

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

SODEXO OPERATIONS, LLC,

Plaintiff,

v.

Case No.: 2:20-cv-00309-AWA-RJK

**VIRGINIA AQUARIUM & MARINE
SCIENCE CENTER FOUNDATION, INC.,**

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

Defendant Virginia Aquarium & Marine Science Center Foundation, Inc. (the “Foundation”) answers the Complaint filed by plaintiff Sodexo Operations, LLC (“Sodexo”) in correspondingly numbered paragraphs as follows:

The Foundation admits the first three sentences of the section of the Complaint titled “Introduction.” The Foundation denies the remainder of the “Introduction.”

1. The Foundation lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

2. Admits.

3. Admits.

4. Admits.

5. Admits.

6. Admits.

7. Admits.

8. Admits.

9. The Foundation avers that the FSA speaks for itself. To the extent that this paragraph is inconsistent with the FSA, the Foundation denies it.

10. The Foundation avers that the FSA speaks for itself. To the extent that this paragraph is inconsistent with the FSA, the Foundation denies it.

11. The Foundation avers that the FSA speaks for itself. To the extent that this paragraph is inconsistent with the FSA, the Foundation denies it.

12. The Foundation avers that the FSA speaks for itself. To the extent that this paragraph is inconsistent with the FSA, the Foundation denies it.

13. The Foundation avers that the FSA speaks for itself. To the extent that this paragraph is inconsistent with the FSA, the Foundation denies it.

14. The Foundation avers that the FSA speaks for itself. To the extent that this paragraph is inconsistent with the FSA, the Foundation denies it.

15. Admits.

16. Admits.

17. Admits.

18. Admits.

19. Admits.

20. The Foundation admits that Sodexo sent the letter attached to the Complaint as Exhibit B, but denies that it was in compliance with the FSA and denies the remainder of this paragraph.

21. Denies

22. Admits.

23. Denies.

24. Denies.
25. Denies.
26. The Foundation incorporates by reference its answers to the foregoing paragraphs.
27. Admits.
28. Admits.
29. Denies.
30. Denies.
31. Denies.
32. Denies.
33. The Foundation incorporates by reference its answers to the foregoing paragraphs.
34. Admits.
35. Denies.
36. Denies.
37. Denies.
38. The Foundation incorporates by reference its answers to the foregoing paragraphs.
39. Denies.
40. Denies.
41. Denies.
42. Denies.

The remainder of the Complaint consists of Sodexo's prayer for relief, to which no answer is required. To the extent that the remainder of the Complaint is deemed to contain allegations of fact, the Foundation denies them.

The Foundation denies all allegations that are not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Sodexo's second and third causes of action are barred by Virginia's source of duty rule because any obligation between the parties arose through an express contract.
2. Sodexo is barred from recovery by the doctrine of unclean hands because it acted in bad faith by first notifying the Foundation that it was terminating the FSA for convenience, failing to remove all of its property from the premises upon termination, and failing to substantiate its claimed capital investments.
3. Sodexo cannot recover under the FSA because it terminated the FSA for convenience.
4. Sodexo is equitably estopped from pursuing its claims against the Foundation because it represented that it was terminating the FSA for convenience and the Foundation justifiably relied on that representation to its detriment.
5. Sodexo's recovery is barred in whole or in part because it failed to mitigate its damages.

WHEREFORE, the Court should dismiss the Complaint and award the Foundation such other relief as the Court deems just.

Respectfully submitted,

VIRGINIA AQUARIUM & MARINE
SCIENCE CENTER FOUNDATION, INC.

/s/ Anne G. Bibeau

Anne G. Bibeau, Esquire (VSB #41488)
VANDEVENTER BLACK LLP
101 W. Main Street, Suite 500
Norfolk, VA 23510
Telephone: (757) 446-8600
Facsimile: (757) 446-8670
Email: ABibeau@VanBlackLaw.com

4816-1642-0808,