IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, v. 1. SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and 2. THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA Defendants.	)	Case No. CIV-15-324-C

DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY AND THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA'S MOTION TO DISMISS PLAINTIFF/INTERVENOR'S COMPLAINT IN PART AND BRIEF IN SUPPORT

COME NOW Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), (collectively "University Defendants" or "the State"), and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) move this Court for an order dismissing Plaintiff/Intervenor's Complaint [Doc. No. 24] in part. In support hereof, the University Defendants submit the following brief in support:

STATEMENT OF THE CASE

Intervenor failed to take advantage of the academic and professional opportunities offered to her by the University Defendants in her pursuit of a tenured position at SEOSU. Instead, Intervenor ignored the academic and professional advice she received from University leadership, pushed forward with her application for tenure before it was ready, and ultimately

failed to attain tenure as a result. Rather than taking responsibility for her cavalier approach to an important and detail-oriented process, Intervenor filed grievances, complaints and the present lawsuit. Now the State is called upon to defend claims by a disgruntled former employee who recklessly casts aspersions on the University Defendants and their employees. Although the University Defendants elected to answer (rather than seek dismissal of) certain counts set forth by the Plaintiff and by the Intervenor, the University Defendants presently seek dismissal of Count One of Intervenor's Complaint. As set forth more fully below, Count One of Intervenor's Complaint should be dismissed with prejudice.

STANDARD OF REVIEW

Fed.R.Civ.P. 12(b)(1) empowers a court to dismiss a complaint for "lack of jurisdiction over the subject matter." A Rule 12(b)(1) motion to dismiss "must be determined from the allegations of fact in the complaint, without regard to mere conclusory allegations of jurisdiction." *Groundhog v. Keller*, 442 F.2d 674, 677 (10th Cir.1971). The burden of establishing subject matter jurisdiction is on the party asserting jurisdiction. *See Basso v. Utah Power and Light Co.*, 495 F.2d 906, 909 (10th Cir.1974), and *Eagle Air Med Corp. v. Martin*, No. CIV.A. 08-CV-00532LT, 2009 WL 651800 (D. Colo. Mar. 12, 2009) aff'd, 377 F. App'x 823 (10th Cir. 2010).

Fed.R.Civ.P. (12)(b)(6) empowers a court to dismiss a complaint for failure to state claims upon which relief may be granted. Motions to dismiss are properly granted when a complaint provides no "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct.

1955, 1965 (2007). A complaint must contain enough "facts to state a claim to relief that is plausible on its face" and those factual allegations "must be enough to raise a right to relief above the speculative level." *Id.* at 1965, 1974 (citations omitted). The Supreme Court's standard for 12(b)(6) dismissal is "whether the complaint contains 'enough facts to state a claim that is plausible on its face.'" *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007)). The court should "look for plausibility in th[e] complaint." *Alvarado v. KOBTV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007) (quoting *Bell Atl.*, 127 S.Ct. At 1974). The specific allegations in the complaint must be reviewed "to determine whether they plausibly support a legal claim for relief." *Id.* at 1215, n.2; *see also Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007). Entitlement to relief requires more than just "labels and conclusions or a formulaic recitation of the elements" to state a cause of action. *Robbins v. State of Okla., et al.*, 519 F.2d 1242, 1247 (10th Cir. 2008) (quoting *Bell Atl.*, 127 S.Ct. at 1965). In deciding a 12(b)(6) motion a court must accept all the well-pleaded allegations of the complaint as true, and must construe the allegations in the light most favorable to the claimant. *Id.* at 1965; *Alvarado v. KOBTV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007); *Moffett v. Halliburton Energy Servs., Inc.*, 291 F.3d 1227, 1231 (10th Cir. 2002).

