

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEBORAH R. COOKE and CHRISTINA M.
RODINO,

Case No.: 11-CIV-0201 (AKH)

Plaintiffs,

ANSWER TO COMPLAINT

-against-

DB 85 GYM CORP. d/b/a DAVID BARTON
GYM, CV II GYM, LLC d/b/a DAVID BARTON
GYM, CV VI, LLC d/b/a DAVID BARTON GYM,
DB BROADWAY GYM CORP. d/b/a DAVID
BARTON GYM, KEVIN KAVANAUGH, and
CARL HELMLE III,

Defendants.

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Defendants, DB 85 Gym Corp. d/b/a David Barton Gym, CV II Gym, LLC
d/b/a David Barton Gym, CV VI, LLC d/b/a David Barton Gym, DB Broadway Gym
Corp. d/b/a David Barton Gym, Kevin Kavanaugh, and Carl Helmle, III (collectively,
“Defendants”), by their attorneys, Gordon & Rees LLP, as and for their Answer to the
Complaint filed by Deborah R. Cooke and Christina M. Rodino (collectively
“Plaintiffs”), respectfully allege as follows:

ANSWERING PRELIMINARY STATEMENT

1. The allegations contained in Paragraph 1 of the Complaint do not
require a response on the part of the Defendants. To the extent that a response is
required, Defendants deny the allegations contained in Paragraph 1 of the
Complaint.

ANSWERING JURISDICTION

2. The allegations contained in Paragraph 2 of the Complaint contain
legal conclusions to which no response is necessary. To the extent that Paragraph

2 of the Complaint alleges that Defendants engaged in misconduct or violated any laws, those allegations are denied.

ANSWERING VENUE

3. The allegations contained in Paragraph 3 of the Complaint contain legal conclusions to which no response is necessary. To the extent that Paragraph 3 of the Complaint alleges that Defendants engaged in misconduct or violated any laws, those allegations are denied.

ANSWERING PARTIES

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint consist of a legal conclusion and do not require a response on the part of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 6 of the Complaint.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

9. The allegations contained in Paragraph 9 of the Complaint consist of a legal conclusion and do not require a response on the part of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. Defendants admit the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. Defendants admit the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants admit the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

ANSWERING BACKGROUND OF PLAINTIFF COOKE'S EMPLOYMENT BY

DEFENDANTS

26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint.

27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint.

28. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants admit the allegations contained in Paragraph 35 of the Complaint.

36. Defendants admit the allegations contained in Paragraph 36 of the Complaint.

37. Defendants admit the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

ANSWERING BACKGROUND OF PLAINTIFF RODINO'S EMPLOYMENT BY
DEFENDANTS

39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint.

40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. Defendants admit the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

ANSWERING PERVASIVELY HOSTILE WORK ENVIRONMENT

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. (a) Defendants deny the allegations contained in Paragraph 49(a) of the Complaint;

(b) Defendants deny the allegations contained in Paragraph 49(b) of the Complaint;

(c) Defendants deny the allegations contained in Paragraph 49(c) of the Complaint;

(d) Defendants deny the allegations contained in Paragraph 49(d) of the Complaint;

(e) Defendants deny the allegations contained in Paragraph 49(e) of the Complaint;

(f) Defendants deny the allegations contained in Paragraph 49(f) of the Complaint;

(g) Defendants deny the allegations contained in Paragraph 49(g) of the Complaint;

(h) Defendants deny the allegations contained in Paragraph 49(h) of the Complaint;

(i) Defendants deny the allegations contained in Paragraph 49(i) of the Complaint;

(j) Defendants deny the allegations contained in Paragraph 49(j) of the Complaint;

(k) Defendants deny the allegations contained in Paragraph 49(k) of the Complaint;

(l) Defendants deny the allegations contained in Paragraph 49(l) of the Complaint;

(m) Defendants deny the allegations contained in Paragraph 49(m) of the Complaint;

(n) Defendants deny the allegations contained in Paragraph 49(n) of the Complaint;

(o) Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49(o) of the Complaint; and

(p) Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49(p) of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

50. (sic) Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. (a) Defendants deny the allegations contained in Paragraph 51(a) of the Complaint;

(b) Defendants deny the allegations contained in Paragraph 51(b) of the Complaint;

(c) Defendants deny the allegations contained in Paragraph 51(c) of the Complaint;

1) Defendants deny the allegations contained in Paragraph 51(c)(1) of the Complaint;

2) Defendants deny the allegations contained in Paragraph 51(c)(2) of the Complaint;

3) Defendants deny the allegations contained in Paragraph 51(c)(3) of the Complaint;

4) Defendants deny the allegations contained in Paragraph 51(c)(4) of the Complaint;

(d) Defendants deny the allegations contained in Paragraph 51(d) of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

ANSWERING DISPARATE TREATMENT

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. Defendants admit the allegations contained in Paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

ANSWERING AS AND FOR A FIRST COUNT

63. Defendants repeat and reallege each and every response made in Paragraphs 1 through 62 as if fully set forth herein.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

ANSWERING AS AND FOR A SECOND COUNT

66. Defendants repeat and reallege each and every response made in Paragraphs 1 through 65 as if fully set forth herein.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Any and all decisions affecting Plaintiffs were based on legitimate, non-discriminatory and non-retaliatory reasons.

