

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY :	CIVIL ACTION
COMMISSION, Plaintiff :	NO: 02-CV-6715
:	:
and :	:
LAUREN ELLERSON :	:
Plaintiff - Intervener, :	:
vs. :	:
VICTORIA'S SECRET STORES, INC. :	JURY TRIAL DEMANDED
Defendant. :	:

ORDER

AND NOW, this ___ day of _____, 2003, upon consideration of the Plaintiff-Intervener Lauren Ellerson's Motion For Leave To File A Second Amended Complaint in the above-captioned matter, it is hereby ORDERED and DECREED that said Motion is GRANTED. Upon entry of this Order, Plaintiff-Intervener's Second Amended Complaint shall be deemed filed and served against all parties.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY :	CIVIL ACTION
COMMISSION, Plaintiff :	NO: 02-CV-6715
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LAUREN ELLERSON :	:
Plaintiff - Intervener, :	:
vs. :	:
VICTORIA'S SECRET STORES, INC. :	JURY TRIAL DEMANDED
Defendant. :	:

PLAINTIFF-INTERVENER'S MOTION FOR LEAVE TO FILE
A SECOND AMENDED COMPLAINT

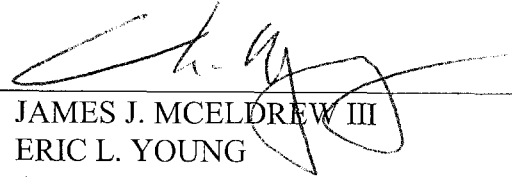
Plaintiff-Intervener Lauren Ellerson, by and through her attorneys, McEldrew & Fullam, P.C., pursuant to Fed.R.Civ.P. 15, hereby moves for leave of court to file the attached Second Amended Complaint, for the sole purpose of adding as an additional defendant, the Limited Brands, Inc., defendant Victoria's Secret, Inc.'s parent corporation. Plaintiff's proposed Second Amended Complaint is identical to the First Amended Complaint in all material respects, except for the addition of the Limited Brands, Inc., as a defendant.

For the reasons set forth in detail in the attached Memorandum of Law in Support of Plaintiff-Intervener's Motion For Leave to File a Second Amended Complaint, this Court should grant the instant Motion and deem the attached Second Amended Complaint filed and served upon entry of the attached proposed Order.

Respectfully submitted,

MCELDREW & FULLAM P.C.

BY:

A handwritten signature in black ink, appearing to read "J. McEldrew III", is written over a horizontal line. The signature is stylized and somewhat cursive.

JAMES J. MCELDREW III

ERIC L. YOUNG

Attorneys for Lauren and Derrick Ellerson

DATE: March 12, 2003

ATTACHMENT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY :		CIVIL ACTION
COMMISSION, Plaintiff,	:	No. 02-CV-6715
	:	
and	:	
	:	
LAUREN ELLERSON	:	
Plaintiff - Intervener,	:	
	:	
v.	:	
	:	
VICTORIA'S SECRET STORES, INC.	:	
	:	JURY TRIAL DEMANDED
	:	
and	:	
	:	
LIMITED BRANDS, INC.	:	
Defendants.	:	

**SECOND AMENDED COMPLAINT OF INTERVENER
LAUREN ELLERSON**

I. PRELIMINARY STATEMENT

1. In this action, Plaintiff Lauren Ellerson, hereinafter referred to as "Plaintiff", and/or "Mrs. Ellerson", seeks declaratory, injunctive, and equitable relief, liquidated compensatory and punitive damages, costs, and attorney's fees for the racial and religious discrimination, harassment, retaliation for complaining about said discrimination and physical and psychological injuries caused by Defendant, Victoria's Secret Stores, Inc., and Limited Brands, Inc., hereinafter referred to as "Defendants".

II. JURISDICTION

2. This action arises under Title VII, as amended by the Civil Rights Act of 1991, 42 U.S.C. Sec. 2000(e), et seq., and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 951, et seq.

3. Jurisdiction over the federal claim is invoked pursuant to 28 U.S.C. §451, 1331, 1337 and 1343, and over the state law claims pursuant to 28 U.S.C. §1367.

4. Jurisdiction over the additional claims of religious and racial discrimination is appropriate because Plaintiff's Charge of Discrimination was filed with the Equal Employment Opportunity Commission (EEOC) was filed and time stamped, and was timely cross-filed with the Pennsylvania Human Relations Commission, regarding Ms. Ellerson's treatment by Victoria's Secret, in a timely manner following her constructive discharge from that company. On or about August 13, 2002, the EEOC filed a Complaint and demand for jury trial in the Eastern District of Pennsylvania. By Order of the Court, Plaintiff Lauren Ellerson intervened in this action to assert, *inter alia*, her state law claims.

5. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. Sec. 2001 and Sec. 2002, and Title VII, as amended by the Civil Rights Act of 1991 by the EEOC, and Lauren Ellerson seeks such relief under the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 962.

6. Compensatory and punitive damages are available under the Civil Rights Act of 1991, the Pennsylvania Human Relations Act (PHRA), 43 P.S. et. seq., and other damages are sought, including but not limited to, back pay and front pay, and other lost benefits under Title VII as amended by the Civil Rights Act of 1991, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 951, et seq.

7. Costs and attorney's fees may be awarded pursuant to Title VII as amended by the Civil Rights Act of 1991, 42 U.S.C. Sec. 200(e)-5(k); Rule 54 of the Federal Rules of Civil Procedure, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 962 (c.2).

8. The Honorable Jay C. Waldman of the United States District Court for the Eastern District of Pennsylvania, in an Order dated January 13, 2003 and entered on January 14, 2003, permitted Plaintiff Lauren Ellerson to intervene as a plaintiff in the above captioned matter.