However, the court must also insure that each Defendant has adequate notice as to the facts and allegations entitling Intervenor to the requested relief. See Fed.R.Civ.P. (8)(a)(2) ("A pleading that states a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief"); *Bell Atlantic*, *supra.* A court is not required

to accept as true allegations that are conclusory in nature. *Erikson v. Pawnee County Bd. of County Comm'rs*, 263 F.3d 1151, 1154-55 (10th Cir. 2001) (citations omitted). "[C]onclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." *Hall v. Bellmon*, 935 F.2d 1106, 1109-10 (10th Cir. 1991). Similarly, "in analyzing the sufficiency of the [Intervenor's] complaint, the court need accept as true only the [Intervenor's] well-pleaded factual contentions, not h[er] conclusory allegations." *Id. See also Bryan v. Stillwater Bd. Of Realtors*, 578 F.2d 1319, 1321 (10th Cir. 1977) ("allegations of conclusions or opinions are not sufficient when no facts are alleged by way of the statement of the claim."); *Oppenheim v. Sterling*, 368 F.2d 516, 519 (10th Cir. 1966) ("unsupported conclusions of the pleader may be disregarded").

ARGUMENT AND AUTHORITY

I. INTERVENOR'S COMPLAINT LACKS SUFFICIENT SUPPORTING FACTUAL AVERMENTS TO MAINTAIN THE TITLE VII HOSTILE WORK ENVIRONMENT CLAIM.

Intervenor's Complaint fails to meet the requirement for pleading of factual averments set forth above. " 'The words 'hostile work environment' are not talismanic, for they are but a legal conclusion; it is the alleged facts supporting those words, construed liberally, which are the proper focus at the motion to dismiss stage.' " *Moya v. Schollenbarger*, 465 F.3d 444, 457 (10th Cir.2006)(quoting *Bass v. E.I. Dupont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir.2003)). According to the U.S. Supreme Court, in order to set forth a prima facie case of hostile work environment sexual harassment, Intervenor must show that: (1) she is a member

of a protected class[1]; (2) she was subjected to unwelcome sexual harassment; (3) the harassment was based upon sex; (4) the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) the sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive, and the victim, in fact, did perceive it to be so; and (6) some basis for employer liability has been established. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65-73, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). More recently, the Tenth Circuit put it this way:

> Title VII prohibits an employer from "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ... sex." 42 U.S.C. § 2000e-2(a)(1). To establish the existence of a hostile work environment actionable under Title VII, a plaintiff must show (1) that she was discriminated against because of her sex; and (2) that the discrimination was sufficiently severe or pervasive such that it altered the terms or conditions of her employment and created an abusive working environment.
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> *Medina v. Income Support Div.*, New Mexico, 413 F.3d 1131, 1134 (10th Cir. 2005) (*Citing Chavez v. Thomas & Betts Corp.*, 396 F.3d 1088, 1096 (10th Cir.2005))

Intervenor's Complaint fails to allege sufficient facts to show that any harassment based on sex (which did not exist in any event) was so severe or pervasive such that it altered the terms or conditions of her employment and created a hostile working environment. For

[1]The Tenth Circuit Court of Appeals has explicitly stated that, " . . . This court concludes transsexuals are not a protected class under Title VII . . ." *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1220 (10th Cir. 2007).

example, Intervenor's Complaint alleges without specificity (as to either date or person) that she was directed not to wear certain types of clothing by "an employee" of the University. [Doc. No. 24, ¶ 64]. In another example, Intervenor again alleges without specificity (as to dates or persons) that she was told by "an employee" [Doc. No. 24, ¶¶ 45-47] and/or "a Southeastern administrator" [Doc. No. 24, ¶ 51 which restroom she should use. However, Intervenor alleges neither the requisite frequency or severity of conditions to raise her claim above the speculative level. In fact, she alleges less than a handful of factual events or comments (as opposed to her own conclusory statements) regarding her bathroom or wardrobe designations. Intervenor does not allege whether the comments in question were made by the same person, or even when they were supposed to have been made. Moreover, it does not appear that Intervenor's Complaint alleges that she ever actually objected (verbally or in writing) to the alleged directions regarding restroom usage or her wardrobe over a timespan of "nearly four years." [Doc. No. 24, ¶ 53]. Similarly indistinct are Intervenor's conclusory statements about the University's health insurance company and the plan it provided starting in 2007. There is no allegation that any specific exclusions or limitations were requested or controlled by the University Defendants. There is no allegation that any limitations were aimed at Intervenor or any particular groups of employees or were so pervasive as to create a hostile work environment. And just like Intervenor's failure to complain about any restroom or wardrobe limitations for roughly three (3) years, there is no allegation that any complaints of any kind were raised about the health insurance plan.

