

COMMONWEALTH OF KENTUCKY
8th JUDICIAL CIRCUIT
WARREN CIRCUIT COURT
DIVISION NO. II
CIVIL ACTION NO. 22-CI-431

FILED

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WALLACE CIRCUIT CT
BRANDY CLERK

PLAINTIFFS.

DEBORAH TOMES WILKINS

VS.

WESTERN KENTUCKY UNIVERSITY

Serve: Hon. Daniel Cameron
Kentucky Attorney General
118 State Capitol
700 Capitol Avenue
Frankfort, KY 40601

Hon. Andrea Anderson
Western Kentucky University
Office of General Counsel
1906 College Heights Blvd. #11035
Bowling Green, KY 42101

TIMOTHY CABONI, in his individual capacity

Serve: Timothy Caboni, President
c/o Western Kentucky University
Office of the President
1906 College Heights Blvd.
Bowling Green, KY 42101

DR. PHILLIP W. BALE, in his individual capacity

Serve: Dr. Phillip W. Bale
205 Norris Street
Glasgow, KY 42141

DAVID BRINKLEY, in his individual capacity

Serve: David Brinkley
726 Cumberland Trace Road, #321
Bowling Green, KY 42013

SUSAN HOWARTH, in her individual capacity

Serve: Susan Howarth
2500 Crossings Blvd. No. 553
Bowling Green, KY 42104

AND

TONY GLISSON, in his individual capacity

Serve: Tony Glisson
6177 Cemetery Spur Road
Scottsville, KY 42164

VERIFIED COMPLAINT

Plaintiff, by counsel, for her verified complaint against the Defendants, herein states as follows.

INTRODUCTION

This is an action involving claims under various state law causes of action. The plaintiff, Deborah Wilkins, has been subjected to tortious conduct by the Defendants including, but not limited to, discrimination on the basis of her age and gender, and retaliation for her participation in protected activity, tortious interference with a contractual relationship, breach of contract, and fraud.

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, at all times relevant, has been a citizen and resident of Warren County, Kentucky.

2. The Defendant, Western Kentucky University ("WKU") is a Kentucky public university and is a necessary and proper party to these proceedings for the reasons set forth below, and it may be served as indicated above.

3. The Defendants Caboni, Bale, Brinkley, Howarth, and Glisson, all in their respective individual capacities, are proper parties to these proceedings and may be served as indicated above. Specifically:

3(a) Susan Howarth, is a resident of and domiciled in Kentucky. Howarth holds the position of Executive Vice-President for Strategy, Operations and Finance, and is the Senior Division Administrator responsible for oversight and management of WKU's information technology and financial affairs, including, but not limited to, all WKU revenue and expenditures, the budget and human resources, and is thus responsible for all actions pertaining to Wilkins' status and the position status. Howarth engaged in actions to interfere with Wilkins' contractual relationship with WKU, her job duties as General Counsel and as the Senior Division Administrator responsible for WKU's compliance with all aspects of Equal Opportunity, ADA Compliance, Affirmative Action, and Title IX. Howarth was a party to and engaged in retaliation against Wilkins as a result of her participation in and activities related to protected activity.

3(b) Tony Glisson is a resident of and is domiciled in Kentucky. Glisson held the position of Director of Human Resources at WKU, reported directly to defendant Howarth during the time periods pertinent to this complaint and in this position was responsible for all matters pertaining to WKU's human resources. Glisson engaged in actions to interfere with Wilkins' contractual relationship with WKU, her job duties as General Counsel and as the Senior Division Administrator responsible for all aspects of WKU's compliance with Equal Opportunity, ADA Compliance, Affirmative Action, and Title IX. Glisson was a party to and engaged in retaliation against Wilkins as a result of her participation in and activities related to protected activity.

3(c) David Brinkley is a resident of and domiciled in Kentucky. Brinkley holds the position of Executive Director of Public Radio Services for WKU and also serves as an elected member of WKU's Governing Board as the Staff Regent. Brinkley has specific knowledge and involvement in actions taken by WKU related to Wilkins' status. In addition, Brinkley engaged in a series of actions to interfere with Wilkins' contractual relationship with WKU, her job duties as General Counsel and as the Senior Division Administrator responsible for WKU's compliance with all aspects of Equal Opportunity, ADA Compliance, Affirmative Action, and Title IX, and in her role as an elected representative to the Staff Senate. Brinkley was a party to and engaged in retaliation against Wilkins as a result of her participation in and activities related to protected activity.

3(d) Phillip W. Bale is a resident of and domiciled in Kentucky. Bale is an appointed member of WKU's Board of Regents and serves as Chair of the Board. Bale interfered with Wilkins' contractual relationship with WKU, her job duties as General Counsel and as the Senior Division Administrator responsible for WKU's compliance with all aspects of Equal Opportunity, ADA Compliance, Affirmative Action, and Title IX. Bale was a party to and engaged in retaliation against Wilkins as a result of her participation in and activities related to protected activity.

3(e) Timothy C. Caboni is a resident of and domiciled in Kentucky. Caboni is President of, and the chief academic and administrative official for, WKU, reporting directly to the Board of Regents. Caboni made material representations to Wilkins which were in fact false, which he either knew to be false or made recklessly, for purposes of inducing Wilkins to rely upon the false material representations to her

detriment. In addition, Caboni interfered with Wilkins' contractual relationship with WKU, her job duties as General Counsel and as the Senior Division Administrator responsible for WKU's compliance with all aspects of Equal Opportunity, ADA Compliance, Affirmative Action, and Title IX. Caboni retaliated against Wilkins as a result of her participation in and activities related to protected activity.

4. All of the relevant the conduct occurred in Warren County, Kentucky.

5. This Court has proper personal jurisdiction, subject matter jurisdiction, and venue.

6. All the claims made herein arise solely under Kentucky common law and statutory law, including the claims breach of contract, a violation of the Kentucky Civil Rights Act, a violation of the Kentucky Whistleblower Act, retaliation, defamation, wrongful termination, fraud/fraudulent representation/fraudulent inducement, tortious interference, promissory estoppel, invasion of privacy – false light, conversion, and outrage/intentional infliction of emotional distress. None of the claims made herein are based on federal claims.

7. This action is not removable to federal court for many reasons, including:

a. There are no federal claims asserted. The claims arise exclusively under Kentucky law. Plaintiff does not assert any claim under federal law or regulation, and to the extent any claim or factual assertion herein may be construed as stating a federal claim, Plaintiff disavows that claim.

b. There is not complete diversity of citizenship; and

c. This is not a class action.

8. The Defendants are directly liable for their own actions and failures to act, and vicariously liable for the actions and failures to act of their servants, employees, agents and apparent or ostensible agents. Certain Defendants are also liable with other Defendants for acting in a joint enterprise, and/or civil conspiracy, and/or aiding and abetting the other.

9. As a direct and proximate result of the individual, joint and several acts and omissions of Defendants, individually and through their own and other Defendant(s)' employees, agents, ostensible agents, and/or servants, Wilkins endured, and will in the future endure, mental pain and suffering, severe mental anguish, embarrassment, humiliation, depression, and loss of enjoyment of life. Further, it is reasonably anticipated that Wilkins will incur lost wages and a loss of her earning capacity.

GENERAL ALLEGATIONS

10. Wilkins undertook representation of WKU as outside counsel in 1992 and while a partner with the firm of Campbell, Kerrick and Grise. WKU did not employ a General Counsel, or in-house attorney during this time, and Wilkins provided all legal advice and representation to WKU, its officials, and Board of Regents.

11. In the summer of 1994, then-President Thomas Meredith restored the position of University Attorney (i.e., a/k/a General Counsel) and following a position search process, he recommended Wilkins' appointment as General Counsel to the Board of Regents. Wilkins' appointment was approved unanimously and she officially assumed this position on November 10, 1994.

12. In October of 2013 Wilkins had held the position for almost twenty years, and in a unanimous vote, the Board of Regents approved then-President Gary Ransdell's recommendation that Wilkins be awarded an Employment Agreement (i.e., contract)(Attached as Exhibit 1). Wilkins was the first female General Counsel, as well as the first female administrator, to be awarded an employment contract at WKU.

13. Wilkins' physical office was located immediately adjacent to both Presidents' offices. This lent itself to almost daily contact, and a close working arrangement, that would

continue for the next twenty-five years and including the tenure of Interim President Barbara Burch. In fact, Wilkins was relocated to the Craig Administrative Center when this historic facility was renovated for use as a new location for the WKU President's Office in 2014.

14. Because the General Counsel position is equal in status to a vice president position, Wilkins also served as a member of each President's Cabinet, including defendant Caboni's Cabinet – the President's Cabinet is a body whose members comprise those officials / administrators who directly report to the President.

