaff filed a charge with the EEOC alleging violations of the EPA, Title VII, and the ADA against Defendant. Defendant specifically denies that all conditions precedent to the institution of this lawsuit have been fulfilled including but not limited to the EEOC's duty to conciliate pursuant to 42 U.S.C. § 2000e-5(b). Defendant denies all remaining factual allegations and/or legal conclusions in Paragraph 9 of the Complaint.

EPA—Wages

10. Denied.

11. Denied.

12. Denied.

Title VII—Wages

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint, including any allegation or inference that it has engaged in unlawful employment practices and further denies that Plaintiff or Schlaff are entitled to any relief.

14. Denied.

15. Denied.

16. Denied.

Title VII and EPA —Retaliation

17. Defendant denies the allegations contained in Paragraph 17 of the Complaint. Defendant specifically denies any allegation or inference that it has engaged in unlawful

employment practices and that Schlaff opposed employment practices made unlawful by Title VII and/or the EPA. Defendant further denies that Plaintiff or Schlaff are entitled to any relief.

18. Denied.

19. Denied.

20. Denied.

ADA Claim

21. Defendant is without sufficient information to form a belief as to the truth of the factual allegations regarding Schlaff's medical condition contained in Paragraph 21 of the Complaint and therefore denies the same. Defendant denies all remaining factual allegations and/or legal conclusions in Paragraph 21 of the Complaint.

22. Defendant denies the factual allegations and/or legal conclusions contained in Paragraph 22 of the Complaint.

23. Defendant denies the allegations contained in Paragraph 23 of the Complaint. Defendant specifically denies that Schlaff satisfactorily performed her job duties while employed by Defendant.

24. Defendant is without sufficient information to form a belief as to the truth of the factual allegations and conclusions contained in Paragraph 24 of the Complaint regarding Schlaff's experience of pain in her hands or the cause of this pain and therefore denies the same. Defendant denies all remaining factual allegations and/or legal conclusions in Paragraph 24 of the Complaint.

25. Defendant denies the factual allegations and/or legal conclusions contained in Paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of the Complaint. Defendant specifically denies any allegation or inference that it refused requests from Schlaff to modify her work assignment in a way that would permit her to continue working or for reasonable accommodation. Defendant further denies any allegation or inference that reassigning Schlaff would constitute a reasonable accommodation under the ADA.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

PRAYER FOR RELIEF

Plaintiff's prayer is not an allegation and therefore requires no response. To the extent any response is necessary, Defendant denies any allegation or inference that it has engaged in unlawful employment practices and further denies that Plaintiff or Schlaff are entitled to any relief.

II. **AFFIRMATIVE DEFENSES AND OTHER MATTERS**

In addition to the factual and legal denials stated above, Defendant sets forth the following Affirmative Defenses to the allegations contained in the Complaint. Defendant reserves the right to amend this Answer with additional defenses as further information is obtained. Plaintiff's claims are barred, in whole or in part, by the following:

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. To the extent there was a wage disparity, an allegation which Defendant denies, the factor of sex provided no basis for the wage differential. Rather, the challenged wages were

paid pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, and/or a differential based on a factor other than sex.

3. To the extent that Plaintiff relies on any events, allegations, or claims occurring outside the applicable statute of limitations, those events, allegations, or claims are barred.

4. Defendant's conduct and treatment of Schlaff was based on legitimate, non-discriminatory and non-retaliatory reasons that were unrelated to Schlaff's alleged complaints of Equal Pay Act and/or Title VII violations, and no genuine issue of material fact to the contrary exists. In the alternative, if any action taken by Defendant was motivated in part by discrimination and/or retaliation, an allegation Defendant denies, Defendant would have taken the same action irrespective of such motive.

5. Plaintiff cannot state a claim for retaliation because Schlaff did not engage in protected conduct.

6. Plaintiff cannot state a claim for disability discrimination because Schlaff is not a qualified individual with a disability and no reasonable accommodation existed that would have allowed Schlaff to perform the essential functions of her job. Alternatively, Plaintiff cannot state a claim for disability discrimination because any reasonable accommodation for Schlaff would have caused an undue hardship on the operation of Defendant's business.