III. VENUE

9. This action properly lies in the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. Sec.1391(b) because the claim arose in Pennsylvania and was filed by the EEOC in this district.

IV. PARTIES

10. Plaintiff Lauren Ellerson is an adult individual who resides at 6520 Walnut Park Drive, Philadelphia, PA 19120-1032.

11. Defendant Victoria's Secret, Inc. has continuously been, and is now doing business in the State of Pennsylvania, and engages in an industry affecting interstate commerce, and employs more than fifteen (15) regular employees.

12. Defendant Limited Brands, Inc., has continuously been, and is now doing business in the State of Pennsylvania, and engages in an industry affecting interstate commerce, and employs more than fifteen (15) regular employees.

V. FACTS

13. Plaintiff Lauren Ellerson incorporates by reference all facts pled in the Complaint filed by the EEOC in this case.

14. More than thirty days prior to the institution of this lawsuit, Lauren Ellerson filed a charge of discrimination with the EEOC alleging violations of Title VII by Victoria's Secret, Inc. All conditions precedent to the institution of this lawsuit have been fulfilled.

15. Since at least December 1999, Defendants have engaged in unlawful employment practices at its Oxford Valley Mall Victoria's Secret store in Langhorne, Pennsylvania, by subjecting Mrs. Ellerson to a hostile work environment based on her race, which is black, and her religion, which is Baptist, and failing to accommodate Mrs. Ellerson's religious needs. These unlawful practices include, but are not limited to, the following:

(a) Mrs. Ellerson was ordered by store manager Evelyn Gibson, and another co-manager, to watch black customers very closely when they entered the store, to consider them to be shoplifters until proven otherwise, and to go outside of the store premises to spot groups of blacks who may enter the store. Store manager Gibson instructed Ms. Ellerson not to report an incident as theft when a white customer disappeared with merchandise, yet required Ms. Ellerson to write up reports on blacks for shoplifting when Ms. Ellerson had not observed any such activity.

(b) In the presence of the store manager, Ms. Ellerson was accused by a bra specialist of "trying to be white", and was spoken to in the slang known as "ebonics" as though Ms. Ellerson would understand this "street" language. Store manager Gibson also spoke to Ms. Ellerson in "ebonics."

(c) The store manager and another co-manager instructed Ms. Ellerson that they did not hire applicants from a particular local high school because they are "race mixers."

(d) Co-workers asked Mrs. Ellerson if her hair was real, and one co-manager tugged at her hair while asking if Mrs. Ellerson had hair extensions; in addition, co-workers commented about blacks "looking alike" and being afraid of water; in addition, in response to a comment made by a black customer, an employee expressed displeasure at the way "you people" talk. At a

closed door session to which Mrs. Ellerson was invited by Ms. Gibson, a co-manager continued a conversation with Ms. Gibson in front of Mrs. Ellerson containing statements that blacks claim racial discrimination whenever something goes against them, and this statement was not addressed or corrected by the store manager.

(e) When Ms. Ellerson reported to store manager Gibson that racially derogatory remarks were made that were upsetting to her, Ms. Gibson shrugged or laughed and took no action to correct the situation.

(f) Employees left notes in Mrs. Ellerson's purse calling her "Dum Dum" and "Bitch", took away her keys so that Mrs. Ellerson could not find them, and called her "lackey" and "flunky."

(g) Upon her hire, Ms. Ellerson was assured by Defendant Victoria's Secret's District Director, Alexis Black, that Defendants would accommodate her need to attend church on Sundays and that she would only have to work one Sunday a month. However, Mrs. Ellerson was continuously scheduled to work two or three Sundays a month.

(h) Mrs. Ellerson complained to store manager Gibson about the scheduling, and requested that she at least have the third Sunday of each month off so that she could receive communion. Gibson ignored this request and continued to schedule Ellerson on Sundays, including the third Sunday of the month.

(i) Defendant Victoria's Secret's Co-Manager Jackie Addis referred to Mrs. Ellerson as "Christian girlfriend", and store manager Gibson informed Mrs. Ellerson that an applicant who had left a voice mail message at the store saying "God bless and Godspeed" would not be hired, since "[w]e don't want another religious person. You are enough."

(j) Alexis Black, District Manager, proclaimed at a meeting at the Langhorne store that if any employee had a problem at the store, they should not come to her but should solve the problems themselves within the store; this comment discouraged Mrs. Ellerson from reporting to Ms. Black about the hostile work environment.

(k) Mrs. Ellerson complained to Defendants' corporate representative, Michael Bender, about the harassment, and about the employees not following safety rules.

(l) After the phone call to Bender, District Director Black called a store meeting but she asked Mrs. Ellerson to arrive an hour later than everyone else. The meeting focused solely on the failure to follow safety rules and did not address Ms. Ellerson's complaints of discrimination.

(m) On or about April 4, 2001, Defendants' Loss Prevention and Control Investigator came to the store to investigate Mrs. Ellerson's allegations; however, during the investigation, the harassment worsened. A co-manager asked Mrs. Ellerson, "What other Victoria's Secret stories are you going to tell?" Mrs. Ellerson was never informed of the results of the investigation.

(n) Creation of a hostile work environment for Mrs. Ellerson based on her race, her religion and in retaliation for complaining to Defendants' management about the unlawful and discriminatory practices and safety issues.

(o) On or about April 12, 2001, Mrs. Ellerson took disability leave because she was unable to continue working due to major depression and anxiety, caused by the hostile work environment.

(p) Defendants' creation of a hostile work environment led to Mrs. Ellerson's actual

and/or constructive discharge from Victoria's Secret.

