

COMMONWEALTH OF KENTUCKY
WARREN CIRCUIT COURT
DIVISION NO. II
CASE NO: 22-CI-431
Electronically Filed

DEBORAH TOMES WILKINS

PLAINTIFF

vs.

WESTERN KENTUCKY UNIVERSITY, et al.

DEFENDANTS

**DEFENDANT WESTERN KENTUCKY UNIVERSITY ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant Western Kentucky University ("WKU"), by counsel, submits its Answer for those Causes of Action in Plaintiff's Complaint which are not subject to the Motion to Dismiss filed contemporaneously with the Answer.¹

Defendant has copied the captions utilized by Plaintiff in her Complaint in structuring Defendant's Answer, but Defendant does not adopt the truth, accuracy or validity of any characterizations or representations contained within Plaintiff's captions.

FIRST DEFENSE

INTRODUCTION

The Introduction Paragraph of the Complaint contains a statement summarizing Plaintiff's characterizations of her Complaint. To the extent this Paragraph contains any factual averments, Defendant denies them.

¹ Defendant WKU and the Individual Defendants named in Plaintiff's Complaint have filed Motions to Dismiss contemporaneously with the filing of this Answer. The Individual Defendants' Motion to Dismiss seeks dismissal of all claims against them on the basis of immunity. In the event that Motion to Dismiss is denied in whole or in part, Individual Defendants will join in Defendant WKU's Answer.

PARTIES, JURISDICTION AND VENUE

1. Defendant admits the allegations contained in Paragraph 1 of the Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of the Complaint to the extent it describes WKU's as a public university and method of service. Defendant denies all other allegations contained in Paragraph 2 of the Complaint.
3. Defendant denies the allegations contained in Paragraph 3 of the Complaint. Defendant admits the first and second sentences of paragraphs 3(a), 3(b), 3(c), 3(d) and 3(e), but denies all other allegations contained in those paragraphs.
4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.
5. The allegations contained in Paragraph 5 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies those allegations.
6. The allegations contained in Paragraph 6 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies those allegations.
7. The allegations contained in Paragraph 7 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies those allegations.
8. The allegations contained in Paragraph 8 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies those allegations.
9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

GENERAL ALLEGATIONS

10. Defendant admits the allegations contained in Paragraph 10 of the Complaint, with the exception of the allegation that she “provided all legal advice and representation to WKU, its officials, and Board of Regents,” which is denied.
11. Defendant admits the allegations contained in Paragraph 11 of the Complaint.
12. Defendant admits the allegations contained in Paragraph 12 of the Complaint.
13. Defendant admits the allegations contained in the first and last sentences of Paragraph 13 of the Complaint. Defendant denies the remaining allegations contained in Paragraph 13 of the Complaint.
14. Defendant admits the allegations contained in Paragraph 14 of the Complaint.
15. Defendant admits the allegations contained in the first sentence of Paragraph 15 of the Complaint. Defendant denies the remaining allegations contained in Paragraph 15 of the Complaint.
16. Defendant admits the allegations contained in Paragraph 16 of the Complaint to the extent that describe James Tomes’ employment with Defendant. Defendant denies the remaining allegations contained in Paragraph 16 of the Complaint.
17. Defendant admits that part of Plaintiff’s job duties included bringing matters before the President, his cabinet. Defendant denies the remaining allegations contained in Paragraph 17 of the Complaint.
18. Defendant admits the allegations contained in Paragraph 18 of the Complaint.

President Caboni Is Appointed President

19. Defendant admits the allegations contained in Paragraph 19 of the Complaint, but denies the allegations pertaining to “Senior Administrator for Title IX and Equal Opportunity/ADA/Affirmative Action”.

20. Defendant admits the first, second and fourth sentences of Paragraph 20 of the Complaint. The allegations contained in the third sentence of Paragraph 20 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies those allegations.
21. Defendant admits that the office for the general counsel was moved in 2018, but denies the remaining allegations contained in Paragraph 21 of the Complaint.
22. Defendant admits the allegations contained in Paragraph 22 of the Complaint, but denies them to the extent they imply the office space in Wetherby was not comparable to the office space in Craig.
23. Defendant admits the allegations contained in the first sentence of Paragraph 23 of the Complaint. Defendant denies the remaining allegations in Paragraph 23 of the Complaint.
24. Defendant denies the allegations contained in Paragraph 24 of the Complaint.
25. Defendant admits that a meeting involving Plaintiff occurred in January 2019. Defendant denies the remaining allegations contained in Paragraph 25 of the Complaint.
26. Defendant admits the allegations contained in the first sentence of Paragraph 26 of the Complaint to the extent she notified WKU and Caboni of the incident. Defendant denies the remaining allegations contained in Paragraph 26 of the Complaint.
27. Defendant admits the allegations contained in the first and second sentence of Paragraph 27 of the Complaint. Defendant denies the remaining allegations contained in Paragraph 27 of the Complaint.
28. Defendant denies the allegations contained in Paragraph 28 of the Complaint. To the extent Paragraph 28 attempts to quote portions of a statement made by Caboni to

Plaintiff, Defendant states the full statement speaks for itself and denies Plaintiff's characterization and partial quotation.

