

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DR. GAVIN CLARKSON,

Plaintiff,

v.

No.

**BOARD OF REGENTS OF
NEW MEXICO STATE UNIVERSITY,**

Defendant.

DEFENDANT’S ANSWER TO COMPLAINT

COMES NOW the Defendant, the Board of Regents of New Mexico State University (hereinafter “Defendant”), by and through its attorneys of record, Conklin, Woodcock, & Ziegler, P.C. (Christa M. Hazlett), and for its Answer to Plaintiff’s Complaint, states as follows:

RESPONSE TO FACTS COMMON TO ALL CLAIMS FOR RELIEF

1. In response to the allegations contained in Paragraph 1, Defendant admits that Dr. Clarkson was an Associate Professor in the College of Business at New Mexico State University until April 27, 2018. Upon information and belief, Defendant admits that Dr. Clarkson is an enrolled member of the Choctaw Nation, a federally recognized tribe. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 1, and therefore denies same.

2. Upon information and belief, Defendant admits that Dr. Clarkson received a BA and an MBA from Rice University, is a cum laude graduate of Harvard Law School, and was

President of the Native American Law Students Association and Managing Editor of the Harvard Journal of Law and Technology. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 2, and therefore denies same.

3. Defendant is without sufficient information to admit or deny the allegations of Paragraph 3, and therefore denies same.

4. Defendant admits that Plaintiff's appointment to the NMSU faculty required him to be the faculty advisor to the Native American Business Students Association and to develop new courses related to tribal economic development. Defendant denies the remaining allegations of Paragraph 4 of the Complaint.

5. Defendant is without sufficient information to admit or deny the allegations of Paragraph 5, and therefore denies same.

6. Defendant is without sufficient information to admit or deny the allegations of Paragraph 6, and therefore denies same.

7. Defendant admits that Dr. Clarkson requested a leave of absence until January 2020, and that Provost Daniel Howard granted a leave of absence until January 2020 in a letter dated June 28, 2017. All other allegations contained in Paragraph 7 are denied.

8. Defendant admits that Provost Howard's letter stated that Dr. Clarkson's tenure clock would be stopped during his leave. Defendant denies the remaining allegations contained in Paragraph 8.

9. Defendant admits the allegations contained in Paragraph 9 of the Complaint.

10. Defendant admits the allegations contained in Paragraph 10 of the Complaint.

11. Defendant states that Paragraph 11 accurately states, in part, a portion of New Mexico State University (“NMSU”) Administrative Rules and Procedures § 8.53. Defendant denies the remaining allegations contained in Paragraph 11 of the Complaint.

12. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 12, and therefore denies same.

13. Defendant denies ever discriminating against Plaintiff. Defendant admits that someone provided one of Plaintiff’s supervisors a file containing certain pages of Plaintiff’s published articles and alleged that Dr. Clarkson had self-plagiarized some of his own earlier work. Defendant is without sufficient information to admit or deny the remaining allegations contained in Paragraph 13, and therefore denies same.

14. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 14, and therefore denies same.

15. Paragraph 15 of the Complaint is vague and confusing and is therefore denied.

16. Defendant denies the allegations contained in Paragraph 16.

17. Upon information an belief, Defendant admits the allegations contained in Paragraph 17 of the Complaint.

18. Defendant is without sufficient information to admit or deny the allegations of Paragraph 18, and therefore denies same.

19. Defendant is without sufficient information to admit or deny the allegations of Paragraph 19, and therefore denies same.

20. Defendant is without sufficient information to admit or deny the allegations of Paragraph 20.

21. Defendant admits the first sentence of Paragraph 21. Defendant denies the remainder of Paragraph 21 of the Complaint.

22. Defendant is without information to admit or deny the allegations of Paragraph 22, and therefore denies same.

23. Defendant is without information to admit or deny the allegations of Paragraph 23, and therefore denies same.

24. Defendant admits that Plaintiff's resignation from the U.S. Department of the Interior resulted in the revocation of Plaintiff's leave. Defendant denies all other allegations contained in Paragraph 24.

25. Defendant denies the allegations contained in Paragraph 25..

26. Defendant is without sufficient information to admit or deny the allegations of Paragraph 26, and therefore denies same.

27. Defendant admits the allegations of Paragraph 27.

28. Defendant admits that Plaintiff sent an email to Hari Sankaran stating that Plaintiff was running for Congress. Defendant is without sufficient information to admit or deny the remaining allegations in Paragraph 28, and therefore denies same.

29. Defendant is without sufficient information to admit or deny the allegations of Paragraph 29, and therefore denies same.

30. Defendant is without sufficient information to admit or deny the allegations of Paragraph 30, and therefore denies same.

31. Defendant is without sufficient information to admit or deny the allegations of Paragraph 31, and therefore denies same.

32. Defendant admits the first sentence of Paragraph 32. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 32, and therefore denies same.