16. The effects of the practices complained of in paragraph 15(a)-(p) above have been to deprive Lauren Ellerson of equal employment opportunities and adversely effect her status as an employee because of her race, which is black, and her religion, which is Baptist.

17. The unlawful employment practices complained of in paragraph 15(a)-(p) were intentional.

18. The unlawful employment practices complained of in paragraph 15(a)-(p) were done with malice or reckless indifference to the federally protected rights of Lauren Ellerson.

FIRST CAUSE OF ACTION

(Racial and Religious Discrimination Under Title VII 42 U.S.C. 2000)

19. Plaintiff Lauren Ellerson hereby incorporates Paragraphs 1 through 18 as if fully set forth herein.

20. By the actions of its employees and managers which are set forth in the foregoing paragraphs of this Complaint, Defendants unlawfully harassed, discriminated against, and retaliated against Plaintiff Lauren Ellerson on the basis of her race and religion in violation of Title VII.

21. Defendants maliciously, intentionally and with extreme indifference to the civil rights of plaintiff Lauren Ellerson, allowed their employees to act in such a manner when it knew or should have known, that such actions would discriminate against the plaintiff because of her race and religious beliefs, and created a hostile working environment for plaintiff.

22. Defendants, on the basis of race and religious beliefs, discriminated against plaintiff in her work assignments and work environment.

23. Defendants, on the basis of race and religious beliefs, discriminated against plaintiff by having discharged and/or constructively discharged her employment.

SECOND CAUSE OF ACTION

(Racial and Religious Discrimination under 43 P.S. Sec. 955(a))

24. Plaintiff hereby incorporates by reference Paragraphs 1 through 23 herein as though fully set forth at length.

25. By the actions of its employees and management which are set forth in the foregoing paragraphs of the Complaint, Defendants unlawfully harassed and discriminated against Plaintiff on the basis of race and religion, and retaliated against her for her complaints in violation of 43 P.S. Sec. 953, 955(a) and 955(d).

25. Defendants knew, or should have known, that such actions would create a hostile working environment for Plaintiff.

26. Such harassing and discriminatory actions by Defendants on the basis of race and religious practices created a hostile work environment, and ultimately caused the termination of Plaintiff's employment with defendant Victoria's Secret .

THIRD CAUSE OF ACTION

(Retaliation under Title VII)

27. Plaintiff Lauren Ellerson hereby incorporates by reference, Paragraphs 1 through 26 above as though fully set forth at length herein.

28. By the actions of their employees and management which are set forth in the foregoing paragraphs of this Complaint, Defendants unlawfully harassed and discriminated against Plaintiff on the basis of her race and religion, and retaliated against her for reporting

those incidents, and for engaging in protected activity in violation of 43 P.S. 955(a) and 955(d) and Title VII, 42 U.S.C. Sec. 2000, et seq.

29. Defendants knew, or should have known, that such actions would create a hostile working environment for Plaintiff and would cause her great physical and emotional harm.

30. Defendants' actions caused the Plaintiff physical damage, emotional damage, and severe economic loss, including, but not limited to, her actual and/or constructive discharge from Victoria's Secret.

VI. PRAYER FOR RELIEF:

WHEREFORE, Plaintiff Lauren Ellerson respectfully requests that this Honorable Court:

- (a) Declare Defendants' conduct to be in violation of Plaintiff's rights;
- (b) Enjoin Defendants from engaging in such conduct in the future;
- (c) Award Plaintiff Lauren Ellerson equitable relief of back pay and benefits up to the date of the reinstatement and front pay and benefits accrual;
- (d) Award Plaintiff Lauren Ellerson compensatory damages to which she is entitled for past and future pecuniary losses, emotional pain and suffering, physical pain and suffering, inconvenience, loss of enjoyment of life, damages for breach of contract, and any other compensatory damages;
- (e) Award Plaintiff Lauren Ellerson punitive damages to which she proves herself entitled;
- (f) Award Plaintiff's attorney's fees and costs, and
- (g) Grant such other relief as may be deemed just and proper.

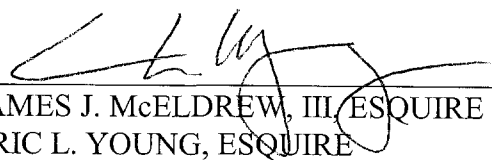
VII. JURY DEMAND

31. Plaintiff Lauren Ellerson demands a trial by jury with a panel consisting of twelve with alternates.

Respectfully submitted,

McELDREW & FULLAM, P.C.

BY



JAMES J. McELDREW, III, ESQUIRE
ERIC L. YOUNG, ESQUIRE
Attorneys for Plaintiff Lauren Ellerson

DATE: March 12, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY :	CIVIL ACTION
COMMISSION, Plaintiff :	NO: 02-CV-6715
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and :	:
LAUREN ELLERSON :	:
Plaintiff - Intervener, :	:
vs. :	:
VICTORIA'S SECRET STORES, INC. :	JURY TRIAL DEMANDED
Defendant. :	:

**PLAINTIFF-INTERVENER'S MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

Plaintiff-Intervener Lauren Ellerson, by and through her attorneys, McEldrew & Fullam, P.C., pursuant to Fed.R.Civ.P. 15, hereby submits this memorandum of law in support of her Motion for Leave to File a Second Amended Complaint.

I. INTRODUCTION

Plaintiff-Intervener Lauren Ellerson (also referred to as "Mrs. Ellerson") seeks leave of court, pursuant to Fed.R.Civ.P. 15, to file the attached Second Amended Complaint, for the sole purpose of adding as an additional defendant, the Limited Brands, Inc., ("The Limited"), defendant Victoria's Secret, Inc.'s ("Victoria's Secret"), parent corporation. Plaintiff-Intervener's proposed Second Amended Complaint is identical to the First Amended Complaint in all material respects, except for the addition of The Limited, as a defendant.