29. Defendant denies the allegations contained in Paragraph 29 of the Complaint.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

Caboni Achieves Removal of Wilkins as General Counsel

32. Defendant admits the allegations contained in Paragraph 32 of the Complaint to the extent the allegations pertain to a discussion between Wilkins and Caboni regarding a potential buy-out of her contract, but deny the allegations to the extent the discussion constituted an "offer."

33. Defendant admits the allegations contained in Paragraph 33 of the Complaint as they relate to electronic communications. To the extent Paragraph 33 of the Complaint attempts to summarize or characterize those communications, Defendant states the communications speak for themselves and Defendant denies the summarization and characterization to the extent they differ from those communications.

34. Defendant admits the allegations contained in Paragraph 34 of the Complaint with the caveat that Wilkins understood the buyout was subject to Board of Regents approval.

Defendant denies that Caboni's discussion with Wilkins constitute an "offer."

35. Defendant denies the allegations contained in Paragraph 35 of the Complaint.

36. Defendant admits the final sentence in Paragraph 36 of the Complaint. Defendant admits that Wilkins and Caboni discussed a reassignment, with Wilkins making proposals for reassignment that Caboni declined. Defendant denies the remaining allegations contained in Paragraph 36 of the Complaint.

37. Defendant admits the allegations contained in the first sentence of Paragraph 37 of the Complaint, but denies that Willins served as Senior Administrator responsible for Equal Opportunity/ADA/Affirmative Action and Title IX.. Defendant denies the remaining allegations contained in Paragraph 37 of the Complaint.
38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.
39. Defendant admits that Wilkins hired and mentored Anderson, that Anderson was approximately 38 years of age as stated in Paragraph 39. Defendant denies the remaining allegations contained within Paragraph 39 of the Complaint.
40. Defendant admits the allegations contained in Paragraph 40 of the Complaint.
41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.
42. Defendant admits that Plaintiff completed Title IX training and made various proposals to Defendant relating to Title IX. Defendant denies the remaining allegations contained in Paragraph 42 of the Complaint.
43. Defendant denies the allegations contained in Paragraph 43 of the Complaint.
44. Defendant denies the allegations contained in Paragraph 44 of the Complaint.

Wrongful Actions Against Wilkins While in Title IX Position

45. Defendant denies the allegations contained in Paragraph 45 of the Complaint.
46. Defendant admits the allegations contained in the first sentence of Paragraph 46 of the Complaint, including the three bullet points. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.
47. Defendant admits that Caboni and Wilkins discussed her position terminating in June 2022, but denies that this was discussed for the first time in May 2021. Defendant denies the remaining allegations contained in Paragraph 47 of the Complaint to the extent they

allege Plaintiff had not expressed her desire to retire in June 2022 when her contract terminated.

48. Defendant admits the allegations contained in Paragraph 48 of the Complaint, but denies them to the extent they imply Plaintiff's name and position should be listed.

49. Defendant denies the allegations contained in Paragraph 49 of the Complaint to the extent that allege any action that was not a part of routine employee classification.

50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

51. Defendant denies the allegations contained in Paragraph 51 of the Complaint to the extent that allege any action that was not a part of routine employee classification.

52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.

54. Defendant admits the allegations contained in the first sentence of Paragraph 54 of the Complaint. Defendant denies the remaining allegations contained in Paragraph 54 of the Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.

59. Defendant admits the allegations contained in Paragraph 59 of the Complaint regarding specific salary increases. Defendant denies the remaining allegations contained in Paragraph 59 of the Complaint.

60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

61. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint, therefore denies them.

62. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 62 of the Complaint, therefore denies them. Defendant admits the remaining allegations contained in Paragraph 62 of the Complaint.

Caboni's Actions in re Wilkins' Removal

63. Defendant admits that Wilkins was relieved of her responsibilities on November 22, 2021 and that a copy of the letter stating the reasons the University's decision is attached as Exhibit 2 to her Complaint. Defendant denies the remaining allegations contained in Paragraph 63 of the Complaint.