15. In addition to her duties as General Counsel, and like her divisional vice president counterparts, Wilkins also held a "Senior Administrator" ("SA") position. In this role, Wilkins was administratively responsible for (i.e., directly supervised) several key WKU departments and functions at various times during her twenty-seven-year career, including Human Resources, Environmental Health and Safety, International Student Scholar Services, Internal Audit, Title IX, and Equal Opportunity/ADA/Affirmative Action. Wilkins' unique job duties and close working relationship with the President and the President's Office resulted in her advice and counsel, both legal and non-legal, being much sought after and appreciated by administration and employees throughout the campus.

16. Wilkins involvement with WKU began long before her employment. Wilkins' father, James B. Tomes, held the position of Director of Personnel for WKU for over twenty years and until his retirement in 1986. Mr. Tomes also served as WKU's first Affirmative Action Officer. When her father became employed at WKU, Wilkins was enrolled in the elementary school component of the WKU Training School, which also included College High. Wilkins spent afternoons, after school, in her father's office, observing him and the Personnel Office staff interact with WKU employees, students and others. Wilkins

involvement continued when she returned as an undergraduate student; while her father continued to fulfill his WKU duties, they often met for breakfast or lunch on campus and she was a frequent visitor to his office in Wetherby Administration Building. Her close bond with her father allowed her to observe his work ethic and dedication, draw on his experience and counsel, and further enhanced her knowledge and abilities in her roles as General Counsel and Senior Administrator.

17. When Wilkins became aware of actions and decisions being proposed or implemented by WKU as an institution and/or by its officials that involved or implicated departments, their operations or policies under her supervision or an area of her responsibilities, like her counterparts, she would bring information, concerns, and questions to the Cabinet and/or the President.

18. Wilkins had served as WKU's sole legal counsel for twenty-one years as of 2015, and up to this point WKU was the only Kentucky public university that employed only one "in house" attorney. In the fall of 2015, then President Gary A. Ransdell approved the creation of an Assistant General Counsel position. Following a position search, Wilkins' recommended Andrea Anderson be appointed to the position of Assistant General Counsel. Anderson also assumed the duties of Title IX Coordinator.

President Caboni is Appointed President

19. When President Caboni (Caboni) assumed his position in 2017, Wilkins' was serving as (and continued to serve as) General Counsel and as the Senior Administrator for Title IX and Equal Opportunity/ADA/Affirmative Action. Her employment contract remained in place, unchanged.

20. Wilkin's office, and the space utilized by the Assistant General Counsel and the paralegal, was located in the Craig Administrative Center. As with previous Presidents, Wilkins' office was physically adjacent to Caboni's office, and she had access to communicate to him directly and immediately any concerns, issues, actions or decisions affecting Title IX and/or Equal Opportunity/ADA/Affirmative Action Office matters, policies and/or practices. Her reported concerns and complaints were protected activity, and each were communicated verbally and in writing to the WKU President and the appropriate senior administrator. Wilkins also reported concerns and complaints regarding actions or decisions affecting Title IX and/or Equal Opportunity/ADA/Affirmative Action Office matters, policies and/or practices as the Interim Title IX Coordinator.

21. In 2018, Caboni advised Wilkins she, Anderson and the paralegal would be relocated out of the Craig Administrative Center. The office space occupied by Wilkins, specifically, was to be set aside for a Vice President for Public Affairs, a position which at the time was vacant. Caboni indicated he would be advertising the position vacancy and wanted the office space vacated in order that applicants invited to campus could tour "their future office." All furniture and amenities in the offices and being used by the Wilkins' and her staff were to remain in the Craig Administrative Center offices as well.

22. Wilkins, the Assistant General Counsel and the paralegal were relocated to Suite 101 in Wetherby Administration Bldg. ("WAB"), a suite which provided sufficient space, but required renovation (paint, carpet, maintenance) and furniture. Wilkins, the Assistant General Counsel and paralegal moved into WAB in January of 2019. The office space vacated by Wilkins in Craig Administrative Center remained vacant, and is vacant as of the filing of this complaint.

23. President Caboni undertook a series of administrative reorganizations, hires, title changes and promotions between 2018 and 2020. As a result, the membership of the President's Cabinet was almost completely reconstituted: Wilkins, as General Counsel, and the Director of Athletics ("AD") were the only members whose appointments would predate Caboni's appointment. Each new Provost and Vice President selected by Caboni and appointed to their position was less experienced than Wilkins, younger in age than Wilkins, and was awarded a salary well in excess of the salary being earned by Wilkins. Further, in 2019, Caboni initiated, without any request from the AD, a contract extension and a \$70,000 salary increase for the AD, which the Board of Regents approved. The AD is a male, and also younger in age than Wilkins, and with less years experience in position.

24. Wilkins' learned high level administrators were engaged in multiple, separate/distinct instances of serious WKU policy and procedure violations related to Equal Opportunity/ADA/Affirmative Action and Title IX, two areas for which she was primarily responsible for supervision and oversight as the Senior Division Administrator. The complaints concerning the violations were reported, separately, to Wilkins' by WKU employees and by then Anderson, who was serving as Title IX Coordinator. Wilkins, in turn, reported these complaints, concerns and violations to Caboni and the respective responsible Senior Division Administrator, yet no action was taken toward any of the administrators who were involved in the policy and procedure violations.

25. In January of 2019, Wilkins initiated a meeting with several high level administrators (three male employees, all younger in age than Wilkins) who were involved in the procedural and policy violations. During this meeting, Wilkins' was subjected to verbal

harassment, threatening behavior, and demeaning age and gender derogatory language. During the meeting, one administrator said to Wilkins: "Are you going to run to daddy?" *

26. Wilkins reported her concern regarding the treatment and conduct at the meeting to the Director of Equal Opportunity/ADA/Affirmative Action Office and the Director of Human Resources the same day, and in writing to Caboni the following day. Although President Caboni expressed his support for Wilkins, assured Wilkins the conduct was unacceptable, and indicated he would take action, no action was taken toward any of the administrators regarding their conduct in this meeting, or the policy and procedural violations, then or to date.

27. Thereafter, one of the administrators involved referred to Wilkins' as a gender specific obscenity in public, in the presence of subordinate employees and members of the community. A witness to the comment reported it to Wilkins, who in turn reported it, in writing to Caboni. Caboni again expressed support for Wilkins, and assured Wilkins the conduct would be "addressed." Wilkins learned that the administrator admitted to making the statement and comment; however no action was taken toward the administrator, then or to date.

28. Instead, during this same period, Wilkins' performance began to be scrutinized and her position, responsibilities and actions marginalized. Wilkins had provided legal opinions, advice and counsel to virtually every aspect of WKU operations and navigated WKU through legal risks and interests successfully for decades. Wilkins was now removed or isolated from Cabinet level matters, her communications, questions, or counsel were openly ignored, her motivations were "questioned," and routine tasks performed by Wilkins and her staff were investigated and/or suspended. When two of the administrators — noted in

paragraphs 24, 25, 26 and 27 – were found, again, to have violated a policy procedure – one that implicated serious violations of Kentucky Law – Wilkins and her staff were barred from involvement. Caboni personally directed Wilkins and her staff to “disengage on all things related to (them) going forward...there have been too many...issues.”

29. Caboni also began to question Wilkins regarding her retirement, when she intended to retire, and if Wilkins had hired Anderson as part of a “succession plan.” Wilkins affirmed her desire that Anderson be promoted to the position of General Counsel upon her retirement, but Wilkins denied any intent or desire to retire. Caboni also discussed whether Wilkins’ contract of employment could be “bought out.” Wilkins, in turn, questioned Caboni how WKU would fund such a buyout, given WKU’s budget constraints and cuts. Ultimately, Caboni told Wilkins that when the General Counsel position did become vacant, he would conduct a national search for a new General Counsel; Anderson could apply for the vacancy, but would not be promoted to the position.

30. Assistant General Counsel Anderson applied for and was selected as a candidate for interview by the City of Bowling Green for the vacant City Attorney position in the fall of 2019. Wilkins developed a written plan to fund a salary adjustment for Anderson, and submitted it as a formal request to Caboni. Although the plan was supported and endorsed by the Provost, Caboni and Howarth refused to even consider the request or a salary adjustment for Anderson.

31. These actions, and others, were undertaken by President Caboni, and in conjunction with other WKU officials, in retaliation for Wilkins’ protected activity, in order to interfere with Wilkins’ contract with WKU, and, ultimately, to bring about Wilkins’ removal from her position as General Counsel due to her age.

Caboni Achieves Removal of Wilkins as General Counsel

32. In March of 2020, as a result of the Covid-19 pandemic, WKU had moved to “remote” instruction (on-line courses and zoom) and employees were working from home. During the first week of April, 2020, Anderson was offered the City Attorney position. Wilkins advised Anderson to notify Caboni of the offer, which she did. Caboni immediately * contacted Wilkins and offered to buyout her contract of employment. Under the terms of Wilkins’ contract, it was to extend through June 30, 2022.

