

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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|--------------------------------|---|----------------------------|
| DONRUDY LOISEAU et. al. | : | CIVIL ACTION NO. |
| Plaintiffs | : | 3:22-cv-01485 (JCH) |
| | : | |
| v. | : | |
| | : | |
| BOZZUTO’S INC. et. al. | : | |
| Defendants | : | APRIL 15, 2024 |

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES
TO SECOND AMENDED COMPLAINT**

Defendants, Bozzuto’s, Inc. (“Bozzuto’s”), James Jones, Charles B. Cerreta III and Joel Santiago, hereby answer Plaintiffs’ Second Amended Class Action Complaint (“Second Amended Complaint”) (Dkt. #49) by admitting, denying, averring and asserting affirmative defenses thereto as follows:

I. INTRODUCTION

1. This paragraph contains Plaintiffs’ characterization as to the nature of this action as to which no response is required. To the extent a response is required, Defendants deny any and all claimed discriminatory actions and/or deprivations of rights alleged by Plaintiffs for themselves and on behalf of other purportedly similarly situated Black or African-American employees.

2. Deny.
3. Deny.
4. Deny.
5. Deny.

II. ADMINISTRATIVE PROCEDURES

6. Deny that Plaintiffs and all putative class members filed timely charges of discrimination with the CHRO/EOOC or met the administrative pre-requisites to filing and exhausting individual and/or class action claims under Title VII or CFEPA.

Defendants are without sufficient information to be able to admit or deny any remaining allegations in this paragraph and leave Plaintiffs to their proof.

7. Deny.

III. JURISDICTION AND VENUE

8. This paragraph contains Plaintiffs' characterization as to jurisdiction to which no response is required. To the extent a response is required, Defendants leave Plaintiffs to their proof.

9. This paragraph contains Plaintiffs' characterization as to venue to which no response is required. To the extent a response is required, Defendants leave Plaintiffs to their proof.

10. This paragraph contains Plaintiffs' characterization as to jurisdiction to which no response is required. To the extent a response is required, Defendants leave Plaintiffs to their proof.

11. This paragraph calls for a legal conclusion which does not require a response. To the extent a response is required, Defendants leave Plaintiffs to their proof.

IV. PARTIES

12. Defendants are without sufficient information to be able to admit or deny the allegations in this paragraph and leave Plaintiffs to their proof.

13. Defendants are without sufficient information to be able to admit or deny the allegations in this paragraph and leave Plaintiffs to their proof.

14. Defendants are without sufficient information to be able to admit or deny the allegations in this paragraph and leave Plaintiffs to their proof.

15. Admit.

16. Aver that James Jones worked as a manager at Bozzuto's facility located at 400 Frontage Road, in North Haven, Connecticut 06473 ("North Haven") at times relevant to this Second Amended Complaint and resides in Connecticut. As to any remaining allegations in this paragraph, Defendants leave Plaintiffs to their proof.

17. Aver that Charles B. ("Chuck") Cerreta III worked as a manager at Bozzuto's in North Haven at times relevant to this Second Amended Complaint and resides in Connecticut. As to any remaining allegations in this paragraph, Defendants leave Plaintiffs to their proof.

18. Aver that Joel Santiago worked as a manager at Bozzuto's in North Haven at times relevant to this Second Amended Complaint and resides in Connecticut. As to any remaining allegations in this paragraph, Defendants leave Plaintiffs to their proof.

V. FACTS

19. Aver that Plaintiff Hebron held the production position of Selector from May 15, 2017 to July 8, 2018 at Bozzuto's in the warehouse in North Haven and that he was an at-will employee at all times during his employment at Bozzuto's. Deny any remaining allegations in this paragraph.

20. Aver that Bozzuto's paid Plaintiff Hebron various hourly rates when he worked as a Selector. Aver that Mr. Jones has held various supervisor and manager positions at Bozzuto's in North Haven from 1998 to the present. Deny any remaining allegations in this paragraph.

21. Aver that Plaintiff Hebron held the support positions of Clerk (Pallett Returns) and then Clerk (Returns Bay) from July 8, 2018 to October 13, 2019 and the production position of Forklift Operator from October 13, 2019 to March 11, 2020 at Bozzuto's in the warehouse in North Haven. Deny any remaining allegations in this paragraph.

22. Defendants are without sufficient information to be able to admit or deny who Plaintiff Hebron claims to have spoken to and what they supposedly complained about and leave Plaintiffs to their proof. Aver that Mr. Cerreta was Plaintiff Hebron's manager from July 8, 2018 to October 13, 2019. Deny any remaining allegations in this paragraph.

23. Deny.

24. Aver that Bozzuto's terminated an employee named Josh on October 10, 2018 for violating company policies regarding misrepresentation of information and stealing time. Deny any remaining allegations in this paragraph.

25. Aver that an employee named Abidin a/k/a Dino worked as a Selector from January 3, 2012 through March 9, 2014 and then as a Loader from March 9, 2014 to date and has been paid at various hourly rates. Deny any remaining allegations in this paragraph.

26. Deny.

27. Deny.

28. Defendants are without sufficient information to be able to admit or deny the allegations in this paragraph and leave Plaintiffs to their proof.

29. Defendants are without sufficient information to be able to admit or deny the allegations in this paragraph and leave Plaintiffs to their proof.

30. Aver that Plaintiff Hebron held the production position of Forklift Operator from October 13, 2019 to March 11, 2020 at Bozzuto's in the warehouse in North Haven and was paid \$16.50 per hour.