As set forth in more detail in the attached Second Amended Complaint, Mrs. Ellerson became the victim of serious and repeated hostile work environment discrimination based upon her African-American race, national origin, and religious beliefs by defendant Victoria's Secret at its Oxford Valley, Pennsylvania location, beginning in or about December 1999. In or about

April 2001, Plaintiff was forced to leave her employment with Victoria's Secret after her numerous and repeated complaints were ignored and she was forced to endure an unlawful hostile work environment.

After having investigated and considered Mrs. Ellerson's charges, on or about August 13, 2002, the Equal Employment Opportunity Commission ("EEOC") filed a civil complaint on Mrs. Ellerson's behalf. On September 18, 2002, by and through her undersigned attorneys, Mrs. Ellerson filed a petition to intervene as a party-plaintiff pursuant to Fed.R.Civ.P. 24(a). After having considered the parties' briefing on the issue, on January 13, 2003, the Court granted Plaintiff-Intervener's petition to intervene. Pursuant to the Court's Order, on January 21, 2003, Plaintiff-Intervener filed her Complaint, asserting claims against Victoria's Secret under both Title VII and the Pennsylvania Human Relations Act. Shortly thereafter, on February 5, 2003, Plaintiff filed her First Amended Complaint, adding certain substantive allegations in support of her existing claims, and restating certain jurisdictional statements set forth in the original Plaintiff-Intervener Complaint.

Since filing the First Amended Complaint, Plaintiff-Intervener's continued investigation in support of her allegations has revealed that the facts and circumstances which led to the complained of hostile work environment were not exclusive to defendant Victoria's Secret, but resulted from a known insensitive corporate culture fostered by Victoria's Secret's parent corporation, The Limited.

The evidence in this case will demonstrate that Victoria's Secret's parent corporation, The Limited, exercises a significant amount of day-to-day control over Victoria's Secret's affairs, such that the two companies share a common identity of interest and are equally responsible for discriminating against Mrs. Ellerson. Upon information and belief, the evidence will

demonstrate that while still employed by defendant Victoria's Secret, and prior to the institution of this lawsuit, Mrs. Ellerson's numerous complaints about repeated and continued unlawful discrimination were received and ignored not only by representatives of Victoria's Secret, but also by corporate personnel at The Limited, including individuals working in The Limited's human resources and loss prevention departments.

In addition, the evidence in this case will show that The Limited encourages direct communications between its corporate offices and Victoria's Secret associates on all matters of corporate concern. For example, The Limited's chief executive officer, Leslie Wexler, sent a letter to all Victoria's Secret associates encouraging use of *The Limited's* "open-door" policy, and use of *The Limited's* "ethics hotline". See e.g., August 9, 2002, Limited Brands letter directed to all Victoria's Secret associates, pg. 2, attached hereto as Exhibit "A". Moreover, in the instant case, The Limited was aware of Mrs. Ellerson's predicament by having directly provided short-term disability benefits to her as an employee of *The Limited*, and not Victoria's Secret. See July 23, 2002 letter from MetLife to Lauren Ellerson, attached hereto as Exhibit "B". Similarly, during her employment with Victoria's Secret, Mrs. Ellerson's health benefits were provided to her by and through *The Limited*. See April 10, 2002 HIPAA Certificate of Evidence, attached hereto as Exhibit "C".

II. ARGUMENT

Fed. R.Civ.P. 15 provides that Plaintiff-Intervener can amend her First Amended Complaint by requesting leave of court to do so. It is well-settled in Pennsylvania that requested amendments made pursuant to Fed.R.Civ.P. 15, are to be granted freely, absent a showing of undue delay, bad faith, or dilatory tactics. *Mathai v. Catholic Health Initiatives, Inc., et al.*, 2000 U.S. Dist. LEXIS 16555 (E.D. Pa. 2000); *D.E.J.S.A. Corp. v. Shooster*, 1993 U.S. Dist. LEXIS

15291, * 2 (E.D.Pa. 1993); *Powers v. The Southland Corp.*, 1992 U.S. Dist. LEXIS 8642, * 4 (E.D. Pa. 1992). Where the moving party can satisfy the requirements of Rule 15(c), it should be permitted to amend the Complaint to include an additional defendant and the claims against the additional defendant will relate back to the filing of the original complaint. *State Farm Mutual Automobile Ins. Co. v. Red Lion Medical Center, Inc.*, 2001 U.S. Dist. LEXIS 24101, *10 (E.D.Pa. 2001)(citing *Revelle v. Trigg*, 1999 U.S. Dist. LEXIS 382 (E.D.Pa. 1999)).

A. PLAINTIFF-INTERVENER'S CLAIMS AGAINST THE LIMITED RELATE BACK TO THE ORIGINAL COMPLAINT BECAUSE THE LIMITED SHARES AN "IDENTITY OF INTEREST" WITH ITS WHOLLY-OWNED SUBSIDIARY, DEFENDANT VICTORIA'S SECRET.

In *Schiavone v. Fortune*, 477 U.S. 21 (1986), the Supreme Court spelled out the requirements for adding a defendant under Rule 15(c) and relating the relevant claims against the additional defendant back to the date of the original pleading. To do so, the Supreme Court held that:

- (1) the basic claim must have arisen out of the conduct set forth in the original pleading;
- (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense;
- (3) that party must or should have known that but for a mistake concerning identity, the action would not have been brought against it; and
- (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Id. at 29. See also *Kinnally v. Bell of Pennsylvania*, 748 F.Supp. 1136, 1140 (E.D. Pa. 1990).

