

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	
AHMET DEMERELLI,)	
)	
Plaintiff-Intervener)	
)	
v.)	No. 4:04CV00846CAS
)	
CONVERGYS CUSTOMER)	
MANAGEMENT GROUP INC. ,)	
)	
Convergys.)	

DEFENDANT’S AMENDED ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF-INTERVENER’S COMPLAINT

COMES NOW, Convergys Customer Management Group Inc. (“Convergys”), by and through the undersigned counsel, and answers or otherwise responds to Plaintiff Ahmet Demerelli’s (“Demerelli”) Intervener Complaint.

JURISDICTION AND VENUE

1. Convergys admits the allegations in paragraph 1 of the Intervener Complaint.
2. Convergys admits the allegations in paragraph 2 of the Intervener Complaint.
3. Convergys admits only so much of paragraph 3 of the Intervener Complaint that Plaintiff’s claims are asserted pursuant to the Americans with Disabilities Act and that this Court has jurisdiction of Demerelli’s claims. Convergys specifically denies that it has violated any of the laws identified in paragraph 3 of the Intervener Complaint.

4. Convergys admits only so much of paragraph 4 of the Intervener Complaint as alleges that venue is proper in this Court. Convergys denies each and every remaining allegation of fact and conclusion of law contained in paragraph 4 of the Intervener Complaint.

5. Convergys admits only so much of paragraph 5 of the Intervener Complaint as it alleges that Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commissions regarding his employment with Convergys. Convergys denies the remaining allegations in paragraph 5 of the Intervener Complaint.

6. Convergys is without sufficient information or knowledge as to the truth or falsity of the allegations in paragraph 6 of the Intervener Complaint and therefore denies the same.

COUNT I

7. Convergys incorporates by reference its responses to paragraphs 1-6 above as if fully stated herein.

8. Convergys denies the allegations in paragraph 8 of the Intervener Complaint.

9. Convergys admits only so much of paragraph 9 of the Intervener Complaint as it alleges that Demerelli was dismissed on or about June 27, 2002. Convergys denies all other allegations in paragraph 9 of the Intervener Complaint.

10. Convergys denies the allegations in paragraph 10 of the Intervener Complaint.

11. Convergys denies the allegations in paragraph 11 of the Intervener Complaint.

12. Convergys denies the allegations in paragraph 12 of the Intervener Complaint.

13. Convergys denies the allegations in paragraph 13 of the Intervener Complaint.

14. Convergys denies the allegations in paragraph 14 of the Intervener Complaint.

Further answer, Convergys denies that Demerelli is entitled to any of the relief requested in the "Wherefore" paragraph following paragraph 14 of the Intervener Complaint.

All other allegations not otherwise admitted are denied.

IN FURTHER answer, Convergys asserts the following Affirmative Defenses:

A. The claims in the Intervener Complaint should be dismissed for failure to state a claim on which relief can be granted.

B. Demerelli's claims are precluded to the extent he failed to satisfy all conditions precedent to the institution of this action, and/or has failed to exhaust administrative remedies.

C. Demerelli's claims are, in part, are barred by applicable statutes of limitation or other time limitations.

D. Demerelli's request for damages must be either barred or offset as a result of his failure to mitigate damages.

E. Demerelli's claims are barred because even if unlawful discrimination had taken a part in Convergys' challenged decisions, which Convergys denies, Convergys would have made the same decisions absent discrimination.

F. Any proposed accommodation or proposed further accommodation would cause an undue hardship on the operation of Convergys' business.

G. The actions taken by Convergys were job-related and consistent with business necessity.

H. Convergys affirmatively states that Demerelli's claims for punitive damages in this matter would be contrary to the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

I. Demerelli fails to state a claim to the extent Ahmet Demerelli is not a qualified employee with a disability within the meaning of the ADA.

J. Plaintiff's right to relief is barred in whole or in part based upon the doctrine of after-acquired evidence.

WHEREFORE, Convergys prays that this Court dismiss all of the Plaintiff-Intervener's claims, and award Convergys its costs incurred in this action, and such further relief as the Court may deem just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

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Attorneys for Defendant, Convergys Customer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 6, 2005, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon Barbara A. Seely and Donna L. Harper, Equal Employment Opportunity Commission, St. Louis District Office, Robert A. Young Federal Bldg., 1222 Spruce Street, Room 8.100, St. Louis, Missouri 63103, and Michael Fagras, 4700 Mexico Rd., St. Peters, MO 63304.

/s/ *Laura M. Jordan*