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**PER CURIAM OPINION,
U.S. COURT OF APPEALS
FOR THE FIFTH CIRCUIT
(OCTOBER 3, 2023)**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DEANA POLLARD SACKS,

Plaintiff-Appellant,

v.

TEXAS SOUTHERN UNIVERSITY; AHUNANYA
ANGA; JAMES DOUGLAS; FERNANDO COLON-
NAVARRO; ANA OTERO; APRIL WALKER;
DARNELL WEEDEN,

Defendants-Appellees.

No. 22-20541

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-299

Before: KING, WILLETT, and DOUGLAS,
Circuit Judges.

PER CURIAM:

Deana Pollard Sacks resigned from her tenured professorship at the Thurgood Marshall School of Law at Texas Southern University (TSU) in August 2020.

She then sued TSU and several TSU employees for Title VII constructive discharge, Equal Pay Act (EPA) retaliation, and civil rights violations under 42 U.S.C. § 1983. The district court dismissed all her claims, holding that *res judicata* barred her § 1983 claims and that she failed to state Title VII and EPA claims. We AFFIRM.

I

We start at the beginning. In 2018, while Sacks was still teaching at TSU, she filed her first suit against TSU and its employees (*Sacks I*). Sacks sued TSU for (1) Title VII hostile work environment, (2) Title VII retaliation, (3) EPA violation, and (4) § 1983 civil rights violations. She also sued Ahunanya Anga, James Douglas, Fernando Colon-Navarro, Ana Otero, and April Walker, all TSU employees, for (1) § 1983 civil rights violations and (2) invasion of privacy.

Sacks lost on all claims. The district court dismissed all of Sacks's claims except her (1) Title VII race-based hostile work environment claim, (2) EPA claim, and (3) § 1983 civil rights claim against Douglas. The Title VII and § 1983 claims were later dismissed on summary judgment. The EPA claim continued to trial, where the jury found for TSU.

In August 2020, while *Sacks I* was ongoing, Sacks resigned from TSU. A month later, she moved for leave to amend her complaint in *Sacks I* to add several claims and defendants, including a Title VII constructive discharge claim against TSU. The district court denied her motion.

Sacks then filed a second suit against TSU and TSU employees, this case, now before us on appeal

(*Sacks II*). Against TSU, she claims (1) Title VII constructive discharge, (2) EPA retaliation, and (3) breach of contract. Against the same individual defendants from *Sacks I*, plus current Thurgood Marshall School of Law professor Darnell Weeden (the Individual Defendants), Sacks claims (1) EPA retaliation and (2) § 1983 violations. TSU and the Individual Defendants moved to dismiss all claims, arguing that Sacks's claims were barred by *res judicata*—that is, claim preclusion—and that she failed to state a claim. Alternatively, they argued that these claims should be consolidated with *Sacks I*. The district court denied the motion to consolidate.

The district court held that *res judicata* did not bar Sacks's Title VII constructive discharge claim or her EPA claim. But, looking to conduct after August 29, 2019—which the parties agree was the last day to amend pleadings in *Sacks I*—the court held that Sacks did not state Title VII and EPA claims. The district court held that Sacks's § 1983 and breach of contract claims were barred by *res judicata* and that she also failed to state a claim.

Sacks timely appealed the district court's dismissal of all claims except breach of contract. We first address whether Sacks's claims are barred by *res judicata* and then, if they are not, whether Sacks states a claim.

II

“The *res judicata* effect of [the *Sacks I*] judgment is a question of law that we review de novo.” See *Davis v. Dall. Area Rapid Transit*, 383 F.3d 309, 313 (5th Cir. 2004) (italics omitted). *Res judicata* is an affirmative defense. Fed. R. Civ. P. 8(c)(1). So Defendants bear the burden to plead and prove it. *Taylor v.*

Sturgell, 553 U.S. 880, 907 (2008). Dismissal under Rule 12(b)(6) for *res judicata* can be appropriate when the elements of *res judicata* “appear[] on the face of the pleadings.” *Kansa Reinsurance Co. v. Cong. Mortg. Corp. of Tex.*, 20 F.3d 1362,1366 (5th Cir. 1994).

“We review de novo the district court’s dismissal for failure to state a claim under Rule 12(b)(6).” *Ghedi v. Mayorkas*, 16 F.4th 456, 463 (5th Cir. 2021). We may affirm dismissal on any ground that the record supports. *See In re S. Recycling L.L.C.*, 982 F.3d 374, 382 (5th Cir. 2020).

III

“[R]es judicata[] bars the litigation of claims that either have been litigated or should have been raised in an earlier suit.” *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005). True *res judicata*—also called claim preclusion—applies only if “(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions.” *Id.*

We apply the transactional test to determine whether both suits involve the same claim or cause of action. *Id.* Under this test, *res judicata* bars litigation of “all rights of the plaintiff with respect to all or any part of the transaction, or series of connected transactions, out of which the original action arose.” *Id.* To determine whether facts constitute a “transaction” or “series of transactions,” we consider “whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether

their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* So, "[t]he critical issue is whether the two actions are based on the 'same nucleus of operative facts.'" *Id.* (quoting *New York Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000)).

"[S]ubsequent wrongs' by a defendant constitute new causes of action" not barred by *res judicata* when those wrongs "occurred either after the plaintiffs had filed their prior lawsuit or after the district court had entered judgment in the prior lawsuit." *Davis*, 383 F.3d at 314. Simply, *res judicata* does not "extinguish[] claims which did not even then exist and which could not possibly have been sued upon in the previous case." *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 328 (1955).

A

We start with Sacks's Title VII constructive discharge claim against TSU. At issue is whether *Sacks I* involved the same claim. *See Test Masters*, 428 F.3d at 571. We agree with the district court that it does not.

To state a claim for constructive discharge, the former employee must show (1) "that he was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign," and (2) "that he actually resigned." *Green v. Brennan*, 578 U.S. 547, 555 (2016). "In other words, an employee cannot bring a constructive-discharge claim until he is constructively *discharged*." *Id.*

Accordingly, Sacks could not bring a constructive discharge claim until she resigned in August 2020. Her

claim thus did not exist until well after August 29, 2019, which the parties agree is the last day that Sacks could amend her pleadings in *Sacks I*. See *Lawlor*, 349 U.S. at 328. Sacks nonetheless moved to amend her complaint in *Sacks I* to add her constructive discharge claim. The district court denied her motion. Sacks therefore could not have brought her constructive discharge claim in *Sacks I*. We simply cannot treat the *Sacks I* judgment as extinguishing a claim that did not exist until well into *Sacks I* and that Sacks was not permitted to bring in that case. See *id.*; see also *Davis*, 383 F.3d at 314 (“*Res judicata* ‘bars all claims that were or *could have been* advanced . . . [in the earlier action].” (quoting *Nilsen v. City of Moss Point*, 701 F.2d 556, 560 (5th Cir. 1983))); *Anderson v. Hous. Cmty. Coll. Sys.*, 90 F. Supp. 3d 667, 672 (S.D. Tex. 2015) (citing *Suter v. Univ. of Tex. at San Antonio*, No. SA-12-CV-969-OLG, 2013 WL 6919760 (W.D. Tex. Dec. 20, 2013)).

Therefore, Sacks’s resignation, which she alleges was a constructive discharge, is a “subsequent wrong” by TSU. See *Davis*, 383 F.3d at 314. It is thus a new claim that survives *res judicata*.

Sacks argues that the district court gave de facto *res judicata* effect to *Sacks I* by holding that Sacks could look only to post-*Sacks I* conduct. We agree. Having decided that Sacks could not have brought a constructive discharge claim in *Sacks I*, we cannot now truncate that claim merely because some underlying facts overlap with facts in *Sacks I*. *Res judicata* bars relitigation of “claim[s] or cause[s] of action,” not individual facts. *Test Masters*, 428 F.3d at 571.

Thus, we hold that *res judicata* does not bar Sacks’s Title VII constructive discharge claim and

that Sacks can look to conduct before and during *Sacks I*.

B

Next, we turn to Sacks's EPA retaliation claims against TSU and the Individual Defendants. The first and fourth *res judicata* factors are in play: whether the *Sacks I* and *II* parties are identical or in privity and whether *Sacks I* involved the same claim. *See id.*

Because Weeden was not a party in *Sacks I*, *res judicata* bars Sacks's claim against him only if he was in privity with someone who was. *See id.* We conclude that there is privity here.

"Privity" is recognized as a broad concept, which requires us to look to the surrounding circumstances to determine whether claim preclusion is justified." *Russell v. SunAmerica Sec., Inc.*, 962 F.2d 1169, 1173 (5th Cir. 1992). We have recognized privity in three circumstances: "(1) where the non-party is the successor in interest to a party's interest in property; (2) where the non-party controlled the prior litigation; and (3) where the non-party's interests were adequately represented by a party to the original suit." *Meza v. Gen. Battery Corp.*, 908 F.2d 1262,1266 (5th Cir.1990).

Weeden is not a successor in interest and did not control *Sacks I* So he is only in privity with named defendants in *Sacks I* if his interests were adequately represented. *See id.* That is, a named defendant in *Sacks I* must have been "so closely aligned to [Weeden's] interests as to be his virtual representative." *Id.* at 1267 (citation omitted). A vicarious liability relationship between an employer and employee can create the requisite privity here. *Lubrizol Corp. v. Exxon Corp.*,

871 F.2d 1279,1288-89 (5th Cir. 1989) (collecting cases from the First, Seventh, Ninth, and D.C. Circuits).

Weeden's interests were adequately represented in *Sacks I* by TSU, which employs Weeden and is vicariously liable for his conduct. In *Sacks I*, Sacks built her claims against TSU in part on allegations about Weeden's conduct as professor and former associate dean of the law school. And when Sacks moved to amend her complaint in *Sacks I*, she also sought to name Weeden as a defendant. Only after the *Sacks I* district court denied her motion to amend did she file the current suit. On these facts, TSU adequately represented Weeden's interests in *Sacks I*. So Weeden is in privity with a *Sacks I* party.

Now to the fourth *res judicata* factor. "[A] Title VII plaintiff is free to bring successive actions, claiming in each that his employer has taken retaliatory actions against him more recent than the prior lawsuit." *Dawkins v. Nabisco, Inc.*, 549 F.2d 396, 397 (5th Cir. 1977) (per curiam). The parties agree that August 29, 2019, was the last day that Sacks could move to amend her complaint in *Sacks I*. Accordingly, *res judicata* bars Sacks from bringing an EPA retaliation claim based on conduct occurring before August 29, 2019. Any EPA claim based on that conduct could have and should have been raised in *Sacks I*. See *Davis*, 383 F.3d at 313. But to the extent Sacks's EPA claim is based on conduct after August 29, 2019, it is not barred.

