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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JANINE VIRGA,

Plaintiff,

vs.

CFI SALES & MARKETING, LTD, d/b/a
and a/k/a WESTGATE RESORTS,; CFI
SALES & MARKETING, INC., d/b/a and
a/k/a WESTGATE RESORTS; CFI RESORTS
MANAGEMENT, INC./ CFI SALES &
MARKETING, LLC; WESTGATE
RESORTS, LTD; WESTGATE RESORTS,
INC., WESTGATE MARKETING, LLC,
DOES 1 through 10 and ROE Corporations
11 through 20, inclusive,

Westgate, LLC.

Case No.: 2:15-cv-00207-APG-PAL

**REMAINING DEFENDANTS' ANSWER
TO PLAINTIFF'S
COMPLAINT**

Defendants, CFI SALES & MARKETING, INC., CFI RESORTS MANAGEMENT,
INC., CFI SALES & MARKETING, LLC, WESTGATE RESORTS, LTD., and WESTGATE

Defendants' Answer to Plaintiff's Complaint
Case No.: 2:15-cv-00207

1 RESORTS, INC., (collectively "Defendants"), by and through their attorneys of record, hereby
2 file their Answer and Defenses to Plaintiff's, JANINE VIRGA, Complaint ("Complaint") and
3 state as follows:

4 **JURISDICTION**

5 1. Defendants admit that this purports to be an action under state and federal laws
6 prohibiting unlawful employment actions but deny that Plaintiff's claims have any merit or that
7 she is entitled to relief.

8 2. Defendants admit that this court has jurisdiction over Title VII, N.R.S. Chapter
9 613 or N.R.S. Chapter 233, but deny that Plaintiff's claims have any merit or that she is entitled
10 to any relief.

11 3. Defendants admit venue is proper but deny the rest of the allegations in paragraph
12 3 of the Complaint.

13 4. Defendants admit that Plaintiff has demanded this matter be heard by a jury but
14 deny that her claims are sound or that she is entitled to any relief.

15 **PROCEDURAL REQUIREMENTS**

16 5. Defendants admit that Plaintiff filed a Charge of Discrimination with the Equal
17 Employment Opportunity Commission ("EEOC") but deny that Plaintiff exhausted pre-suit
18 requirements under Title VII or N.R.S. 613.330.

19 6. Defendants are without knowledge as to the allegations in paragraph 6 of the
20 Complaint; hence, they deny the allegations.

21 7. Defendants admit that the EEOC issued a letter of determination on April 23,
22 2014, but deny the factual and legal merits of this determination or that Plaintiff is entitled to any
23 relief.

Defendants' Answer to Plaintiff's Complaint
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23. Defendants deny the allegations in paragraph 23 of the Complaint.

24. Defendants deny the allegations in paragraph 24 of the Complaint.

25. Defendants deny the allegations in paragraph 25 of the Complaint as Plaintiff was never employed by Defendants.

26. Defendants deny the allegations in paragraph 26 of the Complaint.

27. Defendants deny the allegations in paragraph 27 of the Complaint.

28. Defendants deny the allegations in paragraph 28 of the Complaint.

29. Defendants deny the allegations in paragraph 29 of the Complaint.

30. Defendants deny the allegations in paragraph 30 of the Complaint.

31. Defendants deny the allegations in paragraph 31 of the Complaint.

32. Defendants deny the allegations in paragraph 32 of the Complaint.

33. Defendants deny the allegations in paragraph 33 of the Complaint.

FIRST CAUSE OF ACTION
Race Discrimination/Harassment/Retaliation
42U.S.C. §2000E-2 (Title VII) NRS 613.330/42 U.S.C. §2000E-3(a)

34. Defendants adopt all answers as stated in paragraphs 1 through 33 above.

35. Defendants are without knowledge as to the allegations in paragraph 35 of the Complaint; therefore, they deny the allegation.

