

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LEYTH O. JAMAL,
PLAINTIFF,

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§
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§
§

v.

CASE No.: 4:14-CV-02782

SAKS & COMPANY
DEFENDANT.

JURY DEMAND

ORIGINAL ANSWER

SAKS & Company (“SAKS” or “Defendant”) files this Original Answer to Plaintiff’s Original Complaint (“Complaint”) and shows as follows:

DEFENSES, INCLUDING AFFIRMATIVE DEFENSES

Defendant asserts the following defenses, including affirmative defenses, but does not assume the burden of proof on any such defense except as required by applicable law with respect to the particular defense asserted:

1. Plaintiff’s claims should be dismissed in whole or in part for failing to state a claim upon which relief can be granted. Plaintiff’s sexual orientation and/or his sexual identity issues and/or his “gender identity” and/or his gender expression” and/or his alleged disability are not protected categories under Title VII.

2. Plaintiff is not entitled to, nor does the law allow, the damages pleaded by Plaintiff.

3. The alleged damages in this case are capped and/or limited by the statutory caps contained in the relevant statutes under which Plaintiff is attempting to sue.

4. Plaintiff’s claims are barred by the applicable statutes of limitations and/or the equitable doctrines of laches, waiver, and/or estoppel.

5. Pending discovery, Defendant asserts that Plaintiff has failed to mitigate his

alleged damages, the entitlement to which is expressly denied.

6. Pending discovery, Defendant asserts that Plaintiff's lawsuit and alleged damages are barred and/or limited by the after-acquired evidence doctrine.

7. Plaintiff's claims are barred to the extent Plaintiff failed to exhaust administrative remedies. Plaintiff's claims are barred to the extent they exceed the scope of her EEOC and or Commission on Human Rights Charge(s) and/or the reasonable investigation that could have been expected to grow out of such charge(s).

8. Plaintiff is not entitled to punitive damages. None of Defendant's actions or inactions toward Plaintiff, if any, were committed with malice and/or reckless indifference or disregard of any rights of Plaintiff.

9. Plaintiff's lawsuit is frivolous, without foundation, vexatious, and/or brought in bad faith.

10. Defendant did not have an employment contract with Plaintiff and accordingly did not and could not have breached any such contract with Plaintiff.

11. Plaintiff's allegations, even if true, do not reflect conduct which was sufficiently severe or pervasive as to establish a hostile work environment claim as a matter of law.

12. There is no causal connection to support Plaintiff's retaliation claim.

13. Plaintiff did not engage in the requisite protected conduct necessary to establish a retaliation claim prior to Defendant making the decision to terminate his employment.

14. To the extent that Plaintiff's former co-workers and /or supervisors engaged in tortious conduct toward or against her, Defendant cannot be held liable for such conduct because any such alleged conduct was not committed within the course and /or scope of such person's employment with Defendant.

Without waiving the above defenses, Defendant responds to the allegations in the Complaint on a paragraph-by-paragraph basis as follows:

1. Defendant acknowledges that Plaintiff is attempting to assert claims under Title VII as set forth in the first sentence of paragraph 1 of the Complaint, but denies that he has done so or that he has stated actionable claims under Title VII. Defendant also denies that “disability” claims are actionable under Title VII. Defendant further denies that Plaintiff can assert an action under “Texas common law for breach of contract” as alleged in the second sentence of paragraph 1 of the Complaint.

2. Defendant acknowledges that Plaintiff is alleging that Defendant subjected Plaintiff to discrimination as alleged in paragraph 2 of the Complaint, but Defendant denies that it did so.

3. In connection with the allegations in paragraph 3 of the Complaint, Defendant admits only that this Court has jurisdiction over matter brought under Title VII.

4. In connection with the allegations in paragraph 4 of the Complaint, Defendant admits only that this Court has supplemental jurisdiction over state law claims that arise out the same case or controversy as matters brought under Title VII when brought in the same lawsuit.