33. In a series of electronic communications, Caboni stated that in exchange for Wilkins’ retirement on June 30, WKU would provide to her (a) a sum equal to one year of her fiscal year 2020-2021 salary, payable in full on July 1, 2020; and (b) an additional amount equal to two years of the same fiscal year salary payable on January 1, 2021. President Caboni further stated he would appoint Assistant General Counsel Anderson to the position of General Counsel upon Wilkins’ retirement; Caboni confirmed he and Anderson had already spoken and Anderson had accepted the proposal and the position.

34. Wilkins accepted Caboni’s offer to buy out her Employment Agreement as described. Caboni directed Wilkins to draft a proposed Employment Agreement for Andrea Anderson to serve as General Counsel – which was in fact signed the same day. Caboni directed that WKU’s outside counsel draft documentation consistent with the agreement reached between Caboni and Wilkins.

35. Before any documents were drafted reflecting the agreement between WKU and Wilkins, Caboni informed Wilkins, via email, that the “Board will not approve the buyout offer” that Caboni had offered (and that Wilkins had accepted), and it was “off the table.”

36. Caboni then informed Wilkins that he intended instead to remove her from her position of twenty-five (25) years as General Counsel; Wilkins would be reassigned to another newly-created position, and if she refused to accept the reassignment, Caboni would terminate her employment immediately. Further, the proposed employment agreement to appoint Anderson as General Counsel would go forward on Caboni's recommendation and be submitted to the Board for approval at the next Board meeting (to occur within a matter of weeks), as he had stated originally.

37. In the midst of the Covid-19 pandemic – a state of emergency with national and statewide closures – Wilkins, like her colleagues, had continued to work from home performing her duties as a member of the President's Cabinet and General Counsel, and Senior Administrator responsible for Equal Opportunity/ADA/Affirmative Action and Title IX. During this time, Caboni was aware that Wilkins, a widow who had not remarried, lived alone, and was the primary caregiver for her father, age 90, who was in the early stages of dementia.

38. Caboni's ultimatum to Wilkins - that she either accept being removed from her position, without being given any reason, basis or explanation for such action, and be replaced by a less qualified, younger person, or face immediate termination was malicious and intentional in both its timing and the manner it was delivered.

39. Wilkins had hired and mentored Anderson, and the entirety of Anderson's experience in a higher education legal office had occurred under Wilkins' supervision. Because of Caboni's actions set forth above, Anderson, who had five years of professional experience and was not yet 38 years of age, was ultimately appointed as WKU's General

Counsel, and her salary increased immediately from \$83,299 to \$178,164 – the exact same salary earned by Wilkins.

40. Wilkins, then age 60, did not achieve this salary level until 25 years in the position at WKU.

41. Under the circumstances, Wilkins had no other options but to accept the forced transfer. Despite this, her loyalty to WKU remained intact, and she endeavored to move forward and perform the new responsibilities assigned to her in the newly created position – Interim Title IX Coordinator and Senior Advisor to the President.

42. The duties and responsibilities of the new position were significant: Wilkins was responsible for drafting WKU's current Title IX Policy and achieved campus support and endorsement of it in an unprecedented time frame. Without any institutional or administrative support, she shepherded thousands of WKU students through successful completion of WKU's Title IX training. Wilkins prepared and submitted a proposal to the Provost in November of 2022 where WKU faculty and staff would likewise be trained utilizing the very same processes and procedures developed and implemented by Wilkins for the student body.

43. Wilkins also put in place a collaborative process crossing divisional lines that ensured complaints were promptly and effectively reported, investigated, and resolved regardless of the status of the complainant (i.e., student, employee, applicant, etc.)

44. Wilkins' training and outreach efforts were tireless and extremely successful, with demonstrably proven results. Detailed reports of all her activities were provided to Caboni, the Provost, and the Vice President for Enrollment and Student Experience.

Wrongful Actions Against Wilkins While in Title IX Position

45. Despite and/or as a result of Wilkins removal as General Counsel and her accomplishments and successes with Title IX, Caboni and other WKU officials continued in their efforts to subject her to discrimination, retaliate against her, and interfere with her contract of employment with WKU.

46. In accordance with WKU policy and as Title IX Coordinator, Wilkins was charged with the following responsibilities:

- To oversee WKU's compliance with Title IX, including training, and be primarily responsible for coordinating efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, prevent, and remedy sex and gender based discrimination, harassment, and retaliation prohibited under the Title IX policy;
- To coordinate and manage all aspects of the procedure and process and act with independence and authority free from bias and conflicts of interest; and,
- To oversee all resolutions under the Title IX policy and procedures, and act as WKU's contact for all information pertaining to complaints, notices of alleged policy violations, and inquiries or concerns regarding the policy and procedures.

Unlike any other unit or department at WKU, Wilkins, and thus the responsibilities outlined above, were never provided operational support or funding. Wilkins had no budget, no spending authority, and was not allocated or assigned support staff, clerical assistance, or even student support staff. During development of WKU's 2020 -2021 Operating Budget, Wilkins repeatedly requested funding for Title IX. Like other departments and divisions at WKU, Wilkins also requested the opportunity to present, in person, funding requests to WKU's Budget Executive Committee. These requests went unanswered and were repeatedly ignored.

47. In May of 2021, Caboni informed Wilkins that the position she held would be eliminated on June 30, 2022. Caboni stated Wilkins' duties would be added to or become a

part of "a reconfigured position, *at a lower salary*," and that Wilkins had "agreed to retire" on June 30, 2022. Wilkins responded to Caboni, stating she did not agree to retire and would perform whatever additional duties, or reconfigured duties, WKU desired to add to the position.

48. Wilkins discovered that neither her name nor her position (Interim Title IX Coordinator – Senior Advisor to the President) were included / contained in the FY 2020-2021 WKU Operating Budget – Salary Listing, a document which accompanies WKU's annual Operating Budget. The salary list provides the name, title, position number and salary for every person employed full-time at WKU. Wilkins' name, title, position number and salary had been included in that document every year for the previous twenty-five years.

49. Wilkins also discovered that on May 27, 2020, without any notice to Wilkins and twelve days after the Board of Regents approved Anderson's appointment as General Counsel and Wilkins' transition to Title IX Coordinator, Caboni took action to further "modify" Wilkins' position. Caboni directed his staff to submit a "Request to Modify a Position" through WKU's Interview Exchange ("IE") system, the system utilized by WKU to manage and track all matters related to employment and employee rank, status, salary, etc., at WKU. Specifically, Caboni did the following:

(a) Wilkins employee status was modified (changed) from "*Full Time Regular Assignment*" – the status Wilkins had held since her employment in November of 1994 and up to the date of Caboni's action - to "*Full Time Limited Assignment (with an End Date)*." Caboni's actions in this regard violated WKU policy, procedure and directly contravened the action taken by the Board of Regents just twelve days earlier.

(b) The IE system form required that Wilkins' "principal duties" be described and a percent of time allocated to each; the information entered on the form and into the system was inaccurate and inconsistent with Wilkins' duties and responsibilities and the action taken by the Board of Regents twelve days earlier. The information was also false.

(c) The IE system form required a "yes" or "no" answer to specific questions related to Wilkins' duties and responsibilities. Each question pertinent to Wilkins' specific duties and responsibilities had been answered/marked "no" when, in fact, all should be answered "yes." The information submitted was deliberately false, misleading and inaccurate.

50. Wilkins immediately requested Caboni or Howarth provide an explanation, reason or basis concerning the Modification Request, and pointed out the inaccuracy in the information entered and the actions' inconsistency with Board actions. Her requests and concerns were ignored and her questions went unanswered, as were similar requests to WKU's Department of Human Resources, Anderson and WKU's outside legal counsel.

51. Simultaneous to the foregoing action, Caboni initiated creation of an Electronic Personnel Action Form (EPAF) to accompanied the Request to Modify Wilkins' position. The EPAF is required under Human Resources policies and procedures, and stated Wilkins had "no supervisory authority, no authority to enforce or develop policy, and no authority to supervise or discipline students or employees," all of which (like the information entered into the Request to Modify), was false, and which Caboni, Howarth and every official who subsequently approved the form knew was false. All other officials approving the form report to Howarth.

52. Wilkins was given neither notice of the change in status nor any reason for the action taken, and under WKU policy and Kentucky law, the change in status should have been

recommended by the President to the Board of Regents for approval in a formal meeting. It had not been, and never was approved by the Board of Regents. The actions above were intended to retaliate against Wilkins by further diminishing Wilkins' status, humiliating and embarrassing her, and – more importantly, eliminate Wilkins' employee rights under WKU policy and Kentucky law.