36. Defendants deny the allegations in paragraph 36 of the Complaint.

37. Defendants deny the allegations in paragraph 37 of the Complaint as Plaintiff was never employed by Defendants.

38. Defendants deny the allegations in paragraph 38 of the Complaint as Plaintiff was never employed by Defendants.

39. Defendants deny the allegations in paragraph 39 of the Complaint.

Defendants’ Answer to Plaintiff’s Complaint
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40. Defendants deny the allegations in paragraph 40 of the Complaint.

41. Defendants deny the allegations in paragraph 41 of the Complaint.

42. Defendants deny the allegations in paragraph 42 of the Complaint.

43. Defendants deny the allegations in paragraph 43 of the Complaint.

44. Defendants admit Plaintiff retained an attorney but deny the remaining allegations in paragraph 44 of the Complaint.

45. Defendants deny the allegations in paragraph 45 of the Complaint.

SECOND CAUSE OF ACTION
Sex Discrimination/Harassment/Retaliation
42 U.S.C. §2000e-2 (Title VII) / NRS 613.330/42 U.S.C. §2000e-3(a)

46. Defendants adopt all answers as stated in paragraphs 1 through 45 above.

47. Defendants admit Plaintiff is a female but deny she is entitled to any relief under Title VII or N.R.S. 613.330.

48. Defendants deny the allegations in paragraph 48 of the Complaint.

49. Defendants deny the allegations in paragraph 49 of the Complaint.

50. Defendants deny the allegations in paragraph 50 of the Complaint.

51. Defendants deny the allegations in paragraph 51 of the Complaint.

52. Defendants deny the allegations in paragraph 52 of the Complaint.

53. Defendants deny the allegations in paragraph 53 of the Complaint.

54. Defendants deny the allegations in paragraph 54 of the Complaint.

55. Defendants admit Plaintiff retained an attorney but deny the remaining allegations in paragraph 55 of the Complaint.

56. Defendants deny the allegations in paragraph 56 of the Complaint.

PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to any relief for her claims as stated in this section or subsections.

DEFENDANTS' DEFENSES AND AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE

57. Plaintiff cannot state a claim for which relief can be granted under any theory of the law.

SECOND AFFIRMATIVE DEFENSE

58. Plaintiff's claims are untimely and outside the statutes of limitations imposed by federal and state law.

THIRD AFFIRMATIVE DEFENSE

59. Defendants plead all applicable limitations periods, both as a bar to the claims and requests for relief asserted in the Complaint and as limitations upon evidence to be admitted or considered in connection with any proceedings in this case.

FOURTH AFFIRMATIVE DEFENSE

60. Plaintiff failed to exhaust her administrative remedies or otherwise failed to comply with statutory requirements and thus cannot obtain relief under Title VII or N.R.S. 613.330.

61. Plaintiff failed to timely file a Charge of Discrimination against Defendants as required by Title VII or N.R.S. 613.330.

FIFTH AFFIRMATIVE DEFENSE

62. Plaintiff's claims are barred to the extent that they exceed the scope of her Charge of Discrimination.

SIXTH AFFIRMATIVE DEFENSE

63. Plaintiff cannot establish a *prima facie* case of hostile work environment under Title VII or N.R.S. 613.330.

64. Plaintiff was not subjected to verbal or physical conduct because of her protected classes.

65. Plaintiff was not subjected to unwelcome conduct because of her protected classes.

66. Any alleged conduct was not sufficiently severe or pervasive to alter the terms and conditions of her employment.

67. There is no basis for holding Defendants vicariously liable for any alleged conduct.

SEVENTH AFFIRMATIVE DEFENSE

68. Defendants had a well promulgated and established anti-discrimination policy which was known to Plaintiff.

69. Defendants exercised reasonable care to prevent and to immediately stop all forms of illegal discrimination.

70. Plaintiff unreasonably failed to take advantage of any preventative and corrective measures or otherwise avoid the harm alleged in the Complaint.

71. Plaintiff's failure to exhaust available remedies precluded Defendants from becoming aware of the alleged discrimination or retaliation and taking corrective measures within its control, barring Plaintiff's claims.

