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OF OHIO

IN THE OHIO COURT OF CLAIMS

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NATHAN C. HALL, MD, PHD,

PLAINTIFF,

v.

THE OHIO STATE UNIVERSITY
WEXNER MEDICAL CENTER,

DEFENDANT.

CASE NO. 2015-00038

JUDGE DALE A. CRAWFORD

**ANSWER AND DEFENSES OF DEFENDANT THE OHIO STATE UNIVERSITY
WEXNER MEDICAL CENTER TO PLAINTIFF NATHAN C. HALL'S FIRST
COMPLAINT**

Pursuant to Civ.R. 12, Defendant The Ohio State University Wexner Medical Center ("Defendant" or the "University")¹ submits its Answer and Defenses to Plaintiff Dr. Nathan C. Hall's ("Plaintiff") First Amended Complaint ("Complaint"), admitting, denying, and stating as follows:

ANSWER AND FIRST DEFENSE

NATURE OF THE CLAIMS

1. The University admits only that Plaintiff has filed this action against the University and that Dr. Richard D. White ("Dr. White") is entitled to immunity from suit. The University denies the remaining allegations set forth in Paragraph 1 of the Complaint.

a. The University denies the allegations set forth in Paragraph 1(a) of the Complaint.

b. The University denies the allegations set forth in Paragraph 1(b) of the Complaint.

¹ Here, Plaintiff has sued the The Ohio State University Wexner Medical Center. The Medical Center is not a separate legal entity from the University and instead is simply one unit of the University. As a result, the University is the real party in interest.

ON COMPUTER

c. The University admits only that Plaintiff did not have a contractually protected interest in his position as Division Chief of Nuclear Medicine and Molecular Imaging. The University denies the remaining allegations set forth in Paragraph 1(c) of the Complaint.

d. The University denies the allegations set forth in Paragraph 1(d) of the Complaint.

e. The University denies the allegations set forth in Paragraph 1(e) of the Complaint.

2. The University admits only that Plaintiff alleges various causes of action against the University. The University denies the remaining allegations set forth in Paragraph 2 of the Complaint.

PARTIES

3. The University lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint and therefore denies them.

4. The University denies the allegations set forth in Paragraph 4 of the Complaint.

5. The University lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint and therefore denies them.

6. The University admits only that it is an instrumentality of the State of Ohio, that it directly and/or indirectly receives various forms of financial assistance from the State of Ohio and the federal government, that it employed more than 20 employees during all times Plaintiff was employed by the University, and that it currently employs more than 20 employees. The University states that the allegation it constitutes an "employer" under the statutes identified in Paragraph 6 is a legal conclusion to which no response is required. The University denies the remaining allegations set forth in paragraph 6 of the Complaint.

7. The University admits only that Dr. White was Chairman of the Department of Radiology at certain times alleged in the Complaint, that because Dr. White was Chairman he had certain supervisory duties over the Department of Radiology including Plaintiff while he was employed there, and that the University is an instrumentality of the State of Ohio. The University denies the remaining allegations set forth in Paragraph 7 of the Complaint.

JURISDICTION

8. The University admits only Plaintiff purports to allege claims under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*; R.C. Section 4112.14(A); Ohio tort law; Ohio contract law; and Ohio common law, but denies this action properly arises under them. The University denies the remaining allegations set forth in Paragraph 8 of the Complaint.

9. The University admits only that Plaintiff dual-filed a charge with the Equal Employment Opportunity Commission and the Ohio Civil Rights Commission, and that he received a right to sue letter. The University lacks knowledge or information sufficient to form a belief as to the truth of any allegations regarding Exhibit A to the Complaint, and therefore denies them. The University denies the remaining allegations set forth in Paragraph 9 of the Complaint.

10. The University admits only that this Court is the proper jurisdiction for the claims alleged by Plaintiff pursuant to R.C. 2743.02, and that Dr. White was an employee of the State of Ohio at certain times alleged in the Complaint. The University states that the remaining allegations in Paragraph 10 of the Complaint call for a legal conclusion and therefore do not require a response.

