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Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Cynthia Binkley, an individual,

Plaintiff,

v.

Safeway Inc., a Delaware Corporation,

Defendant.

Case No. 2:11-cv-00904-TSZ

ANSWER AND ADDITIONAL
DEFENSES OF SAFEWAY INC.

ANSWER

Defendant Safeway Inc. (“Safeway”), in answer to the Complaint for Damages for Employment Discrimination and Wrongful Termination (“Complaint”) brought by Cynthia Binkley (“Plaintiff”), admits, denies, and alleges as follows:

I. JURISDICTION AND VENUE

1.1 In response to Paragraph 1.1, Safeway affirmatively states that the Court had subject matter jurisdiction over Plaintiff’s claims when this matter was removed to federal court. Plaintiff’s allegations in Paragraph 1.1 contain legal conclusions that do not require a response. To the extent any further response is required, Safeway denies the allegations in Paragraph 1.1.

1 1.2 In response to Paragraph 1.2, Safeway admits, based on information and belief,
2 that Plaintiff resides in King County, Washington.

3 1.3 Safeway admits the allegations in Paragraph 1.3.

4 1.4 In response to Paragraph 1.4, Safeway admits that Plaintiff has worked for
5 Safeway in King County, Washington. Safeway otherwise denies the allegations in Paragraph
6 1.4.

7 II. BACKGROUND FACTS

8 2.1 In response to Paragraph 2.1, Safeway admits, based on information and belief,
9 that Plaintiff is a female and over the age of 40 years. Paragraph 2.1 otherwise contains legal
10 conclusions that do not require a response. To the extent any further response is required,
11 Safeway denies the remainder of the allegations in Paragraph 2.1.

12 2.2 In response to Paragraph 2.2, Safeway admits that it hired Plaintiff on or about
13 January 7, 2007 as a Second Assistant Store Manager at Safeway's Coal Creek Parkway store.
14 Safeway otherwise denies the allegations in Paragraph 2.2.

15 2.3 In response to Paragraph 2.3, Safeway admits that on or about June 8, 2008,
16 Plaintiff's employment position with Safeway changed from Second Assistant Store Manager
17 to Food Clerk. Safeway otherwise denies the allegations in Paragraph 2.3.

18 2.4 Safeway denies the allegations in Paragraph 2.4.

19 2.5 Safeway denies the allegations in Paragraph 2.5.

20 2.6 In response to Paragraph 2.6, Safeway admits that, on or about July 16, 2007,
21 Plaintiff reported to Safeway that she experienced a fall and resulting injury while working
22 for Safeway on that date. Safeway is without knowledge or information sufficient to form a
23 belief as to the existence or extent of any injury sustained by Plaintiff as a result of this fall
24 and therefore otherwise denies the allegations in Paragraph 2.6

25 2.7 Safeway admits the allegations in Paragraph 2.7.

26 2.8 Safeway denies the allegations in Paragraph 2.8.

1 2.9 Paragraph 2.9 contains legal conclusions that do not require a response.
2 Moreover, Safeway is unable to determine what specific “job” Plaintiff intended to refer to in
3 Paragraph 2.9. Safeway therefore lacks sufficient knowledge or information to form a belief
4 as to the truth of Plaintiff’s allegations in Paragraph 2.9. To the extent any response is
5 required, Safeway denies the allegations in Paragraph 2.9.

6 2.10 Safeway denies the allegations in Paragraph 2.10.

7 2.11 Paragraph 2.11 contains legal conclusions that do not require a response.
8 Moreover, Safeway is unable to determine what specific “job” Plaintiff intended to refer to in
9 Paragraph 2.9. Safeway therefore lacks sufficient knowledge or information to form a belief
10 as to the truth of Plaintiff’s allegations in Paragraph 2.11. Thus, to the extent any response is
11 required, Safeway denies the allegations in Paragraph 2.11.

12 2.12 Paragraph 2.12 contains legal conclusions that do not require a response. To
13 the extent any response is required, Safeway denies the allegations in Paragraph 2.12.