53. Wilkins offered, through appropriate administrative channels and following WKU policy and procedure, to present information to the Board of Regents concerning WKU's efforts to comply with Title IX. Informational presentations to the Board members during regular and committee meetings of the Board occur on a regular basis and are a matter of routine. Wilkins requests included the involvement of the Directors of Student Conduct and Equal Opportunity/ADA/Affirmative Action as these officials provide critical support for Title IX. Her requests to Bale and Caboni were ignored and she received no response from either, contrary to the requirements of the Bylaws of the Board of Regents. These actions were a breach of the Bylaws of the Board of Regents, both Bale and Caboni's fiduciary duties to WKU and the Board members, and were intended to denigrate Wilkins' activities and job responsibilities, and marginalize her achievements and efforts regarding WKU's Title IX compliance.

54. Wilkins was elected to the WKU Staff Senate in the spring of 2021, a representative body of all staff members at WKU. At the time of her election to the Senate, WKU staff had expressed concern regarding the lack of wage/salary adjustments, the increased workload due to previous Reductions in Force, multiple contracts for professional services authorized by Caboni and overseen by Howarth for WKU amounting to millions of dollars (at that time), and a compensation study that had been "in process" since 2019.

Wilkins' knowledge concerning WKU budgeting, purchasing, operations and management was unquestionably a reason why she had been elected to the Senate, and she utilized this knowledge for the benefit of the staff represented by the Senate.

55. In January of 2021, Brinkley contacted Wilkins concerning a hire he had initiated in December of 2020 and submitted for approval to Caboni. Brinkley had conducted a search to fill a vacant position in Public Television and Radio in the fall of 2020. A female already employed in another position at WKU applied for the position and was qualified. Brinkley offered her the position and she accepted it, giving notice to her supervisor that she would transfer to this new position in January of 2021. Brinkley stated he was contacted by Caboni in January, at which time Caboni directed Brinkley to withdraw the position offer from the female employee. Brinkley said Caboni told him the female employee could not transfer to another WKU position because she was under a "Plan of Improvement" for her job performance in her current position, and "WKU policy doesn't allow an employee to transfer to another position" in this circumstance. Brinkley asked Wilkins if "this was true." Wilkins informed Brinkley that there was no WKU policy to this effect. Wilkins also confirmed the female employee was in fact not employed under a Plan of Improvement, yet Brinkley nevertheless withdrew the offer of the position; and the female employee eventually resigned from WKU. The female employee who was the subject of the position offer and withdrawal was also over the age forty.

56. Brinkley, as Staff Regent, is not an elected member of the Staff Senate, but attends meetings of the Senate. In addition, the Chair of the Senate (in addition to two other Senate officers) occupies a full-time employee position which reports directly to (are supervised) by Brinkley. Because the Vice President of Public Affairs position remains

vacant, Brinkley reports to Caboni and Caboni is Brinkley's direct supervisor. Brinkley was aware of the discussions concerning staff salaries, work conditions, and expenditures related to the service contracts.

57. Funding for employee salary increases and working conditions was the primary concern of the WKU employees, and Wilkins recommended the Senate request further details and status on the issues noted in paragraph 54 of this complaint during Senate meetings. Brinkley, supported by the Chair and the two Senate officers, openly discouraged any efforts to obtain information from administration on these issues. The Chair of the Senate has regular monthly meetings with Caboni, but the Chair provided little to no feedback to the Senate body concerning these meetings.

58. In addition, the Chair and several of the executive officers of the Senate met to discuss "business" and craft communications purporting to be from the Senate as a whole outside of regularly scheduled and announced meetings of the Senate, which is a violation of the Senate Constitution and Kentucky Open Meetings laws. Wilkins expressed concern regarding this practice and urged transparency and adherence to the Constitution and Open Meetings laws.

59. Information came to light that Brinkley had been approved for a salary increase effective July 1, 2021, based on "reclassification" and reorganization, resulting in Brinkley's salary increasing from \$95,000.00 to \$120,600.00, an adjustment of 21%. In addition, the Senate Chair and the two other officers who also reported to Brinkley were likewise approved for substantial, double digit, salary adjustments effective the same date. These salary increases were far in advance and well in excess of the 1.5% "across the board" increase which would subsequently be recommended and approved for all other staff effective

January of 2022. Brinkley and the Senate officers' salary increases were authorized and approved by Caboni, during the summer of 2021, and went into effect on July 1, 2021, despite the fact that these adjustments were not approved by the Board of Regents (of which Brinkley is a member) until October of 2021.

60. Once Brinkley, the Chair and the other officers' salary increases became known, Wilkins (who was not eligible for a salary increase under the terms of her contract) proposed a budget resolution which would modify the allocation of the 1.5% proposed salary adjustment by taking into consideration staff who had already been awarded increases in excess of 1.5%. Staff Senate utilizes an "anonymous" Email messaging system whereby WKU employees can send messages to the Senate body without identification. Before the resolution could be considered in a Senate meeting, messages were posted to this account by one or more persons identifying themselves as a member of the Staff Senate. The messages were threatening, critical and accusatory of Wilkins. Wilkins subsequently resigned from her position on the Staff Senate.

61. During the week prior to Thanksgiving, the Provost's Office staff contacted Wilkins to advise her that the Provost would need to meet with her on Monday, November 22, 2021. Wilkins had submitted her Fiscal Year 2022 Performance Development Reflection and Goal Setting report to the Provost on October 11, 2021, and also a proposal outlining the methodology and expense estimates for all employee Title IX training which had been requested by the Provost earlier that month. Wilkins asked if one or both of these documents would be discussed during the meeting and the staff member advised Wilkins she "did not know" the purpose of the meeting.

62. On November 22, 2021, Wilkins left her office in Downing Student Union to meet with the Provost in his office in Wetherby Administration Building, turning off her office lights and locking her interior and exterior doors because there would be no one in the office. Upon arrival in the Provost's office, Wilkins was met by the Provost, the Chair of WKU's Board of Regents and a third person – an attorney (non-WKU employee). Wilkins was informed she was being relieved of her job duties, "effective immediately."

Caboni's Actions in re Wilkins Removal

63. Two days before WKU's scheduled closure for Thanksgiving, Caboni wrongfully terminated Wilkins' employment. A copy of the termination letter is attached hereto to this Complaint as Exhibit 2.

64. Caboni's letter to Wilkins, informing her that she was being immediately relieved of her job duties, states in part: *"...it is apparent you can no longer well and faithfully serve the University. You have relinquished – or failed to do – tasks assigned to you, demonstrating that you are no longer devoting your full time and attention to your job duties."* The letter contains no other information, no source, evidence or factual basis to support this content. Caboni's statements in the letter are unequivocally false, and clearly intended to maliciously defame and smear Wilkins personally and professionally.

65. Wilkins submitted job performance/activity/reports for each year of her employment at WKU, including 2021, to the President. Caboni has voiced only praise for Wilkins' job performance, stating more than once in the presence of staff, administration, and Board members, his "complete confidence" in her. Caboni's level of confidence is confirmed by the achievements she outlined in the "25 year Review" of her performance as General Counsel, which was submitted to him and the Board of Regents in 2020. Further, Caboni was

fully informed and aware of her activities as Title IX Coordinator and supervisor of Equal Opportunity/ADA/Affirmative Action as he was copied on her Activity Reports.

66. In addition, no one at WKU alerted or notified Wilkins of any disciplinary issues or performance concerns, either before or after she was placed on leave. WKU officials have indicated in response to formal requests that no documents or records of complaints against, toward or involving Wilkins, no disciplinary action, and/or no alleged or actual policy violation reports exist.

67. Caboni did not meet with Ms. Wilkins regarding this letter or this action; in fact, Caboni did not meet with Wilkins at all after May of 2020. The letter Caboni authored and signed was delivered to the Provost, who was directed to hand deliver it to Wilkins. When the Provost handed the letter over to Ms. Wilkins, he said, *"I am to give you this letter and ask you to read it."*

68. When Wilkins had read Caboni's letter, the Provost then read a written prepared statement informing Wilkins she was immediately prohibited from returning to her office in the Downing Student Union, from that point forward or for any reason, and he directed her to surrender her office and building keys "immediately." Wilkins advised all three men present that she was responsible for matters related to the closing of her late father's estate and these records would need to be retrieved. The Provost informed Wilkins that if there was personal property or items in her office that she wished to retrieve, she was "only to contact" the attorney (non-WKU employee) present at the meeting to make arrangements to do so. Caboni's letter likewise directed Wilkins only to contact this attorney if she had any questions regarding her employment.

69. Wilkins immediately returned all WKU keys in her possession, after which she was publicly escorted by the male attorney (non-WKU employee) from the Provost's Office, out of the front door of the Wetherby Administration Building, to her vehicle parked in front of the building – all of which occurred on a regular WKU work day and during WKU's regular operating hours.