31. Aver that Mr. Jones has held various supervisor and manager positions at Bozzuto's in North Haven from 1998 to the present. Deny any remaining allegations in this paragraph.

32. Aver that an employee named Justin worked as a Forklift Operator at Bozzuto's from September 29, 2014 to July 5, 2015 and from October 23, 2016 to December 12, 2019 and was paid at various hourly rates. Defendants are without sufficient information to be able to admit or deny the remaining allegations in this paragraph and leave Plaintiffs to their proof.

33. Defendants are without sufficient information to be able to admit or deny the allegations in this paragraph and leave Plaintiffs to their proof.

34. Aver that an employee named Justin worked as a Loader at Bozzuto's from March 15, 2020 to December 24, 2020 and he was paid at a rate commensurate with that position. Deny any remaining allegations in this paragraph.

35. Aver that Mr. Jones has held various supervisor and manager positions at Bozzuto's in North Haven from 1998 to the present. Deny any remaining allegations in this paragraph.

36. Defendants are without sufficient information to be able to admit or deny who Plaintiff Hebron claims to have "overheard" and leave Plaintiffs to their proof. Deny any remaining allegations in this paragraph.

37. Defendants are without sufficient information to be able to admit or deny who Plaintiff Hebron claims to have "heard" and leave Plaintiffs to their proof. Deny any remaining allegations in this paragraph.

38. Defendants are without sufficient information to be able to admit or deny who Plaintiff Hebron claims to have "heard" and leave Plaintiffs to their proof. Deny any remaining allegations in this paragraph.

39. Defendants are without sufficient information to be able to admit or deny who Plaintiff Hebron claims to have been "told" or "observed" and leave Plaintiffs to their proof. Deny any remaining allegations in this paragraph.

40. Defendants are without sufficient information to be able to admit or deny who Plaintiff Hebron claims another employee "heard" or "confirmed" and leave Plaintiffs to their proof. Deny any remaining allegations in this paragraph.

41. Aver that Plaintiff Hebron voluntarily resigned his position as Forklift Operator at Bozzuto's in the warehouse in North Haven on March 11, 2020; was rehired

as a Forklift Operator there on September 20, 2020; remained a Forklift Operator there until he voluntarily resigned again on August 9, 2021; and was paid various hourly rates as Forklift Operator there. Aver that Mr. Jones has held various supervisor and manager positions at Bozzuto's in North Haven from 1998 to the present. Deny any remaining allegations in this paragraph.

42. See Response to Paragraph 41.

43. See Response to Paragraph 41.

44. See Response to Paragraph 41.

45. Aver that Plaintiff Small held the production position of Selector from January 22, 2018 to February 14, 2021 at Bozzuto's in the warehouse in North Haven and that he was an at-will employee at all times during his employment at Bozzuto's. Deny any remaining allegations in this paragraph.

46. Aver that Bozzuto's paid Plaintiff Small various hourly rates when he worked as a Selector. Aver that Mr. Santiago (Hispanic) has held various supervisor and manager positions at Bozzuto's in North Haven from 2001 to the present. Deny any remaining allegations in this paragraph.

47. See Response to Paragraph 45. As to any remaining allegations in this paragraph, Defendants leave Plaintiffs to their proof.

48. Deny.

49. Deny.

50. Aver that an employee named Matt was promoted to the exempt position of Support Supervisor on January 9, 2020 at Bozzuto's in the warehouse in North Haven and received a salary increase at such time commensurate with that position. As

to any remaining allegations in this paragraph, Defendants leave Plaintiffs to their proof.

51. Aver that Plaintiff Small held the support position of Product Integrity Clerk (“PIC”) from February 14, 2021 to August 12, 2022 at Bozzuto’s in the warehouse in North Haven until his employment was terminated after he took an unauthorized break for 2 hours and 31 minutes on August 8, 2022 and after he had been previously disciplined for stealing company time. Aver that Plaintiff Small was assigned to the “meat room” while working in the PIC position. As to any remaining allegations in this paragraph, Defendants leave Plaintiffs to their proof.

52. Aver that Bozzuto’s provided employees assigned to the “meat room” a 15 minute paid break and a 30 minute unpaid break during their shift. Deny any remaining allegations in this paragraph.

53. Aver that another African-American employee was assigned to work in the “meat room” during the time Plaintiff Small worked there. Aver that Mr. Jones has held various supervisor and manager positions at Bozzuto’s in North Haven from 1998 to the present. Deny any remaining allegations in this paragraph.

54. See Response to Paragraph 51.

55. Aver that Plaintiff Loiseau held the production position of Selector from May 11, 2020 to August 1, 2020 at Bozzuto’s in the warehouse in North Haven and that he was an at-will employee at all times during his employment at Bozzuto’s. Deny any remaining allegations in this paragraph.

56. Aver that Plaintiff Loiseau held the support position of PIC from August 2, 2020 to February 8, 2021 at Bozzuto’s in the warehouse in North Haven. Deny any remaining allegations in this paragraph.

57. Aver that in accordance with Bozzuto's Bid Policy & Procedure for hourly warehouse and production employees ("Bid Policy"), Bozzuto's posted bids on the employee bulletin board in North Haven on December 2, 2020 for two open warehouse production positions of Forklift Operator/Selector positions at one of its four Cheshire, CT facility. Aver that on this same date, Plaintiff Loiseau called the Bid Hotline and left a voice message expressing his interest in these two positions.

