

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

April Bezdichek,

Court File No. 08-6196 (JNE/JJG)

Plaintiff,

v.

DEFENDANTS' ANSWER

Hilton Hotels Corporation d/b/a
HHC-Hilton Minneapolis H&T, and
James M. Vennewitz,

Defendants.

For their Joint Answer to the Plaintiff's Second Amended Complaint, Defendants, Hilton Hotels Corporation and James M. Vennewitz, state and allege as follows:

1. Answering Paragraph 1 of the Second Amended Complaint, Defendants admit Plaintiff worked for Defendant Hilton Hotels Corporation as a cocktail server from October 25, 2005 to November 16, 2007 and was an on-call cocktail server when she quit her employment. Upon information and belief, Defendants admit Plaintiff is a 25-year-old female residing in Corona, California. Defendants deny the remaining allegations contained in Paragraph 1.

2. Answering Paragraph 2 of the Second Amended Complaint, Defendants admit that, on occasion, Plaintiff's performed satisfactorily and assisted with the training of other employees. Defendants deny the remaining allegations contained in Paragraph 2.

3. Defendants admit Paragraph 3 of the Second Amended Complaint.

4. Answering Paragraph 4 of the Second Amended Complaint, Defendants admit James M. Vennewitz is a 38-year-old male and worked for Defendant Hilton Hotels Corporation as Assistant Director of Food and Beverage at the time of Plaintiff's employment. Defendants deny the remaining allegations contained in Paragraph 4.

5. Answering Paragraph 5 of the Second Amended Complaint, Defendants admit Harley Gayle, Deborah Smith, 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 Hilton at times when Plaintiff was employed. Defendant denies the remaining allegations contained in Paragraph 5.

6. Defendants deny Paragraph 6 of the Second Amended Complaint.

7. Answering Paragraph 7 of the Second Amended Complaint, Defendants admit Vennewitz invited Plaintiff to the hotel to celebrate the completion of a large project with other employees. Defendants deny the remaining allegations contained in Paragraph 7.

8. Defendants deny Paragraph 8 of the Second Amended Complaint.

9. Defendants deny Paragraph 9 of the Second Amended Complaint.

10. Defendants deny Paragraph 10 of the Second Amended Complaint.

11. Defendants deny Paragraph 11 of the Second Amended Complaint.

12. Defendants deny Paragraph 12 of the Second Amended Complaint.

13. Defendants deny Paragraph 13 of the Second Amended Complaint.
14. Defendants deny Paragraph 14 of the Second Amended Complaint.
15. Defendants deny Paragraph 15 of the Second Amended Complaint.
16. Defendants deny Paragraph 16 of the Second Amended Complaint.
17. Defendants deny Paragraph 17 of the Second Amended Complaint.
18. Defendants deny Paragraph 18 of the Second Amended Complaint.
19. Defendants deny Paragraph 19 of the Second Amended Complaint.
20. Defendants deny Paragraph 20 of the Second Amended Complaint.
21. Defendants deny Paragraph 21 of the Second Amended Complaint.
22. Defendants deny Paragraph 22 of the Second Amended Complaint.
23. Answering Paragraph 23 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 23.

24. Defendants deny Paragraph 24 of the Second Amended Complaint.
25. Defendants deny Paragraph 25 of the Second Amended Complaint.
26. Defendants deny Paragraph 26 of the Second Amended Complaint.
27. Defendants deny Paragraph 27 of the Second Amended Complaint.
28. Defendants deny Paragraph 28 of the Second Amended Complaint.
29. Defendants deny Paragraph 29 of the Second Amended Complaint.
30. Defendants deny Paragraph 30 of the Second Amended Complaint.

31. Defendants deny both Paragraphs numbered as 31 in the Second Amended Complaint.

32. Defendants deny Paragraph 32 of the Second Amended Complaint.

33. Defendants deny Paragraph 33 of the Second Amended Complaint.

34. Defendants deny Paragraph 34 of the Second Amended Complaint.

35. Defendants deny Paragraph 35 of the Second Amended Complaint.

36. Defendants deny Paragraph 36 of the Second Amended Complaint.

37. Defendants deny Paragraph 37 of the Second Amended Complaint.

38. Defendants deny Paragraph 38 of the Second Amended Complaint.

39. Defendants deny Paragraph 39 of the Second Amended Complaint.

40. Defendants deny Paragraph 40 of the Second Amended Complaint.

41. Defendants deny Paragraph 41 of the Second Amended Complaint.

42. Answering Paragraph 42 of the Second Amended Complaint, Defendants admit Vennewitz worked for Defendant Hilton Hotels Corporation as Assistant Director of Food and Beverage at the time of Plaintiff's employment. Defendants deny the remaining allegations contained in Paragraph 42.