70. During the meeting and while Wilkins was being presented with President Caboni's letter, Caboni and WKU took further actions: WKU Information Technology staff suspended (i.e., cut off) Wilkins' access to her WKU TopNet information (personnel information, academic information, and other personal electronic information specific to each WKU employee relating to their withholdings, deductions, direct deposit, salary, benefits, vacation, sick leave, parking, etc.) and also her WKU email account (deborah.wilkins@wku.edu) – which has been her email address since 1994. WKU also removed her access to her calendar (personal and work), and all personal and professional contact information (name, email, address, telephone, etc.) compiled and maintained over a period of 30+ years.

71. At the same time, other WKU officials, including WKU Access Control/WKU Police, were entering Wilkins' office (which she had locked on her departure). While there, and among other things, these officials changed the locks on the exterior and interior doors, turned on the office lights, and left behind several large, empty cardboard moving boxes in plain sight. A photograph of the boxes (taken through the glass entry door to Wilkins' office) accompanied an article published the following day by the student newspaper.

72. These actions were undertaken without any notice to Wilkins – including any notice that the suspension of her email, contacts, and calendar had even taken place – fifteen

days before the WKU campus would close for its winter break. For no reason whatsoever, Wilkins was purposely cut off from vital and important means of communication and communication resources two days before Thanksgiving and thirty days before Christmas.

73. Since being escorted off campus, WKU officials have allowed an unknown number of persons to enter Wilkins' office and, as a result, have access to material and records in Wilkins' office. Aside from Wilkins' personal property, all of her personal and professional work, professional development, and personal files and records have been removed, including all records related to Wilkins' responsibilities as Title IX Coordinator and Senior Advisor for Equal Opportunity/ADA/Affirmative Action.

74. WKU has provided – in fact has admitted, there is no basis or reason for any of these actions, and has done so verbally and in writing to Wilkins. WKU has produced no records to support such action. The fact of the matter is WKU cannot provide a basis.

75. The actions outlined and detailed above, all of which were initiated against her by WKU and Caboni, are unprecedented in Western Kentucky University's history of personnel / employee actions – a history that has included dismissals, terminations, and forced retirements and resignations based on conduct that has included conspiracy to commit murder, counterfeiting, possession of pornography, sexual assault, indecent exposure and embezzlement, to name only a few.

76. In January of 2022, Wilkins discovered that WKU had not shut down/shut off her WKU email account as it had represented. In fact, WKU officials had maintained her Email account and were reading messages sent to Wilkins. In some cases, WKU officials were forwarding and responding to messages. All of these actions were taken without Wilkins' knowledge or permission and are in direct violation of WKU policy.

77. The actions noted in Paragraph 76 also implicate a violation of the senders' privacy and Title IX. Wilkins provided pro bono legal services to WKU faculty and staff, and their families, and these individuals continued attempting to communicate with her. Perhaps more serious, Wilkins, and her WKU Email address, continued to be published in all WKU course syllabi and WKU Policy and Procedure No. 0.2070 as the Title IX Coordinator and point of contact up to and including February of 2022, and parties to Title IX issues continued to communicate with this email address believing they were communicating with Wilkins.

78. WKU's student newspaper, *College Heights Herald*, published a print and an on-line article on Monday, November 29, 2021, stating, in part:

"Deborah Wilkins is no longer listed as WKU's Title IX coordinator; her phone number has been removed from WKU's campus directory and her office in Downing Student Union was locked at 2:35 p.m. Monday with open boxes in the office.

But WKU isn't talking about the changes." (*College Heights Herald*; Lily Burris; November 29, 2021)

This article was accompanied by a full color photograph of Wilkins' office, showing large empty moving boxes. On February 2, 2022, the *Herald* published another article, which stated, in part:

"The university did not comment on this in the fall, and Caboni was not able to offer clarity on the situation as it was "a personnel issue". (*College Heights Herald*; February 1, 2022).

79. WKU released a copy of Caboni's November 22, 2021, letter to the media after redacting much of the content. An article in the Bowling Green *Daily News* stated, in part:

"...Wilkins has largely been scrubbed from the university's website, with her phone number no longer listed in its online staff directory...WKU spokesman Jace Lux told the Daily News WKU does not provide comment on personnel issues..."

“(In the letter) Caboni notifies Wilkins that she is being relieved of her employment duties, but that the university will continue to pay Wilkins through June 30, 2022, the expiration of the employment agreement. The letter then directs Wilkins to arrange a time to collect her personal belongings from her office on campus, and refers further questions to Louisville-based attorney Gregg Hovious of the Middleton-Reutlinger law firm. The rest of Caboni’s letter to Wilkins, specifically a substantial second paragraph, is redacted...According to his LinkedIn profile, Hovious is a civil trial attorney. (*Daily News*; Aaron Mudd; December 5, 2021.)

80. The intentional actions taken by WKU to end Wilkins’ career at WKU – collecting her office and building keys and prohibiting her return to her office; summarily and immediately directing her to leave campus and escorting her to her car, suspending her access to her Email account and calendar and denying her access to personal and professional property; and in twenty-four hours “scrubbing” all references to Wilkins from WKU’s website and directory – coupled with the release of the redacted letter and the comments of WKU’s official spokesperson and Caboni were maliciously intended to create an inference that Wilkins’s removal was based upon misconduct, wrongful act or activity that violated WKU policy, state or federal law.

COUNT ONE
Breach of Contract

81. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

82. That, at all times relevant, Wilkins and WKU had a written contract.

83. That Wilkins never requested to retire, nor did she ever suggest that she would retire; rather, it was always Wilkins’ intention to seek a contract extension based upon her job performance. In fact, it was Wilkins’ expectation that her contract would have been extended an additional four years without question.

84. That WKU has breached its contract with Wilkins.

85. That Wilkins has been damaged as a result of WKU's breach, and she is entitled to all legal remedies that flow from this breach, to include all compensatory and other damages permitted by law.

COUNT TWO
Kentucky Civil Rights Act

86. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

87. That, at all times relevant, Wilkins was a member of a protected class by virtue of her age and gender.

88. That Wilkins was discharged from her employment at WKU.

89. That Wilkins was qualified for the position from which she was discharged.

90. That Wilkins was replaced by a significantly younger person.

91. That WKU routinely grants contract extensions for similarly situated male employees with employment contracts, and has done so for the past thirty years.

92. That the conduct of WKU in terminating the employment of Wilkins was in violation of the Kentucky Civil Rights Act, KRS 344.010, et seq. ("KCRA"), and Wilkins is entitled to recover all compensatory damages, punitive damages, and attorney fees permitted by law.

COUNT THREE
Kentucky Whistleblower Act

93. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

94. That the Kentucky Whistleblower Act, at KRS 61.102, among other things, specifically states that: "No employer shall subject to reprisal or discriminate against, or use

any official authority or influence to cause reprisal or discrimination by others against, any person who supports, aids, or substantiates any employee who makes public any wrongdoing set forth in [KRS 61.102(1)].”

95. That, at all times relevant, Wilkins was an employee of the State.

96. That Wilkins made or attempted to make a good faith report or disclosure of a suspected violation of state or local law to an appropriate body or authority.

97. That, specifically, these good faith reports and disclosures include, but are not limited to, (a) multiple instances of Title IX policy violations brought to the attention of the President and Executive Vice-President, both before and after Wilkins was appointed as Title IX Coordinator; (b) multiple documented instances of the high level administrators working in tandem to circumvent established WKU and department-specific policies and procedures to the detriment of qualified minority employees; (c) multiple instances of state regulations and laws being violated regarding operations and management of department subject to same; (d) reports regarding decisions and practices that resulted in evidence of disparate impact on over-forty employee population, as well as female and minority employees; (e) multiple instances of significant salary increases for Caucasian male employees in the form of reclassifications, transfers, and title changes; (f) misinformation and false information contained submitted to WKU’s accrediting body; (g) falsification of information and/or entry of fraudulent information on official WKU forms and data systems in order to adversely impact and discriminate against employee applicants, hires and transfers; (h) violation of WKU Policy No. 4.2204, Recruitment and Employment of Faculty and Staff through the use of a “Non-competitive Assignment Requisition,” referred to as a “permanent waiver of the hiring process” by WKU employees; (i) reports regarding the circumvention and bypass of

established hiring procedures; and (j) reports of age and gender harassment related to high level, male administrators.

98. That WKU took action specifically intended to discourage Wilkins from making such a disclosure and/or to punish her for making such a disclosure.

99. That, as a result of the conduct of WKU, Wilkins has sustained damage, and she is entitled to recover all compensatory damages, punitive damages, and attorney fees permitted by law.

COUNT FOUR **Protected Activity**

100. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

101. That KRS 344.280 states, in pertinent part: "It shall be an unlawful practice for a person, or for two (2) or more persons to conspire: (1) to retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this chapter, or because he has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter."