Plaintiff-Intervener's claims against The Limited, as set forth in the attached Second Amended Complaint, easily satisfy the first prong of the *Schiavone* test. A claim asserted in an amended complaint against a new defendant will relate back to the date of the original complaint if the claim arose out of the same conduct or occurrence. *Bronson v. Zimmerman*, 1994 U.S. Dist. LEXIS 16836, * 3 (E.D. Pa. 1994).

Here, Plaintiff-Intervener seeks only to add The Limited as a co-defendant. Plaintiff-Intervener's Second Amended Complaint does not include any new or additional substantive allegations. Mrs. Ellerson's claims against both Victoria's Secret and The Limited arise out of the same facts and circumstances involving their uniform violation of Title VII and the Pennsylvania Human Relations Act, by subjecting Mrs. Ellerson to a hostile work-environment. As such, this Court should find that the first prong of the *Schiavone* test is met. *See Mathai v. Catholic Health Initiatives, Inc.*, 2000 U.S. Dist. LEXIS 16555 (E.D. Pa. 2000); *Powers*, 1992 U.S. Dist. LEXIS 8642, at 5.

The second prong of the *Schiavone* test, namely that The Limited must have had notice of the filing of the original Intervener-Complaint is also satisfied. To meet this requirement, Plaintiff-Intervener need not demonstrate that The Limited had actual notice. *State Farm*, 2001 U.S. Dist. LEXIS 24101, at 12; *Bronson*, 1994 U.S. Dist. LEXIS 16836, at 4; *Advanced Power Systems*, 801 F.Supp. 1450, 1456 (E.D.Pa. 1992). It is well-settled that constructive notice may be found if “[t]he original and added parties are so closely related in business or other activities that it is fair to presume the added parties learned of the institution of the action shortly after it was commenced.” *Bronson*, 1994 U.S. Dist. LEXIS 16836, at 4 (citing *Hernandez Jimenez v. Calero Toledo*, 604 F.2d 99, 101-02 (1st Cir. 1979). *See also Gharzouzi v. Northwestern Human Services of PA*, 225 F.Supp.2d 514, 531 (E.D. Pa. 2002); *Mathai*, 2000

U.S. Dist. LEXIS 16555; *Wine v. EMSA Ltd. Pshp.*, 167 F.R.D. 34, 38 (E.D. Pa. 1996). “**When a corporate entity is named in a complaint, those who own it or run its day-to-day business are typically deemed to have received constructive notice of the action.**” *Advanced Power Systems*, 801 F.Supp., at 1456. (citing *Itel Corp. v. Cups Coal Co.*, 707 F.2d 1253 (11th Cir. 1983)(97% stock owner on constructive notice of action against defendant corporation)).¹

In *State Farm*, this Court dealt with circumstances almost identical to those here in finding that the proposed additional defendant had constructive notice of the original complaint. In granting plaintiffs’ motion for leave to file a second amended complaint, the court emphasized the fact that the proposed additional defendant, like The Limited here, was the owner of the original named defendant. *Id.* at 14. (citing *Bloomfield Mech. Contracting, Inc. v. Occupational Safety and Health Rev. Comm’n*, 519 F.2d 1257, 1262 (3rd Cir. 1975)(noting that “identity of interest” between original-named party and party-to-be-added may result in “notice to the former [being] attributed to the latter”). See also *D.E.J.S.A. Corp. v. Shooster*, 1993 U.S. Dist. LEXIS 15291, * 6 (E.D. Pa. 1993)(given the nature of the proposed additional defendant’s close relationship with the existing defendants, the court held inferred notice in holding that amendment of the complaint to include claims against the additional defendant, pursuant to Fed.R.Civ.P. 15, was proper).

Here, The Limited had actual and/or constructive notice of Plaintiff-Intervener’s original Complaint, not only because it is Victoria’s Secret’s parent corporation, but also due to its close day-to-day management and oversight of Victoria’s Secret’s operations. Upon information and

¹ *Advanced Power Systems*, and its progeny provide that the statute of limitations is satisfied by virtue of the fact that the additional defendant, like The Limited here, had at least constructive notice of the filing of the original Intervener-Complaint at or shortly after the time it was filed.

belief, the evidence in this case will demonstrate that The Limited employed individuals in its human resource and loss prevention departments to perform services on behalf of both companies, and, in particular, that some of these individuals were involved in the investigation of Mrs. Ellerson's numerous complaints. Moreover, the evidence in this case will demonstrate that The Limited deals directly with Victoria's Secret associates on matters of corporate concern and in providing health and welfare benefits. See Exhibits "A", "B", and "C", attached hereto. Accordingly, this Court should find that Plaintiff-Intervener has satisfied the second prong of the *Schiavone* test.

Although the third prong of the *Schiavone* test requires that a moving party demonstrate that it was mistaken with respect to the real party in interest, "[c]ourts have generally held that the mistake condition is satisfied when the original party and added party have a close identity of interests." *Advanced Power Systems*, 801 F.Supp. at 1457. (citing *Sounds Express Int'l v. American Themes and Tapes, Inc.*, 101 F.R.D. 694, 697 (S.D.N.Y. 1984). See also, *State Farm*, 2001 U.S. Dist. LEXIS 24101, at 16. (same); *Mathai*, 2000 U.S. Dist. LEXIS 16555 (same).

In *Advanced Power Systems*, this Court supported its conclusion as follows:

[i]n view of the history of the application of Rule 15(c), the phrase 'a mistake concerning the identity of the proper party' should clearly not be read to limit its usefulness to cases of misnomer . . . a narrow reading of the phrase would wrongly divert attention from the 'central element' of notice . . . where an amendment seeks to add a new defendant, the mistake aspect of 15(c) seems designed to insure that, prior to the expiration of the limitations period, the new defendant knew (or should have known) that his joinder was a distinct possibility . . . the mistake condition, though not subsumed by the notice condition, is 'intertwined' with it.

