

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
Case No.: 3:24-cv-00529-MOC-DCK**

CHRISTOPHER W. SMITH,

Plaintiff,

v.

ALLY FINANCIAL INC.,

Defendant.

ANSWER

Defendant Ally Financial Inc. (“Ally”) responds to the Complaint as follows:

ANSWER AND FIRST DEFENSE

Ally answers the correspondingly numbered paragraphs of the Complaint as follows:

Nature of the Action

1. The allegations of paragraph 1 constitute a legal conclusion to which no response is required. Ally expressly denies that it engaged in unlawful sexual and racial discrimination in the employment context.
2. Ally denies the allegations of paragraph 2.
3. Ally admits that its website contains certain demographic statistics regarding its employees. Ally denies the allegations of Paragraph 3 except as expressly admitted.
4. Ally denies the allegations of paragraph 4.
5. Ally admits that Plaintiff accepted an analyst position with Ally. Ally denies the allegations of paragraph 5 except as expressly admitted.
6. Ally denies the allegations of paragraph 6.

The Parties

7. Ally admits that Plaintiff is a Caucasian male. Ally lacks sufficient knowledge or information to determine the truth of the remaining allegations of paragraph 7 and therefore denies those allegations.

8. Ally admits the allegations of paragraph 8.

Jurisdiction and Venue

9. The allegations of Paragraph 9 constitute a legal conclusion that requires no response. To the extent a response is required, Ally admits that this Court has subject matter jurisdiction over the claims alleged in the Complaint. Ally denies the allegations of Paragraph 9 except as expressly admitted.

10. The allegations of paragraph 10 constitute legal conclusions that require no response. To the extent a response is required, Ally does not contest the Court's personal jurisdiction, and further admits that it does substantial business in North Carolina, that it employs more than 2,000 individual at its corporate center in Charlotte and that the positions Plaintiff applied for and held with Ally were based in Charlotte. Ally denies the allegations of paragraph 10 except as expressly admitted.

11. The allegations of paragraph 11 constitutes a legal conclusion that requires no response. To the extent a response is required, Ally does not contest venue in this district. Ally denies the allegations of paragraph 11 except as expressly admitted.

Fact Allegations

12. Ally denies the allegations of paragraph 12.

13. Ally admits that paragraph 13 contains quotations from Ally's Form 10-K attached as Exhibit A to the Complaint and that Ally employs a Chief Diversity Officer. Ally denies the

allegations of Paragraph 13 except as expressly admitted.

14. Ally admits that its website contains the language specifically stated within quotation marks in paragraph 14. Ally denies the allegations of paragraph 14 except as expressly admitted.

15. Ally admits that its 2023 Form 10-K contains the language specifically stated within quotation marks in paragraph 15. Ally denies the allegations of paragraph 15 except as expressly admitted.

16. Ally admits that its 2023 Form 10-K contains the language specifically stated within quotation marks in paragraph 16. Ally denies the allegations of paragraph 16 except as expressly admitted.

17. Ally admits that its website contains certain language regarding the demographics of its workforce and that it maintains certain statistics on the demographics of its workforce. Ally denies the allegations of paragraph 17 except as expressly admitted.

18. Ally admits that its 2023 Form 10-K contains the language specifically stated within quotation marks in paragraph 18, without added emphasis. Ally denies the allegations of paragraph 18 except as expressly admitted.

19. Ally admits that in 2023, it was hiring for three roles for which Bruce Bellamy, Director of Physical Security, was the hiring manager. Ally denies the allegations of paragraph 19 except as expressly admitted.

20. Ally admits that it was hiring for the following three roles: (1) Physical Security Intelligence Manager; (2) Senior Analyst - Physical Security Threat Preparedness; and (3) Analyst II – Security. Ally denies the allegations of paragraph 20 except as expressly admitted.

21. Ally admits that Plaintiff applied for three positions. Ally lacks sufficient knowledge or information to determine the truth of the remaining allegations of paragraph 21 and therefore denies those allegations.

22. Ally admits that Plaintiff attaches a resume as Exhibit B to the Complaint. Ally denies the allegations of paragraph 22 except as expressly admitted.

23. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 23 and therefore denies those allegations.

24. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 24 and therefore denies those allegations.

25. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 25 and therefore denies those allegations.

26. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 26 and therefore denies those allegations.

