

**NO. DC-17-10121**

**ICHEL M. COOK,**

**Plaintiff,**

**v.**

**EBG, LLC d/b/a**

**EATZI’S MARKET & BAKERY,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**DALLAS COUNTY, TEXAS**

**116<sup>th</sup> JUDICIAL DISTRICT**

**DEFENDANT’S ORIGINAL ANSWER AND DEFENSES**

Defendant EBG, LLC d/b/a Eatzi’s Market & Bakery (“Defendant”) answers Plaintiff Ichel M. Cook’s (“Plaintiff”) Original Petition as follows:

**I.**  
**GENERAL DENIAL**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant denies each and every allegation contained in Plaintiff’s Original Petition (“Petition”) and any amendment or supplement thereto, and demands strict proof thereof by a preponderance of the credible evidence. With respect to any claim by Plaintiff for punitive damages, Defendant demands strict proof thereof by clear and convincing evidence.

**II.**  
**DEFENSES INCLUDING AFFIRMATIVE DEFENSES**

Defendant sets forth its defenses, including affirmative defenses, as follows:

1. Plaintiff’s Original Petition fails to state a valid claim.
2. Plaintiff has not been subjected to any adverse employment actions.
3. At all times during Plaintiff’s employment with Defendant, she was employed at-

will and could be discharged with or without notice and with or without cause so long as Defendant did not base its decision solely upon an unlawful reason.

4. All employment decisions made regarding or affecting Plaintiff were based upon legitimate, non-discriminatory, and non-retaliatory business reasons that were in no way related to Plaintiff's gender or alleged attempt to exercise her rights under any statute.

5. Plaintiff's injuries, if any, were caused by the acts of third parties and/or intervening or superseding causes and those acts or causes are a complete or partial bar to Plaintiff's claims.

6. Defendant has in place a clear and well-disseminated policy against discrimination and retaliation and a reasonable and available procedure for handling complaints thereof, which provides for prompt and effective responsive action. Some or all of Plaintiff's claims are barred because Plaintiff unreasonably failed to avail herself of the preventative or corrective opportunities provided by Defendant, or to avoid harm otherwise.

7. All decisions relating to the employment of Plaintiff were made in good faith and based on reasonable factors other than those prohibited by law, and would have been the same regardless of any protected class to which Plaintiff belongs.

8. With regard to Plaintiff's claims of discrimination or retaliation, claims that were not timely presented to the Texas Workforce Commission are barred because of limitations and Plaintiff's failure to exhaust administrative remedies.

9. Without conceding Plaintiff has suffered any damages because of any alleged wrongdoing by Defendant, Defendant pleads the damage caps and/or limits to punitive/exemplary or liquidated damages under the United States Constitution, Texas Labor Code § 21.2585, Texas Civil Practice & Remedies Code § 41.008, and all other applicable state or federal laws.

10. Without conceding Plaintiff has suffered any damages because of any alleged wrongdoing by Defendant, Plaintiff has failed to mitigate or minimize the alleged damages.

11. Defendant denies it acted willfully, recklessly, or maliciously, and, therefore, an award of punitive damages is not appropriate.

12. Defendant is not liable for punitive damages under state or local law because neither Defendant nor any employees sufficiently high in the company's corporate hierarchy committed any act with malice or reckless indifference to Plaintiff's legally protected rights, or approved, authorized, or ratified, or had actual knowledge, of any such acts.

13. Plaintiff's claims are barred in whole or in part to the extent they contain allegations exceeding the scope of any administrative charges she has filed.

14. Discovery has yet to commence. Plaintiff's claims and alleged damages, if any, may be barred by the doctrines of waiver, estoppel, the after-acquired evidence doctrine, and/or unclean hands.

15. Pursuant to Local Rule 1.08, Defendant asserts that Plaintiff failed to disclose the following pending related case to this Court: Cause No. CC-16-03169-B; *Ichel Maria Cook v. Philip J. Romano*; in the County Court at Law No. 2 of Dallas County, Texas.

16. Defendant reserves the right to add additional affirmative defenses and defenses as they appear applicable during the course of this litigation.

WHEREFORE, Defendant prays that Plaintiff take nothing by way of her Petition, that the Petition be dismissed with prejudice, and that Defendant be awarded its costs and fees incurred in defending against this action.

Respectfully submitted,

/s/ John B. Brown

John B. Brown

Texas State Bar No. 00793412

[john.brown@ogletreedeakins.com](mailto:john.brown@ogletreedeakins.com)

Jamie E. Brod

Texas State Bar No. 24087211

[jamie.brod@ogletreedeakins.com](mailto:jamie.brod@ogletreedeakins.com)

**OGLETREE, DEAKINS, NASH, SMOAK  
& STEWART, P.C.**

Preston Commons, Suite 500

8117 Preston Road

Dallas, Texas 75225

Telephone: 214-987-3800

Facsimile: 214-987-3926

And

Michael A. McCabe

Texas State Bar No. 24007628

[mmccabe@munckwilson.com](mailto:mmccabe@munckwilson.com)

Shain A. Khoshbin

Texas State Bar No. 11375975

[skhoshbin@munckwilson.com](mailto:skhoshbin@munckwilson.com)

Jessica L. Spaniol

Texas State Bar No. 24072360

[jspaniol@munckwilson.com](mailto:jspaniol@munckwilson.com)

**MUNCK WILSON MANDALA, LLP**

600 Banner Place Tower

12770 Coit Road

Dallas, Texas 75251

(972) 628-3600

(972) 628-3616 (*facsimile*)

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2017, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record, as follows:

John E. Wall, Jr.  
THE LAW OFFICE OF JOHN E. WALL, JR.  
5728 Prospect Avenue, Suite 2001  
Dallas, Texas 75206

*/s/ John B. Brown*

\_\_\_\_\_  
John B. Brown

31187622.2