

THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JENNIFER STRANGE, MAGEN MORRIS, on  
behalf of themselves and all other similarly  
situated,

Plaintiffs,

v.

LES SCHWAB TIRE CENTERS OF  
WASHINGTON, INC., LES SCHWAB  
WAREHOUSE CENTER, INC.,

Defendants.

NO. CV 06-0045RSM

LES SCHWAB DEFENDANTS' ANSWER  
TO SECOND AMENDED COMPLAINT

**I. ANSWER**

Defendants Les Schwab Tire Centers of Washington, Inc., and Les Schwab Warehouse Centers, Inc. ("Defendants") answer plaintiffs' Second Amended Complaint ("Second Amended Complaint") as follows:

- 1.1 The allegations in this paragraph are admitted.
- 1.2 The allegations in this paragraph are admitted.
- 1.3 The allegations in this paragraph are admitted.

1           1.4     In response to the first sentence of this paragraph, Defendants admit that plaintiffs  
2  
3 purport to have asserted claims under Title VII of the Civil Rights Act of 1964. The second  
4  
5 sentence states a legal conclusion and is therefore denied.  
6

7           1.5     Defendants deny the allegations in the first sentence of this paragraph. The  
8  
9 second sentence states a legal conclusion and is therefore denied.  
10

11           1.6     This paragraph states a legal conclusion and is therefore denied.  
12

13           2.1     Defendants admit the allegations in this paragraph.  
14

15           2.2     Defendants admit the allegations in this paragraph.  
16

17           2.3     Defendants deny the allegations in this paragraph.  
18

19           3.1     Defendants deny any discrimination against plaintiffs or any other women based  
20  
21 on gender, deny that any of the requirements of Rule 23 of the Federal Rules of Civil Procedure  
22  
23 are or can be met, note that the Court has twice denied plaintiffs' motion for class certification,  
24  
25 and deny any other allegations in this paragraph.  
26

27           3.2     Defendants deny the allegations in this paragraph.  
28

29           3.3     Defendants deny the allegations in this paragraph.  
30

31           3.4     Defendants deny the allegations in this paragraph.  
32

33           3.5     Defendants deny the allegations in this paragraph.  
34

35           3.6     Defendants deny the allegations in this paragraph.  
36

37           4.1     Defendants admit that Les Schwab Tire Centers of Washington, Inc., operates 103  
38  
39 tire stores under the name Les Schwab Tire Centers in Washington. Defendants deny that Les  
40  
41 Schwab Warehouse Center, Inc., operates (or operated, during the relevant time period) any tire  
42  
43 stores in any state. Defendants deny any remaining allegations in this paragraph.  
44

45           4.2     Defendants admit that each of their retail tire stores has a Manager, that each store  
46  
47 typically has one or two Assistant Managers, and that each store also has employees in a position  
48  
49 entitled "Sales and Administration" and a position entitled "Sales and Service," among other  
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51 positions. Defendants further admit that the Sales and Administration position encompasses,

1 among other things, office and clerical work, and the Sales and Service position encompasses tire  
2 sales, tire installation, and related physical work on automobiles, trucks, farm machinery, and  
3 other vehicles and equipment. Defendants deny that Les Schwab Warehouse Center, Inc.,  
4 employs (or employed, during the relevant time period) any employees in any of these  
5 enumerated positions. Defendants deny any remaining allegations in this paragraph.  
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10  
11 4.3 Defendants admit that some entity known as Les Schwab Tire Centers has been in  
12 business for more than 50 years and deny any remaining allegations in the first sentence of this  
13 paragraph. Defendants deny any remaining allegations in this paragraph.  
14  
15

16  
17 4.4 Defendants admit that the positions of Assistant Manager and Manager require  
18 extensive prior experience in the Sales and Service position, and that all promotions to the  
19 positions of Assistant Manager and Manager are made from within. Defendants deny any  
20 remaining allegations of this paragraph.  
21  
22  
23

24  
25 4.5 Defendants deny the allegations in this paragraph.  
26

27 4.6 Defendants deny the allegations in this paragraph.  
28

29 5.1 As to the first sentence of this paragraph, Defendants admit that plaintiffs Strange  
30 and Morris filed charges with the EEOC and state that the charges speak for themselves and are  
31 the best evidence of their contents. Defendants admit the allegations in the second sentence.  
32  
33 The third sentence states a legal conclusion and is therefore denied.  
34  
35

36  
37 6.1 Defendants incorporate their responses to paragraphs 1.1 through 5.1 of the  
38 Second Amended Complaint.  
39

40  
41 6.2 This paragraph requires no response.  
42

43 6.3 Defendants deny the allegations in this paragraph.  
44

45 6.4 Defendants deny the allegations in this paragraph.  
46

47 6.5 Defendants deny the allegations in the first sentence of this paragraph. The  
48 allegations in the second sentence require no response.  
49  
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51

1 7.1 Defendants incorporate their responses to paragraphs 1.1 through 6.5 of the  
2  
3 Second Amended Complaint.