11. The University admits only that Franklin County is the appropriate venue for this action, but denies that it committed any acts giving rise to this action. The University denies the remaining allegations set forth in Paragraph 11 of the Complaint.

GENERAL FACTUAL ALLEGATIONS

12. The University admits the allegations set forth in Paragraph 12 of the Complaint.

13. The University admits only that it had certain performance expectations and criteria for Plaintiff. The University denies the remaining allegations set forth in Paragraph 13 of the Complaint.

14. The University denies that the document attached as Exhibit B is a true and accurate copy of Appointment, Promotion & Tenure Document (“APT Document”). As the allegations in Paragraph 14 purport to describe the contents of the actual APT Document, the University states that the actual APT Document speaks for itself. The University denies the remaining allegations set forth in Paragraph 14 of the Complaint.

15. The University denies that the document attached as Exhibit C is a true and accurate copy of The College of Medicine Policy on Salary Recovery (“Salary Recovery Policy”). As the allegations in Paragraph 15 purport to describe the contents of the actual Salary Recovery Policy, the University states that the actual Salary Recovery Policy speaks for itself. The University denies the remaining allegations set forth in Paragraph 15 of the Complaint.

16. The University denies the allegations set forth in Paragraph 16 of the Complaint.

17. The University denies that the documents attached as Exhibit D are a true and accurate copy of Plaintiff’s Physician Employment Agreement (the “Employment Agreement”). The University admits only that Plaintiff entered into the actual Employment Agreement in July 2011. As the allegations in Paragraph 17 purport to describe the contents of the Employment

Agreement, the University states that the Employment Agreement speaks for itself. The University denies the remaining allegations set forth in Paragraph 17 of the Complaint.

18. As the allegations in Paragraph 18 purport to describe the contents of the Employment Agreement, the University states that the Employment Agreement speaks for itself.

19. As the allegations in Paragraph 19 purport to describe the contents of the Employment Agreement, the University states that the Employment Agreement speaks for itself.

20. The University denies the allegations of Paragraph 20, including subparagraphs (a)-(j) and (j)(i)-(j)(iii).

21. The University admits only that Dr. White was Chairman of the Department of Radiology at certain times alleged in the Complaint, and that because Dr. White was Chairman he had certain supervisory duties over the Department of Radiology including Plaintiff while he was employed there. The University denies the remaining allegations of Paragraph 21 of the Complaint.

22. The University admits only that Plaintiff has, at various times while employed by the University, received evaluations containing negative remarks about his job performance. The University specifically denies that Dr. White was inconsistent in his supervisory duties compared with any prior Chairmen or Chairwoman of the Radiology Department. The University denies the remaining allegations of Paragraph 22 of the Complaint.

23. The University denies the allegations set forth in Paragraph 23 of the Complaint.

24. The University states that Dr. White's Employment Agreement, and any other employment agreements he had with the University, speak for themselves. The University denies the remaining allegations of Paragraph 24 of the Complaint.

25. The University states that the first and fourth sentences of Paragraph 25 reference unspecified documents and, therefore, the University lacks knowledge or information sufficient to form a belief as to the truth of any allegations in the first and fourth sentences of Paragraph 25 and therefore denies them. As to the second sentence of Paragraph 25, the University admits only that Plaintiff had certain job performance failings, including those where Plaintiff did not meet his job requirements. The University states that the third sentence of Paragraph 25 constitutes a hypothetical for which the University lacks knowledge or information sufficient to form a belief as to the truth the allegations and therefore denies them. The University denies the remaining allegations set forth in Paragraph 25 of the Complaint,

26. The University states that the APT Document, the Salary Recovery Policy, and the Employment Agreement speak for themselves. The University denies the remaining allegations set forth in Paragraph 26 of the Complaint.