14 2.13 In response to Paragraph 2.13, Safeway is unable to determine in what specific
15 employment position Plaintiff alleges she was “replaced.” Safeway therefore lacks sufficient
16 knowledge or information to form a belief as to the truth of Plaintiff’s allegations in
17 Paragraph 2.13. Thus, to the extent any response is required, Safeway denies the allegations
18 in Paragraph 2.13.

19 2.14 In response to Paragraph 2.14, Safeway admits to maintaining and distributing
20 to employees various written policies and procedures, including those designed to prevent
21 unlawful discrimination in the workplace. However, Safeway is unable to determine what
22 specific type of “discrimination” Plaintiff intended to refer to in Paragraph 2.14. As a result,
23 except as otherwise admitted above, Safeway lacks sufficient knowledge or information to
24 form a belief as to the truth of Plaintiff’s allegations in Paragraph 2.14, and thus denies the
25 same.

1 2.15 In response to Paragraph 2.15, Safeway admits that it provided various written
2 policies and procedures to Plaintiff. Safeway is otherwise without sufficient knowledge or
3 information to form a belief as to the truth of the allegations in Paragraph 2.15, and thus
4 denies the same.

5 2.16 In response to Paragraph 2.16, Safeway admits that it generally expects its
6 employees to comply with the policies and procedures that it provides to them. Given the
7 broad and generalized nature of Plaintiff's allegations in Paragraph 2.16, however, Safeway is
8 otherwise without sufficient knowledge or information to form a belief as to the truth of those
9 allegations and therefore, except as admitted above, denies the same.

10 2.17 Safeway denies the allegations in Paragraph 2.17.

11 III. CLAIMS AND CAUSES OF ACTION

12 A. CLAIM FOR DISCRIMINATION

13 3.1 Paragraph 3.1 contains legal conclusions that do not require a response. To the
14 extent any response is required, Safeway denies the allegations in Paragraph 3.1.

15 B. CLAIMS FOR WRONGFUL TERMINATION—BREACH OF EMPLOYMENT 16 CONTACT AND/OR EMPLOYMENT POLICY

17 3.2 Paragraph 3.2 contains legal conclusions that do not require a response. To the
18 extent any response is required, Safeway denies the allegations in Paragraph 3.2.

19 3.3 Paragraph 3.3 contains legal conclusions that do not require a response. To the
20 extent any response is required, Safeway denies the allegations in Paragraph 3.3.

21 3.4 Paragraph 3.4 contains legal conclusions that do not require a response. To the
22 extent any response is required, Safeway denies the allegations in Paragraph 3.4.

23 C. CLAIM FOR FAILURE TO ACCOMMODATE

24 3.5 Paragraph 3.5 contains legal conclusions that do not require a response. To the
25 extent any response is required, Safeway denies the allegations in Paragraph 3.5.

1 3.6 Paragraph 3.6 contains legal conclusions that do not require a response. To the
2 extent any response is required, Safeway denies the allegations in Paragraph 3.6.

3 **D. CLAIM FOR RETALIATION**

4 3.7 Paragraph 3.7 contains legal conclusions that do not require a response. To the
5 extent any response is required, Safeway denies the allegations in Paragraph 3.7.

6 **IV. DAMAGES**

7 4.1 Paragraph 4.1 (include subparts 4.1.1 through 4.1.4) sets forth Plaintiff's
8 alleged damages and does not require a response. To the extent any response is required,
9 Safeway denies engaging in any unlawful conduct alleged in the Complaint and thus denies
10 each and every assertion in Paragraph 4.1 regarding Plaintiff's alleged damages.

11 **V. REQUEST FOR RELIEF**

12 Plaintiff's Request for Relief does not require a response. To the extent any response
13 is required, Safeway denies that Plaintiff is entitled to the relief requested in the Complaint
14 (including without limitation Section V and its subparts 1 through 6) or to any relief
15 whatsoever.

