

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED

MAR 28 2002

CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy *dyj*

EQUAL EMPLOYMENT OPPORTUNITY §  
COMMISSION, §  
§

Plaintiff, §  
§

and §  
§

ASHARI BURCH, ANDREA §  
FERGUSON, LINDA FERGUSON and §  
CATRINA GARRETT §

CIVIL ACTION NO. 3-01CV1588-D

Intervenors, §  
§

v. §  
§

SEARS LOGISTICS SERVICES, INC., §  
§

Defendant. §  
§

**DEFENDANT'S FIRST AMENDED ANSWER**

TO THE HONORABLE SIDNEY A. FITZWATER:

Defendant Sears Logistics Services, Inc. ("SLS") files this First Amended Answer to Plaintiff's Complaint (the "Complaint") and in support thereof would show the Court as follows:

**First Defense**

The Complaint fails to state a claim for sex discrimination/sexual harassment under Title VII upon which relief can be granted against SLS. Therefore, Plaintiff's claim for alleged sex discrimination/sexual harassment in violation of Title VII should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Second Defense

The Complaint fails to state a claim for retaliation under Title VII upon which relief can be granted against SLS. Therefore, Plaintiff's claim for retaliation in violation of Title VII should be dismissed pursuant to Rule 12(b)(6).

Third Defense

The Complaint fails to state a claim upon which punitive damages can be granted. Therefore, Plaintiff's claim for punitive damages should be dismissed pursuant to Rule 12(b)(6).

Fourth Defense

All actions taken by SLS with respect to the Charging Parties were based entirely on legitimate factors other than sex/gender or retaliation for protected activity.

Fifth Defense

Plaintiff's Title VII claims asserted on behalf of the Charging Parties are barred because (1) SLS exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (2) the Charging Parties unreasonably failed to take advantage of the preventive or corrective opportunities provided by SLS or to avoid harm otherwise.

Sixth Defense

Now pleading specifically in response to the numbered allegations of the Complaint, SLS would show as follows:

1. SLS acknowledges that Plaintiff purports to assert claims against it under Title VII as set forth in the first paragraph of the Complaint, but denies that SLS engaged in any unlawful employment practices or violated Title VII. SLS denies the remaining allegations in the first paragraph of the Complaint.

2. SLS admits that Plaintiff invokes the jurisdiction of the Court as set forth in paragraph 1 of the Complaint, but denies that Plaintiff or the Charging Parties have suffered any deprivation of rights secured by the cited statutes or that Plaintiff or the Charging Parties are entitled to any relief.

3. SLS acknowledges that venue is proper in the Northern District of Texas, but denies that any unlawful employment practices complained of by Plaintiff "were and are now being committed" at all.

4. SLS admits the allegations in paragraph 3 of the Complaint.

5. SLS admits that it was doing business in the State of Texas during the period the Charging Parties were employed by it, and that during the Charging Parties' employment at SLS, SLS had at least fifteen employees. SLS is without information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 4 of the Complaint.

6. SLS admits that it was an employer engaged in an industry affecting commerce as defined by Title VII during the period that the Charging Parties were employed by SLS. SLS is without information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 5 of the Complaint.

7. SLS admits that the Charging Parties filed charges of discrimination with the EEOC more than thirty (30) days prior to the EEOC filing this lawsuit. SLS denies the remaining allegations in paragraph 6 of the Complaint.

8. SLS denies the allegations of paragraph 7 of the Complaint.

9. SLS denies the allegations of paragraph 8 of the Complaint.

10. SLS denies the allegations of paragraph 9 of the Complaint.

11. SLS denies the allegations of paragraph 10 of the Complaint.

12. SLS admits that Plaintiff seeks the relief requested in its prayer paragraphs (A)-(H), but denies that Plaintiff or the Charging Parties are entitled to any of the relief they request.

13. SLS acknowledges that Plaintiff requests a jury as set forth in the Complaint.

14. SLS denies any allegations not expressly admitted herein.

Seventh Defense

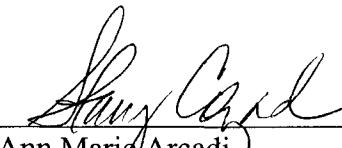
Plaintiff's Title VII claims asserted on behalf of the Charging Parties are barred in whole or in part by their failure to mitigate damages.

Request for Attorney's Fees

Plaintiff's Title VII claims are frivolous, unreasonable, groundless, and/or brought in bad faith, and SLS is therefore entitled to recover reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 20003-5(K) and 42 U.S.C. § 1988(b).

WHEREFORE, Defendant SLS asks that Plaintiff's claims be dismissed in their entirely, that SLS be granted its attorney's fees in connection with Plaintiff's claims and other reasonable expenses, and that SLS be granted such other and further relief to which it shall show itself entitled.

Respectfully submitted,



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Ann Marie Arcadi

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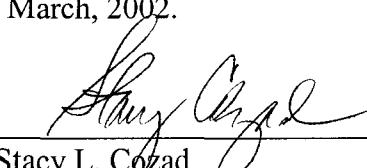
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*Attorneys for Sears Logistics Services, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served upon counsel of record for Plaintiff in the above cause in accordance with Rule 5, Federal Rules of Civil Procedure, on this 13th day of March, 2002.



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Stacy L. Cozad