33. Defendant is without sufficient information to admit or deny the allegations of Paragraph 33, and therefore denies same.

34. Defendant admits that Professor Sankaran sent a Doodle Poll request to Dr. Clarkson for a meeting to discuss and reevaluate the leave of absence that was granted to Plaintiff. Defendant denies the remainder of the allegations contained in Paragraph 34.

35. Defendant is without sufficient information to admit or deny the allegations of Paragraph 35, and therefore denies same.

36. Defendants admits the first sentence of Paragraph 36. Defendant admits that many faculty were paid on January 12 2018, for the pay period of January 1 through January 15, 2018. If any other allegations are intended by Paragraph 36, they are denied.

37. Defendant admits that Paragraph 37 accurately recites a portion of an email sent by Professor Sankaran on January 11, 2018. If any other allegations are intended by this Paragraph, they are denied.

38. Defendant is without sufficient information to admit or deny the allegations of Paragraph 38, and therefore denies same.

39. Defendant admits that Provost Howard sent Plaintiff a letter via email on January 12, 2018, stating that his leave was revoked and telling him to return to duty on January 16, 2018, or resign. Defendant admits that January 12, 2018, was the day before the Martin Luther King holiday weekend. Defendant denies any remaining allegations in Paragraph 39.

40. Defendant is without sufficient information to admit or deny the allegations of Paragraph 40, and therefore denies same.

41. Defendant admits the allegations of Paragraph 41.

42. Defendant denies the allegations of Paragraph 42.

43. Defendant admits that Plaintiff attended the College of Business convocation. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 43, and therefore denies same.

44. Defendant denies the allegations of Paragraph 44.

45. Defendant denies the allegations of Paragraph 45.

46. Defendant denies the allegations of Paragraph 46.

47. Defendant denies the allegations of Paragraph 47.

48. Defendant admits that Provost Howard and Plaintiff had a telephone conversation on or about January 17, 2018. Defendant denies the second sentence of Paragraph 48. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 48, and therefore denies same.

49. Defendant denies the allegations of Paragraph 49.

50. Defendant admits that Plaintiff told Provost Howard that he was willing to teach classes. Defendant denies all remaining allegations of Paragraph 50.

51. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 51, and therefore denies same.

52. Defendant admits that Professor Sankaran emailed Plaintiff on Friday, January 19, 2018, stating that Plaintiff had been scheduled to teach three mini-mester courses during the Spring

2018 semester. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 52, and therefore denies same.

53. Defendant denies the allegations of Paragraph 53.

54. Defendant denies the first sentence of Paragraph 54. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 54, and therefore denies same.

55. Defendant denies the allegations of Paragraph 55.

56. Defendant admits that on January 24, 2018, a letter was sent to Plaintiff from Provost Howard proposing Plaintiff's termination. Defendant is without sufficient information to admit or deny the remaining allegations in Paragraph 56, and therefore denies same.

57. Defendant is without sufficient information to admit or deny the allegations of Paragraph 57 and therefore denies same.

58. Defendant is without sufficient information to admit or deny the allegations of Paragraph 58, and therefore denies same.

59. Defendant denies the allegations of Paragraph 59.

60. Defendant denies the allegations of Paragraph 60.

61. Defendant admits that in late February 2018, NMSU suggested that the hearing be postponed and Dr. Clarkson agreed to postpone the Pre-Action Hearing. If any other allegations are intended by this paragraph, they are denied.

62. Defendant admits that the Pre-Action Hearing took place on Friday April 13, 2018. Defendant denies the remaining allegations of Paragraph 62.

63. Defendant denies the allegations of Paragraph 63.

64. Defendant denies the allegations of Paragraph 64.

65. Defendant denies the allegations of Paragraph 65

66. Defendant admits that the hearing office decided to uphold the proposed termination of Plaintiff. Defendant denies the remaining allegations of Paragraph 66.

67. Defendant denies the allegations of Paragraph 67.

68. Defendant admits that the portion of Paragraph 68 that appears in quotations also appears in the hearing officer's decision, and that the hearing officer ruled in favor of upholding the proposed termination. Defendant denies all remaining allegations in Paragraph 68.

69. Defendant admits that Provost Howard sent a notice of termination to Plaintiff dated April 24, 2018, and that Plaintiff had five days to appeal the hearing officer's determination. Defendant denies all remaining allegations of Paragraph 69.

70. Defendant admits the allegations of Paragraph 70.

71. Defendant admits that Plaintiff's employment was terminated effective April 27, 2018. Defendant denies all remaining allegations contained in Paragraph 71.

RESPONSE TO FIRST CAUSE OF ACTION
(Wrongful Termination)

72. In response to Paragraph 72, Defendant incorporates all preceding paragraphs as through fully set forth herein.

73. Defendant admits the allegations of Paragraph 73.

74. Defendant denies the allegations of Paragraph 74.

75. Defendant denies the allegations of Paragraph 75.

76. Defendant denies the allegations of Paragraph 74.

77. Defendant admits that no current contract exists between the parties. The remaining allegations of Paragraph 77 are vague and are therefore denied.