7. Plaintiff cannot recover damages for failure to accommodate Schlaff in violation of the ADA because Defendant consulted with Schlaff in good faith to identify and make a reasonable accommodation that would provide Schlaff with an equally effective opportunity that would not cause an undue hardship on the operation of Defendant's business.

8. Plaintiff cannot recover against Defendant to the extent that Schlaff failed to make reasonable efforts to mitigate her alleged damages. Alternatively, to the extent that Schlaff

has mitigated her alleged damages, Defendant is entitled to offset those amounts from any alleged damages.

9. To the extent Defendant discovers information after Schlaff's separation from employment revealing that Schlaff engaged in misconduct during her employment with Defendant, and Defendant would have discharged Schlaff for engaging in the misconduct had Defendant known about it before Schlaff separated from Defendant, the after-acquired evidence doctrine bars or limits Plaintiff's claims or damages.

10. If Defendant is found to have violated the Equal Pay Act, which allegations Defendant denies, Defendant neither knew that its conduct violated the Equal Pay Act nor showed reckless disregard for whether its actions complied with the Act. Consequently, Defendant's actions were not "willful" and only a two-year statute of limitations should apply.

11. If Defendant is found to have violated the Equal Pay Act, which allegation Defendant denies, any act or omission giving rise to such failure was in good faith, and Defendant had reasonable grounds for believing that such act or omission did not violate the Equal Pay Act. Further, liquidated damages are not appropriate to effectuate the purpose of the Equal Pay Act's anti-retaliation provision. Consequently, Defendant is not liable for liquidated damages pursuant to 29 U.S.C. § 216 or 29 U.S.C. § 260.

12. If Defendant is found to have used a disparity in pay that violates the Equal Pay Act, which allegations Defendant denies, punitive damages, damages for emotional distress, and/or damages for mental anguish are not recoverable under the Act.

13. If Defendant is found to have violated the anti-retaliation provision of the Equal Pay Act, Title VII, or the ADA, which allegations Defendant denies, Plaintiff cannot recover

mental anguish or emotional distress damages because any mental anguish or emotional distress was caused by factors other than Defendant's conduct.

14. If Defendant is found to have violated the anti-retaliation provision of the Equal Pay Act, Title VII, or the ADA which allegations Defendant denies, Plaintiff cannot recover punitive damages because at no time did Defendant act with malice or reckless indifference.

15. If Defendant is found to have violated Title VII or the ADA, which allegations Defendant denies, Plaintiff's request for compensatory and punitive damages is barred to the extent that it exceeds the statutory caps established by 42 U.S.C. §1981a(b)(3).

16. To the extent that Plaintiff failed to fulfill its statutory duties to conciliate its claims brought under Title VII and the ADA, those claims are barred.

17. Defendant reserves the right to rely upon such other defenses and affirmative defenses as may become available or apparent during discovery proceedings in this case.

Defendant prays that Plaintiff take nothing by this suit, that judgment be entered on behalf of Defendant, that Defendant recover its costs of suit and reasonable attorneys' fees, and such other relief to which Defendant may be entitled.

Respectfully submitted,

/s/ Laura E. O'Donnell

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**ATTORNEYS FOR TAPRITE-FASSCO
MANUFACTURING INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that on November 10, 2014, a copy of the foregoing instrument was served on all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE as follows:

Robert A. Canino
David Rivela
Equal Employment
Opportunity Commission
San Antonio Field Office
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San Antonio, Texas 78229-3555
Facsimile: (210) 281-7669

- **ECF**
- Certified Mail, RRR
 - Hand-Delivery
 - Over-Night Delivery
 - Facsimile
 - E-Mail
 - First-Class U.S. Mail

ATTORNEYS FOR PLAINTIFF

/s/ Laura O'Donnell

Laura O'Donnell