4 7.2 This paragraph requires no response.

5 7.3 Defendants deny the allegations in this paragraph.

6 7.4 Defendants deny the allegations in this paragraph.

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10 7.5 Defendants deny the allegations in the first sentence of this paragraph. The  
11  
12 allegations in the second sentence require no response.

13  
14 8.1 Defendants incorporate their responses to paragraphs 1.1 through 7.5 of the  
15  
16 Second Amended Complaint.

17 8.2 This paragraph require no response.

18 8.3 Defendants deny the allegations in this paragraph.

19 8.4 Defendants deny the allegations in this paragraph and note, specifically, that the  
20  
21 Court has twice denied plaintiffs' motion for class certification and that the Court's Order on  
22  
23 Pending Motions (Dkt. #106, at 3, lines 17-19) contemplates that plaintiffs' Second Amended  
24  
25 Complaint would delete this "pattern and practice" claim.

26 8.5 Defendants deny the allegations in this paragraph.

27 8.6 This paragraph requires no response.

28  
29 9.1 Defendants incorporate their responses to paragraphs 1.1 through 8.6 of the  
30  
31 Second Amended Complaint.

32 9.2 This paragraph requires no response.

33 9.3 Defendants admit that Jennifer Strange was formerly employed by a Les Schwab  
34  
35 Tire Center in the State of Washington. Defendants deny the remaining allegations in this  
36  
37 paragraph.

38 9.4 Defendants admit that Magen Morris was formerly employed by one, or more,  
39  
40 Les Schwab Tire Center in the State of Washington. Defendants deny the remaining allegations  
41  
42 in this paragraph.  
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1 9.5 Defendants deny the allegations in this paragraph.

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3 9.6 Defendants deny the allegations in this paragraph.

4  
5 9.7 Defendants deny the allegations in this paragraph.

6  
7 9.8 Defendants deny the allegations in this paragraph.

8  
9 9.9 This paragraph requires no response.

10  
11 10.1-8 Defendants deny that the class or classes alleged by Plaintiffs exist or that any of  
12 the requirements of Rule 23 of the Federal Rules of Civil Procedure are or can be satisfied.  
13 Defendants further deny that Plaintiffs are entitled to any of the relief requested in these  
14 paragraphs or to any other relief, and deny any remaining allegations in these paragraphs.

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18 11.1 Any allegations not expressly admitted herein are denied.

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21 **II. DEFENSES AND AFFIRMATIVE DEFENSES**

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23 By way of further answer, Defendants state the following defenses and affirmative  
24 defenses:

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27 1. Plaintiffs (hereinafter inclusive of all purported class members, except as  
28 otherwise indicated) fail to state a claim upon which relief may be granted.

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30  
31 2. Plaintiffs lack standing to raise some or all of the claims of the purported class  
32 members.

33  
34  
35 3. Plaintiffs' claims on behalf of the purported class are barred by plaintiffs' failure  
36 to meet all four of the mandatory requirements of Fed. R. Civ. P. 23(a), or any of the  
37 requirements of Fed. R. Civ. P. 23(b).

38  
39  
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41 4. The claims alleged by the named plaintiffs are neither common nor typical of  
42 those, if any, of the members of the purported class.

43  
44  
45 5. The named plaintiffs are inadequate representatives of the purported class.

46  
47  
48 6. The types of claims alleged by plaintiffs are matters in which individual questions  
49 predominate and, accordingly, are not appropriate for class treatment.

1           7.     Plaintiffs have failed to identify a pattern or practice of discrimination against  
2  
3 plaintiffs.