58. Aver that in accordance with its Bid Policy, Bozzuto's does not inform any applicant whether or not they are qualified when they initially apply for the position. Rather, once the posting period has expired and the bid is closed, Bozzuto's posts the names of all candidates who bid for the position(s) on the employee bulletin board. This posting further provides information about, among other things, the seniority and bid rank of the applicants, and with respect to any bid applicants who did not meet the eligibility requirements, the words "not eligible" are stated.

Aver that On December 9, 2020, Bozzuto's posted on the board in North Haven the names of all candidates (including Plaintiff Loiseau) who bid for the two Forklift Operator/Selector positions, which posting showed that he was not eligible for either position (because per the Bid Policy, no employees may transfer/bid out of any position if they have been in their current position for less than six months as he had been at that time). This posting further showed that another employee was similarly ineligible as well.

Aver that Mr. Cerreta supervised Plaintiff Loiseau during his employment at Bozzuto's in the warehouse in North Haven.

59. Aver that Plaintiff Loiseau held the support position of Quality Control (“QC”) from February 9, 2021 to July 14, 2021 at Bozzuto’s in the warehouse in North Haven. Deny any remaining allegations in this paragraph.

60. As to the first sentence, Defendants are without sufficient information to be able to admit or deny why Plaintiff Loiseau accepted the QC position and leave Plaintiffs to their proof. Deny remaining allegations in this sentence. As to the second sentence, aver that the pay rate for two Forklift/Selector positions for which Plaintiff Loiseau applied but was not eligible at Bozzuto’s Cheshire, CT facility was more than the rate of \$16.10 per hour paid to Plaintiff in the PIC position he then held at the time he responded to the bid posting for these two positions. Deny any remaining allegations in this paragraph.

61. Aver that Bozzuto’s paid Plaintiff \$16.50 per hour in his QC position. Defendants are without sufficient information to be able to admit or deny what Plaintiff Loiseau may “believe” and leave Plaintiffs to their proof. Deny any remaining allegations in this paragraph.

62. Deny.

63. Deny.

64. Deny.

65. Deny.

66. Deny.

67. Aver that at 4:28pm on Friday, June 18, 2021, Plaintiff Loiseau sent an email to Janelle Margolies in Human Resources at Bozzuto’s and that Ms. Margolies subsequently forwarded this email to Christine Rindos (mixed race – Hispanic/African-

American/Caucasian), then Human Resources Manager at Bozzuto's. Deny any remaining allegations in this paragraph.

68. Aver that Matthew Voloshin (White) was working as a Produce Loader on June 18, 2021 at Bozzuto's North Haven facility and that Plaintiff Loiseau's email states what it states. Deny any remaining allegations in this paragraph.

69. Aver that there was video footage from surveillance of the incident on June 18, 2021 between Plaintiff Loiseau and Mr. Voloshin. Deny any remaining allegations in this paragraph.

70. Aver that on June 18, 2021, Plaintiff Loiseau drove his forklift and found Mr. Santiago, who was the manager on duty on June 18, 2021, and advised Mr. Santiago about an incident with Mr. Voloshin. Mr. Santiago told Plaintiff Loiseau to follow him back to find Mr. Voloshin, which Plaintiff Loiseau did, and then after locating Mr. Voloshin, Mr. Santiago spoke to Mr. Voloshin privately.

Aver that when speaking to Mr. Santiago, Mr. Voloshin denied using any racial slurs in the incident involving Plaintiff Loiseau. After his discussion with Mr. Voloshin, Mr. Santiago observed Mr. Voloshin trying to apologize to Plaintiff Loiseau for arguing and Plaintiff Loiseau refusing to accept the apology.

Aver that Mr. Santiago sent the following email to Ms. Rindos at 7:32pm on June 18, 2021:

There was a verbal altercation between Donrudy Loiseau 16433 and Mathew Voloshin 17252 [White/Caucasian]. DonRudy complained that Matt called him Effing N word and was very nasty to him. Mathew said he did yell at him and said to him to move the F out of the way but he did not call him the N word. I tried to fix this by having a word with both but DonRudy got really loud so I told him to leave the scene and I talked to Mathew. Mathew acknowledged his mistake

and tried to apologize to DonRudy in front of me but DonRudy would not have it. I told Mathew to leave and I said to DonRudy this was handled and assured him this would never happen again and we left it at that. Next thing I know I have associates telling me that DonRudy sent an e mail to HR about this incident. I was going to talk to him after I heard this but he had already gone home for the day. This is for informational purposes and I guess we will deal with this upon your return to work here Tuesday. I have a statement of this from Mathew who is still here.

Deny any remaining allegations in this paragraph.

71. See Response to Paragraph 70. Deny any remaining allegations.

72. See Response to Paragraph 70. Deny any remaining allegations.

73. See Response to Paragraph 70. Deny any remaining allegations.

74. Aver that after receiving Plaintiff Loiseau's email (from Ms. Margolies) and Mr. Santiago's email, Ms. Rindos contacted Mr. Jones and Mr. Santiago on Saturday, June 19, 2021, and made plans to meet with them (and Mr. Cerreta) in North Haven on Tuesday, June 22, 2021. Ms. Margolies also notified Plaintiff Loiseau on Monday, June 21, 2021 that Ms. Rindos would be in touch with him to discuss this matter.