C

Finally, we consider Sacks's § 1983 claims against the Individual Defendants. We look again to the first and fourth *res judicata* factors. See *Test Masters*, 428

F.3d at 571. We have already established that Weeden is in privity with a *Sacks I* party. And, as with Sacks’s EPA claims, *res judicata* bars Sacks from bringing § 1983 claims against the Individual Defendants based on conduct occurring before August 29, 2019. Because Sacks alleges only post-August 29, 2019 conduct as to Walker, only her claim against Walker survives *res judicata*.

IV

Having tackled *res judicata*, we now turn to whether Sacks states claims that survive a motion to dismiss. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Ad. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “But we ‘do not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions.’” *Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020) (quoting *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 210 (5th Cir. 2010)).

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. The well-pleaded facts must “permit the court to infer more than the mere *possibility* of misconduct.” *Id.* at 679 (emphasis added).

A

We start with Sacks’s Title VII constructive discharge claim. “A claim of constructive discharge . . . has two basic elements. A plaintiff must prove

first that he was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign. [And] he must also show that he actually resigned.” *Green*, 578 U.S. at 555. To determine whether a reasonable person would feel compelled to resign, we have considered:

(1) demotion; (2) reduction in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; (5) reassignment to work under a younger supervisor; (6) badgering, harassment, or humiliation by the employer calculated to encourage the employee’s resignation; or (7) offers of early retirement [or continued employment on terms less favorable than the employee’s former status].

Brown v. Bunge Corp., 207 F.3d 776, 782 (5th Cir. 2000) (alteration in original) (quoting *Barrow v. New Orleans S.S. Ass’n*, 10 F.3d 292, 297 (5th Cir. 1994)).

Sacks does allege that the dean “add[ed] time-consuming, unnecessary, and menial tasks such as rearranging the order of subjects taught in classes[,] . . . call[ing] many extra faculty meetings[,] “adding “new methods of attendance recording,” and assigning torts professors to “correct and edit 25 proposed Kaplan torts questions.”

Even if we assume these tasks are menial, Sacks’s constructive discharge claim still falls short. She fails to allege any other factor that would make a reasonable person feel compelled to resign. *See Bunge Corp.*, 207 F.3d at 782.

She does not allege a demotion, reduction in salary, reduction in job responsibilities, reassignment to work

under a younger supervisor, or offers of early retirement. *See Newbury v. City of Windcrest*, 991 F.3d 672, 677 (5th Cir. 2021) (looking for these factors); *Perret v. Nationwide Mut. Ins.*, 770 F.3d 336, 338-39 (5th Cir. 2014) (same).

And she fails to allege facts showing that TSU “badger[ed], harass[ed], or humiliate[ed] [her] . . . to encourage [her] resignation.” *Bunge Corp.*, 207 F.3d at 782. Again, we do not accept as true Sacks’s bald, conclusory allegations. *Heinze*, 971 F.3d at 479.

Sacks mainly alleges systemic problems at TSU: the claimed gender pay gap, the racial discrimination lawsuit against Douglas and his subsequent promotion, the American Bar Association’s public censure of TSU after sexual discrimination allegations, the American Bar Association’s demands on TSU to remedy the pay gap, and TSU’s conduct toward other female professors. Aside from the pay gap, these allegations do not personally implicate Sacks.

As for conduct that allegedly targeted Sacks, Sacks alleges that TSU investigated her for discrimination but found no evidence that Sacks discriminated, that “Walker threw her hair into [Sacks’s] face in the law school lobby,” and that Walker yelled at Sacks that she couldn’t park in a church parking lot. But no facts suggest that these were more than personal disputes between Walker and Sacks. Indeed, their parking lot confrontation was not even on school property. Sacks also alleges that Walker “has made comments about [her] race,” but she does not identify the comments or their context.

In addition, Sacks claims that Weeden “deprive[d] her of a sabbatical and research monies” and

“encouraged others to vote against [Sacks]” to deny her those benefits. But at least as to the sabbatical, this alleged deprivation occurred almost three years before Sacks resigned. This lack of temporal proximity between the alleged discrimination and her resignation undermines her constructive discharge claim. *See Johnson v. PRIDE Indus., Inc.*, 7 F.4th 392, 407 (5th Cir. 2021).

Even assuming this conduct is harassment, Sacks alleges no facts that show that this conduct was “calculated to encourage [her] resignation.” *Bunge Corp.*, 207 F.3d at 782. Though Sacks alleges that she “reasonably felt compelled to resign because it was clear that the racism and harassment would not be addressed,” this statement is conclusory. *See Heinze*, 971 F.3d at 479.

Looking only to her factual allegations, Sacks does not allege conduct by TSU that plausibly—not just possibly—states a constructive discharge claim. *See Iqbal*, 556 U.S. at 679.

B

Next, we consider whether Sacks states EPA retaliation claims against TSU and the Individual Defendants based on conduct after August 29, 2019. *See* 29 U.S.C. § 215(a)(3).

The EPA disallows discharge or retaliation “because such employee has filed any complaint.” *Id.* EPA retaliation claims are analyzed under Title VII’s framework. *Lindsley v. TRT Holdings, Inc.*, 984 F.3d 460, 469-70 (5th Cir. 2021). To state an EPA retaliation claim, “a plaintiff must demonstrate that: (1) she

engaged in protected activity; (2) an adverse employment action occurred; and (3) a causal link exists between the protected activity and the adverse employment action.” *Id.* at 469 (internal quotation marks omitted). To be a protected activity, “the employee’s conduct must have ‘opposed’ the employer’s practice” and the plaintiff must have “*reasonably believed* the practice was unlawful.” *Scott v. U.S. Bank Nat’l Ass’n*, 16 F.4th 1204, 1209-10 (5th Cir. 2021). “‘Adverse employment action’ is a materially adverse action that ‘might have dissuaded a reasonable worker from making or supporting a charge of discrimination.’” *Lindsley*, 984 F.3d at 470 (quoting *Burlington N. & Santa Fe R.R. v. White*, 548 U.S. 53, 68 (2006)).

Sacks claims that TSU and the Individual Defendants retaliated against her for filing *Sacks I*. Again, we look only to conduct after August 29, 2019. And we disregard any bald, conclusory statements. *See Heinze*, 971 F.3d at 479. Even spotting Sacks that her resignation is an adverse employment action, she does not show a causal link between her filing *Sacks I* and her resignation. *See Lindsley*, 984 F.3d at 469-70.

Sacks alleges that, in “2019-2020,” “Walker threw her hair into” Sacks’s face in the law school lobby and separately yelled at Sacks, “You can’t park here!” in a church parking lot. Even if we assume that this happened *after* August 29, 2020, Sacks does not allege any facts showing that Walker’s behavior was motivated by *Sacks I*.

Similarly, Sacks alleges that the dean introduced “new methods of attendance recording and micro-manag[ed] the order [in] which the torts topics were taught.” She states that “the female professors had to perform burdensome and time-consuming work that

the males did not have to perform.” But as the district court notes, Sacks does not offer any facts showing that the dean’s “broad changes in school procedures and policies, or non-particularized changes to faculty workload, were designed to retaliate against Sacks.” *See Sacks v. Tex. S. Univ.*, No. CV H-22-299, 2022 WL 4227257, at *3 (S.D. Tex. Sept. 12, 2022).

Sacks points out other conduct that, even assuming it occurred after August 29, 2019, lacks a causal link to *Sacks I*. For example, she does not show that the law school’s decision to promote Anga, “despite multiple harassment complaints on file [against her] with TSU’s Human Resources,” was causally linked to *Sacks I*. Same for Sacks’s allegation that a law school professor was promoted to dean after advising a female student not to make a Title IX sexual assault complaint. And same for Sacks’s allegations that other female professors resigned and that TSU has been paying women less than men.

Sacks argues that we must take as true that there was an “agenda to overwork, underpay, and abuse females in the law school, and white females in particular” in 2019. But this is a bald allegation of discriminatory conduct. *See Heinze*, 971 F.3d at 479. Because this and other allegations like it in Sacks’s complaint are conclusory, we don’t assume they are true. *See id.*

Sacks thus fails to state EPA claims against TSU and the Individual Defendants.

C

Finally, we consider Sacks’s § 1983 claim against Walker. To state a claim, Sacks must show that Walker

acted under color of state law. *See Tyson v. Sabine*, 42 F.4th 508, 521 (5th Cir. 2022). “It is firmly established that a defendant in a § 1983 suit acts under color of state law when he abuses the position given to him by the State.” *West v. Atkins*, 487 U.S. 42, 49-50 (1988).

Again, the only post-August 29, 2019 incidents are Sacks’s confrontations with Walker in the law school lobby and in a church parking lot. No facts suggest that Walker “use[d] [her] official power [at the law school] to facilitate [these] actions.” *See Tyson*, 42 F.4th at 522. Walker and Sacks’s confrontation in the church parking lot did not occur at the school. And during neither incident did Walker assert her authority or even mention law school affairs. As TSU argues, these facts merely indicate a personal conflict between Sacks and Walker. *See Delcambre v. Delcambre*, 635 F.2d 407, 408 (5th Cir. 1981) (per curiam) (holding that an “altercation arising] out of an argument over family and political matters” wasn’t under color of law).

Thus, Sacks fails to allege that Walker acted under color of state law and thus fails to state a § 1983 claim.

V

Res judicata does not bar Sacks’s Title VII constructive discharge claim, her EPA claims based on conduct after August 29, 2019, and her § 1983 claim against Walker. However, Sacks fails to state claims that survive a motion to dismiss. Accordingly, we do not reach the question whether her case should be reassigned.

We AFFIRM.

**FINAL DISMISSAL, U.S. DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF TEXAS
(SEPTEMBER 13, 2022)**

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

DEANA POLLARD SACKS,

Plaintiff,

v.

TEXAS SOUTHERN UNIVERSITY, ET AL.,

Defendants.

Civil Action No. H-22-299

Before: Lynn N. HUGHES,
United States District Judge.

FINAL DISMISSAL

Deana Pollard Sacks's claims against Texas Southern University, Ahunanya Anga, James Douglas, Fernando Colon-Navarro, Ana Otero, April Walker, and Darnell Weeden are dismissed with prejudice.

Signed on September 13, 2022, at Houston, Texas.

/s/ Lynn N. Hughes
United States District Judge

**OPINION ON DISMISSAL,
U.S. DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(SEPTEMBER 13, 2022)**

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

DEANA POLLARD SACKS,

Plaintiff,

v.

TEXAS SOUTHERN UNIVERSITY, ET AL.,

Defendants.

Civil Action No. H-22-299

Before: Lynn N. HUGHES,
United States District Judge.

OPINION ON DISMISSAL

1. Background

Deana Pollard Sacks was a tenured professor of the Thurgood Marshall School of Law at Texas Southern University. In 2017, Sacks filed a discrimination charge with the EEOC based on race, sex, retaliation, and unequal pay. She brought suit in this district in 2018 against TSU, alleging:

- (a) Title VII hostile work environment,

- (b) Title VII retaliation,
- (c) violation of the Equal Pay Act, and
- (d) civil rights violations under 42 U.S.C. § 1983

Sacks also sued James Douglas, Ahunanya Anga, Fernando Colon-Navarro, Ana Otero, and April Walker, alleging:

- (a) civil rights violations under 42 U.S.C. § 1983, and
- (b) invasion of privacy.