Given the 12(b)(6) standard and the authority set forth above, the Complaint fails to

provide sufficient supporting factual allegations in support of its conclusory statements. The Complaint relies heavily upon conclusory allegations, and lacks sufficient "factual allegations" to support the requested relief. See *Ashcroft v. Iqbal*, 556 U.S. 662,679 (2009). Intervenor's factual allegations, even when viewed in the light most favorable to Intervenor, do not suggest a sufficiently severe or pervasive set of harassments or abuses such that they altered the terms or conditions of Intervenor's employment and created an abusive working environment. The meager factual support set forth in Intervenor's Complaint does not provide a plausible basis for Intervenor's legal conclusions.

Given the analysis in *Ashcroft v. Iqbal*, and *Hall v. Bellmon*, *supra*, the facts alleged do not set forth a causal relationship between SEOSU's actions and the purported discrimination against Intervenor. The Complaint's Count One fails to "plausibly support a legal claim for relief," (*Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215, n. 2 (10th Cir. 2007) and *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007)), and should be dismissed.

II. INTERVENOR FAILED TO EXHAUST ADMINISTRATIVE REMEDIES AS TO ANY "HOSTILE WORK ENVIRONMENT" CLAIM, AND ANY SUCH CLAIM WOULD NOW BE UNTIMELY.

Intervenor clearly failed to exhaust her administrative remedies as to any "hostile work environment" claim. Intervenor does not allege that she filed an EEOC charge of "hostile work environment,"[2] nor does she allege that she filed such a charge with any relevant State agency.

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[2] Correspondence from the U.S. Department of Education (attached hereto as Exhibit 1) confirms that Intervenor's complaint was for employment discrimination based on race and sex when SEOSU decided not to grant Intervenor tenure, (not for "hostile work environment"). Defendants request this Court take judicial notice of Exhibit 1, but not convert this Motion to

Elementary to the principles established by Title VII, 42 U.S.C. § 2000e-5 is that before bringing an action against an employer for an unlawful employment practice, an employee must file a complaint with the Equal Employment Opportunity Commission ("EEOC") or equivalent state agency within 180 or 300 days after the unlawful practice occurred. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 109 (2002). This requires an employee to not only state the type of unlawful employment practice that was experienced (i.e., gender discrimination as opposed to racial discrimination as opposed to hostile work environment), but also requires an employee to file the complaint within the statutorily set time frame

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Dismiss into one for Summary Judgment.

For example, the District Court of New Mexico took judicial notice of a discrimination charge, stating "the court is permitted to take judicial notice of its own files and records as well as facts which are a matter of public record.'" *Campos v. Las Cruces Nursing Center*, 828 F.Supp. 2d 1256, 1262 n.3 (quoting *Van Woudenberg ex rel. Foor v. Gibson*, 211 F.3d 560, 568, 212 (10th Cir. 2000)(internal citations omitted)). The *Campos* court explained "The United States Court of Appeals for the Tenth Circuit has stated in the context of a Title VII claim: '[I]t is appropriate, particularly in the exhaustion context, for a district court to consider evidence beyond the pleadings in resolving a challenge to subject-matter jurisdiction.'" *Campos v. Las Cruces Nursing Center*, 828 F.Supp. 2d 1256, 1262 n.3 (quoting *Jenkins v. Educ. Credit mgmt. Corp.*, 212 Fed. Appx. 729,732 (10th Cir. 2007)(citiations omitted)). The *Campos* court also cited *Martinez v. City & County of Denver*, No. 08-01503, 2010 WL 1380529 at *1 (D. Colo. March 31, 2010)(taking judicial notice of discrimination charges filed with the EEOC). Campos at 1262 n.3.