Aver that when Ms. Rindos arrived in North Haven on June 22, 2021 to investigate the matter, she first interviewed Plaintiff Loiseau, with Mr. Santiago and Mr. Jones present. At this meeting (among other things): (a) Mr. Jones asked Plaintiff Loiseau if he was sure of what he had reported Mr. Voloshin said to him and if Mr. Voloshin had spit on his forklift. Plaintiff Loiseau responded: "Yes that is correct."; and (b) Plaintiff Loiseau "was advised that the situation would be evaluated in its entirety and someone, HR or Operations would get back to [him] after the conclusion of the investigation."

Aver that Ms. Rindos, Mr. Jones and Mr. Santiago subsequently interviewed Mr. Voloshin regarding the allegations made against him. Ms. Rindos summarized this interview as follows:

[Mr. Voloshin] claimed that while riding in the meat aisle, he was trying to pass Donrudy, but his forklift clipped the pallet. Matt claimed he said "You are always in the way!" Then claimed that Donrudy said "What the f**ck did you say?!" and Matt responded with "Get the he** out of the way!" and that is when Donrudy responded with "Go f**k yourself." At which point Matt yelled back at Donrudy and stated "Get out of my face." Matt admitted that there was a verbal altercation between the two of them and he had attempted to apologize to Donrudy on the day of the incident, June 18th, 2021. He was only apologizing due to his action, but did no spit at Donrudy and did not use any racial slurs towards him."

Aver that Ms. Rindos, Mr. Jones, Mr. Santiago and Mr. Cerreta reviewed video footage from surveillance of the incident on June 18, 2021. The video showed that the pallet on Plaintiff Loiseau's forklift did, in fact, get clipped from Mr. Voloshin's forklift, at which point both of them exited their vehicles and exchanged words. The video further showed that both of them were throwing their hands in the air and seemed to both have aggression towards each other. The video did not show Mr. Voloshin spitting on Plaintiff Loiseau's forklift as he claimed. There was no audio accompanying the video.

Aver that after interviewing Plaintiff Loiseau and Mr. Voloshin and reviewing the video, Mr. Rindos completed her investigation and issued her report, summarizing the evidence that confirmed or denied the allegations and concluding as follows:

To conclude, the accused, Matthew Voloshin denied any racial slurs towards to accuser, Donrudy Loiseau. After meeting with both Matthew and Donrudy, in addition to viewing the video tape on surveillance, it is concluded that there was in fact a verbal altercation between both associates. However, due to the fact that the surveillance video does not have sound on it, it cannot be confirmed or

denied as to what exactly what was said by each of the associates. There was admission from Matthew Voloshin that words were exchanged by both parties involved. It seems that both parties contributed to the verbal altercation that took place on June 18, 2021.

Aver that after completing her investigation into this incident, Ms. Rindos advised Mr. Jones and Mr. Cerreta to issue Plaintiff Loiseau and Mr. Voloshin a verbal counseling for violating company policy against engaging in a verbal argument with a co-worker. Ms. Rindos believed that Mr. Jones and Mr. Cerreta were going to respond to Plaintiff Loiseau and Mr. Voloshin following the conclusion of the investigation, and therefore, Ms. Rindos did not contact Plaintiff Loiseau directly before Ms. Rindos closed the investigation and went on medical leave on June 24, 2021. Deny any remaining allegations in this paragraph.

75. See Response to Paragraph 74. Deny any remaining allegations.

76. Aver that Plaintiff Loiseau never reported any such behavior to Bozzuto's on or after the alleged date. Aver that Mr. Cerreta, Mr. Jones and Mr. Santiago deny engaging in any such behavior towards Plaintiff Loiseau. Defendants are without sufficient information to be able to admit or deny any remaining allegations in this paragraph and leave Plaintiffs to their proof.

77. See Response to Paragraph 74. Deny any remaining allegations.

78. Defendants are without sufficient information to be able to admit or deny what Plaintiff Loiseau "perceived" and leave Plaintiffs to their proof. Deny that Bozzuto's management was "ganging up on" Plaintiff Loiseau and "talking like they were against" Plaintiff Loiseau.

79. See Response to Paragraph 74. Deny any remaining allegations.

80. See Response to Paragraph 74. Deny any remaining allegations.

81. See Response to Paragraph 74. Deny any remaining allegations.

82. See Response to Paragraph 74. Deny any remaining allegations.

83. See Response to Paragraph 74. Additionally, aver that: (a) Plaintiff Loiseau did not request any movement and/or changes to be separated from Mr. Voloshin in the workplace; (b) Plaintiff Loiseau has testified that this was an isolated incident with Mr. Voloshin on June 18, 2021, with the only evidence being conflicting statements as to what occurred and a video with no sound to corroborate either's story; and (c) prior to this alleged incident, Plaintiff Loiseau has testified that Mr. Voloshin had never made any comments to Plaintiff Loiseau about his race. Deny any remaining allegations.

84. See Response to Paragraph 83. Deny any remaining allegations.

85. See Responses to Paragraph 83. Deny any remaining allegations.

86. Aver that on July 6, 2021, Plaintiff Loiseau left work early without telling his supervisor on duty (Mr. Cerreta). Thereafter, on July 8, 2021, Plaintiff Loiseau did not report to work. When Plaintiff Loiseau returned to work on July 9, 2021, Mr. Cerreta issued him: (a) a Corrective Review to serve as a verbal warning for his unscheduled absence in accordance with Bozzuto's Hourly Attendance & Rewards Policy ("Attendance Policy"), in which Plaintiff Loiseau was advised that he had "earned 6.5 attendance points" since March 1, 2021 and that warnings were "issued at 6, 8 and 10 points"; and (b) a second Corrective Review to serve as a warning regarding what Mr.

