

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

PLAINTIFF

v.

CASE NO.: 3:20-cv-270-NBB-RP

USF HOLLAND, LLC

DEFENDANT

DEFENDANT’S ANSWER TO THE FIRST AMENDED COMPLAINT

Defendant USF Holland, LLC (“Holland” or “Defendant”), serves this answer to Plaintiff the Equal Employment Opportunity Commission’s (“Commission” or “Plaintiff”) First Amended Complaint in the above-captioned case pursuant to Federal Rule of Civil Procedure 15(a)(3), as follows:

JURISDICTION AND VENUE¹

1. The allegations in Paragraph 1 constitute legal conclusions to which no responsive pleading is required. To the extent an answer to Paragraph 1 is required, Holland admits that this Court has jurisdiction over this action and that the Commission purports to bring this action pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e-5(f)(1) and (3) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a, but denies that it violated any such laws and denies the remaining allegations in Paragraph 1.

2. Holland admits that the alleged events in Plaintiff’s First Amended Complaint are alleged to have occurred within the jurisdiction of the United States District Court for the Northern

¹ Plaintiff’s First Amended Complaint contains several headings and/or subheadings. Holland does not consider these to be substantive allegations to which a response is required. However, to the extent a responsive pleading is required, Holland denies any and all allegations within any such heading or subheading.

District of Mississippi, Oxford Division. Holland denies the remaining allegations in Paragraph 2, including without limitation that it committed any unlawful acts.

PARTIES

3. The allegations in Paragraph 3 constitute legal conclusions to which no responsive pleading is required. To the extent an answer to Paragraph 3 is required, Holland admits that the Commission is an agency of the United States of America, that it is charged with certain responsibilities with respect to the administration, interpretation and enforcement of Title VII, and that the Commission purports to bring this action pursuant to Title VII, 42 U.S.C. § 2000e-5(f)(1). Holland denies the remaining allegations in Paragraph 3, including without limitation any allegation that it violated Title VII.

4. Holland admits the allegations in Paragraph 4.

5. Holland admits the allegations in Paragraph 5.

ADMINISTRATIVE PROCESS

6. Holland admits that, more than thirty days prior to the institution of this lawsuit, Marilyn Hervey filed a charge with the Commission alleging a violation of Title VII by Holland. Holland denies the remaining allegations in Paragraph 6.

7. Holland admits Plaintiff issued a letter dated August 5, 2019 to Holland titled “Determination.” The remaining allegations in Paragraph 7 purport to characterize the contents of that written document. Holland denies any characterization inconsistent with that document and denies the remaining allegations in Paragraph 7, including without limitation that it violated Title VII or engaged in any “unlawful employment practices.”

8. Holland admits Plaintiff and Holland engaged in communications subsequent to the “Determination” letter Plaintiff sent to Holland. Holland denies the remaining allegations in Paragraph 8, including without limitation that it engaged in any “discriminatory practices.”

9. Holland admits Plaintiff and Holland were unable to reach a conciliation agreement acceptable to the parties. Holland denies the remaining allegations in Paragraph 9, including without limitation any allegation (if any) that it engaged in any violation of Title VII requiring conciliation.

10. Holland admits Plaintiff issued a letter dated September 23, 2019 to Holland titled “Notice of Conciliation Failure.” Holland denies any remaining allegations in Paragraph 10, if any.

11. The allegations in Paragraph 11 constitute legal conclusions to which no responsive pleading is required. To the extent an answer to Paragraph 11 is required, Holland denies that Plaintiff has met the conditions precedent to the institution of its lawsuit.

STATEMENT OF CLAIMS OF MARILYN HERVERY

12. Holland denies the allegations in Paragraph 12.

13. Holland denies the allegations in Paragraph 13, and all of its subparts, except admits that Hervery applied for a position that involved truck driving with Holland in or about May 2015, that Holland scheduled an interview for August 19, 2015 which she canceled, that she informed Holland that she had obtained her forklift certification the day after her interview, and that Holland did not hire Hervery for the position to which she applied in May 2015.

14. Holland denies the allegations in Paragraph 14, including without limitation that it engaged in any “unlawful employment practices.”

15. Holland denies the allegations in Paragraph 15, including without limitation that it engaged in any “unlawful employment practices.”

16. Holland denies the allegations in Paragraph 16, including without limitation that it engaged in any “unlawful employment practices.”

STATEMENT OF CLAIMS OF OTHER FEMALE CLASS MEMBERS

17. Holland denies the allegations in Paragraph 17 and also states that the Court’s Order and Memorandum Opinion dated September 30, 2021 (ECF Nos. 30-31) dismissed Plaintiff’s Complaint with respect to any purported claims predating April 11, 2015.

18. Holland denies the allegations in Paragraph 18, including all of its subparts, except admits that the records it produced with respect to the period of January 1, 2013 to October 9, 2015—the time period Plaintiff investigated during its administrative investigation—did not indicate that Holland had employed any female truck drivers at its Olive Branch, Mississippi location between January 1, 2013 and October 9, 2015, and that as of May 2016 Holland employed more than 100 individuals as truck drivers at its Olive Branch, Mississippi location, all of whom were men.