Similarly, the District Court for the Southern District of Texas took judicial notice of a plaintiff's EEOC filing and quoted a Northern District of Texas case: "Even though the EEOC charge is a matter outside the pleading, judicial notice of it may be taken as a matter of public record when deciding a Rule12(b)(6) motion, especially since its authenticity is uncontested." *Hunter v. Texas Energy Servs*. LP, No. 2:14-CV-142, 2014 WL 5426454, at *1, n.2 (S.D. Tex. Oct. 23, 2014)(*quoting King v. Life School*, 809 F.Supp.2d 572, 579 n. 1 (N.D. Tex. 2011)(*citing Cinel v. Connick*, 15 F.3d 1338, 1343 n. 6 (5th Cir. 1994)).

regarding each unlawful employment practice. *Id.*, 536 U.S. at 110. For example, termination of employment, even when occurring after the filing of an EEOC complaint, has been identified as a discrete act of discrimination (an unlawful employment practice) requiring its own exhaustion of administrative remedies. *Martinez v. Potter*, 347 F.3d 1208, 1210 (10th Cir. 2003). In *Martinez*, the Tenth Circuit Court of Appeals rejected an employee's effort to bring in claims of adverse employment actions that occurred subsequent to the filing of a complaint with the EEOC, finding that "a claimant must file a charge within the appropriate limitations period as to each such discrete act that occurred." *Id*. 347 F.3d at 1211 (citations omitted) (emphasis added). The Court explained:

> Application of this rule to incidents occurring after the filing of an EEO complaint is consistent with the policy goals of the statute. First, requiring exhaustion of administrative remedies serves to put an employer on notice of a violation prior to the commencement of judicial proceedings. This in turn serves to facilitate internal resolution of the issue rather than promoting costly and time-consuming litigation.
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> *Id.*

While failing to file a timely charge is not an absolute bar to litigation, the "procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts" and equitable doctrines such as tolling and estoppel are to be used sparingly. *National Railroad Passenger Corp.*, 536 U.S. at 113 & 114. Here there is no reason to excuse Intervenor's possible disregard for administrative requirements precedent to her bringing a claim for "hostile work environment." Intervenor's Complaint alleges (by conclusory statement and without factual support) that she filed "a timely charge" on

September 9, 2010 with the U.S. Department of Education, (purportedly then forwarded to the EEOC), alleging that she was subjected to "sex discrimination" when SEOSU denied Intervenor's tenure application. [Doc. No. 24, ¶ 6). Intervenor then alleges she supplemented her charge on July 12, 2011 to allege sex discrimination and retaliation. Intervenor never alleges that she received the requisite EEOC's Notice of Right to Sue on any of these charges.

Title VII of the Civil Rights Act of 1964 requires that a "charge" of employment discrimination be filed with the Equal Employment Opportunity Commission "within [a specified number of] days after the alleged unlawful . . . practice occurred," § 706(e)(1), and that the charge "be in writing under oath or affirmation," § 706(b). Before bringing suit, an employee must comply with Title VII's administrative procedural prerequisites, which include filing a timely charge of discrimination with the EEOC. *Montes v. Vail Clinic, Inc.*, 497 F.3d 1160, 1163 (10th Cir. 2007) (citing 42 U.S.C. § 2000e-5(e)(1)). As noted in *Martinez*, supra, each discrete act requires its own separate charge and exhaustion of administrative remedies. As set out by *Martinez*, this serves the policy goal of putting the respondent on notice of violations before judicial action is taken, indicating perhaps even that a dysfunctional situation could be corrected by the employer so as to allow all parties to proceed with a healthy working relationship and without resorting to litigation. Clearly Intervenor did not do that here. After "nearly four years" of allegedly restricted restroom access, and an indeterminate number of years of alleged wardrobe restriction while employed at SEOSU, Intervenor failed to file a charge of "hostile work environment," (based on restroom access, health insurance plan, or otherwise), thereby frustrating one of the policy goals of administrative remedies (remediation

prior to costly litigation).