78. Defendant denies the allegations of Paragraph 74.

RESPONSE TO SECOND CAUSE OF ACTION
(Denial of Due Process)

79. In response to Paragraph 79, Defendant incorporates all preceding paragraphs as through fully set forth herein.

80. Paragraph 80 contains a statement of law to which no response is required. To the extent that a response is required, the allegations are denied.

81. Defendant admits that NMSU policy states that due process will be afforded to regular faculty prior to termination. If any other allegations are intended by Paragraph 81, they are denied.

82. Defendant denies the allegations of Paragraph 82.

83. Defendant denies the allegations of Paragraph 83.

84. Defendant denies the allegations of Paragraph 84

85. Defendant denies the allegations of Paragraph 85.

RESPONSE TO THIRD CAUSE OF ACTION
(Breach of Contract)

86. In response to Paragraph 79, Defendant incorporates all preceding paragraphs as through fully set forth herein.

87. Defendant is without sufficient information to admit or deny the allegations of Paragraph 87, and therefore denies same.

88. Defendant denies the allegations of Paragraph 88.

89. Defendant denies the allegations of Paragraph 89.

90. Defendant denies the allegations of Paragraph 90.

RESPONSE TO FOURTH CAUSE OF ACTION
(42 USC § 1983 – Racial Discrimination)

91. Defendant is without sufficient information to admit or deny the allegations of Paragraph 90, and therefore denies same.

92. Upon information and belief, Defendant admits the allegations of Paragraph 92.

93. Defendant admits that Plaintiff joined the faculty of NMSU in 2012. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 93, and therefore denies same.

94. Defendant denies the allegations contained in Paragraph 94.

95. Defendant admits that Plaintiff is no longer employed by NMSU. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 95, and therefore denies same.

96. Defendant denies the allegations contained in Paragraph 96.

97. Paragraph 97 states legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

98. Upon information and belief, Defendant admits the first sentence of Paragraph 98. Defendant denies the allegations in second sentence of Paragraph 98. The remaining sentences of Paragraph 97 state legal conclusions to which no response is required. To the extent that a response is required, the remaining allegations are denied.

99. Defendant denies that Plaintiff is entitled to any of the relief sought in Paragraphs 99 through 103, and asks that the Court award fees and costs to Defendant as appropriate.

GENERAL DENIAL

Defendant denies all allegations of the Complaint which are not specifically admitted above.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

One or more of Plaintiff's claims may be barred by Plaintiff's failure to exhaust the administrative remedies available to him via NMSU's post termination appeal process.

SECOND AFFIRMATIVE DEFENSE

One or more of Plaintiff's claims may be barred by the doctrine of sovereign immunity, including but not limited to immunity granted by the 11th Amendment to the U.S. Constitution and immunity granted under the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -27..

THIRD AFFIRMATIVE DEFENSE

One or more of Plaintiff's claims may fail to state a claim for which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

One or more of Plaintiff's claims may be barred by Plaintiff's failure to exhaust his administrative remedies via the U.S. Equal Employment Opportunity Commission or the New Mexico Human Rights Bureau.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint may be barred by its failure to comply with the notice provision of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -27.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint for damages may be limited pursuant to the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -27.

SEVENTH AFFIRMATIVE DEFENSE

If an express or implied contract existed, Plaintiff's rights and remedies are limited by the terms, conditions, policies and procedures contained in such alleged contract.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be limited or barred in whole or in part by her failure to comply with or exhaust the grievance procedure or other administrative procedures or remedies.

NINTH AFFIRMATIVE DEFENSE

Depending on discovery, Plaintiff's Complaint may be barred in whole or in part by Plaintiff's failure to mitigate his damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint may be barred by the doctrines of waiver and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant had legitimate, non-discriminatory and non-retaliatory reasons for all actions taken with respect to Plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

All of Defendant's actions were justified and/or privileged, Defendant acted in good faith, pursuant to bona fide legitimate business rights, reasons, purposes, or privileges, and Defendant acted without improper motive, improper means, wrongful act or intent to injure the Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, in whole or in part, are barred or limited by Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

Depending on discovery, Plaintiffs' claims and/or his damages may be barred or limited, in whole or in part, based on the doctrine of after acquired evidence.

SIXTEENTH AFFIRMATIVE DEFENSE

The actions complained of were taken due to the Plaintiff's actions, the Plaintiff's performance, or other legitimate business purpose unrelated to discrimination or retaliation.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant hereby gives notice that it intends to rely upon any other defense that may become available or appear during the proceedings in its case and hereby reserves its right to amend its answer to assert such defense.

Respectfully Submitted,

CONKLIN, WOODCOCK, & ZIEGLER, P.C.

By: /s/ Christa M. Hazlett

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Board of Regents of New Mexico State University