64. Defendant admits the allegations contained in the first sentence of Paragraph 64 of the Complaint. Defendant denies the remaining allegations contained in Paragraph 64 of the Complaint.

65. Defendant denies the allegations contained in Paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in the first sentence of Paragraph 66 of the Complaint. Defendant admits the allegations contained in the second sentence of Paragraph 66 of the Complaint.

67. Defendant admits the allegations contained in Paragraph 67 of the Complaint.

68. Defendant admits the allegations contained in Paragraph 68 of the Complaint.

69. Defendant admits the allegations contained in Paragraph 69 of the Complaint.

70. Defendant admits the allegations contained in Paragraph 70 of the Complaint.

71. Defendant admits the allegations contained in Paragraph 71 of the Complaint.

72. Defendant admits the allegations contained in Paragraph 72 of the Complaint, but denies the allegations to the extent Plaintiff alleges the actions were done “[f]or no reason whatsoever.”

73. Defendant denies the allegations contained in Paragraph 73 of the Complaint. Defendant states that all personal belongings of Plaintiff have been returned to her.

74. Defendant denies the allegations contained in Paragraph 74 of the Complaint.

75. Defendant denies the allegations contained in Paragraph 75 of the Complaint.

76. Defendant denies the allegations contained in Paragraph 76 of the Complaint.

77. Defendant denies the allegations contained in Paragraph 77 of the Complaint.

78. Defendant admits that the student newspaper has printed articles relating to Wilkins. Defendant denies the remaining allegations characterizing those articles contained in Paragraph 78 of the Complaint.

79. Defendant admits that it released a redacted version of the letter to the press in response to Open Records Act requests. Defendant admits that various news outlets have reported on the separation. Defendant denies the remaining allegations characterizing that reporting contained in Paragraph 79 of the Complaint.

80. Defendant denies the allegations contained in Paragraph 80 of the Complaint.

COUNT I
Breach of Contract

81. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

82. Defendant admits the allegations contained in Paragraph 82 of the Complaint.

83. Defendant denies the allegations contained in Paragraph 83 of the Complaint.

84. Defendant denies the allegations contained in Paragraph 84 of the Complaint.

85. Defendant denies the allegations contained in Paragraph 85 of the Complaint.

COUNT II
Kentucky Civil Rights Act

86. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

87. The allegations contained in Paragraph 87 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

88. Defendant denies the allegations contained in Paragraph 88 of the Complaint.

89. The allegations contained in Paragraph 89 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

90. Defendant denies the allegations contained in Paragraph 90 of the Complaint.

91. Defendant denies the allegations contained in Paragraph 91 of the Complaint.

92. Defendant denies the allegations contained in Paragraph 92 of the Complaint.

COUNT III
Kentucky Whistleblower Act

93. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

94. The allegations contained in Paragraph 94 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

95. Defendant admits the allegations contained in Paragraph 95 of the Complaint.

96. Defendant denies the allegations contained in Paragraph 96 of the Complaint.

97. Defendant denies the allegations contained in Paragraph 97 of the Complaint.

98. Defendant denies the allegations contained in Paragraph 98 of the Complaint.

99. Defendant denies the allegations contained in Paragraph 99 of the Complaint.

COUNT IV
Protected Activity

100. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

101. The allegations contained in Paragraph 101 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

102. Defendant denies the allegations contained in Paragraph 102 of the Complaint.

103. Defendant denies the allegations contained in Paragraph 103 of the Complaint.

104. Defendant denies the allegations contained in Paragraph 104 of the Complaint.

105. Defendant denies the allegations contained in Paragraph 105 of the Complaint.

COUNT V
Defamation

106. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

107. Defendant admits the allegations contained in Paragraph 107 of the Complaint.

108. Defendant denies the allegations contained in Paragraph 108 of the Complaint.

109. Defendant denies the allegations contained in Paragraph 109 of the Complaint.

110. Defendant admits the allegations contained in Paragraph 110 of the Complaint.

111. Defendant denies the allegations contained in Paragraph 111 of the Complaint.

112. Defendant denies the allegations contained in Paragraph 112 of the Complaint.

113. Defendant denies the allegations contained in Paragraph 113 of the Complaint.

**COUNT VI
Wrongful Termination**

114. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

115. Defendant denies the allegations contained in Paragraph 115 of the Complaint.

116. The allegations contained in Paragraph 116 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

117. Defendant denies the allegations contained in Paragraph 117 of the Complaint.

**COUNT VII
Fraud**

118. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

119. Defendant denies the allegations contained in Paragraph 119 (incorrectly numbered 118 in Plaintiff’s Complaint) of the Complaint.