Further, Intervenor fails to establish the timeliness of her claim. Today, after nearly four years since she worked at SEOSU (non-renewal date of May 31, 2011, as per Doc. No. 24, ¶119), she has still not alleged that she filed a charge with the EEOC as to a "hostile work environment" claim. In this regard the Intervenor's Complaint fails to plead sufficient facts so as to grant this Court jurisdiction. Therefore, her time to file any such charge has long ago passed, and Count One of the Intervenor's Complaint must be dismissed. To the extent Intervenor might seek leave to file a charge of "hostile work environment" and seek leave to amend her Complaint, such request should be denied as futile. Additionally, Count One of Intervenor's Complaint should be dismissed with prejudice. *See generally T.R. O'Carroll v. Okla. Bd. Of Cnty. Comm'rs*, No. CIV–10–232–D, 2010 WL 4811949, at *2 (W.D. Okla. Nov. 19, 2010) (citing *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006) (dismissal with prejudice appropriate where any attempt to amend a complaint would be futile)).

Moreover, tolling of any of these time-lines or deadlines is unwarranted. "[E]quitable tolling may be appropriate where plaintiff has been lulled into inaction by her past employer, state or federal agencies, or the courts . . . is actively misled, or has in some extraordinary way been prevented from asserting his or her rights . . . ." *Martinez v. Orr*, 738 F.2d 1107, 1110 (10th Cir. 1984) (citations omitted). See also, *Million v. Frank*, 47 F.3d 385 (10th Cir. 1995); Jarrett v. U.S. Sprint, 22 F.3d 256 (10th Cir. 1994). There is no suggestion that any party lulled Intervenor into inaction, or misled or prevented her from filing the requisite

additional EEOC charges. In fact, there is every indication that the Intervenor was in the past, and is currently, actively engaged with Federal officials during the investigation, preparation, and coordination of the present lawsuit.

The Intervenor's Complaint's allegations fail to properly (factually) support the requisite exhaustion of remedies requirement imposed by Title VII as to a hostile work environment claim. The conclusory statement that "All conditions precedent to filing the suit have been performed or have occurred," [Doc. No. 24, ¶9] is insufficient, in light of Intervenor's deficient factual allegations and the authority such as *Bell Atlantic* and *Iqbal* set forth above. Therefore, Intervenor's Title VII claim for hostile work environment should be dismissed.

III. DOCTRINE OF LACHES BARS INTERVENOR'S COMPLAINT

According to the Tenth Circuit, "Laches consists of two elements, inexcusable delay in instituting suit and prejudice resulting to the defendant from such delay." *Alexander v. Phillips Petroleum Co.*, 130 F.2d 593, 605 (10th Cir. 1942). Based on Intervenor's Complaint, she began her gender transition in 2007 and alleges she was subjected to discrimination at SEOSU starting sometime thereafter, and continuing in one form or another up until her non-renewal in 2011. For most of that time, at least according to her Complaint, Intervenor made no complaints or objections, formally or informally, verbally or in writing, to the University Defendants regarding the way they or their employees treated her, or regarding her work environment at SEOSU. In 2010 she involved the Federal Government (U.S. Department of Education, Office of Civil Rights, and the EEOC) in her complaints

against SEOSU. Notably, no complaints or objections are alleged to have been raised until *after* Intervenor failed to attain tenure. However, even once that had happened, Plaintiff and Intervenor (apparently working in concert) did not bring their lawsuits until nearly another four years had passed, seemingly without any real justification for the delays. Clearly, there was significant delay by Intervenor both in raising her concerns, and in filing of her lawsuit.