102. That, during the course of her employment at WKU, Wilkins engaged in protected activity.

103. That, specifically, this protected activity was comprised of Wilkins' good faith reports and disclosures regarding (a) multiple instances of Title IX policy violations brought to the attention of the President and Executive Vice-President, both before and after Wilkins was appointed as Title IX Coordinator; (b) multiple documented instances of the high level administrators working in tandem to circumvent established WKU and department-specific policies and procedures to the detriment of qualified minority employees; (c) multiple

instances of state regulations and laws being violated regarding operations and management of department subject to same; (d) reports regarding decisions and practices that resulted in evidence of disparate impact on over-forty employee population, as well as female and minority employees; (e) multiple instances of significant salary increases for Caucasian male employees in the form of reclassifications, transfers, and title changes; (f) misinformation and false information contained submitted to WKU's accrediting body; (g) falsification of information and/or entry of fraudulent information on official WKU forms and data systems in order to adversely impact and discriminate against employee applicants, hires and transfers; (h) violation of WKU Policy No. 4.2204, Recruitment and Employment of Faculty and Staff through the use of a "Non-competitive Assignment Requisition," referred to as a "permanent waiver of the hiring process" by WKU employees; (i) reports regarding the circumvention and bypass of established hiring procedures; and (j) reports of age and gender harassment related to high level, male administrators.

104. That WKU retaliated against Wilkins based upon her opposition to conduct and practices she perceived as violations and/or participation in investigations and other proceedings.

105. That Wilkins has sustained damage as a result of the conduct of WKU, and she is entitled to all compensatory damages, punitive damages, and attorney fees permitted by law.

COUNT FIVE

Defamation

106. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

107. That Defendant Caboni, among other things, authored Wilkins' termination letter dated November 22, 2021, attached as Exhibit 2.

108. That the letter referenced in the next previous paragraph contains defamatory language and statements which Caboni knows are not true.

109. That the statements in Caboni's letter of November 21, 2021 are false and were made with reckless disregard for the truth. In fact, President Caboni never communicated to Wilkins any concerns regarding her performance either as General Counsel or as Title IX Coordinator – until his letter of November 20, 2021, was transmitted.

110. That the statements made in such letter were about the Plaintiff, Wilkins.

111. That Caboni's statements were published to a third party, or parties.

112. That Caboni's statements have caused, and were intended to cause, damage to Wilkins; reputation.

113. That Wilkins is entitled to recover all compensatory damages and punitive damages permitted by law.

COUNT SIX Wrongful Termination

114. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

115. That Wilkins' discharge and termination from the employment of WKU are contrary to public policy and actionable under the law of wrongful termination. Specifically, the reason for her discharge was for her exercising of a right conferred by a well established legislative enactment.

116. That, pursuant to KRS 446.070, Wilkins retains a private cause of action for wrongful termination.

117. That, as a result of her wrongful termination, Wilkins has sustained damage, and she is entitled to recover all compensatory and punitive damages permitted by law.

COUNT SEVEN
Fraud

118. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

118. That Defendant Caboni made certain material representations to Wilkins with regard to the buyout of her contract with WKU.

120. That Caboni's representations were false. Further, Caboni either knew them to be false, or the representations were made recklessly.

121. That Caboni's representations were made with the inducement to be acted and relied upon by Wilkins, and Wilkins did, in fact, rely upon these representations.

122. That, as a result of the fraud, fraudulent misrepresentations, and fraudulent inducements of WKU, Caboni, and the Defendants, Wilkins has sustained injury and resulting damages. She is entitled to recover all compensatory and punitive damages permitted by law.

COUNT EIGHT
Tortious Interference

123. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

124. That a contract existed between Wilkins and WKU, and Caboni and the Defendants were with specific knowledge of the existence of this contract.

125. That the Defendants intended to cause a breach of this contract, and the Defendants' actions did indeed cause such a breach of the contract between Wilkins and WKU. WKU, and/or its Board of Regents, routinely grants contract extensions to WKU

employees holding employment contracts with WKU based on performance – or even expectation of performance. By way of example only, Caboni has made recommendations to extend the contracts of the Director of Athletics, as well as multiple head coaches in the Athletics Department (most recently, the Head Coach of the WKU Baseball program). In fact, Caboni, himself, was granted a contract extension in 2021. Wilkins' contract should have been recommended for extension based upon her performance as General Counsel and/or her performance as Interim Title IX Coordinator/Senior Advisor to the President. The action of Caboni had others, including the removal of Wilkins from her position, and in the manner it was carried out, were not only retaliatory, but they were also designed to, and did in fact, interfere with her contractual relationship with WKU, and were also done to create circumstances where a contract extension would never be considered.

126. That the Defendants had no privilege or justification to excuse their conduct.

127. That Wilkins has sustained damage as a result of the Defendants' tortious interference with her contract, and she is entitled to recover all compensatory and punitive damages permitted by law.

COUNT NINE

Promissory Estoppel

128. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

129. That Defendant Caboni made a certain promise to Wilkins which Caboni could reasonably have expected would induce action or forbearance on the part of the Wilkins. Specifically, in April of 2020, Caboni offered Wilkins a buyout of her Employment Agreement. In summary, the basic terms were that, in exchange for her resignation, WKU would provide to her (a) a sum equal to one year of her fiscal year 2020-2021 salary, payable

in full on July 1, 2020; and (b) an additional amount equal to two years of the same fiscal year salary payable on January 1, 2021. Caboni stated his intent to appoint Ms. Anderson to the position upon Ms. Wilkins' retirement on June 30th, and he confirmed that Ms. Anderson had already accepted the position. Wilkins accepted Caboni's offer to buy out her Employment Agreement. Caboni directed Wilkins to draft a proposed Employment Agreement for Andrea Anderson to serve as General Counsel – which was signed the same day. Before any documents were drafted reflecting the agreement between WKU and Wilkins, Caboni informed Wilkins, via email, that the “Board will not approve the buyout offer” that Caboni had offered (and that Ms. Wilkins had accepted), and it was “off the table.”

130. The Defendants, to include Caboni, Howarth, Glisson, Brinkley, and Bale, all had specific knowledge regarding the falsity of Caboni's statements and were complicit in carrying out the scheme to terminate Wilkins' from her position as General Counsel.

131. That as a result of the conduct referenced above, Wilkins has sustained damage, and she is entitled to recover all compensatory and punitive damages permitted by law.

COUNT TEN **Invasion of Privacy – False Light**

132. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

133. That the Defendants placed Plaintiff Wilkins in a false light before the public.

134. That the false light in which Wilkins was placed would be highly offensive to a reasonable person.

135. That the Defendants had knowledge of and/or acted in reckless disregard as to the falsity of the matter and the false light in which Wilkins was placed.

136. That as a result of the conduct referenced above, Wilkins has sustained damage, and she is entitled to recover all compensatory and punitive damages permitted by law.

COUNT ELEVEN
Falsification of Business Records

137. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

138. That KRS 446.070 states, in its entirety, that: "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

139. That KRS 517.050 states, in relevant part, that a person is guilty of falsifying business records when, with the intent to defraud, he makes or causes a false entry to be made in the business records of an enterprise, or omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position.

140. That the Defendants have falsified the business records of WKU as set forth within the allegations previously pled in this complaint.

141. That the Plaintiff is within the class of persons who are intended to be protected.

142. That the Plaintiff has suffered damage as a result of the false entries that the Defendants have caused to be made, and the Plaintiff is entitled to recover all of her compensatory damages and punitive damages permitted by law.

COUNT TWELVE
Conversion

143. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

144. That Wilkins had legal title to certain property located within her office at WKU, and had the right to possess such property.

145. That WKU, acting through its agents, exercised dominion over Wilkins' property in a manner which denied Wilkins' rights to use and enjoy the property and which was to the Defendants' own use and beneficial enjoyment.

146. That the Defendants intended to interfere with Wilkins' possession.

147. That Wilkins made demand for the property's return which WKU refused.

148. That the conduct of WKU was the legal cause of the Wilkins' loss of the property.

149. That Wilkins suffered damage by the loss of the property, and she is entitled to recover all compensatory and punitive damages permitted by law.

COUNT THIRTEEN
Intentional Infliction of Emotional Distress/Outrage

150. That the Plaintiff adopts, reiterates, and incorporates by reference all allegations previously pled.

151. That the conduct of WKU, Caboni, and the other Defendants, in wrongfully terminating the Wilkins, placing her in a false light, and otherwise defaming her was carried out in an intentional or reckless manner.

152. That the conduct of the Defendants was outrageous, intolerable, and offensive against the generally accepted standards of decency and morality.

153. That Wilkins has suffered emotional distress as a result of the conduct of the Defendants, and her distress has been severe.

154. That Wilkins has suffered damage as a result of the outrageous conduct of the Defendants, and she is entitled to recover all compensatory and punitive damages permitted by law.