19. Holland denies the allegations in Paragraph 19, including without limitation that it engaged in any “unlawful employment practices.”

20. Holland denies the allegations in Paragraph 20, including without limitation that it engaged in any “unlawful employment practices.”

21. Holland denies the allegations in Paragraph 21, including all of its subparts, and specifically denies that all of the twenty-two individuals whose names appear in Paragraph 21 were identified by the Commission at any time before the Amended Complaint was filed, except

admits that some, but not all, of the individuals identified in Paragraph 21 applied for truck driver positions with Holland.

22. Holland denies the allegations in Paragraph 22.

23. Holland denies the allegations in Paragraph 23.

PRAYER FOR RELIEF

Holland denies that Plaintiff is entitled to any relief whatsoever, including without limitation the remedies described and relief requested in the “PRAYER FOR RELIEF” section of the First Amended Complaint, inclusive of its subparagraphs A to H.

JURY TRIAL DEMAND

Holland objects to a trial by jury on Plaintiff’s equitable claims and other issues as to which a jury is not permitted as a right as a matter of law.

GENERAL DENIAL

Holland denies each and every allegation in the First Amended Complaint that is not expressly admitted in this Amended Answer.

AFFIRMATIVE AND OTHER SEPARATE DEFENSES²

Holland asserts the following affirmative and other defenses, and in doing so does not concede that it has the burden of proof as to all such defenses. Holland reserves the right to assert additional affirmative and other defenses or amend any defenses set forth below upon further discovery.

² All affirmative and other defenses are asserted as to Hervery and all of the other allegedly aggrieved individuals on whose behalf Plaintiff purports to sue as identified in Paragraph 21 of the First Amended Complaint.

1. Plaintiff has failed, in whole or in part, to state a claim upon which relief can be granted, as to Hervery as well as any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing as identified in Paragraph 21 of the First Amended Complaint.

2. Some or all of Plaintiff's claims are barred by the applicable statutes of limitations. Without limiting the foregoing in any way, the Court's Order and Memorandum Opinion dated September 30, 2021 (ECF Nos. 30-31) dismissed Plaintiff's Complaint with respect to any purported claims predating April 11, 2015. To the extent any of the purported Title VII claims of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, concern events alleged to have occurred more than 180 days before the filing of their Charges of Discrimination with the Commission (if any), or more than 180 days prior to Hervery's charge on which the Commission purports to bring this action (i.e., prior to April 11, 2015 per the Court's Order and Memorandum Opinion dated September 30, 2021 (ECF Nos. 30-31)), such claims are barred as untimely.

3. Some or all of Plaintiff's claims on behalf of any of the allegedly aggrieved individuals (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are not actionable to the extent the equitable doctrines of laches, waiver, estoppel, res judicata, issue preclusion, and claim preclusion apply.

4. Some or all of Plaintiff's claims on behalf of any of the allegedly aggrieved individuals (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are not actionable on account of the doctrine of unclean hands.

5. The entitlement to any relief (if any) which otherwise may be held by the Court or the jury to be due in this case to Plaintiff, or any of the allegedly aggrieved individuals on whose

behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, is limited by the after-acquired evidence doctrine.

6. Holland did not act with malice or reckless indifference to the federally protected rights, within the meaning of Section 102(b)(1) of the Civil Rights Act of 1991, of Hervery or any of the other allegedly aggrieved individuals on whose behalf Plaintiff is suing as identified in Paragraph 21 of the First Amended Complaint.

7. To the extent any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, failed to comply with the enforcement provisions of Title VII, including without limitation 42 U.S.C. § 2000e-5(e), their Title VII claims are barred as untimely and/or for failure to exhaust administrative remedies.

8. To the extent the First Amended Complaint purports or attempts to assert any claim other than those contained in any of the Charges of Discrimination filed with the EEOC (if any) by the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, such claims are barred for failing to fulfill and exhaust all the conditions precedent to maintaining such claims and otherwise are time-barred.

9. Claims in the First Amended Complaint for damages or other relief of allegedly aggrieved individuals (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are barred because they seek relief for discrete acts which cannot fall within the continuing violation doctrine and are time-barred.

10. Plaintiff's claims based on alleged "practices," including its claims as to purported "female class members" and claims with respect to any of the allegedly aggrieved individuals on

whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are not actionable under Title VII because Plaintiff cannot establish that a “practice” exists or bring claims in this action on behalf of a purported “class” of any kind. Without limitation, the hiring decisions that the EEOC purports to challenge constitute discrete individual decisions.

11. Plaintiff has failed to identify a practice of discrimination including without limitation against Hervery and any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing as identified in Paragraph 21 of the First Amended Complaint, including, *inter alia*, any policy causing the alleged discrimination.

12. The employment actions taken by Holland with respect to any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, were based solely on legitimate, non-discriminatory factors other than gender. Alternatively, in the event that the Court or a jury ever were to conclude that gender was a motivating factor in any employment decisions challenged by Plaintiff, which Holland expressly denies, Holland affirmatively avers that the same decisions would have been made for legitimate business reasons and without consideration of gender.

