

1 NANCY L. ABELL (SB# 88785) nancyabell@paulhastings.com
 2 MARK W. ATKINSON (SB# 60472) markatkinson@paulhastings.com
 3 ELENA R. BACA (SB# 160564) elenabaca@paulhastings.com
 4 HEATHER A. MORGAN (SB# 177425) heathermorgan@paulhastings.com
 5 JOSEPH W. DENG (SB# 179320) josephdeng@paulhastings.com
 6 PAUL, HASTINGS, JANOFSKY & WALKER LLP
 7 515 South Flower Street
 8 Twenty-Fifth Floor
 9 Los Angeles, CA 90071-2228
 10 Telephone: (213) 683-6000
 11 Facsimile: (213) 627-0705
 12
 13 Attorneys for Defendant
 14 CINTAS CORPORATION

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 ROBERT RAMIREZ, ROBERT
 19 HARRIS, LUIS POCASANGRE
 20 CARDOZA, JOSE SALCEDO, A.
 21 SHAPPELLE THOMPSON,
 22 CORETTA SILVERS (formerly
 23 VICK), SANDRA EVANS, BLANCA
 24 NELLY AVALOS, JAMES MORGAN
 25 and ANTHONY JONES, on behalf of
 26 themselves and all others similarly
 27 situated,

28 Plaintiffs,

vs.

CINTAS CORPORATION,

Defendant.

EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,

Plaintiff/Intervenor.

Case No. C04-0281-JSW

[RELATED TO CASE NO. C05-03145-JSW]

**DEFENDANT CINTAS
 CORPORATION'S ANSWER TO
 EEOC'S AMENDED COMPLAINT-IN-
 INTERVENTION**

Judge: Honorable Jeffrey S. White

Complaint Filed: January 20, 2004

1 Defendant Cintas Corporation (“Defendant”) hereby answers, pleads, and
2 otherwise responds to Plaintiff-Intervenor EQUAL EMPLOYMENT OPPORTUNITY
3 COMMISSION’S (“Plaintiff-Intervenor”) Amended Complaint-in-Intervention
4 (“Complaint-in-Intervention”), as follows:

5
6 Answering the preamble entitled “Nature of the Action,” Defendant admits
7 that Plaintiff-Intervenor purports to bring an action pursuant to the provisions of Title I of
8 the Civil Rights Act of 1991 and Title VII of the Civil Rights Act of 1964, 42 U.S.C.
9 §§ 2000e *et seq.* (“Title VII”). Defendant admits that Plaintiff-Intervenor purports to
10 bring an action regarding allegedly unlawful employment practices, and to provide the
11 requested relief to Plaintiff Blanca Nelly Avalos (“AVALOS”) and other women who
12 allegedly have been adversely affected by the allegedly unlawful practices. Defendant
13 further admits that Plaintiff-Intervenor’s intervention is limited to the issue of Defendant’s
14 alleged refusal to recruit and hire women as Service Sales Representatives (“SSR”).
15 Except as herein expressly admitted, Defendant denies, generally and specifically, each
16 and every remaining allegation in this paragraph.

17
18 1. Answering Paragraph 1, Defendant admits that Plaintiff-Intervenor
19 purports to invoke this Court’s jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337,
20 1343, and 1345, and admits that Plaintiff-Intervenor purports to institute this action
21 pursuant to sections 708(g)(6) and 706(f)(1) and (3) of Title VII of the Civil Rights Act of
22 1964, as amended, 42 U.S.C. §§ 2004e-4 and -5(f)(1) and (3). Except as herein expressly
23 admitted, Defendant denies, generally and specifically, each and every remaining
24 allegation in this paragraph.

25
26 2. Answering Paragraph 2, Defendant denies, generally and specifically,
27 each and every allegation in this paragraph.

