

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHRISTINE DAILY, f/k/a ALLAN :
DALRYMPLE, :

Plaintiff, :

: CIVIL ACTION FILE
: NO: 1:17-CV-04645-CAP-JFK
:

TECHNICAL COLLEGE SYSTEM :
OF GEORGIA; GWINNETT :
TECHNICAL COLLEGE; GLEN :
CANNON, DEBBIE GARARDO, :
DR. VICTORIA SEALS, STEVE :
MOYERS, JAMES SASS, PHIL :
KLEIN AND JOHN OR JANE :
DOE (ALL INDIVIDUALLY AND :
IN THEIR REPRESENTATIVE :
CAPACITIES FOR AND ON :
BEHALF OF GWINNETT :
TECHNICAL COLLEGE), :

Defendants. :

**ANSWER AND DEFENSES TO PLAINTIFF’S
FIRST AMENDED COMPLAINT**

COME NOW Defendants, Technical College System of Georgia¹; Gwinnett
Technical College; Glen Cannon, Debbie Gerardo, Dr. Victoria Seals, Steve

¹ Plaintiff has also named Gwinnett Technical College (“GTC”) as a Defendant in this action. However, as Plaintiff acknowledged in her Brief in Support of her Motion for Leave to Amend the Complaint (*see* Doc. No. 30-1, p. 4), GTC is not a proper Defendant to this action because it is not a legal entity, separate and distinct from the Technical College System of Georgia (“TCSG”), capable of being sued.

Moyers, James Sass, Phil Klein and John or Jane Doe, in the above-styled action, and within time permitted by law, file this Answer and makes known their defenses to the plaintiff's Complaint, showing this Court the following:

FIRST DEFENSE

Plaintiff's First Amended Complaint is subject to dismissal to the extent it fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's First Amended Complaint is or may be subject to dismissal, in whole or in part, for lack of personal or subject matter jurisdiction.

THIRD DEFENSE

Defendants affirmatively state that all actions they have taken with respect to Plaintiff have been taken in good faith, have been reasonable and prudent, and have been consistent with all applicable legal and constitutional standards.

FOURTH DEFENSE

Plaintiff's claims and remedies are barred, in whole or in part, by the applicable statutes of limitations.

Rather, GTC is a member institution of TCSG. As such, it is not a proper Defendant to this action.

FIFTH DEFENSE

Plaintiff is not entitled to compensatory damages to the extent that she has failed to mitigate damages as required by law.

SIXTH DEFENSE

Defendants incorporate by reference all affirmative defenses contained in Federal Rule of Civil Procedure 8(c) to the extent that same apply.

SEVENTH DEFENSE

To the extent Plaintiff seeks punitive damages; such relief is not available against Defendants.

EIGHTH DEFENSE

Plaintiff has not been deprived of any rights, privileges or immunities secured under the United States Constitution or the laws of the United States or the State of Georgia.

NINTH DEFENSE

All actions taken by the Defendants with respect to Plaintiff were taken for legitimate, non-discriminatory business reasons.

TENTH DEFENSE

Plaintiff's claims are barred to the extent said claims were not raised in any charges she may have filed with the Georgia Commission on Equal Opportunity or the Equal Employment Opportunity Commission.

ELEVENTH DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff has failed to satisfy all jurisdictional and administrative prerequisites for those claims.

TWELFTH DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrines of res judicata, collateral estoppel, laches, issue preclusion and/or claim preclusion.

THIRTEENTH DEFENSE

Plaintiff's claims are barred because Defendants are not her statutory employer under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*

FOURTEENTH DEFENSE

Plaintiff's claims for damages, the entitlement of which is expressly denied, are barred to the extent that she failed to mitigate her damages.

FIFTEENTH DEFENSE

Plaintiff's claims may be barred to the extent Plaintiff alleges liability based on the doctrine of *respondeat superior* or any other theory of vicarious liability.

SIXTEENTH DEFENSE

Defendants deny any allegation not expressly admitted herein.

SEVENTEENTH DEFENSE

Plaintiff's claims are barred in part, or in full, to the extent Defendants are immune from such claims by virtue of the Eleventh Amendment to the United States Constitution, sovereign immunity, qualified immunity, official immunity, or any other immunities to which they are entitled.

EIGHTEENTH DEFENSE

Venue of the state tort claims is improper in the Northern District of Georgia.