In *Sacks I*, Judge Werlein first dismissed all of Sacks's claims except: (1) her Equal Pay Act claim (which TSU did not move to dismiss), (2) race-based Title VII hostile work environment claim, and (3) her § 1983 claim against Douglas in his personal capacity. Each of these claims were then dismissed on summary judgment, except the Equal Pay Act claim. At trial, the jury found in favor of TSU on the Equal Pay Act claim. Sacks ultimately lost on all claims.

Sacks now brings a new suit before this Court. Against TSU, she claims: (a) Title VII constructive discharge, (b) Equal Pay Act retaliation, and constructive discharge, and (c) breach of contract. Against the same individual defendants from *Sacks I*, with the addition of Mr. Darnell Weeden, Sacks claims: (a) Equal Pay Act retaliation and constructive discharge, and (b) civil rights violations under 42 U.S.C. § 1983. Defendants have moved to dismiss these claims.

2. *Res judicata*

The rule of *res judicata* bars the litigation of claims that either have been litigated or should have

been raised in an earlier suit.¹ *Res judicata* requires four elements: “(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions.”² The only element in dispute here is the final one of whether the claim or cause of action is the same.

This Circuit applies a transactional test to determine whether two suits involve the same claim or cause of action, looking to whether the two cases “are based on ‘the same nucleus of operative facts.’”³ This inquiry considers “whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.”⁴

Defendants argue that Sacks’s claims in *Sacks II* “stem from the same employment interactions from *Sacks I*,” characterizing *Sacks II* as “essentially a ‘re-do’ of Sacks’ prior litigation,”⁵ however, this characterization is misguided. Despite that Sacks’s Second Amended

¹ *Test Masters Ethic. Servs., Inc. v. Singh*, 42.8 F.3d 559 (5th Cir. 2.005). See also *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 319 (1927).

² *Test Masters*, 428 F.3d at 571.

³ *Houston Pro. Towing Ass’n v. City of Houston*, 812 F.3d 443 (5th Cir. 2016)

⁴ *Petro—Hunt, L.L.C. v. United States*, 365 F.3d 385, 396 (5th Cir.2004) (quoting Restatement (Second) of Judgments § 24(2)).

⁵ Defendant’s Motion to Dismiss and Consolidate, [Doc. 15] at 1.

Complaint was disorganized, conclusory, repetitive, and unspecific, it offers enough conduct to raise some distinct claims. Between August 29, 2019 and the filing of *Sacks II*, Plaintiff says that various new developments occurred (which Defendants list),⁶ including a workload increase, learning negative information about TSU (ranging from civil rights violations to gender-pay discrepancies to its treatment of her colleagues), and April Walker’s aggressive hostilities. Defendants argue that these new claims are insufficient to support a constructive discharge claim. However, the key issue is not whether the allegations in the second suit are sufficient to state a valid claim, but rather whether both actions involve “the same claim or cause of action.”

A. Title VII Constructive Termination

Sacks did not relinquish her tenured professorship until August 2020,⁷ which is after the *Sacks I* court ruled on her pleadings.⁸ In assessing whether the causes of action are the same, the Court finds that Sacks’s constructive termination claim here had not yet arisen at the relevant stages of her prior suit, since Sacks had still been employed by TSU. Sacks claims various new developments since August 29, 2019,⁹

⁶ See Defendants’ Reply in Support, [Doc. 22] at 4.

⁷ See Plaintiffs SAC at 3.

⁸ Sacks did not resign until *Sacks I* was well under way, after which Sacks requested amendment to include a constructive discharge claim but was denied. See *Sacks I*, 4:22-cv-3563, [Doc. 79] at 1.

⁹ August 19, 2019 is the date when the court in *Sacks I* took its pleadings to be final, and Plaintiff does not dispute Defendants’

including Walker's aggressive confrontation, workload increase, and discovering various negative revelations about TSU (ranging from civil rights violations to gender-pay discrepancies to its treatment of her colleagues).

Regardless of whether her newly-plead facts afford her a plausible claim for relief, there is enough for a distinct claim. These facts are temporally separated from the first suit and would not have been conveniently tried in *Sacks I*. Her claimed revelations about TSU's various violations advance a different motivational underpinning compared to *Sacks I*, since many of her newly-pled grievances are more indicative of her motivations to resign than of a hostile work environment. Finally, distinct treatment of the facts would not run counter to the parties' expectations, as Defendants themselves argued in *Sacks I*, when Sacks moved for leave to amend after her resignation, that her constructive termination claim should be a separate lawsuit. In sum, Sacks's Title VII constructive termination claim is not barred by *res judicata*.

B. Equal Pay Act

The analysis for Sacks's Title VII constructive termination claim also informs her Equal Pay Act retaliation claim. When construed generously by this Court despite her poor articulation, her pleadings do suggest that her Equal Pay Act retaliation claim has some foundation in facts that she claims to have happened after August 29, 2019.

reference to this date as the operative date for *res judicata* purposes.

Although Sacks claimed retaliation in *Sacks I*, that retaliation was purportedly in response to her EEOC claim. Her current Equal Pay Act retaliation claim, regardless of whether it is a Title VII claim by a new name, includes retaliation for her filing *Sacks I*. A suit claiming retaliation that occurred after and in response to *Sacks I* is not “the same claim or cause of action” as *Sacks I* itself. She does plead new facts that she claims took place in 2020, including her confrontation with Walker. Sacks’s retaliation claim here is distinct and not barred by *res judicata*, regardless of its sufficiency.

C. § 1983 Claims

Sacks pleads § 1983 civil rights violations against the Individual Defendants, which includes Douglas, Colon-Navarro, Walker, Otero, Anga, and Weeden. Her current suit fails to plead specific post-August 29, 2019 conduct from any of these individuals except Walker. Sacks’s pleadings suggest that this § 1983 claim against Douglas, Colon-Navarro, Otero, and Anga is an attempt to re-litigate the same claim that has already been adjudicated, despite no new facts. These claims will be dismissed.

Weeden was not a party to *Sacks I*, but Sacks does not plead that Sacks violated her civil rights after August 29, 2019. Her allegations against Weeden could and should have been raised in *Sacks I*. Therefore, with the exception of Walker, Sacks’s 1983 claims are barred by *res judicata*.

D. Breach of Contract

Sacks says that TSU “withheld tens of thousands of dollars” from her, refusing to pay wages that she

earned under her contract; however, she fails to plead new facts for an allegation that is an unveiled attempt to re-try her Equal Pay Act claim from *Sacks I*, which she had already lost on the merits. This claim is barred by *res judicata*.

3. Title VII Constructive Termination

To determine whether a constructive discharge has occurred, courts ask whether working conditions became “so intolerable that a reasonable person in the employee’s position would have felt compelled to resign.”¹⁰ In this inquiry, relevant factors considered¹¹ include:

(1) demotion; (2) reduction in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; (5) badgering, harassment, or humiliation by the employer calculated to encourage the employee’s resignation; or (6) offers of early retirement that would make the employee worse off whether the offer were accepted or not.¹²

Sacks has not adequately pleaded her constructive discharge claim. Her post-*Sacks I* allegations, accepted as true, would nevertheless fail to state a claim for

¹⁰ *Again v. Wal-Mart Stores Texas LP*, 534 F.3d 473, 480 (5th Cir.2008) (quoting *Pennsylvania State Police v. Suders*, 542 U.S. 129, 141 (2004)). The Supreme Court has affirmed that “Title VII encompasses employer liability for a constructive discharge.” *Suders*, 542 U.S. at 143.

¹¹ The enumerated considerations are “not exclusive.” *Barrow v. New Orleans S.S. Ass’n*, 10 F.3d 292. (5th Cir. 1994).

¹² *Perret v. Nationwide Mut. Ins. Co.*, 770 F.3d 336 (5th Cir. 2014) (citations omitted).

relief that is plausible on its face. Much of Sacks's new allegations is her "learning" about general transgressions of the university, which does not make her own position less tolerable. Although the list of considerations for a finding of constructive discharge may be non-exhaustive, each listed factor requires a worsening of one's own circumstances, as opposed to knowledge that others similarly situated have been wronged.

Moreover, her allegation that TSU overworked its female faculty and required her (and presumably other professors) to spend increased time dealing with new law school procedures and policies, accepted as true, would be grievances of considerably lesser severity than those contemplated by the relevant factors. Sacks has failed to state a plausible claim for constructive discharge.

4. Equal Pay Act

The Equal Pay Act, in relevant part, disallows discharge or discrimination in any way "against any employee because such employee has filed any complaint."¹³ These claims are analyzed under Title VII, and to state a claim for retaliation, a plaintiff must plead that: (1) she engaged in protected activity; (2) an adverse employment action occurred; and (3) a causal link exists between the protected activity and the adverse employment action.¹⁴ An "adverse employment action" is a materially adverse action that

¹³ 29 U.S.C. § 215 (a) (3).

¹⁴ *Lindsley v. TRT Holdings, Inc.*, 984 F.3d 460 (5th Cir. 2021) (citations omitted).

“might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”¹⁵

While her retaliation claim under this Act can be construed as a new claim, Sacks has not plead any facts that suggest that TSU retaliated against her after her *Sacks I* suit. It is implausible that any broad changes in school procedures and policies, or non-particularized changes to faculty workload, were designed to retaliate against Sacks. The harassment she claims to have experienced from Walker, who Sacks does not plead is any more than a peer (as opposed to a superior), does not amount to more than “petty slights, minor annoyances” which are already held to be non-actionable.¹⁶ Her pleadings, accepted as true, do not state facts that support a finding of an adverse employment action. Sacks’s Equal Pay Act retaliation claim fails.

5. § 1983 Claims

In addition to being barred by *res judicata*, Sacks’s § 1983 claims against the Individual Defendants would also fail for insufficiency. Qualified immunity cases have heightened pleadings requirements, requiring “precision and factual specificity.”¹⁷ Sacks has not pleaded any facts that any person, since August 19, 2019, has engaged in misconduct in their official capacity or acted under color of state law to deprive her of her civil rights.

¹⁵ *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).

¹⁶ *Id.*

¹⁷ *Nunez v. Simms*, 341 F.3d 385, 388 (5th Cir. 2003) (citing *Reyes v. Sazan*, 168 F.3d 158 (5th Cir. 1999)).

6. Breach of Contract

In addition to being barred by *res judicata*, Sacks's breach of contract claim against TSU would also fail on sovereign immunity grounds. Plaintiff does not offer any waiver of immunity by the Texas legislature, which is a requirement in breach of contract claims.¹⁸

7. Conclusion

Deana Pollard Sacks's claims against Texas Southern University, Ahunanya Anga, James Douglas, Fernando Colon-Navarro, Ana Otero, April Walker, and Darnell Weeden are dismissed.

Signed on September 12, 2022, at Houston, Texas.