1 3. Answering Paragraph 3, Defendant admits that Plaintiff-Intervenor
2 purports to describe AVALOS by reference to Plaintiffs' Second Amended Complaint.
3 Defendant further admits that AVALOS seeks to represent a class with respect to her
4 alleged Title VII claims as purportedly described in Plaintiffs' Third Amended Complaint.
5 Except as herein expressly admitted, Defendant denies, generally and specifically, each
6 and every remaining allegation in this paragraph.

7
8 4. Answering Paragraph 4, Defendant admits that Plaintiff-Intervenor is
9 an agency of the United States of America charged with the administration, interpretation
10 and enforcement of Title VII. Except as herein expressly admitted, Defendant denies,
11 generally and specifically, each and every remaining allegation in this paragraph.

12
13 5. Answering Paragraph 5, Defendant admits and alleges that it is a
14 corporation with at least 15 employees, and that Defendant has been doing business
15 continuously in the State of California for a number of years through the present.
16 Defendant alleges that it lacks sufficient knowledge or information to form a belief as to
17 the truth of any averment premised upon the ambiguous phrase "at all relevant times" and,
18 on such basis, Defendant denies all such averments. Except as herein expressly admitted
19 and alleged, Defendant denies, generally and specifically, each and every remaining
20 allegation in this paragraph.

21
22 6. Answering Paragraph 6, Defendant admits and alleges that Defendant
23 has been an "employer" engaged in an "industry affecting commerce" within the meaning
24 of 42 U.S.C. §§ 2000e(b), (g) and (h) of Title VII for a number of years through the
25 present. Defendant alleges that it lacks sufficient knowledge or information to form a
26 belief as to the truth of any averment premised upon the ambiguous phrase "at all relevant
27 times" and, on such basis, Defendant denies all such averments. Except as herein
28

1 expressly admitted and alleged, Defendant denies, generally and specifically, each and
2 every remaining allegation in this paragraph.

3

4 7. Answering Paragraph 7, Defendant denies, generally and specifically,
5 each and every allegation in this paragraph.

6

7 8. Answering Paragraph 8, Defendant admits that Defendant has not
8 employed AVALOS as an SSR. Except as expressly admitted herein, Defendant denies,
9 generally and specifically, each and every remaining allegation in this paragraph.

10

11 9. Answering Paragraph 9, Defendant denies, generally and specifically,
12 each and every allegation in this paragraph.

13

14 10. Answering Paragraph 10, Defendant denies, generally and
15 specifically, each and every allegation in this paragraph.

16

17 11. Answering Paragraph 11, Defendant denies, generally and
18 specifically, each and every allegation in this paragraph.

19

20 12. Responding to the Prayer for Relief and Subparagraphs A through I
21 thereof, Defendant denies, generally and specifically, that AVALOS, or the purported
22 class of women that she seeks to represent, or any of them, have been or will be damaged
23 by reason of any act or omission of Defendant or any officer, agent, or employee of
24 Defendant.

25

26 (a) Defendant denies, generally and specifically, that any act or
27 omission of Defendant or any officer, agent, or employee of Defendant, violated any
28

28

1 rights, statutory or otherwise, of AVALOS or the purported class of women that she seeks
2 to represent, or any of them.

3
4 (b) Defendant denies, generally and specifically, that the elements
5 of relief sought are available to AVALOS or the purported class of women that she seeks
6 to represent, or any of them, on the claims alleged.

7
8 (c) Defendant denies, generally and specifically, that a permanent
9 injunction is necessary or appropriate in this case.

10
11 (d) Defendant denies, generally and specifically, that an order to
12 institute and carry out new policies, practices or programs is necessary or appropriate in
13 this case.

14
15 (e) Defendant denies, generally and specifically, that AVALOS,
16 or the purported class of women that she seeks to represent, or any of them, are entitled to
17 an award of backpay with prejudgment interest or any other compensation for any alleged
18 past or future pecuniary losses.

19
20 (f) Defendant denies, generally and specifically, that AVALOS,
21 or the purported class of women that she seeks to represent, or any of them, are entitled to
22 any affirmative relief.