13. Any instances of alleged discriminatory conduct by any employee of Holland (whether or not an alleged “managerial agent”), the occurrence of which Holland expressly denies, would have contravened Holland’s good faith efforts to enforce and follow Title VII and other anti-discrimination laws, including its policies against discrimination. Holland is therefore not liable, and/or is not liable for punitive damages, for any such acts.

14. Holland is not liable with respect to any and/or all claims of Plaintiff and any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing, as identified in Paragraph 21 of

the First Amended Complaint, to the extent any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery) suffered no adverse employment action.

15. The claims of each of the allegedly aggrieved individuals on whose behalf Plaintiff is suing, as identified in Paragraph 21 of the First Amended Complaint, are subject to individualized defenses, and class treatment would not only violate the due process rights of absent class members but also Holland's rights to due process and a jury trial.

16. The claims of certain of the allegedly aggrieved individuals on whose behalf Plaintiff is suing, as identified in Paragraph 21 of the First Amended Complaint, are barred, in whole or in part, to the extent that those allegedly aggrieved individuals do not fall within the class of qualified female linehaul applicants Plaintiff identified during pre-suit investigation and conciliation because they either did not complete their application, were hired, or otherwise did not apply for a linehaul driver position.

17. The claims of certain of the allegedly aggrieved individuals on whose behalf Plaintiff is suing, as identified in Paragraph 21 of the First Amended Complaint, are barred, in whole or in part, to the extent that those allegedly aggrieved individuals applied for truck driving positions after Plaintiff issued its determination letter on August 5, 2019.

18. Because liability and/or damages, if any, to each of the allegedly aggrieved individuals on whose behalf Plaintiff is suing, as identified in Paragraph 21 of the First Amended Complaint, may not be determined by a single jury or on a group-wide basis or on a representative basis, allowing this action to proceed on a class basis would violate Holland's rights under the Seventh and Fourteenth Amendment to the United States Constitution.

19. Holland is not liable for punitive damages under Title VII to the extent any employee who allegedly discriminated against Plaintiff, or any of the other allegedly aggrieved individuals

on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, was not a “managerial agent” for Holland and/or was not acting within the scope of their employment.

20. Plaintiff’s claims for punitive damages, including those of any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are barred to the extent they violate the Due Process Clause (Fifth Amendment, Fourteenth Amendment, Section 1) and/or the Eighth Amendment of the United States Constitution.

21. Plaintiff’s claims for damages or other relief on behalf of allegedly aggrieved individuals (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are barred to the extent that those allegedly aggrieved individuals did not mitigate their damages in a timely manner or with diligence following the application for employment with Holland and/or the decision not to hire them, and their damages, if any, must be set off and/or reduced by wages, compensation, pay and benefits, or other earnings or remunerations, profits and benefits received or which would have been earned or received through efforts to mitigate alleged damages.

22. Each and every purported claim alleged by any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, is barred because any recovery from Holland would result in the allegedly aggrieved individuals’ unjust enrichment.

23. To the extent that any or all allegedly aggrieved individuals on whose behalf Plaintiff sues (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, have brought claims in another forum, such allegedly aggrieved individuals cannot recover multiple times for the same alleged injuries.

24. The claims of any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are barred to the extent any such allegedly aggrieved individuals have executed or, in the future execute, a release of claims.

25. To the extent that any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, has failed to identify her claims in bankruptcy, such allegedly aggrieved individuals lack standing and/or her claim must be judicially estopped/barred.

26. Any and all claims by Plaintiff, including those of any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, based in whole or in part upon any alleged physical or emotional injury or mental distress are barred because no conduct of Holland was extreme or outrageous or undertaken with the intent of causing, or in reckless disregard of the probability of causing emotional distress.

27. Any alleged damages under Title VII for alleged sex discrimination are subject to, and limited by, the damages caps established by 42 U.S.C. § 1981a(b)(3).

28. The claims for injunctive and other prospective equitable relief by Plaintiff and any of the allegedly aggrieved individuals on whose behalf Plaintiff is suing (including Hervery), as identified in Paragraph 21 of the First Amended Complaint, are barred because Plaintiff and the alleged class have an adequate and complete remedy at law.

29. Plaintiff's claims are barred, in whole or in part, to the extent they are found to be frivolous, groundless, and/or unreasonable. In such a case, Defendant is entitled to attorney fees and other costs incurred in connection with the defense of this action, including but not limited to

as provided for by the Mississippi Litigation Accountability Act, see Miss. Code Ann. §§ 11-55-1, et seq.

WHEREFORE, Holland respectfully requests that this Court dismiss Plaintiff's First Amended Complaint with prejudice, and award Holland its costs and reasonable attorney's fees and such other relief as this Court may deem just and appropriate.

This, the 13th day of December, 2022.

Respectfully submitted,

USF HOLLAND, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification of the filing to all counsel of record.

This, the 13th day of December, 2022.

s/ Zachary B. Busey
ZACHARY B. BUSEY