NINETEENTH DEFENSE

Plaintiff's state tort claims should be dismissed due to failure of process, improper service of process, insufficiency of service of process, and failure to comply with O.C.G.A. § 50-21-35.

TWENTIETH DEFENSE

Plaintiff's claims are barred to the extent she has failed to comply with the requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, *et seq.*

TWENTY-FIRST DEFENSE

Plaintiff's state tort claims against the individually named Defendants should be dismissed because all actions allegedly taken by them were taken while they were acting within the scope of their official duties or employment with a state government entity of the State of Georgia; thus, the individually named Defendants are not subject to lawsuit or liability therefor, pursuant to O.C.G.A. § 50-21-25(a).

TWENTY-SECOND DEFENSE

Plaintiff's alleged injuries and damages were not proximately caused by an act or omission on the part of the Defendants, with the result that the Plaintiff is not entitled to recover against the Defendants in this case.

TWENTY-THIRD DEFENSE

Plaintiff's state tort claims are barred in whole or in part by the lack of a legal duty to Plaintiff, the breach of which would give rise to Plaintiff's claims.

TWENTY-FOURTH DEFENSE

This action is barred in whole or in part by the doctrine of proximate cause.

TWENTY-FIFTH DEFENSE

This action is barred in whole or in part by the doctrine of avoidance of consequences.

TWENTY-SIXTH DEFENSE

Defendants deny that they were negligent or otherwise guilty of any wrongful or tortious act or omission that would entitle the Plaintiff to recover against them in this case.

TWENTY-SEVENTH DEFENSE

Plaintiff's state tort claims are barred in whole or in part by the doctrines of contributory or comparative negligence.

TWENTY-EIGHT DEFENSE

Plaintiff has failed to attach to the First Amended Complaint as exhibits a copy of a pre-suit notice of claim presented to the Risk Management Division of the Department of Administrative Services together with the certified mail or statutory overnight delivery receipt or receipt for other delivery of said notice, pursuant to O.C.G.A. § 50-21-26(a)(4); and has failed to attach to the First Amended Complaint a certificate that the requirement of mailing to the Attorney General has been met, pursuant to O.C.G.A. § 50-21-35.

TWENTY-NINTH DEFENSE

Plaintiff's state tort claims are barred in whole or in part by the lack of a legal duty to Plaintiff, the breach of which would give rise to Plaintiff's claims.

Defendants reserve the right to raise any additional defenses allowed by law as evidence is discovered in pursuit of this litigation. Without waiving any defenses, Defendants responds to Plaintiff's First Amended Complaint as follows:

JURISDICTION AND VENUE

1.

Paragraph 1 is a statement of Plaintiff's claims and jurisdiction, which requires no response, from Defendants. To the extent that a response is required, Defendants deny that they violated Plaintiff's civil rights and further deny that Plaintiff is entitled to any relief whatsoever against Defendants.

2.

Paragraph 2 of Plaintiff's Complaint is a statement of venue and, as such, requires no responsive pleading from Defendants. To the extent that a responsive pleading is required, Defendants deny that Plaintiff is entitled to any relief whatsoever against Defendants in this, or any, court or that Plaintiff's rights were violated by Defendants as alleged in the Complaint. Defendants further show that venue for tort actions against state government entities of the State of Georgia lies in the state or superior court of the county wherein the alleged tort giving rise to the loss occurred. *See* O.C.G.A. §§ 50-21-28 and 50-21-23(b).

3.

Defendants deny the allegations in Paragraph 3 as stated. Defendants admit only that Plaintiff filed a Charge of Discrimination with the EEOC and received a Notice of Right to Sue.

PARTIES

4.

Upon information and belief, Defendants admit the allegations in Paragraph 4 of the First Amended Complaint.

5.

Upon information and belief, Defendants admit the allegations in Paragraph 5 of the First Amended Complaint.

6.

Defendants admit that Plaintiff was an employee of the Technical College System of Georgia. Defendants deny that Gwinnett Technical College was Plaintiff's employer for purposes of Title VII or any other employment related claims. By way of further response, Defendants incorporate footnote one, *supra*, as if restated fully herein.

7.

Defendant Technical College System of Georgia ("TCSG") admits the allegations in paragraph 7 with regard to Plaintiff's federal claims only. With respect to Plaintiff's state law tort claims, Defendants deny the allegations in paragraph 7 to the extent they conflict with the requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, *et seq.*

8.