THIRD AFFIRMATIVE DEFENSE

Defendants have conducted their practices in good faith and in accordance with all applicable statutes and regulations with regard to Plaintiffs. Defendants have not acted in bad faith or willfully or otherwise violated Plaintiffs' rights in any manner or acted maliciously with respect to any aspect of the events underlying the Complaint.

FOURTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction with respect to some or all of Plaintiffs' alleged claims.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs may be barred or limited from recovering damages based on their failure to mitigate said damages.

SIXTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' injuries are due, in whole or in part, to the actions of third-parties over whom these Defendants have no control.

SEVENTH AFFIRMATIVE DEFENSE

Defendants deny the applicability of punitive damage theories under the facts of this litigation and, in any event, deny they are so liable under said theories.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are or may be barred by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

Defendants deny that any of their actions were willful, wanton, malicious or reckless.

ELEVENTH AFFIRMATIVE DEFENSE

At all relevant times, Defendants conducted themselves in full compliance with all applicable contracts as well as federal, state and local laws, statutes, ordinances and regulations, which compliance bars Plaintiffs from asserting the claims herein.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, reduced and/or limited pursuant to applicable statutory and common law regarding limitations of awards, caps on recovery, and set offs, under the New York State Human Rights Law, and the New York City Human Rights Law.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have suffered no damages.

FOURTEENTH AFFIRMATIVE DEFENSE

Costs alleged to be incurred in the future may not be recovered as they are remote, speculative, contingent and incapable of calculation.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' allegations and damages must be discounted to the extent their pleadings and claims seek duplicative damages.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants maintained, enforced, and widely disseminated strong policies and procedures against discrimination, harassment and retaliation of any kind. Plaintiffs unreasonably failed to avail themselves of the preventative or remedial measures or the procedures for reporting discrimination, retaliation and harassment under the Defendants' employment policies, or to otherwise avoid their alleged harm.

NINETEENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' alleged claims are barred to the extent they has failed to exhaust administrative remedies.

TWENTIETH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims are barred by virtue of the equitable defense of the doctrine of laches.

TWENTY FIRST AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' injuries are due, in whole or in part, to their own actions.

TWENTY SECOND AFFIRMATIVE DEFENSE

Plaintiffs may be barred or limited from recovering damages based upon the doctrine of after-acquired evidence.

TWENTY THIRD AFFIRMATIVE DEFENSE

Defendants acted promptly and appropriately under the circumstances to prevent, investigate and remediate the alleged situation.

TWENTY FOURTH AFFIRMATIVE DEFENSE

Defendants are not "employers" within the meaning of the New York State Human Rights Law or the New York City Human Rights Law.

TWENTY FIFTH AFFIRMATIVE DEFENSE

Defendants were not aware of Plaintiffs' sexual orientation.

TWENTY SIXTH AFFIRMATIVE DEFENSE

Defendant Kavanaugh and Defendant Helmle cannot be held liable in their personal capacities for the allegations contained in Plaintiffs' Complaint.

TWENTY SEVENTH AFFIRMATIVE DEFENSE

Some or all of the Defendants are not subject to the New York State Human Rights Law or the New York City Human Rights Law.

TWENTY EIGHTH AFFIRMATIVE DEFENSE

Defendants reserve the right to offer additional defenses, which cannot now be articulated due to Plaintiffs' failure to particularize their claims. Upon further particularization of the claims by Plaintiffs, or upon further discovery concerning the alleged claims at issue herein, or upon discovery of further information concerning Defendants' defenses, Defendants reserve the right to assert additional defenses.

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WHEREFORE, Defendants DB 85 Gym Corp. d/b/a David Barton Gym, CV II Gym, LLC d/b/a David Barton Gym, CV VI, LLC d/b/a David Barton Gym, DB Broadway Gym Corp. d/b/a David Barton Gym, Kevin Kavanaugh, and Carl Helmle, III, demand judgment dismissing Plaintiffs' Complaint against them, together with attorneys' fees, costs, and disbursements of this action, and any other relief the Court deems appropriate.

Dated: New York, New York
February 17, 2011

Respectfully submitted,

GORDON & REES LLP

By: /s/

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