Cerreta initially determined was Plaintiff being a “no-call, no-show” on July 8, 2021.¹

Aver that after receiving the warning for being a “no-call, no-show,” Plaintiff Loiseau told Mr. Cerreta on July 9, 2021 that he had called out and showed Mr. Cerreta the phone number and duration of the call he made to Bozzuto’s on July 8, 2021. In response, Mr. Cerreta stated: “Ok, you did call,” but upon further investigation, Mr. Cerreta determined that Plaintiff Loiseau did not call the appropriate number to report his absence. Nevertheless, Mr. Cerreta informed Plaintiff Loiseau that he was voiding the warning regarding Plaintiff Loiseau being a “no-call, no-show” and that warning was, in fact, voided. The separate warning for the unscheduled absence itself was maintained. Deny any remaining allegations in this paragraph.

87. See Response to Paragraph 86. Deny any remaining allegations.

88. See Response to Paragraph 86. Deny any remaining allegations.

89. See Response to Paragraph 86. Deny any remaining allegations.

90. See Response to Paragraph 86. Deny any remaining allegations.

91. See Response to Paragraph 86. Deny any remaining allegations.

92. See Response to Paragraph 86. Deny any remaining allegations.

93. Aver that Plaintiff Loiseau used a PC cart (i.e., a mobile computer work station) in his QC position to move around the building and assist him in completing his daily responsibilities. However, the PC cart was not dedicated for Plaintiff Loiseau’s use only and Inventory Clerks had priority for usage of the PC cart. Inventory Clerks can only use the PC cart to perform their jobs. Plaintiff Loiseau was trained on secondary

¹ Mr. Cerreta had previously issued a written warning to Plaintiff Loiseau on December 23, 2020 due to his being a no call no show on December 17, 2020, when he failed to use the call out line to report his absence at that time, despite being instructed to do so by Receiving Supervisor Raymond Gilbert.

equipment, namely a forklift, to use when PC carts were being utilized by other staff, and he did so in the past prior to the alleged incident with Mr. Voloshin.

Aver that both prior to and after the alleged incident with Mr. Voloshin on June 18, 2021, Mr. Cerreta told Sasha Pena, the Inventory Trainer, that Ms. Pena could get the PC cart from Plaintiff Loiseau for training purposes for six new staff hired to do inventory and informed Plaintiff Loiseau of this. Mr. Cerreta told Ms. Pena she could take the PC cart as necessary for training purposes, since the Inventory Clerks only used the PC cart but the QC staff (including Plaintiff Loiseau) had secondary equipment (such as the forklift) available to use. As such, Mr. Cerreta: (1) directed Plaintiff to give his PC cart to Ms. Pena, since Plaintiff was able to continue his work duties and responsibilities with secondary equipment, while Inventory Clerks were not; and (2) responded to Plaintiff Loiseau's complaint about having to use the forklift by telling him if he did not use the forklift when the PC cart was unavailable or needed for the Inventory Clerks, he was not doing his job and he could just go home. Deny any remaining allegations in this paragraph.

94. See Response to Paragraph 93. Deny any remaining allegations.

95. See Response to Paragraph 86. Deny any remaining allegations.

96. Aver that Plaintiff Loiseau never reported or provided any medical documentation of seeking medical treatment and/or of any diagnosis of PTSD and/or Generalized Anxiety Disorder to any manager or Human Resources representative at Bozzuto's any time prior to submitting his resignation from employment on July 9, 2021. Deny that Defendants caused Plaintiff Loiseau to suffer in any manner. Defendants without sufficient information to be able to admit or deny the remaining allegations in

this paragraph and leave Plaintiff to their proof.

VI. RULE 23 CLASS ACTION

97. This paragraph calls for a legal conclusion which does not require an answer. To the extent an answer is required, aver that Plaintiffs' and the putative class (and/or sub-classes) members' claims cannot be certified as a class because Plaintiffs cannot satisfy the prerequisites for class certification: Plaintiffs are not similarly situated to the putative class members whom they purport to represent under Title VII and/or Section 1981 and/or CFEPA; the putative class (and/or sub-classes) does not meet the numerosity requirements under Fed. R. Civ. P. 23; there are no common questions of law or fact; Plaintiffs' claims are not typical of the claims asserted by putative class members; Plaintiffs' are not an adequate class representative; individual issues of liability/damages predominate over any issues common to the putative class (and/or sub-classes); and/or the proposed class (and/or sub-classes) cannot be certified as plead. Deny any remaining allegations in this paragraph.

98. See Response to Paragraph 97. Deny any remaining allegations.

99. As to the first sentence, see Response to Paragraph 97. As to the second and third sentences, Defendants leave Plaintiffs to their proof.

100. See Response to Paragraph 97. Deny any remaining allegations.

101. See Response to Paragraph 97. Deny any remaining allegations.

102. See Response to Paragraph 97. Deny any remaining allegations.

103. See Response to Paragraph 97. Deny any remaining allegations.

VII. LEGAL CLAIMS

104. The foregoing responses to the allegations in paragraphs one through one-hundred-three (1-103) are repeated and incorporated as if fully set forth herein.

105. Deny.

106. Deny.

107. Deny.

108. Deny.

109. Deny.

110. The foregoing responses to the allegations in paragraphs one through one-hundred-three (1-103) are repeated and incorporated as if fully set forth herein.

111. Deny.

112. Deny.

113. Deny.

114. Deny.

115. Deny.

116. The foregoing responses to the allegations in paragraphs one through one-hundred-three (1-103) are repeated and incorporated as if fully set forth herein.