Defendants admit the allegations in paragraph 8.

9.

Defendant Gwinnett Technical College ("GTC") admits the allegations of Paragraph 9. By way of further response, GTC incorporates footnote 1, *supra*. Defendants deny that GTC is a legal entity capable of being sued.

10.

Subject to footnote 1 and paragraphs 6 and 9, *supra*, Defendant GTC admits the allegations in paragraph 10.

11.

TCSG admits the allegations in paragraph 11.

12.

Defendants admit the allegations in paragraph 12.

13.

Defendants admit the allegations in paragraph 13.

14.

Defendants submit that Dr. Victoria Seals is the current President of Atlanta Technical College. Defendants admit that at the time of Plaintiff's termination, Dr. Seals was the Vice President of Academic Affairs at GTC. To the extent Plaintiff alleges that Defendant Seals served in that capacity at all times relevant to this First Amended Complaint, Defendants deny the remaining allegations in paragraph 14.

15.

Defendants admit that Steve Moyers was the former Dean of Health Sciences for GTC. To the extent Plaintiff alleges that Defendant Moyers served in

that capacity at all times relevant to this First Amended Complaint, Defendants deny the remaining allegations in paragraph 15.

16.

Defendants admit that Jim Sass was the Interim Dean of Health Sciences for GTC for a period of time relevant to this First Amended Complaint. To the extent Plaintiff alleges that Defendant Sass served in that capacity at all times relevant to this First Amended Complaint, Defendants deny the remaining allegations in paragraph 16.

17.

Defendants admit that Phil Klein is the current Dean of Health Sciences for GTC and that he served in that capacity at the time of Plaintiff's termination. To the extent Plaintiff alleges that Defendant Klein served in that capacity at all times relevant to this First Amended Complaint, Defendants deny the remaining allegations in paragraph 17.

18.

Defendants are without sufficient information to admit or deny the allegations in Paragraph 18 and, therefore, deny those allegations and demand strict proof of same.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

19.

Defendant TCSG admits that Allan Dalrymple worked at GTC. Upon information and belief, Defendants admit the remaining allegations in paragraph 19.

20.

Defendant admits that Plaintiff was party to an employment contract at one point during her employment with TCSG. Defendant denies that Plaintiff was party to any written contract with TCSG when her employment was terminated.

21.

Defendants admit the allegations in paragraph 21.

22.

Defendants admit the allegations in paragraph 22.

23.

Defendants deny the allegations in paragraph 23.

24.

Defendants deny the allegations in paragraph 24.

25.

Upon information and belief, Defendants admit that Plaintiff had a contentious relationship with David Newton. Defendants deny the remaining allegations in paragraph 25.

26.

Defendants admit that in the Spring of 2016, Daily had concerns about her relationship with Newton. Defendants deny the remaining allegations in paragraph 26.

27.

Defendants admit that there was a meeting in or around May, 2016, to discuss the relationship between Newton and Daily.

28.

Defendants admit the allegations in paragraph 28.

29.

Defendants deny the allegations in paragraph 29.

30.

Defendants deny the allegations in paragraph 30. By way of further response, Defendants submit that Ms. Daily requested the meeting with Defendant Gerardo.

31.

Defendants admit the allegations in paragraph 31.

32.

Defendants admit the allegations in paragraph 32.

33.

Defendants deny the allegations in paragraph 33. By way of further response, Defendants submit that Ms. Daily was requested to provide at least 24 hours' notice to the Human Resources department of her transition.

34.

Defendants admit that there was a meeting in which Ms. Daily requested guidance in notifying her colleagues and students of her intent to transition. Defendants deny the allegation that this was the same meeting referenced in Paragraph 33 of the Complaint.

35.

Defendants deny the allegation that Defendant Gerardo "instructed" Ms. Daily to prepare a timeline. By way of further response, Defendants submit that there was a discussion about Ms. Daily's plans for her transition.

36.

Defendants deny the allegations in paragraph 36.

37.

Defendants deny the allegations in paragraph 37.

38.

Defendants admit the allegations in paragraph 38.

39.

Defendants admit that Ms. Daily and Defendant Seals had a discussion about Ms. Daily's transition.

40.

Defendants deny the allegations in paragraph 40.