/s/ Lynn N. Hughes
United States District Judge

¹⁸ See, e.g., *Kitchens v. Texas Dep't of Hum. Res.*, 747 F.2d 985 (5th Cir. 1984) (citing *Pennhurst State Sch. Hosp. v. Halderman*, 465 U.S. 89 (1984)); *Jackson v. Texas S. Univ.*, 997 F. Supp. 2d 613 (S.D. Tex. 2014); *Rosario v. Texas Veterans Comm'n*, No. A-18-CV-1008-RP, 2019 WL 5595234 (W.D. Tex. Oct. 29, 2019).

**ORDER DENYING PETITION FOR
REHEARING, U.S. COURT OF APPEALS
FOR THE FIFTH CIRCUIT
(NOVEMBER 17, 2023)**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DEANA POLLARD SACKS,

Plaintiff-Appellant,

v.

TEXAS SOUTHERN UNIVERSITY; AHUNANYA
ANGA; JAMES DOUGLAS; FERNANDO COLON-
NAVARRO; ANA OTERO; APRIL WALKER;
DARNELL WEEDEN,

Defendants-Appellees.

No. 22-20541

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-299

ON PETITION FOR REHEARING A
ND REHEARING EN BANC

Before: KING, WILLETT, and DOUGLAS,
Circuit Judges.

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED.

**PLAINTIFF'S
SECOND AMENDED COMPLAINT
(JUNE 27, 2022)**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEANA POLLARD SACKS,

Plaintiff,

v.

TEXAS SOUTHERN UNIVERSITY,
JAMES DOUGLAS, FERNANDO COLON-
NAVARRO, APRIL WALKER, ANA OTERO,
AHUNANYA ANGA, AND DARNELL WEEDEN,

Defendants.

Civil Action No. 4:22-cv-00299
Jury Trial Demanded

PLAINTIFF'S SECOND AMENDED COMPLAINT

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Attorney for Plaintiff

Plaintiff, Deana Pollard Sacks submits this Second Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) 21 days after Defendants served a motion under Fed. R. Civ. P. 12(b).

I. INTRODUCTION

1. Professor Deana Pollard Sacks is an internationally recognized scholar and tirelessly devoted teacher. She was among the most decorated and published professors at the Thurgood Marshall School of Law (“TMSL”) at Texas Southern University (“TSU”) and routinely donated her time to review sessions and after-hours study sessions to help students. She created original teaching materials for her students and drafted model questions and answers for the California State Bar; she was unusually qualified to help the TMSL students prepare for the bar exam. She drafted/reviewed proposed new legislation for legislators voluntarily upon request and provided legal counsel free of charge while consistently producing top-rated legal scholarship and gained a top 10% rank in SSRN’s international ranking of scholars. Her student teaching evaluations were extremely positive over 20 years of teaching. Plaintiff worked very hard, fulfilled her contract duties, and exceeded all TSU expectations.

2. Despite Professor Sacks’s accolades and commitment, she is the latest in a long line of TSU educators who have been targeted and discriminated against based on their race and gender. A group of nonwhite TMSL professors, many of whom attended TMSL law school themselves, have used their official positions at the law school to violate clearly established constitutional and federal statutory law prohibiting

racial and gender discrimination and harassment and have done so maliciously based on personal animus against whites and/or women and in retaliation for Plaintiff's (and others') valid civil rights complaints. TSU's and the individual defendants' misconduct forced the Plaintiff (and other whites and females) to resign in 2020 and the Plaintiff seeks lost wages and other damages for harassment, discrimination, and constructive termination.

3. TSU and the individual defendants named herein operated intentionally, maliciously, and in concert under color of state law to deprive Plaintiff (and others) of their civil rights. While exercising official law school functions as deans, administrators, or law school voting faculty/committee members, all individual defendants violated clearly established law by, *inter alia*:

- a) Withholding tens of thousands of dollars from Plaintiff's paychecks and failing and refusing to pay Plaintiff in accordance with compensation promised to her in breach of contract and in violation of Title VII, the Constitution, state law, the Fair Labor Standards Act (FLSA), and the Equal Pay Act (EPA), 29 USC Section 206(d)(3). The withholding of wages exacerbates the intentional pay differential between male and female professors at the law school, which TSU covers up by producing grossly inaccurate official annual reports concerning employee compensation; TSU consistently understates men's total compensation by \$20,000.00 to \$60,000.00 per year and up. Other whites were subject to unlawful wage withholding

and/or false IRS documents created by TSU and had to spend time dealing with TSU as a result, including Plaintiff, Pat Garrison, Walt Champion, Katherine Vukadin, and Rebecca Stewart. This creates very time-consuming tasks by the employees to seek to obtain monies owed (or a correct W-2) and is part of TSU's modus operandi to force white females to resign by means of "exhaustion harassment." TMSL has a long history of overworking women to the point of physical and mental exhaustion while providing men with light workloads and much higher compensation. This is part of TMSL's history and culture. Many employees have sued TSU as a result.

- b) Using official law school committee processes to manipulate a failed-out law student into making a false discrimination complaint against the Plaintiff as a last-ditch effort to remain in law school despite "no evidence"¹ to support the discrimination allegation. This was the first student complaint against Plaintiff in 16 years of teaching and came on the heels of Plaintiff's first gender-and race-based pay discrimination complaint submitted to TSU and TMSL administrators. TMSL's

¹ The law school dean determined there was "no evidence" supporting Defendant Otero and her committee's recommendation to find that the Plaintiff discriminated against the student, in part because all of Plaintiff's exams are blind graded. Ironically, Otero is a "professor" of evidence and apparently did not know the difference between admissible evidence and no evidence.

ridiculous policy provided that the only opportunity a failed-out law student had for remaining in law school where no calculation error was made in the student's grade was to assert discrimination and attempt to get a grade change upon a finding of a professor's discrimination against the student. On information, Colon encouraged the failed-out law student to lodge a complaint against the Plaintiff as part of his ongoing harassment of the Plaintiff that caused him to be named as a defendant in this case. Colon instigated the student complaint against the Plaintiff and aided and abetted the committee in making a false recommendation of discrimination against the Plaintiff.

- c) The committee members, including individual defendants Otero, Anga, and Walker misused their official TSU committee voting power and voted for a finding of discrimination against Plaintiff despite "no evidence" of discrimination (as Dean Holley ultimately found when he refused to adopt the committee recommendation to make a false finding of discrimination against the Plaintiff). Colon aided and abetted the misuse of state power by persuading the law student to initiate the bogus complaint process. A finding of discrimination against the Plaintiff is grounds for termination pursuant to a TSU employee policy manual, which put the committee in the position of threatening Plaintiff with job termination and possibly terminating her if the dean had gone along with their baseless

recommendation to make a false finding of discrimination.

- d) For many years, creating false official annual pay data by underreporting the male professors' total compensation by up to tens of thousands of dollars per year for the purpose of hiding the blatant gender-based unequal pay complaints (Title VII Gunther, et al.)
- e) Harassing the Plaintiff and other members of the Gender Equity Committee that was formed in early 2017 by then-dean Defendant Douglas in response to the ABA's finding that TMSL was "persistent" in refusing to acknowledge or investigate dozens of sexual harassment, sexual assault, gender discrimination and harassment, and unequal pay complaints, which violates ABA accreditation standards (ultimately the ABA assessed a public censure against the law school and a \$15,000.00 fine for its "persistent" refusal to follow the ABA standards and the many laws prohibiting sexual harassment, gender-based pay disparity, and other forms of gender discrimination).
- f) Retaliating against employees who complain, including Plaintiff, and forcing them to resign due to intolerable working conditions arising from physically aggressive, harassing, and malicious violations of Title VII, the Equal Pay Act, 42 USC Section 1981, the Constitution, and the Fair Labor Standards Act, 29 USC Section 206(d) & 215(a)(3).

- g) TSU's ongoing failure to pay women equal to men and other ongoing harassing and discriminatory practices demonstrate that TSU will persist in ignoring the many EEOC complaints and lawsuits arising from the violations. The law is settled that when an employee resigns due to ongoing and persistent civil rights violations, this constitutes constructive termination.
- h) In this case, Plaintiff will prove that she discovered the depth and breadth of TSU's discriminatory practices and corruption in the months leading up to her resignation in August 2020, when it became clear that TSU and TMSL intended to continue its blatant civil rights violations, and falsifying and underreporting men's wages for many years to hide its gender-based pay violations. In addition, the Plaintiff will also show that the work environment had become so intensely abusive, harassing, and discriminatory that it was intolerable. Indeed, three white females referred to the environment at TMSL as "abusive" and "intolerable" as described by multiple female law school deans and/or professors. All three white females resigned as a result.

4. All defendants had actual knowledge of federal anti-discrimination laws as employees of an HBCU or had constructive knowledge that their actions violated clearly established federal and constitutional law. The individual defendants are personally liable for the retaliatory and civil rights violations pursuant to 42 U.S.C. Sec. 1983 and 29 U.S.C. Section 215(a)(3). TSU

is vicariously liable under Title VII of the Civil Rights Act of 1964 and other laws. This is a case of constructive termination for lost pay, health and retirement benefits, and other damages against TSU and individual defendants who are or were TSU employees at the times of their misconduct.² Damages for constructive termination are recoverable against TSU under Title VII and 29 U.S.C. Section 215(a)(3). Damages for constructive termination against the individual defendants are recoverable pursuant to 29 U.S.C. Section 215(a)(3) and 42 U.S.C. Section 1983, both of which also support an award of punitive damages against the individual defendants. TSU is also liable for breach of contract.

II. JURISDICTION AND VENUE

5. This is a district of proper venue. Plaintiff was employed by TSU in Harris County, Texas, and many of the discriminatory acts occurred there. TSU has its headquarters and management in Harris County, Texas.

6. Venue is proper in this district under 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. Venue in Harris County is provided by the Texas Education Code, Section 106.38.

7. This case is brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et

² This case was necessitated by the fact that the trial court refused to allow Plaintiff to amend her pleadings in *Sacks v. TSU* 4:18-cv-03563 to allege constructive termination, which was sought soon after the constructive termination and 19 months prior to trial.

seq., 42 U.S.C. § 1981, 42 U.S.C. § 1983, the Fair Labor Standards Act/Equal Pay Act, 29 U.S.C. Sections 206 (d)(1), 206(d)(3), and 215(a)(3), (29 C.F.R. § 1620 et seq.), and Texas common law for discrimination and retaliation leading to constructive termination. This Court has jurisdiction concerning the federal claims pursuant to 28 U.S.C. § 1331. This Court has jurisdiction concerning the pendant contract claim pursuant to 28 U.S.C. § 1367.

8. Plaintiff has exhausted all administrative filing prerequisites. She timely filed a notice with the Equal Employment Opportunity in August 2020 and received a right-to-sue letter dated November 10, 2021, less than 90 days before this lawsuit was filed.

