

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

JAMEKA K. EVANS

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Plaintiff,

*

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v.

*

Civil Action No:

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4:15-CV-00103-JRH-GRS

GEORGIA DEPARTMENT OF
BEHAVIORAL HEALTH AND
DEVELOPMENTAL

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DISABILITIES, and LISA CLARK,

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In her official capacity, and

*

CHARLES MOSS in his individual
Capacity,

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*

*

Defendants.

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

COME NOW, Georgia Department of Behavioral Health and Developmental Disabilities (“GDHBDD”), Lisa Clark, in her official capacity (“Clark”), and Charles Moss, in his individual capacity (“Moss”), Defendants in the above-styled action, by and through counsel, the Attorney General of the State of Georgia, and file its Answer and Defenses to Plaintiff’s Second Amended Complaint and show this Court as follows:

FIRST DEFENSE

Some or all of Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims are barred to the extent said claims were not raised within the applicable statute of limitations.

THIRD DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff has failed to satisfy all jurisdictional and administrative prerequisites for such claims, including the failure to exhaust administrative remedies.

FOURTH DEFENSE

Plaintiff's claims are barred to the extent that they rely on events not raised or involve persons not named in any charges that Plaintiff may have filed with the Georgia Commission on Equal Opportunity and/or the Equal Employment Opportunity Commission.

FIFTH DEFENSE

Defendants are not liable to Plaintiff because they have not discriminated against Plaintiff on the basis of sex, or any other unlawful factor, nor have Defendants engaged in any otherwise unlawful practices in regard to Plaintiff.

SIXTH DEFENSE

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

SEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part to the extent that Plaintiff's Second Amended Complaint alleges liability based upon the doctrine of *respondeat superior* or any other theory of vicarious liability.

EIGHTH DEFENSE

Defendants have at all times acted in good faith and in a reasonable and prudent manner, exercising the degree of due care required in carrying out any duties allegedly owed to Plaintiff, and have been consistent with all applicable legal and constitutional standards.

NINTH DEFENSE

Defendants have acted at all times upon the existence of reasonable grounds of belief formed at the time and in light of the circumstances known to them.

TENTH DEFENSE

All claims against Defendant Charles Moss are subject to dismissal based upon the doctrine of qualified immunity.

ELEVENTH DEFENSE

Some or all of Plaintiff's claims for monetary damages are barred by Eleventh Amendment immunity and/or sovereign immunity.

TWELFTH DEFENSE

To the extent Plaintiff seeks punitive damages; such relief is not available against Defendants as to some or all of Plaintiff's claims.

THIRTEENTH DEFENSE

Plaintiff's claim for damages, the entitlement to which is expressly denied, is barred to the extent that she has failed to mitigate the damages as required by law.

FOURTEENTH DEFENSE

Plaintiff's claims are or may be barred by waiver, estoppel, and/or *res judicata*.

FIFTEENTH DEFENSE

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

SIXTEENTH DEFENSE

Defendants deny any allegation not expressly admitted herein.

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 respond to Plaintiff's Complaint as follows:

NATURE OF THE ACTION

1.

Paragraph 1 is a statement of the statutory basis for filing this Complaint. As such, it requires no response from Defendants. To the extent that a response is required, Defendants deny that they have discriminated against Plaintiff or that Plaintiff is entitled to any relief against Defendants in this or any other court.

JURISDICTION AND VENUE

2.

Paragraph 2 is a statement of Plaintiff's legal theories regarding jurisdiction. As such, it requires no response from Defendants. To the extent that a response is required, Defendants deny that Plaintiff is entitled to any relief against Defendants in this or any other court.

3.

Paragraph 3 is a statement of Plaintiff's legal theories regarding jurisdiction. As such, it requires no response from Defendants. To the extent that a response is required, Defendants deny that Plaintiff is entitled to any relief against Defendants in this or any other court.

4.

Defendants admit that venue is proper in this District as alleged in paragraph 4 of the Complaint.

PARTIES

5.

Defendants are without sufficient knowledge or information to respond to the allegations contained in paragraph 5 and, therefore, deny the same.

6.

Defendants admit paragraph 6.

7.

Defendants admit sentence 1 of paragraph 7 except that Defendant Lisa Clark served as the Director of Risk Management for the time Plaintiff worked there. Sentence 2 of paragraph 7 contains a legal conclusion and, as such, requires no response from Defendants. Sentence 3 of paragraph 7 contains a statement of Plaintiff's claim and, as such requires no response from Defendants. To the extent that a response is required, Defendants deny that Plaintiff is entitled to any relief against Defendants in this or any other court.

8.

Defendants admit sentences 1 and 2 of paragraph 8. Sentence 3 of paragraph 8 contains a statement of Plaintiff's claim and, as such requires no response from Defendants. To the extent that a response is required, Defendants deny that Plaintiff is entitled to any relief against Defendants in this or any other court.

FACTUAL ALLEGATIONS

9.

Defendants admit paragraph 9.

10.

Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in sentence 1 of paragraph 10 and, therefore, deny the same. Defendants admit sentence 2 of paragraph 10. Defendants deny sentence 3 of paragraph 10. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in sentence 4 of paragraph 10 and, therefore, deny the same. Defendants deny sentence 5 of paragraph 10 and specifically deny that Moss asked Plaintiff the question. In response to sentence 6 of paragraph 10, Defendants admit that GDBHDD did not have a policy against romantic relationships between employees in different departments, other than its code of conduct policy; Defendants are without sufficient knowledge or information to either admit or deny the remaining allegations in sentence 6 of paragraph 10 and, therefore, denies the same.