27. Ally lacks sufficient knowledge and information to determine the truth of the allegations of paragraph 27 and therefore denies those allegations.

28. Ally admits that Plaintiff applied for three open positions and that he reached out to Mr. Bellamy and offered to fill any of the positions for a starting salary of \$75,000 per year. Ally denies the allegations of paragraph 28 except as expressly admitted.

29. Ally denies the allegations of paragraph 29.

30. Ally admits that it considered Plaintiff's applications for the three positions and interviewed him for the senior analyst and analyst positions. Ally denies the allegations of paragraph 30 except as expressly admitted.

31. Ally denies the allegations of paragraph 31.

32. Ally admits that Plaintiff was interviewed by Chris Michel, Michael Pendrak, Cecil Brisbon, and Mr. Bellamy for the Analyst II – Security role. Ally denies the allegations of paragraph 32 except as expressly admitted.

33. Ally admits that it offered Plaintiff the Analyst II - Security role, that Plaintiff accepted the role, and that Ally offered Plaintiff the role based on good faith, honest, merit-based, and nondiscriminatory hiring practices. Ally denies the allegations of paragraph 33 except as expressly admitted.

34. Ally admits that it hired Rachel Stuckey, a white female, for the Physical Security Intelligence Manager role. Ally denies the allegations of paragraph 34 except as expressly admitted.

35. Ally admits that, before Ms. Stuckey started the Physical Security Intelligence Manager role at Ally, she spent two years and five months as a Security Risk Manager for Associate Vetting and a Program Manager at Walmart, and two years as a Senior Manager for Behavioral Threat Management at Walmart. Ally denies the allegations of paragraph 35 except as expressly admitted.

36. Ally admits that, before her employment with Walmart, Ms. Stuckey worked approximately one year and three months as an intel analyst for the International Institute for Counter-Terrorism in Israel. Ally denies the allegations of paragraph 36 except as expressly admitted.

37. Ally admits that it hired Ms. Stuckey for the Physical Security Intelligence Manager role because she was the most qualified candidate and that her experience included, among other things, (1) counterterrorism training in Israel; (2) a background in behavioral assessment and research; and (3) positions as a Senior Threat Manager and Security Risk Manager at Walmart. Ally denies the allegations of paragraph 37 except as expressly admitted.

38. Ally denies the allegations of paragraph 38.

39. Ally denies the allegations of paragraph 39.

40. Ally admits that it hired a female named Clarisa Nin to fill the Senior Analyst - Physical Security Threat Preparedness role. Ally denies the allegations of paragraph 40 except as expressly admitted.

41. Ally denies the allegations of paragraph 41.

42. Ally admits that it hired Jeffrey Barrett, a Black male, for a Senior Analyst role. Ally denies the allegations of paragraph 42 except as expressly admitted.

43. Ally denies the allegations of paragraph 43.

44. Ally denies the allegations of paragraph 44.

45. Ally admits the allegations of paragraph 45.

46. Ally admits the allegations of paragraph 46.

47. Ally denies the allegations of paragraph 47.

48. Ally denies the allegations of paragraph 48.

49. Ally denies the allegations of paragraph 49.

50. Ally admits that Plaintiff, during his employment with Ally, produced certain documents, including an executive domestic travel brief; an executive foreign travel brief; a hurricane safety brief; a spreadsheet with economic data; and a report regarding Citigroup demonstrations. Ally lacks sufficient knowledge or information to determine whether Plaintiff produced the other documents listed in paragraph 50 and therefore denies those allegations. Ally denies the remaining allegations of paragraph 50.

51. Ally admits that Plaintiff produced a draft executive domestic travel brief for a conference in Texas. Ally denies the allegations of paragraph 51 except as expressly admitted.

52. Ally denies the allegations of paragraph 52.

53. Ally denies the allegations of paragraph 53.

54. Ally denies the allegations of paragraph 54.

55. Ally denies the allegations of paragraph 55.

56. Ally denies the allegations of paragraph 56.

57. Ally denies the allegations of paragraph 57.

58. Ally admits that Plaintiff resigned and offered two weeks' notice on September 18, 2023. Ally denies the allegations of paragraph 58 except as expressly admitted.

59. Ally admits that Plaintiff had a conversation with Ms. Stuckey and an exit interview with a member of Ally's Human Resources team. Ally denies the allegations of paragraph 59 except as expressly admitted.

60. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 60 and therefore denies those allegations.

61. Ally denies the allegations of paragraph 61.

62. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 62 and therefore denies those allegations.

63. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 63 and therefore denies those allegations.

64. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 64 and therefore denies those allegations.

65. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 65 and therefore denies those allegations.

66. Ally lacks sufficient knowledge or information to determine the truth of the allegations of paragraph 66 and therefore denies those allegations.

67. Ally denies the allegations of paragraph 67.

68. Ally admits that Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on December 13, 2023, and that the Commission issued a Determination and Notice of Rights, attached as Exhibit C to the Complaint, on April 22, 2024. Ally denies the allegations of paragraph 68 except as expressly admitted.

CLAIMS FOR RELIEF

Count I

69. Ally realleges its responses to paragraphs 1-68 above and incorporates them herein by reference.

70. The allegations of paragraph 70 constitute a legal conclusion that requires no response. To the extent a response is required, Ally denies that it discriminated against Plaintiff on any basis outlawed under Title VII.

71. Ally denies the allegations of paragraph 71.

72. Ally denies the allegations of paragraph 72.

73. Ally denies the allegations of paragraph 73.

74. Ally denies the allegations of paragraph 74.

Count II

75. Ally realleges its responses to paragraphs 1-74 above and incorporates them herein by reference.

76. The allegations of paragraph 76 constitute a legal conclusion that requires no response. To the extent a response is required, Ally denies that it discriminated against Plaintiff on the basis of race or any other protected rights.

77. The allegations of paragraph 77 constitute legal conclusions that require no response. To the extent a response is required, Ally denies the allegations that it discriminated

against Plaintiff on the basis of race and denies that Plaintiff is entitled to any relief, including damages.

78. The allegations of paragraph 78 constitute legal conclusions that require no response. To the extent a response is required, Ally denies that it discriminated against Plaintiff on the basis of race in any manner.

79. The allegations of paragraph 79 constitute legal conclusions that require no response. To the extent a response is required, Ally denies that it discriminated against Plaintiff on the basis of race or sex in any manner.

80. Ally denies the allegations of paragraph 80.

81. Ally denies the allegations of paragraph 81.

82. Ally denies the allegations of paragraph 82.

Count III

83. Plaintiff realleges its responses to paragraph 1-82 above and incorporates them herein by reference.

84. The allegations of paragraph 84 constitute legal conclusions that require no response. To the extent a response is required, Ally denies that Plaintiff was subjected to discrimination and denies that Plaintiff resigned as a result of alleged discrimination.

85. Ally denies the allegations of paragraph 85.

86. Ally denies the allegations of paragraph 86.

87. Ally denies the allegations of paragraph 87.

SECOND DEFENSE

Plaintiff's claims are barred because at all times Ally acted for legitimate nondiscriminatory reasons.

THIRD DEFENSE

At all times relevant to this action, Ally acted in good faith and in full compliance with all applicable laws.

FOURTH DEFENSE

Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred or limited by the doctrine of after-acquired evidence.

FIFTH DEFENSE

Plaintiff's claims are barred because Plaintiff voluntarily resigned from his employment with Ally.

SIXTH DEFENSE

To the extent Plaintiff has suffered damages from the conduct alleged in the Complaint, which Ally denies, Ally was not the legal or proximate cause of such damages.

SEVENTH DEFENSE

Plaintiff's claims are barred to the extent Plaintiff has failed to make reasonable efforts to mitigate his damages, and his claim for lost earnings must be reduced by compensation that he has received or should have received.

EIGHTH DEFENSE

Plaintiff's claims for punitive damages are barred because an award of punitive damages in this case would violate the due process clause of the Fifth and Fourteenth Amendments and the prohibition on excessive fines clause of the Eighth Amendment to the United States Constitution.

NINTH DEFENSE

Plaintiff's claims are barred by the equitable doctrines of laches, waiver, estoppel, avoidable consequences, and unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Ally prays the Court for the following relief:

1. That the Court dismiss the Complaint with prejudice and that the Plaintiff have and recover nothing from Ally;
2. That the Court tax the costs of this action, including reasonable attorneys' fees, against Plaintiff; and
3. That the Court award Ally any other relief deemed just and proper.

This 22nd day of July, 2024.

s/Charles E. Johnson

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