III. PARTIES

9. Plaintiff Deana Pollard Sacks is a Caucasian woman residing in Houston, Harris County, Texas. Professor Sacks devoted 20 years of her life to the development of Texas Southern University's Thurgood Marshall School of Law, 2000-2020. She was a full, tenured professor of law until August 10, 2020, and has a very unusual set of skills that render it virtually impossible to find a comparable position with comparable workload and the freedom to provide *pro bono* services and to write academic and public-interest books and articles. She has been unemployed or underemployed since August 10, 2020, despite her diligence in continuing to produce top-notch scholarship and other academic writings and educational radio shows, and earnestly seeking employment to cover her job loss at TSU. Her lost wages and other compensation at the time this lawsuit was filed originally are approximately \$300,000.00.

10. Defendant Texas Southern University is a coeducational statewide institution of higher education located in Houston, Harris County, Texas. TSU controls and operates TMSL. It may be served by serving its President, Dr. Lesia L. Crumpton-Young, 3100 Cleburne St., Hannah Hall, Suite 220, Houston, Texas 77004, as set forth in the Texas Education Code, Section 106.38.

11. Defendant James Douglas (hereinafter “Douglas”) is a Distinguished Professor of Law at TMSL and has served as the law school dean or TSU university president intermittently for nearly half a century. Defendant Douglas is a TMSL graduate. Defendant Douglas is being sued in his personal and official capacities. Defendant Douglas can be served at his residence or at his office in the law school, Texas Southern University, 3100 Cleburne, Houston, Texas.

12. Defendant Fernando Colon-Navarro (hereinafter “Colon”) is a former law school associate dean and is currently a Professor of Law and Director of L.L.M. & Immigration Development at TMSL. Defendant Colon is being sued in his personal and official capacities. Defendant Colon-Navarro can be served at his residence or at his office in the law school, Texas Southern University, 3100 Cleburne, Houston, Texas.

13. Defendant April Walker (hereinafter “Walker”) is currently a Professor of Law at TMSL and was formerly Douglas’s girlfriend around the time that she was a TMSL student and he was a professor or administrator. Defendant Walker is a TMSL graduate. Defendant Walker is being sued in her personal and official capacities. Defendant Walker can be served at her residence or at her office in the law

school, Texas Southern University, 3100 Cleburne, Houston, Texas.

14. Defendant Ana Otero (hereinafter “Otero”) is currently a Professor of Law at TMSL. Defendant Otero is being sued in her personal and official capacities. Defendant Otero can be served at her residence or at her office in the law school, Texas Southern University, 3100 Cleburne, Houston, Texas.

15. Defendant Ahunanya Anga (hereinafter “Anga”) is currently a Professor of Law at TMSL. Defendant Anga is a TMSL graduate. Defendant Anga is being sued in her personal and official capacities. Defendant Anga can be served at her residence or at her office in the law school, Texas Southern University, 3100 Cleburne, Houston, Texas.

16. Defendant Darnell Weeden (hereinafter “Weeden”) is a former associate dean (on and off) and is currently a Professor of Law at TMSL. Defendant Weeden is being sued in his personal and official capacities. Defendant Weeden can be served at his residence or at his office in the law school, Texas Southern University, 3100 Cleburne, Houston, Texas.

17. Defendants Douglas, Colon, Walker, Otero, Anga, and Weeden (hereinafter “Individual Defendants”) are, or were during relevant times herein, administrators, directors, or professors at TSU/TMSL and exercised state-delegated power over the Plaintiff’s wages, other employment benefits, and committee hearings and functions. The Individual Defendants are all nonwhite and acted in concert to further their malicious, gender-biased, and racist agenda which they knew violated clearly established constitu-

tional and federal civil rights laws prohibiting discrimination and harassment based on race or gender. The clearly established laws include the Title VII, the Due Process Clause, the Equal Protection Clause, and 42 U.S.C. Section 1981 et al.

18. Some of the Individual Defendants acted out of sheer hatred for whites, and some have referred to whites as “white bitch” (Walker) “fucking whites” and “fucking white people” (Colon) inside of the law school in earshot of the Plaintiff, students, and/or other TSU employees. The evidence showing their malicious gender bias and racism will support punitive damages at trial.

IV. STATEMENT OF FACTS

A. TSU’S Long History of Civil Rights Violations

19. TSU is a historically black college or university (“HBCU”) with a long history of racial and sexual discrimination and harassment. TSU’s law school, the Thurgood Marshall School of Law (TMSL) was established in 1946 by the Texas Legislature to provide opportunities for a legal education for members of the black community. The law school’s Mission Statement provides that the law school’s purpose is “to expand opportunities for the underserved in the legal profession . . . with special emphasis on a historically black heritage and tradition.” And yet, TSU and TMSL administration regularly fail to follow clearly established law, industry-wide standards, and their own written policies and have created a culture of intense racism, gender bias, and hate at TSU.

20. Dozens or hundreds of EEOC complaints and lawsuits have been filed against TSU in the past several years for all sorts of civil rights violations committed by TSU and its employees, including sexual harassment, gender and race-based unequal pay, and gender and race-based harassment and other forms of discrimination.

21. The students at TMSL do not receive consistent quality instruction, materials, or exams as a result; the bar passage rate is often below that required for American Bar Association (ABA) accreditation;³ unqualified professors are allowed to harass, assault, and force out qualified professors in part to hide their own incompetency; and the law school mission is being destroyed from within. The most recent bar exam reveals a 35.90% bar passage rate at TMSL for first time takers, and 28.77% for repeaters.

³ The ABA requires a bar passage rate of at least 75% to maintain accreditation. TMSL consistently has the lowest bar passage rate in Texas, a rate of 40% for first time bar examinees from the February 2017 bar exam, 64% for the July, 2017 bar exam, 28% for the February, 2018 bar exam, and 44.5% for the July, 2018 bar exam. The pass rates of TMSL repeat bar takers were even lower, as low as 22.8% for the February, 2018 bar exam, and 23.5% for the February, 2017 bar exam. Previously, Pat Garrison, a Caucasian female, was hired to help with TMSL's bar passage rate and the rate quickly went up to over 75%, whereupon Garrison was subjected to intense harassment and forced out of her job, and sued TSU for race discrimination. See Plaintiff's Second Amended Complaint, *Patricia Garrison v. Texas Southern University*, Civil Action 4:11-cv-02368 (S.D. Tex. August 29, 2012) (Document 44). The bar passage rate for TMSL graduates plummeted thereafter.

B. TMSL's History of Willful Civil Rights Violations Including Equal Pay Act Violations

22. Professor Sacks is a Caucasian woman. TMSL has a long history of underpaying white females significantly while burdening them with much heavier workloads than blacks or males and hiding it very well. White women earn less than male or blacks, and the largest pay differential is between white women and black males. TMSL has been falsifying official wage reports for the State of Texas for many years, and no one has been able to prove this until the Plaintiff obtained the men's W2s. The W2s proved that TSU created grossly false reports of men's wages and understated the wages paid to men by up to about \$70,000.00 per year to hide the willful and ongoing gender-based unequal pay while over-reporting the Plaintiff's wages. In addition, TMSL routinely violates the Texas Education Code and its own policies set forth in its annual reports by failing to monitor workloads among professors, and failing to analyze workload data and produce annual reports.

23. Plaintiff and other white women were targeted for intensive workplace harassment and expulsion upon Defendant Douglas's return to the law school in 2015. Douglas became the law school dean (again) in 2016. While Douglas was the TMSL dean, the following civil rights violations occurred at TMSL:

- a) administrators' intentional and wrongful withholding of wages (including BRP and longevity pay) due and owing to women and whites and ignoring state law and TSU/TMSL policy manuals to manipulate the distribution

of taxpayer dollars to deny earned advancements, titles, pay increases, and other monies to Caucasians and females in violation of the Constitution, federal, and state laws while grossly overpaying male law professors who have lesser academic credentials, less published quality scholarship, and teach fewer course/course hours;

- b) TMSL deans and professors acted under color of state law and used state processes maliciously to violate the Plaintiff's (and others') clearly established and known civil right based on her race and gender;
- c) TMSL discouraged and ignored reports of sexual assault of female law students and law professors perpetrated by male law students and male law professors and TMSL professors and administration persuaded students not to file sexual assault (Title IX) complaints with TSU and ignored or failed to reasonably respond to female law professors' serious sexual assault and/or harassment complaints against male law professors;
- d) promoting black male professors who thwart gender discrimination or sexual assault complaints or aggressively interfere with the processes to enforce civil rights laws, including Defendant Douglas, Gabriel Aitsebaomo, and Okezie Chukwumerije, all of whom were promoted to a university president or law school dean position very soon after perpetrating or aiding and abetting civil rights violations;

- e) beginning in 2019-2020, harassing the Plaintiff (and other women) by forcing them to spend large quantities of time dealing with frivolous and ineffective new law school procedures and policies, creating time-consuming menial job duties and even more onerous workloads for the women, causing exhaustion for the women;
- f) slandering targeted group members to students, faculty, and third parties;
- g) malicious, calculated attempts to force Caucasians and women to resign tenured positions, which included falsifying pay data and creating other fake “evidence” to harm complaining women in response to valid discrimination complaints;
- h) retaliating against the many TSU employees who lodge civil rights complaints against TSU/TMSL to the point of forcing their resignations; and
- i) false accusations of discrimination directed at whites for harassment purposes and to threaten their reputation and employment through the use of official law school committee processes.

24. TMSL routinely denies white and female professors employment opportunities and benefits that non-white and male professors routinely enjoy such as dean positions and director positions, large sums of additional income, large travel budgets, and reasonably qualified administrative and research assistants.

25. TSU and TMSL fail to follow TSU's and TMSL's own written policy manuals concerning distribution of wages, gender and race discrimination complaints, and required annual assessments of workloads to assure fairness. TSU routinely fails to follow the law and its own written policies and in fact forces white females to carry much more burdensome workloads for far less pay than male or black professors and otherwise ignores its own policies and the civil rights laws on a regular and consistent basis.

26. TSU engages in squirrely and very confusing wage practices and recordkeeping that make it very difficult to discern how, exactly, TSU is underpaying women and whites so drastically. The W-2s for male professors routinely show taxable income far higher than the amounts owed to the males pursuant to salary letters or TSU's official annual reports while at the same time the W-2s show tens of thousands of dollars of deductions (pre-tax) from Plaintiff's gross pay such that Plaintiff's W-2s show up to \$20,000 less than her salary letters (based on Box 5 of all W-2s). TSU is paying the men so much money "off the books" that even after deductions, their W-2s reflect tens of thousands of dollars more than their salary letters, Plaintiff's base salary and total compensation were consistently lower than that of law school professors who perform similar jobs but who are black and/or male despite the fact that Plaintiff has better credentials, is more productive, handles a more onerous workload at the law school, provides more public service, and produced the highest quality law review articles in TMSL history. TSU intentionally denies women equal pay by, *inter alia*, denying women dean or director positions and/or paying women less post-dean positions

while the men's salaries remain higher even when they are no longer serving as deans.