27. The University denies the allegations set forth in Paragraph 27 of the Complaint.

28. The University denies the allegations set forth in the first sentence of Paragraph 28 of the Complaint. As to the second sentence of Paragraph 28, the University lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

29. The University denies the allegations set forth in Paragraph 29 of the Complaint.

30. The University denies the allegations set forth in Paragraph 30 of the Complaint.

31. The University admits only that Dr. White had legitimate, non-discriminatory, and non-retaliatory reasons for every action he took in his role as Chair of the Radiology Department. The University denies the remaining allegations set forth in Paragraph 31 of the Complaint.

32. The University lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding what reasons were unknown to Plaintiff or what appeared to frustrate Dr. White, and therefore denies such allegations. The University denies the remaining allegations set forth in Paragraph 32 of the Complaint, including subparagraphs 32(a)-32(c).

33. The University denies the allegations in the first sentence of Paragraph 33 of the Complaint. As to the second sentence of Paragraph 33, the University states that the public docket for the case identified in Paragraph 33 speaks for itself and therefore no response is required. As to the third sentence of Paragraph 33, the University lacks knowledge or information sufficient to form a belief as to the truth the allegations and therefore denies them.

34. The University denies the allegations set forth in Paragraph 34 of the Complaint.

35. The University admits only that Plaintiff had various job performance failings and that Plaintiff filed a complaint against Dr. White with the University's Office of Human Resources. The University denies the remaining allegations set forth in Paragraph 35 of the Complaint.

36. The University denies the allegations set forth in Paragraph 36 of the Complaint, including subparagraphs 36(a)-(d).

37. The University admits only that it removed Plaintiff from his position as Division Chief of Nuclear Medicine and Molecular imaging for various job performance failings. The University denies the remaining allegations set forth in Paragraph 37 of the Complaint.

38. The University denies the allegations set forth in Paragraph 38 of the Complaint.

39. The University admits that Dr. Mona Natwa served as the interim Division Chief of Nuclear Medicine and Molecular Imaging and subsequently became the permanent Division

Chief. The University denies the remaining allegations set forth in Paragraph 39 of the Complaint.

40. The University states that Case Report referenced by the allegations set forth in Paragraph 40 of the Complaint speaks for itself. The University denies any remaining allegations set forth in Paragraph 40 of the Complaint to the extent they are inconsistent with the actual Case Report.

41. The University admits only that Plaintiff resigned his employment with the University in August of 2014. The University lacks knowledge or information sufficient to form a belief as to the truth the remaining allegations set forth in Paragraph 41 and therefore denies them.

FIRST CLAIM FOR RELIEF
(Discrimination and Retaliation in Violation of the ADEA)

42. The University incorporates its admissions, denials, and statements contained in all of the preceding paragraphs.

43. The University admits only that Plaintiff purports to be aged 40 or older at all times relevant to the Complaint. The University states that whether Plaintiff is protected by the Age Discrimination in Employment Act is a legal conclusion to which no response is required. The University lacks knowledge or information sufficient to form a belief as to the truth the remaining allegations set forth in Paragraph 43 and therefore denies them.

44. The University denies the allegations set forth in Paragraph 44 of the Complaint.

45. The University denies the allegations set forth in Paragraph 45 of the Complaint.

46. The University denies the allegations set forth in Paragraph 46 of the Complaint.

47. The University denies the allegations set forth in Paragraph 47 of the Complaint.

SECOND CLAIM FOR RELIEF
(Age Discrimination in Violation of R.C. Section 4112.14(A))

48. The University incorporates its admissions, denials, and statements contained in all of the preceding paragraphs.

49. The University denies the allegations set forth in Paragraph 49 of the Complaint.

50. The University denies the allegations set forth in Paragraph 50 of the Complaint.

51. The University denies the allegations set forth in Paragraph 51 of the Complaint.

52. The University admits that Dr. Mona Natwa served as the interim Division Chief of Nuclear Medicine and Molecular Imaging and subsequently became the permanent Division Chief. The University denies the remaining allegations set forth in Paragraph 52 of the Complaint.