EIGHTH AFFIRMATIVE DEFENSE

72. Plaintiff cannot establish a *prima facie* case of disparate treatment under Title VII or N.R.S. 613.330.

73. Plaintiff was not qualified for her job or job opportunities alleged in the Complaint.

1 74. Plaintiff was not subjected to an adverse action.

2 75. Plaintiff was not treated less favorably than similarly situated individuals outside her
3 protected classes.

4 76. Any comparators identified by Plaintiff are not similarly situated to Plaintiff.

5 **NINTH AFFIRMATIVE DEFENSE**

6 77. Defendants had legitimate non-pretextual reasons for taking all employment actions
7 involving Plaintiff and these actions did not violate Title VII and N.R.S. 613.330.

8 **TENTH AFFIRMATIVE DEFENSE**

9 78. Plaintiff cannot establish a *prima facie* case of Retaliation under Title VII or N.R.S.
10 613.330.

11 79. Plaintiff did not engage in a protected activity.

12 80. Defendants did not take an adverse action against Plaintiff. Plaintiff resigned.

13 81. Plaintiff cannot show a causal connection to a retaliation claim under state or federal
14 law.

15 82. Plaintiff lacked a good faith reasonable belief that Defendants were engaged in
16 unlawful employment practices and a retaliation claim cannot lie under those
17 circumstances.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 83. Defendants had a legitimate non-pretextual reason for taking any adverse action
20 alleged in Plaintiff's Retaliation claim under Title VII and N.R.S. 613.330.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 84. Defendants had good reasonable beliefs that it was complying with federal and state
23 law.

24

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1 85. Defendants exercised reasonable care to prevent and to immediately stop all forms of
2 illegal discrimination and retaliation and have acted in good faith.

3 86. Plaintiff unreasonably failed to take advantage of any preventative or corrective
4 measures or to otherwise avoid the harm alleged in the Complaint.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 87. Some or all of the claims asserted in the Complaint are barred by the equitable
7 doctrine of laches, waiver, estoppel, release and/or unclean hands.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 88. Defendants conduct was not intentional, reckless or willful.

10 89. Plaintiff is prohibited from recovering damages that are not permitted by Title VII or
11 N.R.S. 613.330.

12 90. Plaintiff failed to mitigate her damages.

13 91. Plaintiff is not entitled to fees.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 92. Defendants were not Plaintiff's employer at the time relevant to her claims. In
16 addition, Defendants have never been Plaintiff's employers as defined by Title VII or
17 N.R.S. 613.330.

18 93. Defendants were not employers under Title VII or N.R.S. 613.330.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 94. Plaintiff's discrimination and retaliation claims are barred to the extent they are based
21 upon her membership in unprotected categories.

EIGHTEENTH AFFIRMATIVE DEFENSE

95. Insofar as any of Defendants' policies or procedure had an adverse impact on Plaintiff, such policies or practices nevertheless are lawful because they are job-related and consistent with business necessity. 42 U.S.C. §§ 2000e *et seq.*

96. Plaintiff's Title VII and state claims are barred because any alleged differential treatment of Plaintiffs by Defendants were undertaken pursuant to a *bonafide* merit system, *bonafide* seniority system, or *bonafide* factors other than membership in a protected category. 42 U.S.C. § 2000e-2(h).

Defendants reserve the right to assert additional defenses which may be raised by discovery in this action.

REQUEST FOR RELIEF

WHEREFORE, Defendants respectfully request this Court to:

- (a) Issue Judgment for Defendants and against Plaintiff;
- (b) Award Defendants all costs, including attorneys' fees, post judgment interest and costs, related to the defense of this action; and
- (c) All other relief deemed reasonable by this Court.

DATED this 2nd day of March, 2015.

Defendants' Answer to Plaintiff's Complaint
Case No.: 2:15-cv-00207

GREENSPOON MARDER, P.A.

By: /s/Myrna L. Maysonet
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Attorneys for Westgate, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

CHRISTIAN GABROY, ESQUIRE
The District at Green Valley Ranch
170 South Green Valley Parkway
Suite 280
Henderson, Nevada 89012

By: /s/ Janna R. Sherwood
An Employee of Greenspoon Marder