

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Deborah Smith,

Court File No. 08-6195 (PJS/AJB)

Plaintiff,

v.

DEFENDANT'S ANSWER

Hilton Hotels Corporation d/b/a
HHC-Hilton Minneapolis H&T,

Defendant.

For its Answer to the Plaintiff's Second Amended Complaint, Defendant, Hilton Hotels Corporation, states and alleges as follows:

1. Upon information and belief, Defendant admits Paragraph 1 of the Second Amended Complaint.

2. Answering Paragraph 2 of the Second Amended Complaint, Defendant admits that Plaintiff's job duties included training staff and that she received pay increases from time to time. Defendant denies the remaining allegations contained in Paragraph 2.

3. Defendant admits Paragraph 3 of the Second Amended Complaint.

4. Answering Paragraph 4 of the Second Amended Complaint, Defendants admit James Vennewitz, April Bezdichek, Harley Gayle, Tom Anderson, David Bullerman, Koa Combs, Paul Downing, Mo Hassan, Heather Huggins, Debbie Jahnke, Gretchen Jorgenson, Dawn Kenyon, Kristin Lessard, John E. Luke, George E. Prine III, Aaron Schulte, Kim Thompson, Traci Schultz, Victor Salamone, Dale Nelson, Kristen

Erdmann, Julian Granger, Nakeela Wright, and Hannah Villarose were all employed by Defendant at times when Plaintiff was employed. Defendant denies the remaining allegations contained in Paragraph 4.

5. Answering Paragraph 5 of the Second Amended Complaint, Defendant admits Plaintiff's employment ended when she failed to return from a leave of absence. Defendant denies the remaining allegations contained in Paragraph 5.

6. Defendant denies Paragraph 6 of the Second Amended Complaint.

7. Defendant denies Paragraph 7 of the Second Amended Complaint.

8. Answering Paragraph 8 of the Second Amended Complaint, Defendant admits Plaintiff made a complaint to Human Resources Director Traci Schultz. Defendant denies the remaining allegations contained in Paragraph 8.

9. Defendant denies Paragraph 9 of the Second Amended Complaint.

10. Plaintiff did not plead a Paragraph 10 to her Second Amended Complaint.

11. Defendant denies Paragraph 11 of the Second Amended Complaint.

12. Defendant denies Paragraph 12 of the Second Amended Complaint.

13. Defendant denies Paragraph 13 of the Second Amended Complaint.

14. Defendant denies Paragraph 14 of the Second Amended Complaint.

15. Defendant denies Paragraph 15 of the Second Amended Complaint.

16. Defendant denies Paragraph 16 of the Second Amended Complaint.

17. Defendant denies Paragraph 17 of the Second Amended Complaint.

18. Defendant denies Paragraph 18 of the Second Amended Complaint.

19. Defendant denies Paragraph 19 of the Second Amended Complaint.

20. Defendant denies Paragraph 20 of the Second Amended Complaint.

21. Defendant denies Paragraph 21 of the Second Amended Complaint.

22. Answering Paragraph 22 of the Second Amended Complaint, Defendant admits that Plaintiff was an “employee” and that Defendant was an ‘employer” as those terms are defined under Minn. Stat. § 363A.03, Subds. 15 and 16. Defendant denies the remaining allegations contained in Paragraph 22.

23. Defendant denies Paragraph 23 of the Second Amended Complaint.

24. Defendant denies Paragraph 24 of the Second Amended Complaint.

25. Defendant denies Paragraph 25 of the Second Amended Complaint.

26. Defendant denies Paragraph 26 of the Second Amended Complaint.

27. Defendant denies Paragraph 27 of the Second Amended Complaint.

28. Defendant denies Paragraph 28 of the Second Amended Complaint.

29. Defendant denies Paragraph 29 of the Second Amended Complaint.

30. Defendant denies Paragraph 30 of the Second Amended Complaint.

31. Defendant denies all allegations in the Second Amended Complaint, except as specifically admitted, denied or otherwise answered herein.

AFFIRMATIVE DEFENSES

1. Plaintiff’s Second Amended Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

2. Plaintiff’s damages, if any, were caused or contributed to by Plaintiff’s own conduct or others over whom Defendant has no control.

3. Plaintiff's claims for damages are barred, in whole or in part, because she has failed to mitigate her alleged damages.

4. Plaintiff's claims for hostile work environment are barred and/or any recovery of damages is precluded because Defendant exercised reasonable care to prevent and correct promptly any alleged harassing behavior.

5. Plaintiff's claims are barred and/or any recovery of damages is precluded because Plaintiff unreasonably failed to take advantage of Defendant's preventative or corrective opportunities or to avoid harm otherwise.

6. Plaintiff's claims are pre-empted, in whole or in part, by operation of the exclusive remedies provisions of Minnesota's workers' compensation laws.

7. Defendant asserts that it has further and additional affirmative defenses, the nature of which cannot be determined until Defendant has had an opportunity to engage in discovery. Defendant therefore incorporates all affirmative defenses stated or contemplated by Rule 8 of the Federal Rules of Civil Procedure as if fully set forth herein.

WHEREFORE, Defendant requests the following relief:

1. That Plaintiff's Second Amended Complaint is dismissed with prejudice;
2. That Defendant is awarded its costs and disbursements;
3. That Defendant receives its attorneys fees as a prevailing party pursuant to Minn. Stat. § 363A.33 subd. 7; and

4. Such other relief in favor of Defendant as may be deemed just and equitable.

Dated: December 4, 2008

JACKSON LEWIS LLP

s/Thomas E. Marshall

Thomas E. Marshall #155597

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ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Deborah Smith,

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Plaintiff,

v.

CERTIFICATE OF SERVICE

Hilton Hotels Corporation d/b/a
HHC-Hilton Minneapolis H&T,

Defendant.

I hereby certify that on December 4, 2008, I caused the following documents:

DEFENDANT'S ANSWER

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

Lori C Peterson - loripeterson@qwestoffice.net

Sheila K K Dokken - sjdokken@msn.com, judy1995@qwestoffice.net

Dated: December 4, 2008

s/Thomas E. Marshall
Thomas E. Marshall