117. Deny.

118. Deny.

119. Deny.

120. Deny.

121. Deny.

122. The foregoing responses to the allegations in paragraphs one through one-hundred-three (1-103) are repeated and incorporated as if fully set forth herein.

123. Deny.

124. Deny.

125. Deny.

126. Deny.

127. Deny.

128. The foregoing responses to the allegations in paragraphs one through one-hundred-three (1-103) are repeated and incorporated as if fully set forth herein.

129. Deny.

130. Deny.

131. Deny.

132. Deny.

133. Deny.

134. The foregoing responses to the allegations in paragraphs one through one-hundred-three (1-103) are repeated and incorporated as if fully set forth herein.

135. Deny.

136. Deny.

137. Deny.

138. Deny.

139. Deny.

Defendants further deny that Plaintiffs and the putative class (and/or sub-class) members are entitled to any relief whatsoever, as requested in any allegations and the Demand for Relief in the Second Amended Complaint and/or otherwise.

Defendants further deny every allegation, whether express or implied, that is not unequivocally and specifically admitted herein, including but not limited to all legal conclusions asserted in the Second Amended Complaint.

Nothing stated herein is intended nor shall be construed as an admission that any particular issue or subject matter is relevant to the allegations of Plaintiffs and the putative class (and/or sub-class) members or admissible as evidence at any proceeding in this matter.

AFFIRMATIVE DEFENSES TO PLAINTIFFS' INDIVIDUAL CLAIMS

FIRST AFFIRMATIVE DEFENSE (All Counts)

The Second Amended Complaint fails to state any claim upon which relief can be granted because Plaintiffs cannot establish the elements necessary for each claim alleged as a matter of fact and/or law.

SECOND AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' claims, in whole or in part, are barred to the extent they have been filed beyond any applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' claims are barred, in whole or in part, by his failure to comply with and/or exhaust any statutory prerequisites and/or administrative requirements and/or conditions precedent to suit.

FOURTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs cannot establish that they were treated any differently than any similarly-situated employee of a different race/color.

FIFTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs cannot establish that their race/color was the "but-for" cause of any claimed actionable adverse employment actions against them.

SIXTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs cannot establish that their race/color actually motivated any claimed actionable adverse employment actions against them.

SEVENTH AFFIRMATIVE DEFENSE (All Counts)

To the extent that any alleged discrimination may be proven to be a motivating factor with respect to any employment actions taken by Defendants concerning Plaintiffs, which it was not, the same actions would have been taken in the absence of such motivating factor.

EIGHTH AFFIRMATIVE DEFENSE (All Counts)

All employment actions with respect to Plaintiffs were based on permissible, legitimate, and lawful factors unrelated to any of their legal rights under Title VII, Section 1981 and/or CFEPA.

NINTH AFFIRMATIVE DEFENSE (All Counts)

All employment actions with respect to Plaintiffs were non-discriminatory and based upon legitimate reasons and carried out in the good faith exercise of Defendants' reasonable business judgment(s).

TENTH AFFIRMATIVE DEFENSE (All Counts)

The Second Amended Complaint fails to state a claim for which relief can be granted because there are no facts sufficient to establish that any harassment was sufficiently severe or pervasive to alter the conditions of Plaintiffs' employment and create a hostile working environment, or to establish a specific basis for imputing liability for any alleged objectionable conduct to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE (All Counts)

Defendants are not liable to Plaintiffs for any alleged harassment by Plaintiffs' co-workers because Defendants exercised reasonable care to prevent and

promptly correct any alleged harassing behavior and Plaintiffs unreasonably failed to take advantage of available preventative or corrective opportunities for any purported harassment, and in any event, Plaintiffs have failed to identify a specific basis for imputing liability for any such alleged objectionable conduct to Defendants.

TWELTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' claimed losses or damages, if any, resulted from their own actions and not the actions of Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE (All Counts)

To the extent Plaintiffs may be eligible to recover damages, which Defendants deny, those damages must be reduced or are subject to a set-off or credit because of Plaintiffs' failure to mitigate some or all of their damages.

FOURTEENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs are not entitled to recover any punitive damages because Plaintiffs have not set forth and cannot set forth facts sufficient to support a claim under any federal or state law for such damages, in that, Bozzuto's adopted policies and practices in support of its non-discrimination and non-retaliation obligations and in good faith attempted to comply with those obligations.

FIFTEENTH AFFIRMATIVE DEFENSE (All Counts)

To the extent Plaintiffs are seeking any form of damages and/or other relief on a claim for which such damages or other relief is or are not available, those claims are barred.

SIXTEENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs are not entitled to a trial by jury on any claims for equitable relief.

SEVENTEENTH AFFIRMATIVE DEFENSE (Counts Four through Six)

Plaintiffs' claims are barred, in whole or in part, by their failure to exhaust administrative remedies.

EIGHTEENTH AFFIRMATIVE DEFENSE (Counts Four through Six)

Any claims of discrimination that pre-date the filing of Plaintiff Loiseau's administrative complaint at the CHRO/EEOC by more than 300 days are untimely. The Court, therefore, lacks the subject matter jurisdiction over those untimely claims and those untimely claims fail to state a claim upon which relief can be granted.

NINETEENTH AFFIRMATIVE DEFENSE (Counts Four through Six)

Plaintiffs' claims are barred, in whole or in part, to the extent that they exceed the scope of or are inconsistent with any charge of discrimination Plaintiff Loiseau filed with the CHRO or EEOC.