WHEREFORE, Plaintiff Wilkins prays and demands judgment against the Defendants, individually, and jointly and severally; for her compensatory and punitive damages; for her costs expended herein; for her attorney fees; for a trial by jury; and for all other relief to which she may be deemed entitled.

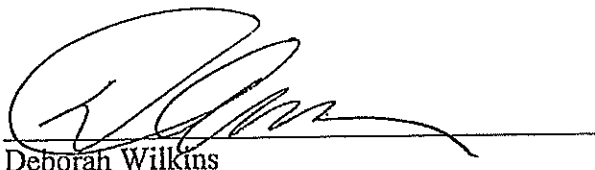
This 21st day of April, 2022.



Matthew J. Baker
911 College Street, Suite 200
Bowling Green, KY 42101
Telephone: (270) 746-2385
Facsimile: (270) 746-9621

VERIFICATION

I, DEBORAH WILKINS, hereby state that I have read the foregoing complaint and verify that all allegations stated within it are true and accurate to the best of my knowledge and belief.


Deborah Wilkins



A LEADING AMERICAN UNIVERSITY WITH INTERNATIONAL REACH
OFFICE OF THE PRESIDENT

September 10, 2013

MEMORANDUM

TO: Board of Regents
Mr. J. David Porter, Chair
Mr. Frederick A. Higdon, Vice Chair
Dr. Phillip W. Bale
Ms. Keyana Boka
Dr. Melissa B. Dennison
Ms. Cynthia Harris
Mr. Gillard B. Johnson
Mr. James Kennedy
Dr. Patricia H. Minter
Mr. John W. Ridley
Mr. Laurence J. Zielke

FROM: Gary A. Ransdell *Gary*

SUBJECT: General Counsel

Deborah joined the University as General Counsel in November of 1994, and as you know, served as Chief of Staff from 2008 through June of 2013. Her responsibilities have not been limited solely to oversight of legal affairs and COS duties. The offices of Environmental Health and Safety, Human Resources, Internal Audit and Equal Opportunity / 504 / ADA Compliance have all reported to her at various times during her years with WKU. Deborah is the most "senior" of the General Counsels serving Kentucky universities, including UL and UK, and is considered a valued advisor and resource to her counterparts and to CPB's general counsel. Deborah is a valued colleague and advisor to faculty, staff and students (when appropriate). Her diplomacy, persuasion, and understandable explanations of applicable policies, regulations, or laws have served her well.

Deborah has not sought recognition of her performance through a salary adjustment. However, given her performance and years of service, I believe she has earned the commitment and the recognition that would come from an Employment Agreement. I will be proposing such an agreement to you as part of the next Board agenda.

The manner in which Deborah has guided and directed WKU's legal issues since 1994 is worth noting. The University achieved a favorable result in each of the six claims pursued to the point of jury trial (either by judicial dismissal or a jury verdict in favor of WKU). Deborah's role is to be proactive, and her early intervention and involvement has allowed us not only to be successful when litigation is brought against the University, but also allowed us to usually "avoid" litigation as well. Litigation is often preceded by complaints to state and federal agencies, such as the Kentucky Human Rights Commission, EEOC, OCR, etc. The quality, depth and breadth of the responses prepared by Deborah, and her candor in working with the representatives of these agencies, have resulted in positive outcomes for WKU.

The proposed Employment Agreement is attached. This agreement does not include or provide for any salary adjustment as part of the agreement — her salary, which is seventh among my direct reports, will remain unchanged. The Agreement will provide Deborah with employment security through 2022, Deborah's date for retirement eligibility.

Because this action involves a senior executive officer of the University, I wanted to let you know in advance my rationale for the recommendation. This will be on the Executive Committee agenda when it meets on September 27. Please let me know if you have questions or thoughts.

Thank you.

GAR:sh

Attachment

cc: Ms. Julia McDonald

Western Kentucky University

ADDENDUM
TO
EMPLOYMENT AGREEMENT

THIS ADDENDUM TO EMPLOYMENT AGREEMENT ("Agreement") made as of the 4 day of May, 2020, by and between Western Kentucky University (hereinafter "the University") and Deborah T. Wilkins (hereinafter referred to as "Wilkins").

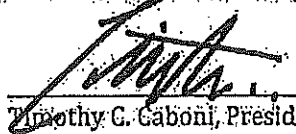
For and in consideration of the covenants and agreements herein contained, the University and Wilkins covenant and agree as follows:

1. **EMPLOYMENT.** Pursuant to the terms and conditions of this addendum, the University agrees and Wilkins has agreed that her duties as General Counsel, under the Employment Agreement dated October 25, 2013, will end effective June 30, 2020, subject to and contingent upon the terms and conditions set forth herein. Effective July 1, 2020, Wilkins will be appointed to the position and assume the duties as described in the job description attached hereto as Exhibit "A."
2. **TERM.** The term of this appointment and addendum will be for a period beginning on the 1st day of July, 2020, and expiring on the 30th day of June, 2022.
3. **DUTIES.** Wilkins shall well and faithfully serve the University and shall at all times devote her whole time, attention, and energies to the performance of the duties as described in the job description attached hereto as Exhibit "A," and shall do and perform all such services, acts, and things connected therewith. In accordance with Item 7 of the Employment Agreement dated October 25, 2013, Wilkins' salary shall not be reduced during the term of the Agreement. Wilkins will be provided with an office appropriate for the position, consistent with her education and experience and located on the main campus.
4. **COMPENSATION.** As of the date of this addendum, Wilkins's annual salary is one hundred seventy-eight thousand, one hundred and sixty-four dollars and no cents (\$178,164.00). Wilkins's base salary for the term of this addendum will remain unchanged and unadjusted. The University will continue to be responsible for payment of any required professional licensing expenses, dues and/or fees, such as Bar association dues.
5. **BENEFITS.** Wilkins shall continue to receive her current level of and/or have an opportunity to participate in the maximum of, benefits accorded to administrators of the University now, or in the future, including, but not limited to, health insurance, retirement, vacation and sick leave.
6. **TERMINATION.** The University shall have the right to terminate this Employment Agreement for cause prior to its expiration date. The term "cause" shall be defined as follows:
 - a) Conviction of a felony or declared by a court of competent jurisdiction to be guilty of a crime involving moral turpitude;
 - b) Suspension or disbarment from the practice of law;
 - c) Deliberate refusal to perform the duties or responsibilities outlined in Exhibit "A" in good faith and failure to cure such violations upon thirty (30) days written notice from the University;

7. COMPLETE AGREEMENT. The Agreement constitutes the complete Agreement between the parties and incorporates all prior discussions, agreements, and representations made in regard to the matters set forth herein. This Agreement shall not be amended, modified, or changed except upon the mutual consent of Wilkins and the University. Any amendment to modification, to be effective, must be reduced to writing and signed by all parties to this Agreement.

8. BOARD OF REGENTS APPROVAL. The parties agree that this Addendum to Employment Agreement will be recommended to the Board of Regents for its approval by the President of the University at its next regular meeting on May 15, 2020.

This agreement entered into this 4th day of May, 2020, by


Timothy C. Gaboni, President

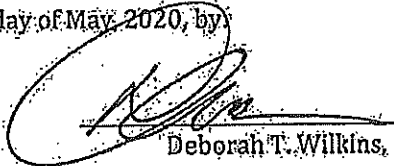

Deborah T. Wilkins,

Exhibit A

Western Kentucky University

Position Description

Title: Senior Advisor and Interim Title IX Coordinator

Purpose of Position

The Senior Advisor will report to the President and be responsible for providing legal counsel and oversight of institutional initiatives at the President's discretion.

As Interim Title IX Coordinator, the position will report to the Provost and be responsible for all matters pertaining to the university's compliance with state and federal Title IX regulations.

Primary Job Duties and Responsibilities

The following duties are customary for this position but are not all-inclusive. Duties may be added, deleted, and assigned based on management discretion and institutional needs.

- The Senior Advisor is responsible for oversight of litigation, including supervision of outside counsel, on matters for which she has served as the primary contact.
- In this role, the Senior Advisor will provide support and consultation to the General Counsel, as requested.
- The Senior Advisor will oversee and facilitate the establishment of a program to provide affordable legal services for students.
- As Interim Title IX Coordinator, the position is responsible for overseeing the university's compliance and educational efforts with regard to Title IX of the Higher Education Act of 1964 as amended in 1972. The Interim Title IX Coordinator will develop, implement, and monitor appropriate policies, procedures, and practices to ensure compliance with state and federal law as well as oversee the university's investigation of complaints related to sex and gender-based discrimination and harassment. Working in conjunction with the university's Title IX Investigators, the Title IX Coordinator will develop and implement appropriate educational programs aimed at the prevention of sexual violence and other forms of sex and gender-based discrimination.