Id. at 1457. (citing *Taliferro v. Costello*, 467 F.Supp. 33, 36 (E.D. Pa. 1979)(finding that

plaintiffs' failure to include the City of Philadelphia in a civil rights action, though simply mistaken legal judgment, satisfied the mistake condition).

Therefore, regardless of whether this Court characterizes Plaintiff-Intervener's failure to previously name The Limited as a defendant as a mistake or not is irrelevant. Where, as here, the original defendant and the proposed additional defendant are closely related or share a common identity of interest, the third prong of the *Schiavone* test is met because The Limited knew or should have known that, but for an error or lack of available information on the part of Mrs. Ellerson, it would have been previously joined in this action. *Advanced Power Systems*, 801 F.Supp. at 1457. *See also Kinnally*, 748 F.Supp. at 1136 (failure to name individual defendants, in addition to the company, in a sex discrimination case constituted "mistake concerning identity"); *Itel*, 707 F.2d at 1258 (failure to join president and owner of corporation considered a mistake in identity)

For all of the foregoing reasons, this Court should find that Plaintiff-Intervener has satisfied each of the *Schiavone* elements and should grant the instant Motion accordingly.

B. THE IDENTITY OF INTEREST DOCTRINE DOES NOT REQUIRE THE ADDITIONAL DEFENDANT TO HAVE BEEN NAMED IN AN ADMINISTRATIVE CHARGE.

The fact that The Limited was not a named party to the administrative charges filed with the E.E.O.C. and P.H.R.C., is irrelevant with respect to this Court's jurisdiction over this matter. It is well-settled that the jurisdictional requirements for bringing suit under Title VII should be liberally construed. *Hart v. J.T. Baker Chemical Corp.*, 598 F.2d 829, 831 (3rd Cir. 1979); *Glus v. G.C. Murphy Co.*, 562 F.2d 880, 887-88 (3rd Cir. 1977); *Kinnally v. Bell of Pennsylvania*, 748 F.Supp. 1136, 1139 (E.D. Pa. 1990). On that basis, the United States Court of Appeals for the Third Circuit has established that if a party shares a common "identity of interest" with the

named defendant in a Title VII case, such that it knew or should have known of the pending discrimination claims at issue, in the absence of any demonstrable prejudice, then jurisdiction over the claims against an additional defendant is proper. *Glus v. The G.C. Murphy Co.*, 629 F.2d 248, 251 (3rd Cir. 1980). *See also Cronin v. Martindale Andres & Co.*, 159 F.Supp. 2d 1, 10-12 (E.D. Pa. 2001)(court exercised subject-matter jurisdiction over defendant parent-corporation which was not named in administrative complaint because it shared a “commonality of interest” with its subsidiary, the original defendant).

Here, for the reasons set forth in more detail above, The Limited and Victoria’s Secret share a common identity of interest such that The Limited knew or should have known of Mrs. Ellerson’s commencement of this action at or near the time it was filed. *See Bronson*, 1994 U.S. Dist. LEXIS 16836, at 4 (citing *Hernandez Jimenez v. Calero Toledo*, 604 F.2d 99, 101-02 (1st Cir. 1979).

Accordingly, this Court should find that it has jurisdiction over The Limited and grant the instant Motion for Leave to File A Second Amended Complaint to add The Limited as a defendant in this case.

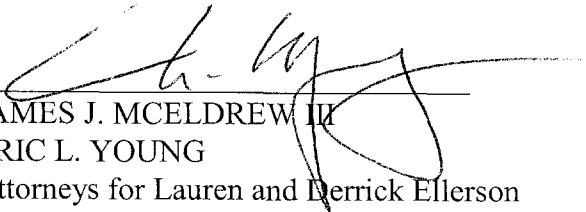
III. CONCLUSION:

For all of the foregoing reasons, Plaintiff-Intervener Lauren Ellerson respectfully submits that this Court should grant her Motion for Leave to File a Second Amended Complaint.

Respectfully submitted,

MCELDREW & FULLAM P.C.

BY: _____


JAMES J. MCELDREW III
ERIC L. YOUNG
Attorneys for Lauren and Derrick Ellerson

DATE: March 12, 2003

EXHIBIT “A”

Limited Brands

August 9, 2002

Dear Associate,

As we approach the anniversary of that terrible day last September, I cannot help but think about how much has changed in just one year – the truly unprecedented changes that will forever impact our lives, both personally and professionally. Whether it is the horrible acts of terrorism and loss of life...our nation's military response and increased homeland security...or the deterioration of the stock market and disruption of world economies, the past 12 months have been full of hurt and fear and disappointment.

As I have tried to come to terms with all of this, I have found comfort in the concept of values. Yours. Mine. And collectively, ours. Whether I find myself in a position of leadership or one where I am following, for me, it all begins with the Golden Rule. Am I doing the right thing? Do I know right from wrong? Am I willing to make the important choices and the difficult decisions? Do I have a moral compass? And is it serving me well? If I can answer yes to every question – even when it's painful or uncomfortable or ends up being the wrong decision – I have the comfort of knowing I tried to do what's right.

And that is what makes me so proud of the men and women who represent Limited Brands. As an enterprise, we have chosen to live our professional lives by this philosophy. We consistently try to do what's right. This behavior manifests itself in how we treat each other, how we treat our customers, and how we support the communities in which we live and work – through activities like our Reads programs, United Way and other community support programs. Not just this year or last year...but consistently over many years.

