

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

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|----------------------------------|---|----------------------------------|
| JOSE VASQUEZ, | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Civil Action No. 3:11-cv-03412-L |
| | § | |
| JANET NAPOLITANO, Secretary, | § | |
| Department of Homeland Security, | § | |
| Defendant. | § | |

DEFENDANT’S ANSWER TO PLAINTIFF’S AMENDED COMPLAINT

Pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (Title VII), defendant Janet Napolitano, Secretary of the United States Department of Homeland Security, by and through the United States Attorney for the Northern District of Texas and the undersigned Assistant United States Attorney, without waiving any defenses or affirmative defenses to which defendant may be entitled, files this answer and affirmative defenses to the May 17, 2012 amended complaint of plaintiff Jose Vasquez and respectfully would show the Court as follows:

1. Insofar as a response is required to the allegation in paragraph 1 of Vasquez’s amended complaint that Vasquez resides in Harris County, Texas, defendant admits that records Vasquez submitted to the Department of Homeland Security indicate that he resides in that county. Defendant admits the other allegation in paragraph 1 of Vasquez’s amended complaint that Vasquez “was an employee of Defendant within the meaning of Title VII, 42 U.S.C. § 2000e(f).”

2. Defendant admits the allegation in sentence 1 of paragraph 2 of Vasquez's amended complaint. The allegations in sentence 2 of paragraph 2 of Vasquez's amended complaint constitute allegations of jurisdiction to which no response is required. Insofar as a response is required, defendant admits the same, with the averment that Vasquez has not served the United States Attorney General.

3. Defendant admits the allegation in paragraph 3 of Vasquez's amended complaint.

4. The allegations in paragraph 4 of Vasquez's amended complaint constitute allegations of jurisdiction to which no response is required. Insofar as a response is required, defendant admits the same.

5. The allegations in paragraph 5 of Vasquez's amended complaint constitute allegations of venue to which no response is required. Insofar as a response is required, defendant admits the same.

6. Defendant admits the allegation in sentence 1 of paragraph 6 of Vasquez's amended complaint. Defendant denies the allegations in sentence 2 of paragraph 6 of Vasquez's amended complaint, with the averment that Vasquez filed his complaint before, not subsequent to, the expiration of ninety days from receiving his right-to-sue letter from the EEOC. Defendant lacks sufficient information to admit or deny the allegations in sentence 3 of paragraph 6 of Vasquez's amended complaint. Insofar as a response is required, defendant denies the same.

7. Defendant admits the allegations in paragraphs 7 and 8 of Vasquez's amended complaint.

8. Defendant denies the allegations in paragraphs 9 and 10 of Vasquez's amended complaint.

9. Defendant admits the allegations in paragraph 11 of Vasquez's amended complaint.

10. Defendant denies the allegations in paragraphs 12 through 32 of Vasquez's amended complaint.

11. Defendant admits the allegations in paragraph 33 of Vasquez's amended complaint.

12. Defendant denies the allegations in paragraphs 34 and 35 of Vasquez's amended complaint.

13. Defendant lacks sufficient information to admit or deny the allegations in paragraphs 36 and 37 of Vasquez's amended complaint. Insofar as a response is required, defendant denies the same.

14. Defendant denies the allegations in paragraphs 38 through 59 of Vasquez's amended complaint.

15. The remaining paragraphs of Vasquez's amended complaint contain a prayer for relief to which no response is required. Insofar as the allegations in those paragraphs may be construed as containing allegations of fact, defendant denies the same.

General Denial

Any allegation contained in Vasquez's amended complaint that has not been specifically and expressly admitted or explained by defendant herein is hereby denied.

Affirmative Defenses

As separate and complete defenses hereto, and without waiving any of the above, defendant offers the following affirmative defenses:

First Affirmative Defense

Vasquez failed to exhaust his administrative remedies with respect to some of his allegations.

Second Affirmative Defense

Vasquez failed to establish a prima facie case of discrimination under Title VII.

Third Affirmative Defense

Vasquez failed to establish an adverse employment decision.

Fourth Affirmative Defense

Vasquez failed to establish that he has been treated differently from members not of his protected class.

Fifth Affirmative Defense

Vasquez failed to establish a prima facie case of hostile work environment under Title VII.

Sixth Affirmative Defense

All personnel actions taken by defendant and complained of by Vasquez were for legitimate, non discriminatory reasons.

Seventh Affirmative Defense

Vasquez cannot establish that defendant's legitimate non-discriminatory reasons for each of the challenged actions are pretext for discrimination.

Eighth Affirmative Defense

Defendant would have made the same decisions without consideration of any prohibited factors under Title VII.

Ninth Affirmative Defense

Defendant denies that Vasquez is entitled to recover any damages in connection with the actions alleged in his amended complaint. However, if any damages are recovered, Vasquez is entitled to recover only those damages allowed under Title VII.

Tenth Affirmative Defense

Vasquez has failed to mitigate his alleged damages.

Prayer for Relief

Having fully answered Vasquez's amended complaint, defendant respectfully requests that, after due proceedings be had, judgment be granted in her favor dismissing Vasquez's amended complaint with prejudice, with Vasquez to bear the costs of defending this litigation, and for such other relief to which defendant is justly entitled.

Respectfully submitted,

SARAH R. SALDAÑA
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CERTIFICATE OF SERVICE

I certify that, on May 31, 2012, I electronically filed the foregoing document with the Clerk of Court for the United States District Court for the Northern District of Texas using the Court's electronic case filing system. That system sends a "Notice of Electronic Filing" to the following attorney in charge for plaintiff:

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