53. The University denies the allegations set forth in Paragraph 53 of the Complaint.

THIRD CLAIM FOR RELIEF
(Wrongful Discharge in Violation of Public Policy)

54. The University incorporates its admissions, denials, and statements contained in all of the preceding paragraphs.

55. The University admits only that Plaintiff did not have a contractual right to his position as Division Chief of Nuclear Medicine and Molecular Imaging. The University denies the remaining allegations set forth in Paragraph 55 of the Complaint.

56. The University denies the allegations set forth in Paragraph 56 of the Complaint.

57. The University denies the allegations set forth in Paragraph 57 of the Complaint.

58. The University denies the allegations set forth in Paragraph 58 of the Complaint.

59. The University denies the allegations set forth in Paragraph 59 of the Complaint.

FOURTH CLAIM FOR RELIEF
(Breach of Contract)

60. The University incorporates its admissions, denials, and statements contained in all of the preceding paragraphs.

61. The University states that the Employment Agreement speaks for itself. The University denies the remaining allegations set forth in Paragraph 61 of the Complaint.

62. The University denies the allegations set forth in Paragraph 62 of the Complaint.

63. The University states that the Employment Agreement speaks for itself. The University denies the remaining allegations set forth in Paragraph 63 of the Complaint.

64. The University denies the allegations set forth in Paragraph 64 of the Complaint.

FIFTH CLAIM FOR RELIEF
(Constructive Discharge)

65. The University incorporates its admissions, denials, and statements contained in all of the preceding paragraphs.

66. The University admits only that Plaintiff had various job performance failings. The University denies the remaining allegations set forth in Paragraph 66 of the Complaint.

67. The University admits that Plaintiff met with Kate Dillingham regarding matters within the purview of the University's Human Resources personnel. The University denies the remaining allegations set forth in Paragraph 67 of the Complaint.

68. The University lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68 of the Complaint and therefore denies them.

69. The University specifically denies any harassment by Dr. White. The University lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 69 of the Complaint and therefore denies them.

70. The University denies the allegations set forth in Paragraph 70 of the Complaint.
71. The University denies the allegations set forth in Paragraph 71 of the Complaint.
72. The University denies the allegations set forth in Paragraph 72 of the Complaint.
73. The University denies the allegations set forth in Paragraph 73 of the Complaint.

ADDITIONAL DEFENSES

1. Plaintiff's Complaint fails to state a claim on which relief may be granted.
2. Plaintiff's claims are barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.
3. Plaintiff's claims are barred, in whole or in part, by the doctrine of qualified immunity.
4. Plaintiff's claims are barred, in whole or in part, by R.C. 9.86 and R.C. 2743.02 because Dr. White was at all times an officer or employee of the State of Ohio consistent with R.C. 109.36, any acts or omissions by Dr. White complained of by Plaintiff were not manifestly outside the scope of Dr. White's office or employment, and Dr. White did not act with malicious purpose, in bad faith, or in a wanton or reckless manner.
5. Plaintiff's claims are barred, in whole or in part, for failure to exhaust administrative remedies and/or certain of Plaintiff's allegations extend beyond the scope of any charge of discrimination that Plaintiff filed with the Ohio Civil Rights Commission and/or Equal Employment Opportunity Commission.
6. Plaintiff's claims are barred, in whole or in part, by the applicable statute or statutes of limitations and/or to the extent that Plaintiff relies on any acts or events occurring outside the applicable statute or statutes of limitations, such claims are barred.

7. Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of waiver, acquiescence, estoppel, laches, and/or unclean hands.

8. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot establish a *prima facie* case for one or more of his claims.

9. Plaintiff's claims are barred, in whole or in part, because the University's actions toward Plaintiff were for legitimate non-discriminatory and non-retaliatory reasons.

10. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot establish that the University's reasons for any adverse employment actions against Plaintiff were a pretext for any alleged unlawful motive(s).

11. Plaintiff's claims are barred, in whole or in part, because of the honest belief doctrine.

12. To the extent the University is ever found to have been motivated by impermissible criteria, the University asserts that all employment decisions made in this action would have occurred even in the absence of the impermissible criteria.

