

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff,
v.
BLOCKBUSTER INC.,
Defendant.

Civil Action No.: 8:07-CV-02612

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT BLOCKBUSTER INC.

Defendant Blockbuster Inc. ("Blockbuster" or "Defendant"), by and through its attorneys, Morgan, Lewis & Bockius LLP, for its [answer]Answer and [affirmative defenses]Affirmative Defenses to the Amended Complaint of Plaintiff, United States Equal Employment Opportunity Commission ("EEOC") states the following:

NATURE OF THE ACTION

Defendant admits that Plaintiff purports to bring this action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, but Defendant denies that facts exist that would entitle Plaintiff to maintain the claims advanced or to obtain the relief sought.

JURISDICTION AND VENUE

1. Defendant admits that Plaintiff purports to invoke this Court's jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. Defendant admits that Plaintiff purports to further invoke this Court's jurisdiction pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"),

~~[and]~~Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, [and Section 709\(c\) of Title VII, 42 U.S.C. § 2000e-8\(c\)](#) but Defendant denies that facts exist that would entitle Plaintiff to maintain the claims advanced or to obtain the relief sought.

2. Defendant admits that Plaintiff purports the practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Maryland, Southern Division, but Defendant denies that facts exist that would entitle Plaintiff to maintain the claims advanced or to obtain the relief sought.

PARTIES

3. Defendant admits that Plaintiff is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and purports to bring this action under the express authorization of § 706(f)(1)~~[-and]~~, (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3), [and Section 709\(c\) of Title VII, 42 U.S.C. § 2000e-8\(c\)](#) but Defendant denies that facts exist that would entitle Plaintiff to maintain the claims advanced or to obtain the relief sought.

4. Defendant admits the allegations in paragraph 4 of the [Amended](#) Complaint.

5. Defendant admits the allegations in paragraph 5 of the [Amended](#) Complaint.

STATEMENT OF CLAIMS

6. Defendant admits that Lolita Gonzales and Dolores Gonzales (“Charging Parties”) filed charges of discrimination with the Commission alleging violations of Title VII by Defendant. Defendant denies the remaining allegations in paragraph 6 of the [Amended](#) Complaint.

7. Defendant denies the allegations in paragraph 7 of the [Amended](#) Complaint.

8. Defendant denies the allegations in paragraph 8 of the [Amended](#) Complaint.

9. Defendant denies the allegations in paragraph 9 of the [Amended](#) Complaint.

10. Defendant denies the allegations in paragraph 10 of the [Amended](#) Complaint.
11. Defendant denies the allegations in paragraph 11 of the [Amended](#) Complaint.
12. Defendant denies the allegations in paragraph 12 of the [Amended](#) Complaint.
13. Defendant denies the allegations in paragraph 13 of the [Amended](#) Complaint.
14. Defendant denies the allegations in paragraph 14 of the [Amended](#) Complaint.
15. Defendant denies the allegations in paragraph 15 of the [Amended](#) Complaint.
16. Defendant denies the allegations in paragraph 16 of the [Amended](#) Complaint.
17. Defendant denies the allegations in paragraph 17 of the [Amended](#) Complaint.
18. Defendant denies the allegations in paragraph 18 of the [Amended](#) Complaint.
19. Defendant denies the allegations in paragraph 19 of the [Amended](#) Complaint.
20. Defendant denies the allegations in paragraph 20 of the [Amended](#) Complaint.
21. Defendant denies the allegations in paragraph 21 of the [Amended](#) Complaint.
22. Defendant denies the allegations in paragraph 22 of the [Amended](#) Complaint.
23. Defendant denies the allegations in paragraph 23 of the [Amended](#) Complaint.
24. Defendant denies the allegations in paragraph 24 of the [Amended Complaint](#).
- 25. Defendant denies the allegations in paragraph 25 of the Amended** Complaint.

Defendant further denies every allegation, whether express or implied, that is not unequivocally or specifically admitted in the Answer.

PRAYER FOR RELIEF

Defendant denies that the EEOC, Charging Parties, or any of the purported putative class members are entitled to the relief requested in paragraphs A. through [\[H\]](#). of the Prayer for Relief, or to any relief whatsoever.

AFFIRMATIVE DEFENSES AND ADDITIONAL DEFENSES

FIRST DEFENSE

To the extent that Plaintiff failed to comply with statutory and/or jurisdictional prerequisites for the institution of an action under the statutes it relies upon in its [Amended](#) Complaint, its claims are barred and/or diminished.