5. In connection with the allegations in paragraph 5 of the Complaint, Defendant admits only that this Court has diversity jurisdiction over matters between citizens of different states where the amount in controversy exceeds \$75,000.00. Defendant is unable to admit or deny that Plaintiff is a citizen of the state of New York.

6. In connection with the allegations in paragraph 6 of the Complaint, Defendant admits only that venue is proper in this Court.

7. In connection with the allegations in paragraph 7 of the Complaint, Defendant

admits only that venue is proper in this Court.

III.

THE PARTIES

8. Defendant is unable to admit or deny the allegations in paragraph 8 of the Complaint regarding Plaintiff's citizenship and, on information and/or belief, Defendant states that Plaintiff is a male.

9. In connection with the allegations in paragraph 9 of the Complaint, Defendant admits that Plaintiff commenced his employment with Saks on or about April 24, 2011, in the position of Selling and Service Associate, at Saks's OFF 5TH Outlet located in Katy, Texas, and that, on or about March 26, 2012, Plaintiff transferred to the full-line Houston location, into the position of Selling Associate.

10. Defendant denies the allegation in paragraph 10 of the Complaint.

11. Defendant denies the allegations in paragraph 11 of the Complaint to the extent that it alleges that Defendant "has continuously had at least 500 employees" at its store in Houston Texas.

12. Defendant admits the allegations in paragraph 12 of the Complaint.

IV.

ADMINISTRATIVE PROCEDURE

13. In connection with the allegations in paragraph 13 of the Complaint, Defendant admits that Plaintiff submitted an EEOC Charge dated July 2, 2012 in which he checked the box indicating alleged discrimination based on "sex".

14. In connection with the allegation in paragraph 14 of the Complaint, Defendant

admits that the EEOC Charge references the “Texas Workforce Commission Civil Rights Division.”

15. In connection with the allegations in paragraph 15 of the Complaint, Defendant admits that an “Amendment” to the EEOC Charge dated July 21, 2012 was made and that it references alleged “retaliation.”

16. In connection with the allegation in paragraph 16 of the Complaint, Defendant admits that part of the EEOC “Determination” contains the quoted language. However, Defendant notes that the “Determination” also states “No finding is being made regarding any other issue alleged in the charge.”

17. Defendant admits the allegation in paragraph 17 of the Complaint.

18. Defendant denies the allegation in paragraph 18 of the Complaint.

19. Defendant denies the allegation in paragraph 19 of the Complaint.

V.

FACTUAL ALLEGATIONS

20. Defendant denies the allegation in paragraph 20 of the Complaint.

21. Defendant admits the allegation in paragraph 21 of the Complaint.

22. Defendant denies the allegation in paragraph 22 of the Complaint.

23. Defendant is unable to admit or deny the allegation in paragraph 23 of the Complaint.

24. In connection with the allegation in paragraph 24 of the Complaint, Defendant admits only that approximately one year into his employment, Plaintiff submitted an application to transfer to an open Selling Associate position at Saks’s Houston, Texas, full-line store.

25. In connection with the allegation in paragraph 25 of the Complaint, Defendant

admits only that it agreed to offer Plaintiff the opportunity to transfer to the full-line Houston location on or about March 26, 2012.

26. In connection with the allegations in paragraph 26 of the Complaint, Defendant admits that Plaintiff discussed restroom issues with Ms. Mullen and/or Ms. Taylor but denies that Plaintiff requested to “be referred to using female pronouns” with them.

27. In connection with the allegations in paragraph 27 of the Complaint, Defendant admits that Plaintiff was told to use male restrooms while within its store Defendant denies the allegation in the second sentence of paragraph 25 of the Complaint.

28. Defendant is unable to admit or deny the allegation in paragraph 28 of the Complaint regarding the purported definition of “misgendering.”

29. Defendant acknowledges the allegation in paragraph 29 of the Complaint but denies that it had the motivation alleged therein.