27. TSU's unequal pay and unfair working conditions are grounded in gender bias and racism. Plaintiff's gender and race motivated the unfair and unlawful treatment perpetrated by all defendants. TSU fails to follow its own policy manuals and federal law, and routinely falsifies its annual wage reports to under-report men's true compensation and to hide the fact that females and whites are making significantly less than blacks and males for performing the same essential job duties. There are dozens of examples of this; a few examples follow.

- a) James Douglas. Professor Douglas is a black male with a J.D. from TSU and a J.S.M. from Stanford. He joined the TMSL faculty 29 years before Plaintiff. Professor Douglas has virtually no scholarship, and in the past 49 years published a total of *one* brief academic article in a bottom-tier law journal that contained only one substantive footnote. Professor Douglas's base pay is reported in the 2019 TSU Annual Salary Report as \$213,198 with additional BRP pay of \$1034, and his 2019 his W2 shows total taxable compensation (Box 5) of \$210,103.57.
- b) Manuel Leal. Professor Leal is a male who has a J.D. from South Texas College of Law and an LL.M. from N.Y.U. He joined the TSU law faculty four years after Plaintiff. Professor Sacks has published far more than Professor Leal, who has no top 50 law review articles published, and virtually no scholarship at all. Professor Leal started with a base salary

approximately \$20,000.00 higher than Plaintiff. By 2016, Professor Leal's base salary was \$23,000.00 higher than Plaintiff's base salary. Over the past 15 years, Professor Leal has received hundreds of thousands of dollars more in compensation than Plaintiff. TSU underreported Professor Leal's compensation by approximately \$60,000 per year in 2015 and 2016, as his W2s (Box 5) show \$218,000 as opposed to the reported \$158,000 for those years; his actual compensation is higher since Box 5 reflects taxable income only. In August 2019, the TSU Annual Salary Report stated Professor Leal was paid \$161,603, but his 2019 W2 reflects total compensation (Box 5) of \$179,378.94.

- c) Okezie Chukwumerije. Professor Chukwumerije is a black male who has law degrees from Nigeria and Canada, and joined the faculty a few years after Plaintiff. Professor Chukwumerije's base salary is within approximately \$1000.00 of Plaintiff's base salary. Professor Chukwumerije has a few publications, none of which are top 50 law review articles, and yet, he receives an additional \$20,000.00 per year for "quality scholarship" as a titled professor, while Plaintiff was denied a scholarship-based title. Soon after Professor Chukwumerije told a female student not to report an incident of sexual assault inside of a law school office, he was promoted to Associate Dean, with an increase in pay of approximately \$40,000 per year. For the academic year ending in August

2019, the TSU Annual Salary Report stated that Professor Chukwumerije was paid \$136,697, and despite TSU being ordered by the court to produce his W2, TSU failed to do so. On information, he was paid at least \$20,000 more than reported by TSU, as the Eugene Harrington Professor of Law since 2017. (Titled professorships normally confer an additional \$20,000 per year.)

- d) Gabriel Aitsebaomo. Professor Aitsebaomo is a black male who has a J.D. from TSU and an LL.M. from University of Florida. He joined the faculty a few years after Plaintiff, and yet in 2016 TSU reported that his base salary is within about \$1000.00 of Plaintiff's base salary. Professor Aitsebaomo also was offered a dean position early on, and has been making approximately \$40,000.00–45,000.00 more than Plaintiff for years, *i.e.*, hundreds of thousands of dollars more than Plaintiff over the past decade, with lesser credentials and a scant publication record in low-ranking journals, while Plaintiff has consistently published in top 20 to top 50 law reviews and has been denied a dean position and a director position. For the academic year ending in August 2019, the TSU Annual Salary Report stated that Professor Aitsebaomo was paid \$181,322, and despite TSU being ordered by the court to produce his W2, TSU failed to do so.
- e) Larry Weeden. Professor Weeden is a black male who has a J.D. from Mississippi and no LL.M. He joined the faculty 10 years before

Plaintiff. Professor Weeden has no top 20 law review articles, and most of his publications are in bottom-tier law journals and riddled with legal and grammatical errors and inconsistencies. Yet, Plaintiff's base salary is approximately \$32,000.00 lower than Professor Weeden's base salary. Professor Weeden has a title, for an additional \$20,000.00 per year. Professor Weeden was offered a dean position in or about 2018, and his taxable compensation in 2019-2020 was approximately 106,000.00 higher than Plaintiff's compensation (which understates the true differential relative to pre-tax withholdings). For the academic year ending in August 2019, the TSU Annual Salary Report stated that Professor Weeden was paid \$170,777 plus BRP pay of \$1034, plus an uncertain amount that TSU's 30(b)(6) compensation expert (Derrick Wilson) could not identify in a deposition due to the "pooled" nature of the compensation. Weeden's 2019 W2 reflected total taxable compensation (Box 5) of \$239,698.06.

28. TSU failed to pay Plaintiff the wages she was entitled to be paid.

- a) TSU refused to pay Plaintiff \$20,000.00 between 2014 and 2016 for no good reason despite the money being owed for scholarly activities pursuant to her title of Roberson King during that period and despite the Plaintiff's extraordinary scholarly production during this period.

- b) In 2019, Defendant Weeden refused to pay Plaintiff a \$9000 summer stipend bonus for scholarship, despite the fact that Plaintiff was in the process of producing two legal-political nonfiction books which were published in December 2019 and May 2020, Weeden knew this, and other professors were given the bonuses despite producing no scholarship or low-quality publications.
- c) TSU routinely paid black law professors and long-term male professors BRP or longevity pay while denying the additional pay to women and/or whites.

29. The gender and race-based pay disparity and other forms of discrimination and retaliation violate Title VII, the Equal Protection Clause, and/or other clearly established constitutional and federal law. The persistent refusal even to investigate reasonably the ongoing civil rights violations and retaliation against Plaintiff for pursuing a remedy for the violations caused the constructive termination about which Plaintiff now complains.

C. Douglas's Long History of Racism and 2015 Return to TMSL

30. Douglas has a long history of anti-white sentiment and conduct. His TSU personnel file contains a transcript of a racist speech he gave many years ago (TSU failed to produce this transcript in violation of discovery rules but another TSU plaintiff obtained it in in a prior case and provided it to Plaintiff). He was sued for racial discrimination against whites and lost, then never paid the punitive or compensatory damages assessed against him personally. That is, despite the

jury verdict, Douglas paid nothing and testified that the Texas Attorney General paid for his personal liability, meaning that the Texas taxpayers paid for his intentional and malicious civil rights violations in violation of Texas's policy that taxpayers are not responsible for punitive damages assessed against individuals for malicious or willful misconduct.⁴

31. Soon after the jury verdict against Douglas in the race discrimination case brought by white law professors, he was promoted to become the TSU President with an enormous increase in pay and power. This reflects "TSU's truth" as he stated in deposition in 2020; he believes that TSU is sovereign and exempt from civil rights laws as long as whites and women are targeted for discrimination, and he has abused his administrative powers at TSU so badly for half a century that TSU is hopelessly corrupt and the law school is failing miserably. Douglas has made clear to many people over the years that whites do not belong at TSU, and his behavior is consistent with this attitude.

32. Douglas did not work at TMSL for several years then returned to the law school in or about 2015. After Douglas returned to teach and to help administer the law school, Plaintiff and other whites suffered numerous adverse employment decisions resulting in significant lost compensation, including revocation of their lucrative scholarship-based titles,

⁴ Douglas has testified that when he was sued before for intentional race discrimination and the jury assessed \$81,000.00 in punitive damages and \$55,967.00 in compensatory damages against Douglas personally, the Texas Attorney General paid the damages, meaning the taxpayers paid for his misconduct. *See Harrington v. Harris et al.*, 118 F.3d 359, 364 (5th Cir. 1997).

wage withholding, and other lost income and employment benefits.

33. After Douglas returned to the law school and became the interim dean in 2016, he created an intense culture of racial hate and gender discrimination that grew over time and became intolerable in 2019-2020. Students and faculty became more racially divided and students felt free to make blatant anti-white statements on Facebook reflective of TSU's overall anti-white culture.⁵

34. Douglas was the interim law school dean when the ABA made findings against TMSL because the law school "persisted" in ignoring scores of sexual harassment, sexual assault, and gender-based unequal pay complaints in violation of ABA policy. Douglas reacted by establishing a Gender Equity Committee (GE Committee) to review and correct the sex-based discrimination, but he and TSU then thwarted the committee's attempts to obtain pay data and after nearly three years of the GE Committee's repeated requests for the pay data, TSU produced grossly false pay data that underreported the men's compensation to hide intentional gender-based wage discrimination. Now, after nearly five years, TSU has still not produced any accurate pay data to the Gender Equity

⁵ Tamoria Jones is a TMSL graduate and was Harold Dutton's Chief of Staff at the time of her racist Facebook post. Harold Dutton has been Douglas's friend for decades and is also a TMSL graduate. Jones wrote on Facebook, "You know I gotta go out with a BANG!!! I'm not letting these whites make it . . . [shouting icon] they gonna respect the Negroes of the TMSL." This attitude is typical among Douglas's nonwhite group of haters and represents the culture at TMSL. Jones was rewarded by TMSL by being featured in the TMSL monthly periodical.

Committee, has claimed “confidentiality” in relation to requests for information (despite the fact that public employers must disclose how they spend taxpayer dollars on employees), and has thwarted an investigation into the male v. female pay gap for years.

D. 2017-2018: American Bar Association Investigation and Douglas’s Creation of the Gender Equity Committee

35. The egregious racist and sexist hostile work environment has been the subject of dozens or hundreds of EEOC charges of discrimination lodged against TSU and TMSL, and dozens or hundreds of discrimination and civil rights lawsuits over the years filed against TSU and TMSL.

36. Female law professors have testified or otherwise referred to the hostile work environment at the law school as “constant,” “persistent,” “pervasive,” and/or “intolerable.” In the past 10 years alone, female and/or white law professors have described the hostile work environment at TMSL as “pervasive,” with “hostile office rants” occurring on a “regular, almost daily basis” and that the “retaliation is beyond isolated.”⁶ TSU’s and some of its employees’ misconduct necessitated these women’s resignations, despite having tenure and losing lifelong financial security by resigning.

37. Similarly, female dean Patricia Garrison described how the law school dean “embark[ed] on a campaign to make her life extremely difficult,” “micromanaged every detail” of her job (despite the

⁶ See *Jackson v. Texas Southern University*, 4:16-cv-01123 (S.D. Tex. 2011) (Document 17).

fact that she was a dean), refused to allow her the authority to do her job, withheld money earned and owed, refused to allow her to have a key to rooms to which she needed access in the law school, and harassed Dean Garrison in a “varied and constant” manner.⁷ Both of these other TMSL professors describe intense retaliation when they finally filed lawsuits, and Professor Sacks experienced similar harassing, discriminatory, and retaliatory treatment in response to her valid discrimination complaints. In 2019-2020, the Plaintiff learned that TSU has been paying women far less than men for many years and was hiding it through false wage reporting and withholding pay data from the Gender Equity Committee. Plaintiff also learned at this time many other facts that made it clear that TSU and TMSL was refusing to follow civil rights laws with audacity and had no intention of ever following the law. There was no choice but to resign.