SECOND DEFENSE

Plaintiff has failed to meet its statutory duty to conciliate in good faith prior to instituting this action.

THIRD DEFENSE

Plaintiff's claims under Title VII are barred to the extent that the [Amended](#) Complaint alleges conduct that was not previously alleged in a timely administrative charge filed with the EEOC, or that otherwise exceeds the scope of the charge of discrimination filed with the EEOC.

FOURTH DEFENSE

Plaintiff's claims under Title VII are barred to the extent that the [Amended](#) Complaint is based on conduct occurring more than 300 days prior to the proper filing of a charge of discrimination with the EEOC raising such claim or claims.

FIFTH DEFENSE

Defendant denies that sex, race/national origin, or any other impermissible factor played any role in the employment decisions to Charging Party Lolita Gonzales or Charging Party Dolores Gonzales or any purported putative class members. Alternatively, even if some impermissible motive had been a factor in any of those decisions, the same decisions would have been reached for legitimate, nondiscriminatory reasons.

SIXTH DEFENSE

Plaintiff's claims of retaliation should be dismissed because the challenged employment decisions are justified by legitimate, non-discriminatory, non-retaliatory and non-pretextual business reasons and were based upon reasonable factors other than the Charging Parties' protected status and/or their alleged protected activity, and because Plaintiff cannot show that the Charging Parties were meeting Defendant's legitimate expectations or show a causal connection between any protected activity and any adverse employment action.

SEVENTH DEFENSE

At all times relevant to this action, Defendant has had in place a clear and well disseminated policy against harassment, discrimination, or other inappropriate conduct, on the basis of race, national origin, gender, or other protected classifications, and a reasonable and available procedure for handling complaints, which provides for prompt and effective responsive action.

EIGHTH DEFENSE

If any improper, illegal, or discriminatory acts were taken by an employee of Defendant against Charging Party Lolita Gonzales, Charging Party Dolores Gonzales, or any of the purported putative class members, it was outside the course and scope of that employee's employment, or an independent, intervening and or unforeseeable act, contrary to Defendant's policies, and was not ratified, confirmed, or approved by Defendant. Thus any such actions cannot be attributed or imputed to Defendant.

NINTH DEFENSE

Claims of any putative class members are untimely because they did not file timely administrative charges with the Equal Employment Opportunity Commission, and the putative class members cannot piggyback on the charges of Plaintiffs.

TENTH DEFENSE

Defendant is entitled to contribution and/or indemnification from Venturi Staffing Partners, Inc. as the agency responsible for receiving and investigating complaints of the Charging Parties and some or all of the putative class members.

ELEVENTH DEFENSE

Defendant has made a good faith effort to comply with anti-discrimination laws and Defendant has not engaged in any alleged conduct with malice or reckless indifference to the protected rights of any aggrieved individual, and thus neither Plaintiff, Charging Party Lolita Gonzales, Charging Party Dolores Gonzales, nor any of the purported putative class members are entitled to punitive damages.

TWELFTH DEFENSE

Damages sought by the EEOC for Charging Parties or any putative class members are barred or diminished to the extent they failed to mitigate their damages.

THIRTEENTH DEFENSE

Defendant took all reasonable efforts under the circumstances to preserve relevant investigative records until final disposition of a charge of discrimination in compliance with Title VII and the EEOC's Regulations set forth at 29 C.F.R. § 1602.14.

Defendant reserves the right to assert additional defenses or affirmative defenses as established by the facts of the case.

WHEREFORE, having fully responded to Plaintiff's **Amended** Complaint, Defendant respectfully requests that the Court dismiss Plaintiff's claim with prejudice, award Defendant its costs and reasonable attorneys' fees incurred in this lawsuit, and allow Defendant such other and further relief as this Court deems proper.

Dated: [~~December 21, 2007~~]November 17, 2008

Respectfully submitted,

[~~_____~~ /s/ _____]

/s/ Grace E. Speights

Grace E. Speights (Bar No. 05254)

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Counsel for Blockbuster Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served, via ECF a copy of the foregoing Answer and Affirmative Defenses of Defendant Blockbuster, Inc. to the Amended Complaint of Plaintiff the Equal Employment Opportunity Commission, on the [~~21st~~ 17th] day of [~~December~~ 2007] November 2008 on the following counsel:

Debra Michele Lawrence
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[~~_____~~ /s/ Grace E. Speights]
_____ /s/ Chaka A. Keiller