AFFIRMATIVE DEFENSES TO CLASS ACTION CLAIMS

FIRST AFFIRMATIVE DEFENSE (All Counts)

Some or all of Plaintiffs' and/or the putative class (and/or sub-class) members' claims fail to allege facts sufficient to state a plausible claim for relief against Defendants.

SECOND AFFIRMATIVE DEFENSE (All Counts)

Some or all of Plaintiffs' and/or the putative class (and/or sub-class) members' claims are barred, in whole or in part, by the applicable statutes of limitation governing the asserted claims and Plaintiffs and putative class (and/or sub-class) members are not entitled to an extension of the statute of limitations.

THIRD AFFIRMATIVE DEFENSE (All Counts)

The Second Amended Complaint and each and all claims contained therein (including claims for attorney's fees) are barred, in whole or in part, to the extent that Plaintiffs and/or some or all of the individuals Plaintiffs seek to represent lack standing to seek some or all of the requested relief, cannot sufficiently represent the interests of the putative class (and/or sub-class) action members, have not suffered harm and/or will not suffer any imminent and irreparable harm as a result of any alleged actions or conduct by Defendants.

FOURTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and/or the putative class (and/or sub-class) members' claims are barred, in whole or in part, by the equitable doctrines of laches.

FIFTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and/or the putative class (and/or sub-class) members' claims are barred, in whole or in part, by the equitable doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and/or the putative class (and/or sub-class) members' claims are barred, in whole or in part, by the equitable doctrines of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and/or the putative class (and/or sub-class) members' claims for damages should be denied or reduced due to Plaintiffs' and/or the putative class (and/or sub-class) members' failure to mitigate their respective damages, in whole or in part.

EIGHTH AFFIRMATIVE DEFENSE (All Counts)

Any losses suffered by Plaintiffs and/or the putative class (and/or sub-class) members were not as a consequence of, or in reliance upon, any acts or omissions of Defendants.

NINTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and/or the putative class (and/or sub-class) members' claims are frivolous and groundless and known to Plaintiffs and/or the putative class (and/or sub-class) members to be frivolous and groundless and without foundation in fact or law. Furthermore, this lawsuit is being pursued in bad faith for vexatious reasons for the purpose of harassing Defendants.

TENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and the putative class (and/or sub-class) members' claims are barred, in whole or in part, to the extent that Plaintiffs and the putative class (and/or sub-class) members failed to exhaust any administrative prerequisites or other procedural conditions to the commencement of an action.

ELEVENTH AFFIRMATIVE DEFENSE (Counts Four through Six)

To the extent Plaintiffs' and the putative class (and/or sub-class) members' claims raise matters occurring more than 300 days prior to the date on which any Plaintiff allegedly filed a charge with the CHRO and/or the EEOC, the Court lacks jurisdiction with respect to any such matters.

TWELTH AFFIRMATIVE DEFENSE (Counts Four through Six)

To the extent Plaintiffs' and/or the putative class (and/or sub-class) members' claims raise matters that are not reasonably within the scope of any charge any Plaintiff allegedly filed with the CHRO and/or the EEOC, the Court lacks jurisdiction with respect to any such matters.

THIRTEENTH AFFIRMATIVE DEFENSE (All Counts)

At all times relevant to this action, the employment decisions at issue were made by Defendants for legitimate non-discriminatory and non-retaliatory business reasons and were undertaken in good faith and in compliance with all applicable laws. Alternatively, Defendants would have made the same personnel decisions despite any proven discriminatory or retaliatory motive.

FOURTEENTH AFFIRMATIVE DEFENSE (All Counts)

Defendants exercised reasonable care to prevent and correct promptly any allegedly unlawful discriminatory and/or harassing conduct by promulgating and enforcing policies against discrimination, harassment, and retaliation, which Defendants followed and enforced at all relevant times and which Plaintiffs and/or the putative class (and/or sub-class) members received, read and understood, and Plaintiffs and/or the putative class (and/or sub-class) members unreasonably failed to take advantage of available preventative or corrective opportunities to avoid the alleged harm.

FIFTEENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or the putative class (and/or sub-class) members did not promptly report the alleged incidents that Plaintiffs contend and/or the putative class (and/or sub-class) members may contend constituted harassment. As soon as Plaintiffs (and/or, as may be applicable) the putative class (and/or sub-class) members reported any alleged incidents of harassment, Defendants investigated, reached reasonable conclusions based on the investigation, and took appropriate remedial actions.

SIXTEENTH AFFIRMATIVE DEFENSE (All Counts)

To the extent the Second Amended Complaint alleges conduct of nonsupervisory employees, Defendants were not aware and should not have been aware.

SEVENTEENTH AFFIRMATIVE DEFENSE (All Counts)

To the extent that the Second Amended Complaint alleges conduct by the same supervisor who is accused of discrimination, harassment, and/or retaliation hired and/or

promoted Plaintiffs and/or the members of the putative class (and/or sub-class), such claims are barred.

EIGHTEENTH AFFIRMATIVE DEFENSE (All Counts)

Defendants are not liable for alleged harassing behavior unrelated to the protected characteristic alleged of race/color.

NINETEENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or the putative class (and/or sub-class) members cannot demonstrate severe and pervasive conduct that altered the terms and conditions of their employment.

TWENTIETH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or the members of the putative class (and/or sub-class) did not engage in any protected activity during the respective, applicable period of employment with Bozzuto's of Plaintiffs and/or the putative class (and/or sub-class) members.