As you know, there is much focus right now on how businesses are managing themselves. Congress and the New York Stock Exchange have passed new laws and rules designed to ensure that public companies – not unlike ours – are in fact, doing the right thing. Accurately representing themselves, their performance and their processes.

Next month Ann Hailey and I will certify our financial statements as required by the new rules. We will do so based upon appropriate reviews – but more importantly, we will do so based on the knowledge that the enterprise and its leaders are committed to doing what's right and to making values-based business decisions. Our associates and our leaders have a moral compass...they know right from wrong and they have chosen, to the best of their ability, to do what's right. Anyone who does not meet this standard should not be at Limited Brands. That has been the standard for nearly 40 years – and I deeply hope it never changes.

You should know, however, that while our values remain constant, I am, in fact, a proponent of change for the business – that's how we grew from a single store to more than 4,500 of them. Going forward, not everyone will agree with where we take the business or exactly how we will grow, but rest assured, each time we make a decision or make a change that impacts the business or its associates, we will be guided by those same values questions: Are we doing the right thing? Do we know right from wrong? Are we willing to make the important choices and the difficult decisions? Do we have a moral compass? And is it serving us well?

What Limited Brands needs from each of you, however, is to know how you think the leadership of the business is handling the tough issues. Whether we're listening to your questions or points of view. Whether we are addressing your concerns. Or understanding your perspective. It's not that we want to hear from you...it's that we need to hear from you! So please, speak up. Use our open door policy. Talk to your supervisor, HR partner or business leader. Make use of the ethics hot line for known or suspected violations of our policies or practices (1-888-884-7218). Or simply drop me a note – but please, just let us know what is on your mind. When possible or practical, we'll respond by mail or e-mail. We'll address your concerns by video or in a quarterly briefing meeting. And if necessary, we'll get together and talk.

As you know, I'm not shy about sharing good news with all of you, and I'm not shy about sharing bad news when I have to. I will continue to do both – through notes like this and others. But that kind of candor and transparency must go both ways. While people are generally more than willing to tell me about the good, they're far too reluctant to share the less desirable news. I want to hear it all. It will be of great utility to the enterprise...and it is the right thing to do.

You have chosen to be a part of the Limited Brands family for a reason. I hope it's partly because you – like me – know that Limited Brands associates have a moral compass...know how to use it...and try to do what's right.

In a world so full of change and uncertainty, values matter more than ever. Ours are timeless and they guide us always.

Best regards and we hope to hear from you soon.



Leslie H. Wexner
Chairman and Chief Executive Officer

EXHIBIT ‘B’

Metropolitan Life Insurance Company



MetLife Disability
PO Box 14590 Lexington, KY 40511-4590
800-635-6707, ext 6175 fx: 866 690 1264

July 23, 2002

Ms. Lauren Ellerson
6520 Walnut Park Drive
Philadelphia, PA 19120

RE: Managed Disability Services
Claim #: 200106136390
Employer: Limited Brands, Inc.
Report #: 0084081 – Victoria Secret Stores
SSN: [REDACTED]

Dear Ms. Ellerson:

We have received your request to review our claim denial. MetLife denied your claim under the provisions and terms of your employer's plan. You were notified in writing on September 22, 2000 of the reasons for the denial and your right to file a timely appeal.

We are unable to give your request further consideration since it was received on July 22, 2002, which is seven months beyond the expiration of the 60 day appeals submission time period.

No further review or appeal of the denial will be considered.

If you have questions, please call the customer service unit at the toll-free number.

Sincerely,

Tosha Ford
Case Manager

cc: Limited Brands, Inc.
Kathleen Daerr-Bannon, Esq.

EXHIBIT “C”

UNITED HEALTHCARE - HIPAA CERT.
P.O. BOX 740800
ATLANTA, GA 30374-0800

UNITEDhealthcare®



LAUREN ELLERSON
6520 WALNUT PARK DRIVE
PHILADELPHIA, PA 19120

EMPLOYEE: LAUREN ELLERSON
ID # : 00176508387
GROUP : THE LIMITED
GROUP # : 1510100

RE: CERTIFICATION OF COVERAGE

DEAR LAUREN ELLERSON

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) REQUIRES GROUP HEALTH PLANS TO PROVIDE FORMER PARTICIPANTS AND BENEFICIARIES WITH A CERTIFICATE OF EVIDENCE OF PRIOR HEALTH COVERAGE. IF YOU BECOME ELIGIBLE UNDER A NEW GROUP HEALTH PLAN THAT EXCLUDES COVERAGE FOR CERTAIN MEDICAL CONDITIONS YOU HAVE BEFORE YOU ENROLL, YOU MAY NEED TO FURNISH THIS CERTIFICATION OF PRIOR HEALTH COVERAGE TO REDUCE THE PRE-EXISTING CONDITION EXCLUSION PERIOD. YOU ALSO MAY NEED TO PROVIDE THIS CERTIFICATE IF MEDICAL ADVICE, DIAGNOSIS, CARE OR TREATMENT WAS RECOMMENDED OR RECEIVED FOR THE CONDITION WITHIN THE SIX-MONTH PERIOD PRIOR TO YOUR ENROLLMENT IN THE NEW PLAN. THE MAXIMUM PRE-EXISTING CONDITION EXCLUSION PERMITTED UNDER HIPAA IS EIGHTEEN MONTHS, THEREFORE THE MAXIMUM PERIOD OF CONTINUOUS COVERAGE THAT WILL BE CERTIFIED IS EIGHTEEN MONTHS.