41.

Defendants deny the allegations in paragraph 41.

42.

Defendants admit that there was a meeting including Dr. Seals, Ms. Daily, Jim Sass, and David Newton. Defendants deny that this meeting occurred in late August.

43.

Defendants admit the allegations in paragraph 43.

44.

Upon information and belief, Defendants admit that there was a confrontation between Newton and Daily. Defendants admit that Daily approached Sass to discuss the issue further.

45.

Defendants admit that there was a meeting between Daily, Newton, and Sass in August, 2016.

46.

Defendants admit the allegations in paragraph 46.

47.

Defendants deny the allegations in paragraph 47.

48.

Defendants deny the allegations in paragraph 48.

49.

Defendants are without sufficient information to admit or deny the allegations in paragraph 49 and therefore deny the allegations and demand strict proof of same.

50.

Defendants admit the allegations in paragraph 50.

51.

Defendants admit that the Google drive account was attached to the personal account of David Newton.

52.

Defendants admit that Dean Klein instructed Daily to remove her personal files from the Google drive account by the afternoon of October 31, 2016. Defendants deny the allegation that Daily complied with this directive.

53.

Defendants admit that Gerardo and Daily discussed the Google drive account. Defendants deny any implication that Daily did as she had been instructed.

54.

Defendants admit that Daily was contacted on or around November 7, 2016, and asked to report to Human Resources.

55.

Defendants admit the allegations in paragraph 55.

56.

Defendants deny the allegations of paragraph 56.

57.

Defendants deny the allegations of paragraph 57.

58.

Defendants deny the allegations of paragraph 58.

59.

Defendants deny the allegations of paragraph 59.

STATEMENT OF CLAIMS

COUNT I

60.

All preceding paragraphs of Defendants' Answer are incorporated as if set forth fully herein.

61.

Paragraph 61 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

62.

Defendants deny the allegations in paragraph 62.

63.

Paragraph 63 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that

they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

64.

Defendants deny the allegations in Paragraph 64.

65.

Paragraph 65 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

66.

Paragraph 66 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

COUNT II

67.

All preceding paragraphs of Defendants' Answer are incorporated as if set forth fully herein.

68.

Paragraph 68 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

69.

Paragraph 69 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

COUNT III

70.

All preceding paragraphs of Defendants' Answer are incorporated as if set forth fully herein.

71.

Paragraph 71 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

72.

Paragraph 72 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

73.

Paragraph 73 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

74.

Paragraph 74 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

COUNT IV

75.

All preceding paragraphs of Defendants' Answer are incorporated as if set forth fully herein.

76.

Paragraph 76 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

77.

Paragraph 77 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

78.

Paragraph 78 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

COUNT V

79.

All preceding paragraphs of Defendants' Answer are incorporated as if set forth fully herein.

80.

Paragraph 80 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

81.

Paragraph 81 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

82.

Paragraph 82 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

83.

Paragraph 83 contains a legal statement or conclusion of law to which no response is required. To the extent a response is required, Defendants deny that they have violated Plaintiff's rights in any way or that she is entitled to any relief whatsoever from Defendants.

PRAYER FOR RELIEF

Plaintiff's prayer for relief contains statements of remedies that Plaintiff seeks for wrongs alleged in the First Amended Complaint and, as such, requires no responsive pleading from Defendants. To the extent that a responsive pleading is required, Defendants deny that Plaintiff is entitled to any relief whatsoever against Defendants in this or any other court or that Plaintiff's rights were violated by Defendants as alleged in the First Amended Complaint.

Defendants deny each and every averment in Plaintiff's First Amended Complaint that has not been heretofore specifically admitted, denied, or otherwise controverted.

WHEREFORE, Defendants respectfully request that Plaintiff's First Amended Complaint be dismissed, that her prayers for relief be denied in each and every particular with all costs cast upon Plaintiff, and for such other relief as this Court deems just and proper, including but not limited to an award of reasonable attorney fees incurred by Defendants in the defense of this action, as well as the costs incurred in defending this action.

Respectfully submitted this 13th day of June, 2018.

CHRISTOPHER M. CARR
Attorney General 112505

ANNETTE M. COWART 191199
Deputy Attorney General

s/Bryan K. Webb

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2018, I electronically filed the foregoing **DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney of record:

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s/Courtney C. Poole
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