43. Defendants deny Paragraph 43 of the Second Amended Complaint.

44. Defendants deny Paragraph 44 of the Second Amended Complaint.

45. Defendants deny Paragraph 45 of the Second Amended Complaint.

46. Defendants deny Paragraph 46 of the Second Amended Complaint.

47. Defendants deny Paragraph 47 of the Second Amended Complaint.

48. Defendants deny Paragraph 48 of the Second Amended Complaint.

49. Defendants deny Paragraph 49 of the Second Amended Complaint.

50. Defendants deny Paragraph 50 of the Second Amended Complaint.

51. Defendants deny Paragraph 51 of the Second Amended Complaint.

52. Defendants deny Paragraph 52 of the Second Amended Complaint.

53. Defendants deny Paragraph 53 of the Second Amended Complaint.

54. Defendants deny Paragraph 54 of the Second Amended Complaint.

55. Answering Paragraph 55 of the Second Amended Complaint, Defendants admit Vennewitz worked for Defendant Hilton Hotels Corporation as Assistant Director of Food and Beverage at the time of Plaintiff's employment. Defendants deny the remaining allegations contained in Paragraph 55.

56. Defendants deny Paragraph 56 of the Second Amended Complaint.

57. Defendants deny Paragraph 57 of the Second Amended Complaint.

58. Defendants deny Paragraph 58 of the Second Amended Complaint.

59. Defendants deny Paragraph 59 of the Second Amended Complaint.

60. Defendants deny Paragraph 60 of the Second Amended Complaint.

61. Defendants deny Paragraph 61 of the Second Amended Complaint.

62. Defendants deny Paragraph 62 of the Second Amended Complaint.

63. Defendants deny Paragraph 63 of the Second Amended Complaint.

64. Answering Paragraph 64 of the Second Amended Complaint, Defendants admit Vennewitz worked for Defendant Hilton Hotels Corporation as Assistant Director of Food and Beverage at the time of Plaintiff's employment. Defendants deny the remaining allegations contained in Paragraph 64.

65. Defendants deny Paragraph 65 of the Second Amended Complaint.

66. Defendants deny Paragraph 66 of the Second Amended Complaint.

67. Defendants deny Paragraph 67 of the Second Amended Complaint.

68. Defendants deny Paragraph 68 of the Second Amended Complaint.

69. Defendants deny Paragraph 69 of the Second Amended Complaint.

70. Defendants deny Paragraph 70 of the Second Amended Complaint.

71. Defendants deny Paragraph 71 of the Second Amended Complaint.

72. Defendants deny Paragraph 72 of the Second Amended Complaint.

73. Defendants deny Paragraph 73 of the Second Amended Complaint.

74. Defendants deny Paragraph 74 of the Second Amended Complaint.

75. Answering Paragraph 75 of the Second Amended Complaint, Defendants admit Vennewitz worked for Defendant Hilton Hotels Corporation as Assistant Director of Food and Beverage and Kim Thompson worked for Hilton Hotels Corporation as a Food and Beverage Manager at the time of Plaintiff's employment. Defendants deny the remaining allegations contained in Paragraph 75.

76. Defendants deny Paragraph 76 of the Second Amended Complaint.

77. Defendants deny Paragraph 77 of the Second Amended Complaint.

78. Defendants deny Paragraph 78 of the Second Amended Complaint.

79. Defendants deny 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 Defendants have no control.

3. Plaintiff's Second Amended Complaint is barred, in whole or in part, by the doctrines of unclean hands, mistake, estoppel, waiver or laches.

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

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

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

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

8. Defendants assert that they have further and additional affirmative defenses, the nature of which cannot be determined until Defendants have had an opportunity to engage in discovery. Defendants therefore incorporate all affirmative defenses stated or contemplated by Rule 8 of the Federal Rules of Civil Procedure as if fully set forth herein.

WHEREFORE, Defendants request the following relief:

1. That Plaintiff's Second Amended Complaint is dismissed with prejudice;
2. That Defendants are awarded their costs and disbursements;
3. That Defendants receive their attorneys' fees as a prevailing party pursuant to Minn. Stat. § 363A.33 subd. 7; and
4. Such other relief in favor of Defendants as may be deemed just and equitable.

Dated: December 4, 2008

JACKSON LEWIS LLP

s/ Thomas E. Marshall

Thomas E. Marshall #155597

Katherine C. Bischoff #338266

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ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

April Bezdichek,

Court File No. 08-6196 (JNE/JJG)

Plaintiff,

v.

CERTIFICATE OF SERVICE

Hilton Hotels Corporation d/b/a
HHC-Hilton Minneapolis H&T, and
James M. Vennewitz,

Defendants.

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

DEFENDANTS' 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