120. Defendant denies the allegations contained in Paragraph 120 of the Complaint.

121. Defendant denies the allegations contained in Paragraph 121 of the Complaint.

122. Defendant denies the allegations contained in Paragraph 122 of the Complaint.

**COUNT VIII
Tortious Interference**

123. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

124. Defendant admits the allegations contained in Paragraph 124 of the Complaint.

125. Defendant denies the allegations contained in Paragraph 125 of the Complaint.

126. Defendant denies the allegations contained in Paragraph 126 of the Complaint.

127. Defendant denies the allegations contained in Paragraph 127 of the Complaint.

COUNT IX
Promissory Estoppel

128. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

129. Defendant admits that Caboni discussed a buyout of Wilkins' employment contract with Wilkins with basic terms as described in Paragraph 129 of the Complaint. Defendant admits that the buyout was not approved by the Board of Regents. Defendant denies the remaining allegations contained in Paragraph 129 of the Complaint.

130. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

131. Defendant denies the allegations contained in Paragraph 131 of the Complaint.

COUNT X
Invasion of Privacy – False Light

132. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

133. Defendant denies the allegations contained in Paragraph 133 of the Complaint.

134. Defendant denies the allegations contained in Paragraph 134 of the Complaint.

135. Defendant denies the allegations contained in Paragraph 135 of the Complaint.

136. Defendant denies the allegations contained in Paragraph 136 of the Complaint.

COUNT XI
Falsification of Business Records

137. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

138. The allegations contained in Paragraph 138 of the Complaint are legal conclusions

to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

139. The allegations contained in Paragraph 139 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

140. Defendant denies the allegations contained in Paragraph 140 of the Complaint.

141. The allegations contained in Paragraph 141 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

142. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

**COUNT XII
Conversion**

143. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

144. The allegations contained in Paragraph 144 of the Complaint are legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations.

145. Defendant denies the allegations contained in Paragraph 145 of the Complaint.

146. Defendant denies the allegations contained in Paragraph 146 of the Complaint.

147. Defendant denies the allegations contained in Paragraph 147 of the Complaint.

148. Defendant denies the allegations contained in Paragraph 148 of the Complaint.

149. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

**COUNT XIII
Intentional Infliction of Emotional Distress**

150. Defendant incorporates by reference its answers in each paragraph above as if specifically stated herein.

151. Defendant denies the allegations contained in Paragraph 151 of the Complaint.

152. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

153. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

155. Defendant denies any and all allegations contained in Plaintiff's Complaint which are not expressly admitted to be true herein.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted, and therefore, should be dismissed with prejudice.

THIRD DEFENSE

Defendants are entitled to governmental immunity, sovereign immunity, qualified immunity or official immunity.

FOURTH DEFENSE

Plaintiff's claims are barred by one or more or all of the affirmative defenses of failure to mitigate damages, lack of personal jurisdiction, statute of limitations, improper venue, failure to exhaust administrative remedies, accord and satisfaction, waiver, estoppel, failure to name a necessary party, unclean hands, statute of frauds, and any other matter constituting avoidance or affirmative defense, as discovery may reveal pursuant to the Kentucky Rules of Civil Procedure.

FIFTH DEFENSE

Defendant denies that Plaintiff has suffered the harm or damages as described in the Complaint. However, if she has suffered such harm or damages, they were caused in whole or in part by the

conduct of the Plaintiff herself or of third parties, and therefore, any award against this Defendant should be reduced by virtue of contributory negligence, comparative negligence, contribution, apportionment, or indemnity.

SIXTH DEFENSE

The Plaintiff's alleged injuries were the result of an intervening and superseding cause or causes and are not the substantial result of the acts or omissions of this Defendant.

WHEREFORE, Defendant demands judgment as follows:

- A. That the Complaint be dismissed with prejudice;
- B. For all costs and fees herein expended, including attorneys' fees;
- C. For any and all other relief to which it appears it may be entitled; and
- D. For leave to amend this Answer in the event discovery reveals further defenses.

Respectfully submitted,

/s/ R. Gregg Hovious
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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the clerk of the court by using the KYeCourts' eFiling System and a copy of the foregoing was served, via Email and U.S. Mail this 12th day of May, 2022 to the following counsel of record:

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Counsel for Plaintiff

/s/ R. Gregg Hovious
Counsel for Defendant WKU