23
24 (g) Defendant denies, generally and specifically that AVALOS, or
25 the purported class of women that she seeks to represent, or any of them, are entitled to
26 any compensation for alleged past or future nonpecuniary losses.

27
28

1 (h) Defendant denies that AVALOS or the purported class of
2 women that she seeks to represent, or any of them, are entitled to punitive damages.

3
4 (i) Defendant denies, generally and specifically, that Plaintiff-
5 Intervenor is entitled to an award of its costs in this action.

6
7 (j) Defendant further denies, generally and specifically, each and
8 every remaining allegation in the referenced Subparagraphs A through I.

9
10 **AFFIRMATIVE AND OTHER DEFENSES**

11
12 **GENERAL DEFENSES**

13
14 **FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

15 (Failure to State Facts Sufficient to State a Claim)

16
17 13. The Complaint-in-Intervention, and each purported claim contained
18 therein, fails to allege facts sufficient to state a claim upon which relief can be granted.

19
20 **SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

21 (Failure to State a Claim Upon Which Relief Can Be Granted)

22
23
24 14. The Complaint-in-Intervention, and each purported claim contained
25 therein, fails to state a claim upon which relief can be granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Legitimate Non-Discriminatory Decisions)

15. The Complaint-in-Intervention, and each purported claim contained therein, is barred in whole or in part because all decisions with respect to AVALOS' and other women applicants' purported applications for employment for SSR positions were made by Defendant for legitimate, non-discriminatory, non-pretextual reasons.

FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Mixed Motive)

16. Defendant did not commit the acts or omissions as alleged in the Complaint-in-Intervention for discriminatory motives, but assuming that it did, such acts or omissions would have been taken in any event for legitimate, non-discriminatory, non-pretextual reasons.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Estoppel)

17. AVALOS and other women applicants are estopped from pursuing the claims in the Complaint-in-Intervention by reason of AVALOS' and other women applicants' own actions and course of conduct.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Waiver)

18. AVALOS and other women applicants have waived their right, if any, to pursue the claims in the Complaint-in-Intervention by reason of their own actions and course of conduct.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Laches)

19. The Complaint-in-Intervention, and each purported claim contained therein, is barred by the doctrine of laches.

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Unclean Hands)

20. The Complaint-in-Intervention, and each purported claim contained therein, is barred by the doctrine of unclean hands.

NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Reasonable Care)

21. The Complaint-in-Intervention is barred, in whole or in part, because Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory behavior.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Take Advantage of Corrective Opportunities)

22. The Complaint-in-Intervention is barred, in whole or in part, because AVALOS and other women applicants failed to take advantage of any preventive or corrective opportunities provided by Defendant to avoid harm or otherwise.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Predecessor Liability)

23. To the extent that any of the alleged wrongs were committed by Defendant's predecessor entity or entities, any and all such claims are barred as against Defendant in their entirety.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Third Party Liability)

24. To the extent that any of the alleged wrongs were committed by others, any and all such claims are barred as against Defendant in their entirety.

THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Advice of Counsel)

25. To the extent that any of the alleged wrongs were committed after Defendant reasonably relied in good faith on the advice of counsel, any and all claims are barred as against Defendant in their entirety.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Subsequent Remedial Measures)

26. The Complaint-in-Intervention, and each purported claim contained therein, is barred to the extent it would impermissibly require for proof the admission into evidence of subsequent remedial measures not admissible to prove culpable conduct in connection with the event under Federal Rule of Evidence 407.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Prior Settlement and Release Bars Bringing Suit)

27. To the extent that AVALOS or any other woman applicant has executed a settlement and release with Defendant and received consideration therefor, any and all claims she purports to bring against Defendant, including, without limitation, the claims alleged herein, are barred in their entirety.

SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Arbitration Agreements Bar Bringing Suit)

28. To the extent that AVALOS or any other woman applicant has agreed to arbitrate any or all of the purported claims asserted in the Complaint-in-Intervention, the Complaint-in-Intervention violates such agreements to arbitrate and the Complaint-in-Intervention should be dismissed and/or stayed and AVALOS and/or such woman applicant should be compelled to arbitrate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Collective Bargaining Agreements Bar Bringing Suit)

29. The Complaint-in-Intervention, and each purported claim contained therein, is barred in whole or in part because decisions with respect to AVALOS and other women applicants were made in compliance with the non-discriminatory terms of applicable Collective Bargaining Agreements.

TITLE VII

EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Exhaust Federal Administrative Remedies)

30. AVALOS' and/or other women applicants' Title VII claims are barred because AVALOS and other women applicants failed, in whole or in part, to exhaust all available administrative remedies, and/or otherwise failed to comply with the statutory prerequisites to the bringing of this action, pursuant to Title VII of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000e *et seq.*

NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Untimely EEOC Charges)

31. To the extent that AVALOS and/or other women applicants make allegations or claims under Title VII with respect to a time period more than 300 days before AVALOS and/or other women applicants allegedly filed a charge with the Equal Employment Opportunity Commission ("EEOC"), or which were not made the subject of

1 a timely EEOC charge, such allegations or claims are barred. 42 U.S.C. §§ 2000e-5(c)-
2 (e).

3
4 TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

5 (Failure to File Timely Civil Action on Title VII Claims)

6
7 32. To the extent that AVALOS and/or other women applicants make
8 allegations or claims under Title VII, and failed to file a civil action within ninety (90)
9 days after receiving notice of a right to sue from the EEOC, such allegations or claims are
10 barred. 42 U.S.C. §§ 2000e-5(f).

11
12 TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

13 (Title VII Claims Outside the Scope of Administrative Charges)

14
15 33. AVALOS' and/or other women applicants' Title VII claims are
16 barred to the extent that the allegations contained therein do not reasonably fall within the
17 scope of claims made in any administrative charge timely filed by AVALOS or other
18 women applicants, or each or any of them, with the EEOC.

19
20
21 TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

22 (Failure to Attempt to Resolve Title VII Claims)

23
24 34. Some or all of AVALOS' and/or other women applicants' Title VII
25 claims are barred due to the EEOC's failure to endeavor to eliminate the alleged unlawful
26 employment practice by informal methods of conference, conciliation or persuasion, as
27 required by 42 U.S.C. § 2000e-5(b).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Venue – Special Venue Provisions of Title VII)

35. AVALOS and other women applicants who did not apply for work with Defendant in the Northern District of California are barred from pursuing their Title VII claims in the Northern District of California because they cannot satisfy the special venue requirements of 42 U.S.C. § 2000e-5(f)(3).

TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant’s Practices Consistent with Business Necessity)

36. Insofar as any of Defendant’s hiring practices and/or policies have had a statistically adverse impact on females, such policies or practices nevertheless are lawful because they are job-related and consistent with business necessity. 42 U.S.C. §§ 2000e *et seq.*

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Differential Treatment Based on *Bona Fide* Factors)

37. AVALOS’ and other women applicants’ Title VII claims are barred because any alleged differential treatment of AVALOS and other women applicants by Defendant was undertaken pursuant to a *bona fide* merit system, *bona fide* seniority system, and/or *bona fide* factors other than gender. 42 U.S.C. § 2000e2(h).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Class Allegations)

38. To the extent that the Complaint-in-Intervention makes reference to an alleged “class of women applicants” or a “class of women” whom AVALOS purportedly “seeks to represent,” neither AVALOS nor other women applicants can satisfy the prerequisites for class or subclass certification under Federal Rule of Civil Procedure 23 or any similar state law provisions.

RELIEF AND DAMAGES

TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

39. The Complaint-in-Intervention, and each purported claim contained therein, is barred because AVALOS and each woman applicant has failed to mitigate or reasonably attempt to mitigate her damages, if any, as required by law.

TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Unjust Enrichment)

40. The Complaint-in-Intervention, and each purported claim contained therein, is barred because any recovery from Defendant would result in AVALOS’ or a woman applicant’s unjust enrichment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Legal Remedy Precludes Injunctive and Equitable Relief)

41. Injunctive and other equitable relief are not appropriate and are barred because AVALOS and other women applicants have an adequate and complete remedy at law.

THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(After-Acquired Evidence Doctrine)

42. Recovery of damages as alleged and prayed for in the Complaint-in-Intervention by AVALOS and other women applicants may be barred, in whole or in part, by the after-acquired evidence doctrine.

THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Absence of Intentional Discrimination Precludes Punitive Damages)

43. Defendant alleges that it has not engaged in intentional discrimination with respect to AVALOS or any other woman applicant, and Defendant therefore cannot be liable for punitive damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Absence of Malice, Reckless Indifference or Fraud Precludes Punitive Damages)

44. Defendant alleges that it has not acted with malice, reckless indifference or fraud toward AVALOS and other women applicants and, therefore, Defendant cannot be liable for punitive damages.

THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Punitive Damages Would Constitute Denial of Due Process)

45. AVALOS and other women applicants are not entitled to recover any punitive or exemplary damages as prayed for in the Complaint-in-Intervention, and any allegations with respect thereto should be stricken, because California's laws regarding the alleged conduct in question in this action are too vague to permit the imposition of punitive damages, and because any award of punitive or exemplary damages under California law in general, and/or any such award under California law as applied to the facts in this case, would violate Defendant's constitutional rights under provisions of the United States and California Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Plead Facts Sufficient to Support Punitive Damages)

46. AVALOS and other women applicants are not entitled to receive punitive damages because Plaintiff-Intervenor has not pled facts sufficient to support such an award.

THIRTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant’s Good Faith Efforts Preclude Punitive Damages)

47. AVALOS and other women applicants are not entitled to receive punitive damages because Defendant has made good faith efforts to prevent discrimination in its hiring practices.

THIRTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant’s Policies Preclude Punitive Damages)

48. AVALOS and other women applicants are barred from recovering punitive damages because Defendant had in place a policy to prevent discrimination in its hiring practices and made good faith efforts to implement and enforce that policy.

THIRTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Punitive Damages Precluded – Individual Decisionmakers)

49. AVALOS and other women applicants are not entitled to receive punitive damages because, even if they were able to establish that any individual manager

1 allowed unlawful bias to affect any hiring decision, which Defendant expressly denies,
2 Defendant, in light of its good faith efforts to prevent bias, is not liable for punitive
3 damages based on any such individual decision.

4
5 THIRTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

6 (Workers' Compensation Offset)

7
8 50. AVALOS and other women applicants are barred, in whole or in part,
9 from recovery of damages as alleged and prayed for in the Complaint-in-Intervention to
10 the extent that they received any workers' compensation benefits relating to their claims
11 in the Complaint-in-Intervention or, alternatively, any such workers' compensation
12 benefits received by AVALOS and/or other women applicants should be an offset to any
13 recovery in this action.

14
15 WHEREFORE, Defendant prays for judgment as follows:

16
17 1. That AVALOS and other women applicants take nothing by reason
18 of Plaintiff-Intervenor's Complaint-in-Intervention, that the Complaint-in-Intervention be
19 dismissed in its entirety with prejudice, and that judgment be entered for Defendant;

20
21 2. That Defendant be awarded its reasonable costs and attorneys' fees;
22 and
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. That Defendant be awarded such other and further relief as the Court deems just and proper.

DATED: November 7, 2005

NANCY L. ABELL
MARK W. ATKINSON
ELENA R. BACA
HEATHER A. MORGAN
JOSEPH W. DENG
PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: _____/s/_____
MARK W. ATKINSON

Attorneys for Defendant
CINTAS CORPORATION

LEGAL_US_W # 52848515.1