Intervenor's delay prejudices the University Defendants. "The prejudice normally contemplated in applying laches . . . stems from such factors as loss of evidence and unavailability of witnesses, which diminish a defendant's chances of success." *Powell v. Zuckert*, 366 F.2d 634, 638 (D.C. Cir. 1966) (citation omitted). In the case of *U.S. ex rel. Arant v. Lane*, 249 U.S. 367, 39 S. Ct. 293, 63 L. Ed. 650 (1919), a former employee at Crater Lake National Park sought explanation as to his termination, and also sought reinstatement against Franklin K. Lane (Secretary of the Interior and former superintendent at Crater Lake. But in bringing his action, Arant waited nearly two (2) years. The Secretary argued that the doctrine of laches in defense against Arant's suit. In deciding in favor of the Secretary, the Supreme Court stated in part:

> When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the government service may be disturbed as little as possible and that two salaries shall not be paid for a single service.
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> 2 Under circumstances which rendered his return to the service impossible, except under the order of a court, the relator did nothing to effectively assert his claim for reinstatement to office for almost two years. Such a long delay must necessarily result in changes in the branch of the service to which he was

> attached and in such an accumulation of unearned salary that, when unexplained, the manifest inequity which would result from reinstating him, renders the application of the doctrine of laches to his case peculiarly appropriate in the interests of justice and sound public policy.

Id. at 372.

In the case at bar, Intervenor allegedly waited some three (3) or more years to lodge grievances with her employer, SEOSU, and then Intervenor and the United States waited nearly four (4) more years to bring their current lawsuit(s). To order reinstatement (as sought by Intervenor) would be manifestly unjust, as illustrated by the High Court's reasoning in *Arant*, wherein the plaintiff waited 20 months to bring his suit. As the U.S. Court of Appeals for the Federal Circuit has noted, ". . . laches is routinely applied within the prescribed statute of limitations period for bringing the claim." *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1030 (Fed. Cir. 1992) (noting examples such as military pay and breafch of contract actions) (citations omitted). The *A.C. Aukerman Co.* Court was reviewing a patent infringement case, and interestingly, the defense of laches was raised to completely bar recovery of prefiling damages from continuing tortious conduct. Although that was patents and this is "hostile work environment," the University Defendants submit that the situations are sufficiently analogous to apply laches to the case at bar.

Intervenor apparently seeks to plead an ongoing "hostile work environment" which she claims existed from 2007 or thereabouts until her separation from the University in 2011. If she was aware of tortious conduct in 2007, she should have reported it then. She cannot sit back for three years in order to collect injustices and accumulate damages before making any

complaint. By waiting so long to bring her initial grievances/charges, and then compounding that delay by waiting so long to file her lawsuit, Intervenor has worked to prejudice the University Defendants by allowing the passage of time to potentially destroy or obfuscate evidence favorable to the University. As employees retire or otherwise separate from the University, as memories fade, and as witnesses grow increasingly resentful of (or hardened by) Intervenor's seemingly baseless claims, it becomes more difficult each day, month, and year that passes to insure the availability and reliability of evidence. Some eight (8) years after the initial mistreatment is alleged by Intervenor to have happened the University is now forced to muster its defenses, and is deprived of the ability to address these concerns in a timely fashion that could have potentially averted litigation altogether. Intervenor should not benefit from her intentionally dilatory conduct; thus dismissal is appropriate.

CONCLUSION

Count One of Intervenor's Complaint is fatally flawed, and should be dismissed with prejudice now. Intervenor failed to allege proper and timely compliance with Title VII's exhaustion requirements, fails to establish any court's jurisdiction as to the putative hostile work environment claim, and fails to allege sufficient factual averments in compliance with *Twombly* and *Iqbal*. For the reasons set forth above, Defendants pray this Court will dismiss Count One with prejudice, and for all such other relief as this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May, 2015, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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