THIS CERTIFICATION DESCRIBES PERIODS OF HEALTH COVERAGE ADMINISTERED BY ONE OR MORE OF UNITED HEALTHCARE'S AFFILIATED COMPANIES THAT PROVIDE INSURANCE, HMO OR CLAIMS ADMINISTRATION SERVICES (ALL OF WHICH ARE COLLECTIVELY REFERRED TO AS UNITED HEALTHCARE). THIS CERTIFICATION MAY INCLUDE PERIODS OF COVERAGE THAT WERE PROVIDED BY THE METRAHEALTH INSURANCE COMPANY AND ITS AFFILIATES, THE TRAVELERS INSURANCE COMPANY AND ITS AFFILIATES, OR METROPOLITAN LIFE INSURANCE COMPANY AND ITS AFFILIATES, BUT WERE ADMINISTERED BY UNITED HEALTHCARE. THIS CERTIFICATION MAY ALSO INCLUDE PERIODS OF COVERAGE THAT WERE PROVIDED OR ADMINISTERED BY UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK AND ITS AFFILIATES.

IF YOU BECOME COVERED UNDER A NEW GROUP HEALTH PLAN, CHECK WITH THE PLAN ADMINISTRATOR OR EMPLOYER TO SEE IF YOU NEED TO PROVIDE THIS CERTIFICATE. WE RECOMMEND THAT YOU ATTACH THIS CERTIFICATE TO YOUR FORMER GROUP PLAN COVERAGE BOOKLET AND PROVIDE BOTH DOCUMENTS TO YOUR NEW PLAN ADMINISTRATOR OR EMPLOYER.

IMPORTANT NOTE: CERTAIN INFORMATION MAY NOT BE CURRENTLY AVAILABLE FROM UNITED HEALTHCARE. IF YOUR NEW GROUP HEALTH PLAN REQUIRES YOU TO PROVIDE THIS CERTIFICATE, AND REQUIRES INFORMATION THAT IS NOT CONTAINED IN THE ATTACHED CERTIFICATION, YOU MAY PROVIDE THE INFORMATION IN WRITING TO YOUR NEW PLAN ALONG WITH SUPPORTING DOCUMENTS (E.G. COVERAGE BOOKLET) OR OTHER MEANS.

IF YOU HAVE ANY QUESTIONS PLEASE REFER TO THE CUSTOMER SERVICE PHONE NUMBER ON YOUR CERTIFICATION FORM.

UNITED HEALTHCARE - HIPAA CERT.
 P.O. BOX 740800
 ATLANTA, GA 30374-0800
 APRIL 10, 2002

EMPLOYEE NAME LAUREN ELLERSON
 EMPLOYEE ID 00176508387

GROUP HEALTH BENEFIT PLAN CERTIFICATION OF COVERAGE

THIS CERTIFICATION OF PRIOR CREDITABLE COVERAGE DESCRIBES PERIODS OF GROUP HEALTH COVERAGE ADMINISTERED BY ONE OR MORE OF UNITED HEALTHCARE'S AFFILIATED COMPANIES THAT PROVIDE INSURANCE, HMO OR CLAIMS ADMINISTRATION SERVICES (ALL OF WHICH ARE COLLECTIVELY REFERRED TO AS UNITED HEALTHCARE). THIS CERTIFICATION MAY INCLUDE PERIODS OF COVERAGE THAT WERE PROVIDED BY THE METRAHEALTH INSURANCE COMPANY AND ITS AFFILIATES, THE TRAVELERS INSURANCE COMPANY AND ITS AFFILIATES, OR METROPOLITAN LIFE INSURANCE COMPANY AND ITS AFFILIATES, BUT WERE ADMINISTERED BY UNITED HEALTHCARE. THIS CERTIFICATE MAY ALSO INCLUDE PERIODS OF COVERAGE THAT WERE PROVIDED OR ADMINISTERED BY UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK AND ITS AFFILIATES.

AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY ACT OF 1996, WE ACKNOWLEDGE THAT THE FOLLOWING INDIVIDUAL(S) PARTICIPATED IN A GROUP HEALTH BENEFIT PLAN:

GROUP NAME THE LIMITED

GROUP NUMBER 1510100

PARTICIPANT NAME (MEMBER NUMBER)	DOB	WAIT PERIOD BEGIN DATE	COVERAGE PERIOD(S) BEGIN DATE END DATE
LAUREN ELLERSON	03/15/66	(N/A)	(#) 01/12/02
DERRICK ELLERSON	06/25/56	(N/A)	(#) 01/12/02
BRITTNEY ELLERSON	12/05/89	(N/A)	(#) 01/12/02

(#) INDIVIDUAL/DEPENDENT UNIT HAS AT LEAST 18 MONTHS OF CONTINUOUS COVERAGE. ACTUAL COVERAGE EFFECTIVE DATE IS NOT REQUIRED.

IF YOU HAVE QUESTIONS, OR BELIEVE ANY INFORMATION CONTAINED IN THIS FORM IS NOT ACCURATE, PLEASE CONTACT OUR CUSTOMER SERVICE CENTER AT 800-521-5505.



GROUP # : 1510100
APRIL 10, 2002
PAGE 2

SINCERELY

UNITED HEALTHCARE

APRIL 10, 2002



CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March 2003, a true and correct copy of the foregoing was served upon the parties listed below by Electronic Court Filing:


Equal Employment Opportunity Commission
c/o Cynthia A. Locke, Esquire
21 South 5th Street, Suite 400
Philadelphia, PA 19106

Heather A. Steinmiller, Esquire
Blank, Rome, Comiskey & McCauley LLP
One Logan Square
Philadelphia PA 19103

Michael G. Long, Esquire
Vorys, Sater, Seymour & Paese, LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43210

MCELDREW & FULLAM, P.C.

BY:


ERIC L. YOUNG