38. TMSL is accredited by the American Bar Association (ABA) and the ABA periodically reviews the law school’s performance as part of the accreditation process. The ABA learned of TMSL’s depth of sexual harassment and unequal pay and gave TMSL many months to work toward compliance with the ABA’s gender discrimination policy. For years, TSU ignored the ABA’s demands to investigate and solve the women’s many discrimination complaints against the law school.

⁷ See *Garrison v. Texas Southern University*, 2011 WL 4457374 (S.D. Tex. Sept. 21, 2011). See Plaintiff’s Second Amended Complaint, *Patricia Garrison v. Texas Southern University*, Civil Action 4:11-cv-02368 (S.D. Tex. August 29, 2012) (Document 44).

39. In June 2017, while Defendant James Douglas was the interim dean of the law school, the ABA issued to the law school a written Notice of Censure and Directed Specific Remedial Action (ABA Notice of Censure).⁸ In the ABA Notice of Censure, the law school was ordered to pay a fine of \$15,000.00 for its substantial and persistent non-compliance with ABA standards prohibiting gender discrimination and sexual harassment. The ABA also required the law school to post a notice on the law school's website concerning the school's ongoing problem with gender discrimination complaints and lawsuits.

40. The ABA directed the law school to remedy the unequal pay based on gender. Thereafter, to appease the ABA, in early 2017 law school interim dean, James Douglas created a "Gender Equity Committee" ("GE Committee") to address the ABA's concerns. The committee allegedly was created to address the gender discrimination issues. However, TSU, TMSL, and Douglas treated the committee members with hostility, failed and refused to turn over public records concerning the law professors' compensation, and did everything to prevent the committee from doing its primary job of assessing the gender pay gap and proposing remedies.

41. TSU and TMSL refused to give the pay data to the GE Committee for nearly three years, then produced unintelligible and false pay tables that

⁸ See ABA Journal, "Texas Southern's law school receives ABA public censure after sex discrimination allegations," July 20, 2017, [Exhibit 1] *available at*: http://www.abajournal.com/news/article/texas_southerns_law_school_receives_aba_public_censure_involving_equal_oppo.

grossly underreported the men's compensation. When the GE Committee Chair (Rebecca Stewart) finally obtained the falsified pay in December 2019, she was informed by former dean McKen Carrington that the pay records did not disclose "off the books" payments to men. No one showed up at the meeting to discuss the pay data and no one knew it was bogus data until much later.

42. Even the W-2s are not full disclosures of the full gender-based pay differential because they do not account for pre-tax compensation and benefits. They do, however, prove that TSU was falsifying pay data and grossly understating the total compensation to male law professors for years as part of its annual official employee compensation report. TSU's conduct was willful and intentionally hid the true male v. female pay differential.

43. Both the original chair of the GE Committee and the second chair of the GE Committee – both white women – resigned from the law school following their assignment as the chair of the GE Committee between 2019-2020. Plaintiff attended GE Committee meetings and voiced concerns about the lack of transparency and apparent gross disparities in opportunities and total compensation between male and female law professors, and she was treated with hostility and retaliation in response.

44. Despite facing possible revocation of ABA accreditation, Defendant Douglas, while acting as interim dean of the law school, announced in a faculty meeting that a report found that there was "no problem" with gender pay discrimination at TMSL. Professor Tekle pressed Douglas for information about *who* authored the "report," and Douglas waffled and

was cagey but finally admitted that he and Mr. Huey, TSU's general counsel, had reviewed the pay data and determined it was fair. Neither Douglas nor Huey conducted a competent or reasonable analysis of gender-based unequal pay and tried to sweep the serious law school problems under the rug again.

45. The law school has taken no reasonable steps to equalize the salaries of the professors, despite the ABA's specific directive to take immediate steps to equalize salaries between males and females.

46. According to a TSU internal audit of March 2020, eight state and federal agencies are investigating TMSL for civil and criminal misconduct, which included the FBI, the Texas Rangers, the Department of Education, and the ABA. Plaintiff and other TSU employees learned of the report in or about March 2020 and it became very clear that TSU has a habit of hiding and destroying evidence and creating false evidence, and that TSU had no intention of quelling the civil rights abuses. When an employer makes clear that it will not stop civil rights abuses, this per se supports constructive termination because employees may resign and sue for constructive termination in such circumstances. *See, e.g., Ogden v. Wax Works, Inc.*, 214 F.3d 999, 1008 (8th Cir. 2000).

E. 2016-2017: Plaintiff's Complaints to TSU Human Resources and the EEOC and Retaliatory Harassment

47. Professor Sacks attempted to get relief from the harassment and unequal pay informally by filing a grievance with TSU and TMSL administration years before she filed a lawsuit. On or about September 15, 2016, Plaintiff personally delivered to Douglas (the

law school dean at that time), TSU Human Resources, and TSU President Austin Lane's office, *inter alia*, a ten-page detailed complaint of unequal pay, discrimination, and harassment based on race and gender, including 163 pages of exhibits. Plaintiff hoped to resolve the issues informally and waited patiently for a response for many months.

48. Defendant Douglas, in his official capacity of acting law school dean, did nothing in response to the Plaintiff's detailed complaint. He knew almost nothing about the 173-page document in his deposition in 2020 and then later signed an affidavit that he had read the entire complaint (which he obviously had not). Douglas took no corrective action whatsoever in response to the Plaintiff's detailed and factual account of pervasive, continuing racial and gender harassment.

49. Instead, TSU and the Individual Defendants retaliated against the Plaintiff by misusing official TMSL committee processes and/or using their administrative or official positions of power over the Plaintiff to deprive the Plaintiff of earned wages or benefits of employment to which she was entitled. Among other acts of retaliation:

- a. Some of the Individual Defendants used their positions as committee members to recommend a bogus finding of discrimination against the Plaintiff in retaliation for her first discrimination complaint sent to Dean Holley in 2016 just weeks prior, despite the fact that there was "no evidence" of discrimination in part because all of Plaintiff's exams

are blind graded, as the dean ultimately concluded in rejecting the committee's bogus recommendation;

- b. TSU (by act of Defendant Weeden) refused to provide the Plaintiff with scholarship monies despite Plaintiff's scholarly productivity while providing the monies to other professors whose scholarship is dismal or nonexistent; and
- c. Some of the Individual Defendants were openly hostile and aggressive toward the Plaintiff, including Defendant Anga's aggressive physical intimidation after blocking Plaintiff from parking, Defendants Colon and Anga screaming at the Plaintiff in a faculty meeting, Professor McKen Carrington yelling at Plaintiff in the faculty lounge, and many other acts of hostility and aggression.

50. After more than two years of waiting for TSU do take some reasonable measures to stop the worsening race and sex-based harassment, Professor Sacks had no option but to pursue a remedy in a court of law.

51. The Individual Defendants also harassed the Plaintiff maliciously and created an intolerable hostile work environment after she filed a lawsuit. The harassment and retaliation became so pronounced that Plaintiff and other female professors characterized the working environment in 2019-2020 as "intolerable." These female professors felt compelled to resign and did so out of necessity, giving up lucrative tenured academic positions.

52. The harassment and retaliatory conduct escalated after Professor Sacks notified TSU administration of the pervasive harassment, and especially in 2019-2020, just as it did when other professors complained about similar harassment and abuse in their lawsuits. The retaliatory conduct that forced Plaintiff to resign violates Title VII, 29 USC Section 215(a)(3), other anti-retaliation laws, and the Constitution. ***Any person*** who aids in ***retaliating*** against a person for making even an informal and internal Equal Pay Act complaint is liable pursuant to 29 USC Section 215(a)(3). Plaintiff made internal and then formal complaints.

F. 2020: First Female Law School Dean Forces Out Competent Female Law Professors

53. In 2019, TMSL hired Joan Bullock to be the first female TMSL dean. Bullock had a preexisting relationship with James Douglas and he pushed her law school dean candidacy on the faculty. James Douglas advised Bullock and her actions as the law school dean furthered his racist agenda to oust the most qualified white female law professors.

54. Bullock increased the workload substantially as to the white female professors in particular by adding time-consuming, unnecessary, and menial tasks such as rearranging the order of subjects taught in classes (requiring many hours of extra work to revise syllabi that had been in use for many years), called many extra faculty meetings which were inefficient and a waste of time, and created extra time-consuming tasks disproportionately performed by white female professors. Bullock told Plaintiff that she intended to

make life less comfortable for the law professors. She externalized a disproportionate burden of the law school's failures and incompetency onto the white female professors. All three white female law professors resigned within one year of Bullock becoming the dean.

55. Bullock assigned time-consuming, onerous additional menial tasks that had never been assigned in the prior 20 years. None of the new menial tasks did anything to address the problems of incompetency and inadequate bar passage rate at TMSL. New tasks included new methods of attendance recording and micromanaging the order with which the torts topics were taught. The burden of some law professors' incompetency even to write law school exams was pushed onto the female professors disproportionately and the female professors had to perform burdensome and time-consuming work that the males did not have to perform.

56. For example, TMSL paid Kaplan tens of thousands of dollars to write the law professors' exams for them because numerous TMSL professors could not do the job professionally or adequately. This forced taxpayers to pay for work product that law professors are already paid to perform. Bullock would not allow the competent professors such as Plaintiff to examine their students in violation of their academic freedom while requiring them to edit and correct Kaplan's atrocious proposed torts questions.

57. Each torts professor was assigned to correct and edit 25 proposed Kaplan torts questions. Torts professors Rebecca Stewart, Connie Fain, and the Plaintiff spent many hours correcting the invalid and grammatically incorrect Kaplan draft questions.

Defendant Weeden (the fourth torts professor) did nothing and did not even bother to attend the meetings to discuss the Kaplan torts exam. Instead, he sent a very brief email stating that all Kaplan questions he was assigned to review were acceptable.

58. Weeden obviously had not even reviewed his assigned questions because Stewart and the Plaintiff shared Weeden's burden of reviewing the draft Kaplan questions and found many substantive and grammatical errors in Weeden's assigned questions that would have made the torts questions very unfair to the law students had the questions not been edited and corrected. Meanwhile, Weeden was making more than \$100,000.00 per year more than Stewart or the Plaintiff.

59. In 2020, Bullock overworked the females and made their lives at TSU intolerable. Bullock wrote an offensive email to Rebecca Stewart that confirmed that TSU had no intention of following the law, and indeed sought to force out the qualified white female law professors. Stewart complained about how the male professors were "underutilized" while certain females were horribly overworked. Bullock's response was to change Stewart's teaching schedule to make it much more onerous, which pushed Stewart to resign. Stewart was a much-loved and very talented law professor. The Plaintiff was upset when Stewart shared Bullock's email to Stewart and realized that the new female dean would not correct the longstanding gender-based workload and salary violations at TMSL and that there was no real option but to resign along with other tenured females.