TWENTY-FIRST AFFIRMATIVE DEFENSE (All Counts)

If any improper, illegal, or discriminatory acts were taken against Plaintiffs and/or any member of the putative class (and/or sub-class), such acts were independent, intervening, and unforeseeable acts, occurred outside the course and scope of that employee's employment and/or that agent's agency, were contrary to Bozzuto's policies, and were not condoned, ratified, confirmed, approved or acquiesced in by Defendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE (All Counts)

Bozzuto's employed Plaintiffs and the putative class (and/or sub-class) members on an "at-will" basis and, therefore, could terminate their employment at any time with or without notice and with or without cause.

TWENTY-THIRD AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or the putative class (and/or sub-class) members' punitive damages claims are barred because at no time did Defendants engage in any discriminatory practices or actions intentionally, with malice, and/or with reckless disregard to Plaintiffs and/or the putative class (and/or sub-class) members' statutory rights.

TWENTY-FOURTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or the putative class (and/or sub-class) members' demands for damages and equitable remedies are barred by after-acquired evidence of their prior misconduct that would have otherwise supported an adverse employment action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or the putative class (and/or sub-class) members' claims cannot be certified as a class action because Plaintiffs cannot satisfy the prerequisites for certification: the putative class does not meet the numerosity requirements under Fed. R. Civ. P. 23; there are no common questions of law or fact; Plaintiffs' claims are not typical of the claims asserted by putative class (and/or sub-class) members; Plaintiffs are not adequate class representative(s); individual issues of liability/damages predominate over any issues common to the putative class (and/or sub-class); and/or the proposed class (and/or sub-class) cannot be certified as plead.

TWENTY-SIXTH AFFIRMATIVE DEFENSE (All Counts)

The certification and/or trial of this case as a class (and/or sub-class) action would violate Defendants' rights under the Fifth and/or Seventh Amendments to the United States Constitution and/or under the Federal Rules of Civil Procedure.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and the putative class (and/or sub-class) members' claims are barred, in whole or in part, because class certification would be inappropriate due to conflicts of interest between Plaintiffs and the proposed class (and/or sub-class).

TWENTY-EIGHTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and the putative class (and/or sub-class) members' claims are barred, in whole or in part, because any alleged liability and/or damages to each proposed class (and/or sub-class) member may not be determined by a single factfinder or on a class-wide basis, and therefore, class (and/or sub-class) certification would be inappropriate because it would violate Defendants' rights to due process and trial by jury.

TWENTY-NINTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs' and the putative class (and/or sub-class) members' claims are barred, in whole or in part, because any alleged violation of Title VII, Section 1981 and/or CFEPA was not committed pursuant to a uniform policy or plan, and therefore, class (and/or sub-class) certification would be inappropriate.

THIRTEETH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and the putative class (and/or sub-class) members have failed to define ascertainable classes.

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THIRTY-FIRST AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and the putative class (and/or sub-class) members have failed to establish that any claims in this case may be adjudicated on a class-wide basis.

THIRTY-SECOND AFFIRMATIVE DEFENSE (All Counts)

Potential class (and/or sub-class) members are impossible to identify without extensive and individualized fact-finding and, as defined, the putative class (and/or sub-class) members are not readily identifiable.

THIRTY-THIRD AFFIRMATIVE DEFENSE (All Counts)

Some or all of Plaintiffs' claims and those of some or all of the individuals Plaintiffs seek to represent are barred, in whole or in part, because they have sustained no damages.

THIRTY-FOURTH AFFIRMATIVE DEFENSE (All Counts)

Plaintiffs and/or some or all of the individuals Plaintiffs seek to represent are not entitled to equitable relief insofar as some or all of these individuals have an adequate remedy at law.

THIRTY-FIFTH AFFIRMATIVE DEFENSE (All Counts)

Even if any alleged unlawful act or omission occurred, which it did not, Bozzuto's cannot be held vicariously liable for such alleged misconduct that is contrary to Bozzuto's express policies, procedures and good faith efforts to comply with applicable laws and/or regulations.

BURDEN OF PROOF AND RESERVATION OF ADDITIONAL DEFENSES

Standing fully on its right to plead defenses in the alternative, Defendants have asserted the above affirmative defenses without assuming any burdens of production or proof that, pursuant to law, belong to Plaintiffs and/or the putative class (and/or sub-class) members. Defendants do not purport to represent that any defense they have raised herein is an affirmative defense for which they must assume the burden of proof or production.

Because Defendants presently do not have sufficient upon which to determine whether they may have additional, as yet unstated, defenses available, Defendants reserve the right to amend its Answer and to assert any additional or affirmative defenses as may become available or apparent during the course of this litigation.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for the following relief:

1. That the Second Amended Complaint be dismissed with prejudice and that Plaintiffs and the proposed class (and/or sub-classes) take nothing thereby;
2. That the purported class (and/or sub-classes) not be certified;
3. That judgment be entered in favor of Defendants on all claims and against Plaintiffs;
4. That Defendants be awarded their attorney's fees and costs; and
5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

DEFENDANTS
BOZZUTO'S INC., JAMES JONES,
CHARLES B. CERRETA III
& JOEL SANTIAGO

By _____ /s/
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CERTIFICATION OF SERVICE

The undersigned certifies that on this 15th day of April, 2024, a copy of the foregoing Answer and Affirmative Defenses was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties who have appearances as of the time of this filing by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

_____/s/
Shel D. Myers, ct13581

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