11.

Defendants deny paragraph 11.

12.

In response to sentence 1 of paragraph 12, Defendants admit that Moss announced he was naming Shenika Johnson as the Star Corporal for the night shift to which Plaintiff was assigned. Defendants deny the remaining allegations in sentence 1 of paragraph 12. In response to sentence 2 of paragraph 12, Defendants admit that Johnson came to work at GDBHDD after Plaintiff. Defendants deny the remaining allegations in sentence 2 of paragraph 12. Defendants deny sentence 3 of paragraph 12 and specifically deny that it was a promotion.

13.

Defendants admit sentence 1 of paragraph 13. In response to sentence 2 of paragraph 13, Defendants admit that Moss was directed to change the schedule to two 12-hour shifts, from 7 a.m. to 7 p.m. and from 7 p.m. to 7 a.m. Defendants admit sentence 3 of paragraph 13 for this first rotation, but that the intent of the Security Department was to rotate schedules every 90 days. Defendants deny sentence 4 of paragraph 13.

14.

Defendants deny paragraph 14.

15.

Defendants deny sentences 1 and 2 of paragraph 15. Defendants admit sentence 3 of paragraph 15. Defendants deny sentence 4 of paragraph 15, as stated.

16.

In response to sentence 1 of paragraph 16, Defendants admit that Plaintiff made a written complaint to HR in September 2013 which HR investigated.

Defendants deny sentence 2 of paragraph 16.

17.

Defendants deny paragraph 17.

18.

Defendants deny paragraph 18.

19.

Defendants deny paragraph 19, as stated. By way of further clarification, Defendants admit that Plaintiff voluntarily resigned on October 11, 2013.

20.

Paragraph 20 contains legal conclusions. As such, it requires no response from Defendants. To the extent a response is required, Defendants admit that Plaintiff filed a Charge of Discrimination with the EEOC, but deny that Plaintiff is entitled to any relief against Defendant in this or any other court.

21.

Defendants deny paragraph 21. Defendants specifically deny engaging in any unlawful employment practices or discriminatory treatment.

CAUSES OF ACTION

Count 1
Violation of Title VII of the Civil Rights Act
(Adverse Employment Action)
(Against Defendant GDBHDD)

22.

Defendants incorporate by reference their responses to the preceding paragraphs of the Complaint.

23.

Defendants deny paragraph 23.

24.

Defendants deny paragraph 24. Defendants specifically deny that Plaintiff suffered an adverse employment action.

25.

Defendants deny paragraph 25. Defendants specifically deny that Plaintiff suffered an adverse employment action or any discrimination.

Count 2¹
Violation of Title VII of the Civil Rights Act
(Hostile Work Environment)
(Against Defendant GDBHDD)

26.

¹ While Count 2 is a part of Plaintiff's Second Amended Complaint, the Court dismissed this claim with prejudice in its September 25, 2018 Order on Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint in Lieu of Answer. (Doc. 70).

Defendants incorporate by reference their responses to the preceding paragraphs of the Complaint.

27.

Defendants deny paragraph 27.

28.

Defendants deny paragraph 28. Defendants specifically deny that Moss physically assaulted Plaintiff.

29.

Defendants deny paragraph 29.

30.

Defendants deny paragraph 30. Defendants specifically deny that Plaintiff suffered an adverse employment action or any discrimination.

Count 3

**Violation of the Fourteenth Amendment- Discrimination Based on Sex,
Pursuant to 42 U.S.C. § 1983
(Against Defendant Clark in her Official Capacity and
Defendant Moss in his Individual Capacity)**

31.

Defendants incorporate by reference their responses to the preceding paragraphs of the Complaint.

32.

Defendants deny paragraph 32.

33.

Defendants deny paragraph 33.

34.

Defendants deny paragraph 34.

35.

Defendants deny paragraph 35.

36.

Paragraph 36 contains a legal conclusion. As such, it requires no response from Defendants. To the extent a response is required, Defendants deny that Plaintiff is entitled to any relief against Defendant in this or any other court.

37.

In response to sentence 1 of paragraph 37, Defendants admit that Defendant Clark was in charge of the Risk Management Department, which oversaw the Facility Security Department while Plaintiff was employed. In response to sentence 2 of paragraph 37, Defendants admit that she exercised supervisory responsibility over Defendant Moss, but deny the remaining allegations. Defendants deny sentence 3 of paragraph 37.

38.

Defendants deny paragraph 38.

39.

Defendants deny paragraph 39.

40.

Defendants deny paragraph 40.

PRAYER FOR RELIEF & JURY DEMAND

The remainder of Plaintiff's Complaint contains prayers for relief and a jury demand. In response to paragraphs (A) – (H) of Plaintiff's prayers for relief, Defendants deny that Plaintiff's rights have been violated in any way or that Plaintiff is entitled to any relief whatsoever from Defendants. Plaintiff's request for a trial by jury requires no response from Defendants. To the extent a response is required, Defendants deny that Plaintiff is entitled to any relief whatsoever from Defendants.

Defendants deny any allegation contained in Plaintiff's Second Amended Complaint that is not specifically admitted or denied herein.

WHEREFORE, having answered fully, Defendants hereby pray that Plaintiff's Second Amended Complaint be dismissed in its entirety 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's fees incurred by Defendants in the defense of this action.

(Signatures on next page)

Respectfully submitted, this 9th day of October, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, I electronically filed the foregoing **ANSWER AND DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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