30. In connection with the allegation in paragraph 30 of the Complaint, Defendant admits that a client complained about Plaintiff’s use of a men’s restroom and such fact was brought to Plaintiff’s attention.

31. Defendant denies that allegation in paragraph 31 of the Complaint.

32. Defendant denies the allegation in paragraph 32 of the Complaint.

33. Defendant denies the allegation in paragraph 33 of the Complaint.

34. Defendant denies the allegation in paragraph 34 of the Complaint.

35. Defendant denies the allegation in paragraph 35 of the Complaint.

36. Defendant denies the allegation in paragraph 36 of the Complaint.

37. Defendant denies the allegation in paragraph 37 of the Complaint.

38. Defendant is unable to admit or deny the allegation in paragraph 38 of the

Complaint regarding what Smith allegedly believed or why.

39. Defendant is unable to admit or deny the allegation in paragraph 39 of the Complaint regarding what Ms. Nkuku allegedly told another person.

40. Defendant is unable to admit or deny the allegation in paragraph 40 of the Complaint about what Mr. Chamblee allegedly may have said to some unknown person.

41. Defendant is unable to admit or deny the allegation in paragraph 41 of the Complaint about what Ms. Pray allegedly witnessed or allegedly may have said to some unknown person.

42. Defendant is unable to admit or deny the allegation in paragraph 42 of the Complaint about what Ms. Richmond allegedly witnessed or allegedly may have said to some unknown person.

43. With respect to the allegation in paragraph 43 of the Complaint, Defendant admits only that on or about June 29, 2012, one (1) day after a client complaint was brought to the attention of Plaintiff, and he was questioned regarding same, Plaintiff sent Mullin an e-mail with the subject line "Talk." The e-mail stated, in sum, that Plaintiff believed he was being subject to on-going harassment by his co-workers, specifically by allegedly being teased and asked questions. Defendant denies that "no action was taken."

44. Defendant denies the allegation in paragraph 44 of the Complaint.

45. Defendant denies the allegation in paragraph 45 of the Complaint.

46. Defendant denies the allegation in paragraph 46 of the Complaint.

47. Defendant denies the allegation in paragraph 47 of the Complaint.

48. Defendant denies the allegation in paragraph 48 of the Complaint and further states that it was a client who told Defendant about Plaintiff's inappropriate conversation and

that Plaintiff as questioned about it on or about June 28, 2012.

49. Defendant denies the allegation in paragraph 49 of the Complaint.

50. In connection with the allegation in paragraph 50 of the Complaint, Defendant admits only that Plaintiff filed an EEOC Charge which is dated July 2, 2012. The contents of the documents speak for themselves.

51. In connection with the allegation in paragraph 51 of the Complaint, Defendant admits only that Plaintiff was advised of his employment termination on July 12, 2012., after Defendant had investigated the complaint raised by one of its client's concerning Plaintiff's inappropriate conversation on the sale floor and two members of management had separately spoken with the client and two other associates had independently corroborated the client's reaction to the incident and earlier attempt at complaining.

52. Defendant denies the allegation in paragraph 52 of the Complaint.

53. Defendant denies the allegation in paragraph 53 of the Complaint.

54. Defendant denies the allegation in paragraph 54 of the Complaint.

55. Defendant denies the allegation in paragraph 55 of the Complaint.

56. Defendant denies the allegation in paragraph 56 of the Complaint.

57. Defendant denies the allegation in paragraph 57 of the Complaint.

58. Defendant denies the allegation in paragraph 58 of the Complaint.

59. Defendant denies the allegation in paragraph 59 of the Complaint.

60. Defendant denies the allegation in paragraph 60 of the Complaint.

61. Defendant denies the allegation in paragraph 61 of the Complaint.

62. Defendant denies the allegation in paragraph 62 of the Complaint.

VI.