Subject to university need, the Senior Advisor will also teach one (1) course on Education Law or other subject consistent with the Senior Advisor's education and experience not to exceed one course per semester, provided however, if such course is a face to face (in class) course, said course will be scheduled to begin / start no earlier than 9:00 a.m. and/or will end / conclude no later than 4:30 p.m., on Monday - Friday (i.e., no evening, night or weekend teaching assignments). Course and teaching preparation time will be included in the event of a teaching assignment, consistent with University academic practices.

**Western Kentucky University
EMPLOYMENT AGREEMENT**

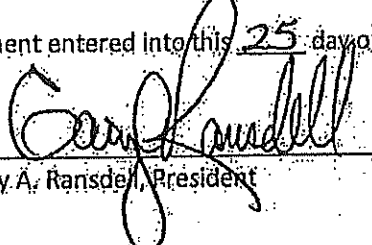
THIS EMPLOYMENT AGREEMENT ("Agreement") made as of the 25 day of October, 2013, by and between Western Kentucky University (hereinafter "the University") and Deborah T. Wilkins (hereinafter referred to as "Wilkins");

For and in consideration of the covenants and agreements herein contained, the University and Wilkins covenant and agree as follows:


1. **EMPLOYMENT.** Pursuant to the terms and conditions of this Agreement, the University agrees that Wilkins will continue to serve as General Counsel, and Wilkins agrees to continue to serve in this capacity and to render services to the University as set forth herein.
2. **TERM.** The term of agreement will be for a period beginning on the 1st day of July, 2013, and expiring on the 30th day of June, 2017. The parties further agree that if circumstances do not exist that would justify the Wilkins' dismissal for cause, as defined in Section 6, in any year of this agreement, the parties agree to extend the term of this Agreement in writing under the terms and conditions outlined herein by one (1) additional year at the end of each of the original four (4) years, with the term of employment, together with extensions, not to extend beyond June 30, 2022. The provisions of the extension shall be interpreted so as to be compliant with KRS 164.360(2). The parties agree that Wilkins's position is a staff position.
3. **DUTIES.** Wilkins shall well and faithfully serve the University and shall at all times devote her whole time, attention, and energies to the performance of her duties as described in the job description attached hereto as Exhibit "A," and shall do and perform all such services, acts, and things connected therewith. Participation in any outside organizations, associations, clubs, or groups shall be consistent with the importance and dignity of Wilkins' position.
4. **COMPENSATION.** As of the date of this Agreement, Wilkins's annual salary is one hundred, forty-two thousand dollars and no cents (\$142,272.00). Wilkins's base salary for subsequent years will be reviewed and established annually during the term and any extension of this Agreement, with any annual adjustment to be effective on July 1 of that year, in accordance with the University's evaluation procedures and policies. Nothing herein will be interpreted to prevent or deny Wilkins consideration for or award of any other appropriate salary adjustment, including market or equity adjustments.
5. **BENEFITS.** Wilkins shall continue to receive and/or have an opportunity to participate in the maximum benefits accorded to administrators of the University now, or in the future, including, but not limited to, health insurance, retirement, vacation and sick leave.
6. **TERMINATION.** The University shall have the right to terminate this Employment Agreement for cause prior to its expiration date. The term "cause" shall be defined as follows:
 - a) Conviction of a felony or declared by a court of competent jurisdiction to be guilty of a crime involving moral turpitude;
 - b) Suspension or disbarment from the practice of law;

- c) Deliberate refusal to perform the duties or responsibilities outlined in Exhibit "A" in good faith and failure to cure such violations upon thirty (30) days written notice from the University;
 - d) Refusal to accept reassignment as provided in paragraph 7 of this agreement.
7. **REASSIGNMENT:** It is understood by the parties that the University retains the right, in its sole discretion, to reassign Wilkins to a position other than General Counsel and with different duties, responsibilities and title during the term of this Agreement. In such event:
- a) Wilkins' salary at the time of the reassignment, or at the time of any further or subsequent reassignments, shall not be reduced due to the reassignment, nor shall the reassignment prevent or deny Wilkins consideration for or award of any other appropriate salary adjustment, including market or equity adjustments;
 - b) Wilkins will be assigned to a position that is consistent with her education and experience, and Wilkins will be provided with an office appropriate for the position, consistent with her education and experience and located on the main campus;
 - c) If the University exercises its right to reassign Wilkins and Wilkins refuses to accept such reassignment, the University may terminate this Agreement pursuant to paragraph 6 above.
8. **COMPLETE AGREEMENT:** The Agreement constitutes the complete Agreement between the parties and incorporates all prior discussions, agreements, and representations made in regard to the matters set forth herein. This Agreement shall not be amended, modified, or changed except upon the mutual consent of Wilkins and the University. Any amendment or modification to be effective, must be reduced to writing and signed by all parties to this Agreement.
9. **BOARD OF REGENTS APPROVAL:** The parties agree and understand that the terms of this Employment Agreement are subject to its recommendation by the President of the University to the Board of Regents, and contingent upon approval of the Board at its next regular meeting following the date the Agreement is executed.

This agreement entered into this 25 day of October, 2013, by:



Gary A. Ransden, President



Deborah T. Wilkins,
General Counsel

Exhibit "A"

**Western Kentucky University
Position Description
Title: General Counsel
President's Office**

Purpose of Position

The General Counsel will be responsible for all matters pertaining to the university's legal affairs; in this capacity, the General Counsel shall provide advice to the Board of Regents, to the President, and to other officers and employees on all legal matters affecting the university; manage litigation involving the university; develop recommendations respecting the university's compliance with applicable state and federal laws; and assist officers of the institution and other upper management in carrying out the mission of the institution.

Primary Job Duties and Responsibilities

The following duties are customary for this position, but are not to be construed as all-inclusive.

Duties may be added, deleted and assigned based on management discretion and institutional needs.

- Provides legal counsel and guidance to the Board of Regents, President, and other upper management of the institution on all legal matters relevant to a large public institution, including personnel law, policies, procedures, rules, and regulations, and laws pertaining to students, real estate transactions, contracts and grants, worker's compensation, liability and insurance matters, public monies and purchases, affirmative action, and other laws and regulations.
- Anticipates and identifies legal issues and counsels officers of the institution and other upper management in order to develop legal strategies and solutions, often in situations of great political, public relations, or financial risk or significance, and with limited time for assessing alternatives.
- Reviews, researches, interprets, and prepares both written and oral opinions on a wide variety of legal issues.
- Drafts, reviews, and approves policies and procedures, regulations, bylaws, and other legal documents.
- Reviews contracts, leases, and other legal documents; researches legal issues and recommends revisions as necessary.
- Represents or oversees the representation of the institution and upper management in judicial and administrative proceedings, and in negotiations with other state agencies.
- Selects and retains outside counsel, as required, to obtain legal opinions or to handle claims and litigation.
- Supervises legal work of outside counsel; consults on difficult or sensitive issues.
- Provides training to the campus community on various legal issues through seminars and meetings.
- Maintains professional growth and development through seminars, workshops, and professional affiliations to keep abreast of latest developments in college and university law and in other related areas.
- Performs miscellaneous job-related duties as assigned.



OFFICE OF THE PRESIDENT

November 22, 2021

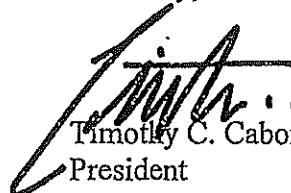
Dear Deborah:

Please accept this letter as notice that you are being relieved of your responsibilities under your Employment Agreement dated October 25, 2013, and as amended by the Addendum to Employment Agreement dated May 4, 2020. Western Kentucky University (the "University") will continue to pay your regular compensation through June 30, 2022, the expiration of your Employment Agreement. Until then, you remain eligible for all benefits to which you are entitled under Paragraph 5 of the Addendum to Employment Agreement.

The University is taking this action because it is apparent you can no longer well and faithfully serve the University. You have relinquished—or failed to do—tasks assigned to you, demonstrating that you are no longer devoting your full time and attention to your job duties. Your communication with faculty and staff have often been aggressive and unprofessional, which has created an environment that is both intimidating and unproductive. As well, your conduct creates questions about whether you are faithfully advancing the interests of the University or, instead, pursuing your own apparent animus towards the administration. In short, your relationships with personnel across campus, and your relationship with the University is broken. These problems have only escalated since the final months of your tenure as General Counsel. All of this and more has led the University to conclude that you can no longer be trusted to fulfill your duties under the Employment Agreement.

Please contact Human Resources to arrange a convenient date and time to collect personal belongings from your office. Beyond that, any questions concerning your employment should be directed to Gregg Hovious of Middleton-Reutlinger at 502.625.2740 or ghovious@MiddletonLaw.com.

Sincerely,



Timothy C. Caboni
President