13. Some or all of Plaintiff's claims fail because he has failed to identify a clear public policy manifested in a state or federal constitution, state or administrative regulation, or in the common law.

14. Some or all of Plaintiff's claims fail because dismissing employees under circumstances like those involved in Plaintiff's dismissal would not jeopardize a clear public policy.

15. Some or all of Plaintiff's claims fail because the alleged adverse employment actions were not motivated by conduct related to a clear public policy.

16. Some or all of Plaintiff's claims fail because there were one or more overriding business justifications for all alleged adverse employment actions taken against Plaintiff.

17. Some or all of Plaintiff's claims fail because of the election of remedies doctrine.

18. Some or all of Plaintiff's claims fail because Plaintiff had available to him the opportunity to arbitrate the discharge.

19. Some or all of Plaintiff's claims fail because of failure or want of consideration, Plaintiff's failure to fulfill conditions precedent to any such contract, and/or Plaintiff's unexcused non-performance.

20. Some or all of Plaintiff's claims fail to state a claim on which non-economic damages may be awarded.

21. Some or all of Plaintiff's claims fail to state a claim on which reinstatement may be awarded.

22. Some or all of Plaintiff's claims fail to state a claim on which front pay may be awarded.

23. Some or all of Plaintiff's claims fail to state a claim on which punitive damages may be awarded.

24. Some or all of Plaintiff's claims fail to state a claim on which attorneys' fees may be awarded.

25. Plaintiff has failed to mitigate his damages, if any.

26. Some or all of Plaintiff's damages may be barred or limited because Plaintiff's alleged injuries and harms were caused, in whole or in part, by Plaintiff's own actions and/or the actions of third parties for whom the University is not responsible.

27. Some or all of Plaintiff's damages may be barred or limited because Plaintiff's alleged damages are speculative and thus unavailable as a matter of law.

28. Some or all of Plaintiff's damages may be barred or limited by the after-acquired evidence doctrine.

29. Some or all of Plaintiff's damages are barred or limited by Ohio Revised Code Sections 2315.18, 2315.51, 2743.02, and/or 3345.50, and/or other applicable state statutes.

30. Some or all of Plaintiff's damages are barred or limited by the Due Process clause of the United States Constitution and/or the Due Process clause of the Ohio Constitution.

31. Defendant reserves the right to assert additional affirmative defenses which may become known to it through further investigation and discovery in this action.

WHEREFORE, the University respectfully submits that Plaintiff's Complaint is without merit, that judgment should be entered in favor of the University, and that the University should be awarded its attorneys' fees, costs, and expenses incurred in the defense of this action.

Respectfully submitted,

/s/ Jason E. Starling

Fred G. Pressley, Jr. (0023090) (Trial Counsel)

Jason E. Starling (0082619)

PORTER, WRIGHT, MORRIS & ARTHUR LLP

41 South High Street, Suites 2800-3200

Columbus, Ohio 43215

Telephone: (614) 227-2147

Facsimile: (614) 227-2100

fpressley@porterwright.com

jstarling@porterwright.com

/s/ Emily M. Simmons

Emily M. Simmons (0082519)

Assistant Chief – Court of Claims Defense

Office of Ohio Attorney General Mike DeWine

150 East Gay Street, 18th Floor

Columbus, Ohio 43215

Telephone: (614) 466-7447

Facsimile: (614) 644-9185
Emily.Simmons@OhioAttorneyGeneral.gov

CERTIFICATE OF SERVICE

I certify that on February 19, 2015, I filed a copy of the foregoing to the following
counsel of record via electronic transmission:

James D. Colner
SHUMAKER, LOOP & KENDRICK, LLP
41 South High Street, Suite 2400
Columbus, Ohio 43215
Telephone: (614) 628-4459
Facsimile: (614) 463-1108
jcolner@slk-law.com

Attorneys for Plaintiff Dr. Nathan C. Hall

/s/ Jason E. Starling
Jason E. Starling