CAUSES OF ACTION

63. Defendant re-alleges and incorporates by reference all responses to all preceding paragraphs 1-62.

64. Defendant denies the allegation in paragraph 64 of the Complaint.

65. Defendant denies the allegation in paragraph 65 of the Complaint.

66. Defendant denies the allegation in paragraph 66 of the Complaint.

67. Defendant denies the allegation in paragraph 67 of the Complaint.

68. Defendant denies the allegation in paragraph 68 of the Complaint.

69. Defendant denies the allegations in paragraph 69 of the Complaint.

70. Defendant re-alleges and incorporates by reference all responses to all preceding paragraphs 1-69.

71. Defendant denies the allegation in paragraph 71 of the Complaint.

72. Defendant denies the allegation in paragraph 72 of the Complaint.

73. Defendant denies the allegation in paragraph 73 of the Complaint.

74. Defendant denies the allegation in paragraph 74 of the Complaint.

75. Defendant denies the allegation in paragraph 75 of the Complaint.

76. Defendant denies the allegation in paragraph 76 of the Complaint.

77. Defendant denies the allegation in paragraph 77 of the Complaint.

78. Defendant denies the allegation in paragraph 78 of the Complaint.

79. Defendant denies the allegation in paragraph 79 of the Complaint.

80. Defendant denies the allegation in paragraph 80 of the Complaint.

81. Defendant denies the allegation in paragraph 81 of the Complaint.

82. Defendant denies the allegation in paragraph 82 of the Complaint.

83. Defendant re-alleges and incorporates by reference all responses to all preceding paragraphs 1-82.

84. Defendant denies the allegation in paragraph 84 of the Complaint.

85. Defendant denies the allegation in paragraph 85 of the Complaint.

86. Defendant denies the allegation in paragraph 86 of the Complaint.

87. Defendant denies the allegation in paragraph 87 of the Complaint.

88. Defendant denies the allegation in paragraph 88 of the Complaint.

89. Defendant denies the allegation in paragraph 89 of the Complaint.

90. Defendant denies the allegation in paragraph 90 of the Complaint.

91. Defendant denies the allegation in paragraph 91 of the Complaint.

92. Defendant re-alleges and incorporates by reference all responses to all preceding paragraphs 1-91.

93. Defendant denies the allegation in paragraph 93 of the Complaint.

94. Defendant denies the allegation in paragraph 94 of the Complaint.

95. Defendant denies the allegation in paragraph 95 of the Complaint.

96. Defendant denies the allegation in paragraph 96 of the Complaint.

97. Defendant denies the allegation in paragraph 97 of the Complaint.

98. Defendant denies the allegation in paragraph 98 of the Complaint.

99. Defendant denies the allegation in paragraph 99 of the Complaint.

100. Defendant denies the allegation in paragraph 100 of the Complaint.

101. Defendant denies the allegation in paragraph 101 of the Complaint.

102. Defendant denies the allegation in paragraph 102 of the Complaint.

103. Defendant denies the allegation in paragraph 103 of the Complaint.

104. Defendant denies the allegation in paragraph 104 of the Complaint.

PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief requested in this case, including that requested in sub-parts (A) through (G) under the “Prayer for Relief” and/or “Wherefore” paragraph of the Complaint.

All allegations that are not expressly admitted herein are hereby expressly denied. Defendant reserves the right to amend this Answer in accordance with any order entered by the Court and/or the applicable Rules of Procedure.

For the above reasons, Defendant SAKS & Company prays that Plaintiff’s Original Complaint will be dismissed and that Defendant will recover its costs, attorneys’ fees, and such other and further relief to which it may be entitled from Plaintiff.

Respectfully submitted,

/s/ Michael D. Mitchell

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**ATTORNEY-IN-CHARGE FOR
DEFENDANT SAKS & COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification of such filing to the following:

Mitchell Katine
KATINE & NECHMAN, L.L.P.
1834 Southmore Blvd., (Almeda Road)
Houston, Texas 77004

/s/ Michael D. Mitchell

Michael D. Mitchell

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