16 **ADDITIONAL DEFENSES**

17 By way of further answer and defense, Safeway states:

- 18 1. The Complaint fails to state a claim upon which relief may be granted.
- 19 2. Plaintiff's claims are barred in whole or in part by applicable statutes of
20 limitations or limitations periods.
- 21 3. Plaintiff's claims are barred in whole or in part pursuant to the doctrines of
22 waiver, laches, estoppel, accord and satisfaction, and settlement and release.
- 23 4. Plaintiff's claims are barred, in whole or in part, by her own negligent or
24 intentional acts or her contributory negligence or her comparative fault.
- 25 5. Plaintiff's claims are barred, in whole or in part, by the exclusive remedy
26 provisions of the Washington Industrial Insurance Act.

1 6. Plaintiff's claims are preempted or exclusively governed, in whole or in part,
2 by Section 301 of the Labor Relations Management Act and/or other federal labor law.

3 7. Some or all of Plaintiff's claims are required to be resolved through grievance
4 or arbitration procedures.

5 8. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's failure to
6 exhaust administrative and contractual remedies.

7 9. Any claims for attorney's fees may be waived, in whole or in part, by the
8 relevant bargaining agreement.

9 10. Plaintiff's discrimination and retaliation claims are barred, because any actions
10 taken by Safeway were taken for legitimate and lawful business reasons, unrelated to
11 Plaintiff's sex, age, alleged disability, worker's compensation claim or alleged requests for
12 workplace accommodations.

13 11. Plaintiff's discrimination and retaliation claims are barred, in whole or in part,
14 because Plaintiff did not suffer any tangible adverse employment action as a result of her sex,
15 age, alleged disability, worker's compensation claim or any alleged request for a workplace
16 accommodation.

17 12. Plaintiff's failure to accommodate claim is barred, in whole or in part, because
18 Plaintiff was not a qualified individual, Safeway did not fail to provide a reasonable
19 accommodation of any alleged disability, and/or no reasonable accommodation could be
20 made without imposing an undue hardship on Safeway.

21 13. An award of attorney's fees pursuant to RCW 49.48.030 is not justified
22 because Safeway has paid Plaintiff appropriate wages legally due for any compensable work
23 and Plaintiff has not been terminated.

24 14. If and to the extent the Court finds that Plaintiff is entitled to damages,
25 Plaintiff's claim for damages may be barred, in whole or in part, due to a failure to mitigate
26 her damages.

1 15. If and to the extent the Court finds that Plaintiff is entitled to damages,
2 Safeway is entitled to an offset against such damages for all amounts that were earned or
3 which reasonably could have been earned by Plaintiff or for income from non-collateral
4 sources.

5 16. To the extent Plaintiff claims that she was wrongfully denied benefits under
6 any retirement or health and welfare plan, Plaintiff's claims are preempted by the Employee
7 Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*

8 17. To the extent Plaintiff claims that she was wrongfully denied benefits under
9 any retirement or health and welfare plan, Plaintiff's claims are barred, in whole or in part, by
10 her failure to exhaust administrative remedies.

11 18. Plaintiff's claims are barred in whole or in part by lack of consideration, lack
12 of mutual assent, lack of agreement, mutual mistake, lack of reliance, failure to perform a
13 condition precedent, and/or breach.

14 19. Safeway acted in good faith and did not act willfully.

15 20. Safeway specifically reserves the right to raise additional defenses, as they
16 may become known through the course of further investigation and discovery.

17 **PRAYER**

18 WHEREFORE, having fully answered, Safeway prays that:

19 A. Plaintiff take nothing by the Complaint;

20 B. The Complaint be dismissed with prejudice;

21 C. Safeway be awarded its costs and reasonable attorneys' fees as permitted by
22 law; and

23 D. Safeway be granted such other and further relief as the Court may deem just
24 and equitable.

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DATED this 7th day of June, 2011.

K&L GATES LLP

By s/ Daniel P. Hurley
Daniel P. Hurley, WSBA #32842

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2011, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant:

Patrick B. Reddy at reddyp@emeryreddy.com

Dated this 7th day of June, 2011.

By s/ Daniel P. Hurley
Daniel P. Hurley, WSBA #32842

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