4           8.     The employment actions taken by Defendants with respect to the plaintiffs were  
5  
6 based upon legitimate, non-discriminatory factors other than gender.  
7

8           9.     Defendants deny that gender or any other impermissible factor played any role in  
9  
10 any employment decision made pursuant to any policy or procedure plaintiffs are or may be  
11  
12 challenging.  
13

14           10.    Plaintiffs' claims are barred to the extent that the alleged unlawful actions of  
15  
16 Defendants' agents, employees and representatives, if they occurred, were not actions taken  
17  
18 within the course and scope of their employment.  
19

20           11.    Plaintiffs' claims for punitive damages are barred under Washington law.  
21

22           12.    Plaintiffs have failed to comply with their duty to mitigate alleged losses (their  
23  
24 entitlement to recovery for which is expressly denied); alternatively, any claim for relief must be  
25  
26 set off and/or reduced by wages, compensation, pay and benefits, or other earnings or  
27  
28 remunerations, profits and benefits received by plaintiffs.  
29

30           13.    In the event that the Court or a jury should ever conclude that gender was a  
31  
32 motivating factor in any of the employment decisions challenged by plaintiffs, which Defendants  
33  
34 expressly deny, Defendants affirmatively aver that the same decisions would have been made  
35  
36 absent consideration of any impermissible factor(s).  
37

38           14.    Plaintiffs' claims, or some of them, are barred by applicable statutes of limitation.  
39

40           15.    Plaintiffs' claims are barred by the doctrines of estoppel and waiver.  
41

42           16.    Plaintiffs' claims are barred, in whole or part, by their failure to undertake  
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44 reasonable measures to avoid alleged consequences of the alleged actions about which they  
45  
46 complain.  
47

48           WHEREFORE, having fully answered the Second Amended Complaint, Defendants  
49  
50 respectfully request that:  
51

- 1           1.     The Second Amended Complaint be dismissed with prejudice;  
2  
3           2.     Defendants be awarded the costs, disbursements and attorneys' fees they incur  
4  
5 herein;  
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7           3.     Defendants be granted permission to amend the Answer to conform with the  
8  
9 proof; and  
10  
11          4.     Defendants be granted such other relief as this Court deems just and equitable.  
12

13 DATED this 3rd day of December 2008.

14  
15 s/ Jeffrey A. Hollingsworth

16 Jeffrey A. Hollingsworth, WSBA #11853

17 Charles N. Eberhardt, WSBA #18019

18 **Perkins Coie LLP**

19 1201 Third Avenue, Suite 4800

20 Seattle, WA 98101-3099

21 Telephone: 206-359-8000

22 Fax: 206-359-9000

23 E-mail: JHollingsworth@perkinscoie.com  
24  
25

26  
27 Kenneth J. Diamond, WSBA #27009

28 **Winterbauer & Diamond, P.L.L.C.**

29 1200 – 5<sup>th</sup> Avenue, Suite 1910

30 Seattle, WA 98101

31 Telephone: (206) 676-8440

32 Fax: (206) 676-8441

33 Email: Ken@winterbauer.com  
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36 Attorneys for Defendants  
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**CERTIFICATE OF SERVICE**

On December 3rd, 2008, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document:

**Defendants' Answer to Second Amended Complaint**

Mr. John F. Stanley	—	Via hand delivery
Mr. Damien A. Lee	—	Via U.S. Mail, 1st Class,
U.S. Equal Employment Opportunity Commission		Postage Prepaid
Seattle District Office	—	Via Overnight Delivery
Federal Office Building, Suite 400	—	Via Facsimile
909 First Avenue	<u>X</u>	Via E-filing
Seattle, WA 98104-1061		

*Attorneys for Plaintiff EEOC*

Mr. Warren E. Martin		
Gordon, Thomas, Honeywell,	—	Via hand delivery
Malanca, Peterson & Daheim LLP	—	Via U.S. Mail, 1st Class,
Suite 2100, One Union Square		Postage Prepaid
600 University Street	—	Via Overnight Delivery
Seattle, WA 98101	—	Via Facsimile
	<u>X</u>	Via E-filing

*Attorney for Plaintiffs Strange & Morris*

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, December 3rd, 2008.

s/Jeffrey A. Hollingsworth  
 State Bar Number: 11853  
 Attorney for Defendants  
**Perkins Coie LLP**  
 1201 Third Avenue, Suite 4800  
 Seattle, WA 98101-3099  
 Telephone: (206) 359-8000  
 Fax: (206) 359-9000  
 E-mail: JHollingsworth@perkinscoie.com

**Perkins Coie LLP**  
 1201 Third Avenue, Suite 4800  
 Seattle, Washington 98101-3099  
 Phone: (206) 359-8000  
 Fax: (206) 359-9000