60. TSU and the Individual Defendants made it impossible for the Plaintiff to continue working at

TMSL. The working conditions became intolerable for numerous female law professors and the Plaintiff and several others resigned between 2019-2020 (including all of the white females, two of whom did not find another tenured academic appointment).

61. Plaintiff reasonably felt compelled to resign because it was clear that the racism and harassment would not be addressed and were getting worse at TMSL. Plaintiff realized in 2020 that the abuse and blatant gender-based unequal pay violations were well-known to TSU and TMSL and that TSU and TMSL did not intend to correct the violations but instead created a great deal of false and fraudulent evidence to try to defend the valid complaint. Under these circumstances, employees are allowed to resign and seek damages for constructive termination.

G. Individual Defendant Liability Under 42 USC Sec. 1983 & 29 USC Sec. 215(a)(3)

62. The Individual Defendants used their official positions as law school administrators, professors, or committee members with authority over Plaintiff's wages, disciplinary proceedings, and employment intentionally to deprive Plaintiff of her rights against discrimination and in retaliation for Plaintiff's complaints of unequal pay and discrimination. The Individual Defendants are personally liable pursuant to 42 USC Sec. 1983. The Individual Defendants' retaliation against the Plaintiff for complaining about discrimination also violated the anti-retaliation provision of the FLSA, 29 USC Sec. 215(a)(3). The Individual Defendants are liable for compensatory and punitive damages under both federal statutes.

63. The Individual Defendants are sued in their personal capacities for self-interested, malicious, intentional, discriminatory, criminal and/or tortious misuse of state power while acting under color of state law, and are jointly and severally liable therefor, based on a concert of action and indivisible injury arising from their intentional violations of clearly established federal statutory and constitutional law.

64. The Individual Defendants' misuse of state power to deprive the Plaintiff of her civil rights and her employment was undertaken with intent and malice. The individual defendants not only misused state power as deans and committee members with authority over Plaintiff's wages, employment benefits, and job security, but also engaged in tortious or criminal behavior in the law school hallways, parking lot, and other places, to force Plaintiff to resign.

65. Some of Defendant Douglas's history of racism and misconduct is discussed herein above, Section IV C-E. Douglas returned to the law school in 2015 and began harassing whites and depriving them of earned titles, employment benefits, and wages. For example, both Walt Champion (white) and the Plaintiff had their high-production, scholarship-based titles revoked in early 2016 despite producing the most high-quality law review articles or the most academic books in the entire law school.

66. After Douglas returned to TMSL in 2015, the Plaintiff was subjected to intense harassment in the law school and while walking to and from her car/parking to the point that the Plaintiff had to hire personal security guards to accompany her while at TSU. Among other things, a TSU security guard told Plaintiff after she complained about discrimination

that some of the law professors “want to kill” her. Plaintiff spent thousands on security guards to be with Plaintiff so that she could keep her job as she sought a remedy with TSU or the Court. But things got worse until the Plaintiff and other females resigned in 2019-2020.

67. Douglas acted with malice toward the Plaintiff because the Plaintiff is female and white. Douglas knew that his conduct violated clearly established constitutional and federal law. He felt entitled to commit the violations, protected by TSU administration which encourages and ratifies such misconduct. Douglas is personally liable for compensatory and punitive damages pursuant to 42 USC Sec. 1983 and 29 USC Sec. 215(a)(3), *inter alia*. TSU is Douglas’s employer and TSU is liable for Douglas’s misconduct.

68. Defendant Walker is defendant Douglas’s ex-girlfriend and is also known for treating whites with disdain and abuse at TMSL. Walker has harassed and aggressed against Plaintiff for several years, necessitating repeated complaints to TSU Human Resources and the TMSL dean, among others. Walker has engaged in very aggressive conduct toward Plaintiff in 2019-2020 and has made comments about Plaintiff’s race during one of Walker’s loud and unprofessional outbursts. She also referred to a white law student as a “white bitch” when the student sought Walker’s assistance, and various TMSL employees heard the statement.

69. Walker misused her official law school committee voting power to try to make a finding that the Plaintiff discriminated against a student soon after Plaintiff’s first complaint of unequal pay and discrim-

ination. The law school dean ultimately found “no evidence” to support the committee’s bogus recommendation, but if the dean had accepted Walker’s and the other committee members’ absurd finding, the Plaintiff could have been terminated for discrimination. Walker engaged state action maliciously to harass, discriminate against, and retaliate against the Plaintiff based on gender and race, in violation of numerous constitutional provisions and federal anti-discrimination laws which are clearly established, rendering her personally liable under 42 U.S.C. Sec. 1983 and 29 U.S.C. Sec. 215(a)(3). Walker also used law students to aid in abusing state authority and brought the students into meetings to vote against the Plaintiff in violation of the law.

70. Walker has a reputation for unprofessional rants in the law school and is known as a “loose cannon,” yelled at Plaintiff in the hallway in front of Plaintiff’s students and followed her to her office where Plaintiff was attempting to take her students after her children’s constitutional rights class. Walker has physically assaulted Plaintiff repeatedly, and made contact with Plaintiff on one or more occasions, which constitutes civil battery.

71. Walker’s harassment of the Plaintiff escalated in 2019-2020. In this time frame, in front of Plaintiff’s step son, Walker threw her hair into the Plaintiff’s face in the law school lobby and approached the Plaintiff’s car aggressively in a church parking lot, yelling, “You can’t park here!”

72. Walker acted with malice toward the Plaintiff because the Plaintiff is female and white. Walker knew that her conduct violated clearly established constitutional and federal law. She felt entitled to

commit the violations, protected by TSU administration which encourages and ratifies such misconduct. Plaintiff complained to TSU Human Resources about Walker's discriminatory harassment and TSU failed to conduct a reasonable investigation or to correct the problem in direct contravention of TSU's official policy manuals for handling discrimination complaints and also in violation of Title VII and other laws. Walker is personally liable for compensatory and punitive damages pursuant to 42 U.S.C. Sec. 1983 and 29 U.S.C. Sec. 215(a)(3), *inter alia*. TSU is Walker's employer and TSU is liable for Walker's misconduct.

73. Defendant Colon began harassing Plaintiff several years ago by: slandering Plaintiff to students and falsely stating that Plaintiff was fired from a prior position when in fact Plaintiff was offered to remain in the prior position but chose to return to TMSL; telling students not to enroll in Plaintiff's classes and spreading untrue rumors that Plaintiff said derogatory things about students which upset the students; harassing Plaintiff's research assistants and reprimanding them for working with the Plaintiff while putting pressure on them to work for him instead; yelling at Plaintiff in a faculty meeting and participating in a voting block to deny Plaintiff the benefits of employment based on her race and/or gender.

74. Colon aided and abetted Otero's Academic Standards Committee's harassment of Plaintiff and attempt to make a finding of discrimination against the Plaintiff with "no evidence." He persuaded the failed-out law student to make a complaint about the Plaintiff knowing that the committee was stacked against the Plaintiff with professors such as Walker, Otero, and Anga, all of whom had assaulted or

harassed Plaintiff (and others) in the past. He also used his faculty voting power to revoke the Plaintiff's title because the Plaintiff is white. He aided in the misuse of state action for malicious, discriminatory, and retaliatory purposes in violation of clearly established constitutional and federal anti-discrimination laws, subjecting him to personal liability under 42 U.S.C. Sec. 1983 and 29 U.S.C. Sec. 215(a)(3).

75. Colon's shockingly poor judgment and lack of professionalism is open and obvious at the law school. Colon also comments on females' bodies in the law school and shows around a photograph of an attractive female pole dancer from South America. He is known for referring to whites as "fucking whites" or "fucking white people," and is also known for giving preferential treatment – including additional study materials – to Hispanic students that he denies to black and white students.

76. Colon acted with malice toward the Plaintiff because the Plaintiff is female and white. Colon knew that his conduct violated clearly established constitutional and federal law. He felt entitled to commit the violations, protected by TSU administration which encourages and ratifies such misconduct. Plaintiff complained to TMSL administration about Colon's discriminatory harassment repeatedly but TMSL did not take action reasonably to stop the harassment in direct contravention of TSU's official policy manuals for handling discrimination complaints and also in violation of Title VII and other laws. Colon is personally liable for compensatory and punitive damages pursuant to 42 U.S.C. Sec. 1983 and 29 U.S.C. Sec. 215(a)(3), *inter alia*. TSU is Colon's employer and TSU is liable for Colon's misconduct.

77. Defendant Otero has harassed and aggressed against Plaintiff for several years, necessitating repeated complaints to TSU Human Resources and the TMSL dean, among others. TSU did not take reasonable corrective action in response to the Plaintiff's complaints in direct contravention of TSU's official policy manuals for handling discrimination complaints and also in violation of Title VII and other laws.

78. Otero was part of a group of nonwhites that misused their official voting power to deprive the Plaintiff of wages and other benefits of employment because Plaintiff is white. In 2016, just weeks after Plaintiff first complained about discrimination, Otero was the chair of the Academic Standards Committee and she orchestrated the kangaroo committee proceeding to attempt to create a false finding of discrimination against the Plaintiff by using a failed-out law student's desperation and TSU's official, absurd policy for failed-out law students. A finding of discrimination could have resulted in Plaintiff's job termination and Otero's behavior as committee chair with state power over the plaintiff was an abuse of her delegated state power. Otero maliciously deprived the Plaintiff of rights clearly established under the Constitution and federal anti-discrimination laws.

79. Like Walker, Otero used TMSL law students to harass the Plaintiff. Otero solicited her teaching assistant, Andrea Curtiss aka Andrea Kurzac, to join the committee and vote in favor of a finding of discrimination against the Plaintiff as part of Otero's attempt to create a false record of discrimination against Plaintiff. In the committee meeting, Kurzac (who Plaintiff had never seen or heard of before) raised her

voice at the Plaintiff and then sent very unprofessional and derogatory emails to the law school dean about Plaintiff in an attempt to influence the dean to make a finding of discrimination against Plaintiff despite their being “no evidence” to support the false claim of discrimination.

80. Kurzac behaved inappropriately in the law school in other ways as well. Kurzac got into a heated, loud argument with another law professor over Kurzac’s inappropriate conduct in the law school. Kurzak acted in concert with Otero to manipulate official state processes to create a false finding of discrimination against Plaintiff and did Otero’s bidding with malicious intent demonstrated by her unprovoked hostility.

81. Otero’s intent is shown by her history and pattern of harassing the Plaintiff. Otero physically assaulted and civilly battered the Plaintiff by slamming a door into the Plaintiff’s foot and grabbing her arm in the hallway near the dean’s suite prior to conducting the kangaroo committee meeting to try to pin the Plaintiff with discrimination despite no evidence. Otero knew this conduct was unlawful and abused her state law power to harass Plaintiff.

82. Otero acted with malice toward the Plaintiff because the Plaintiff is female and white. Otero knew that her conduct violated clearly established constitutional and federal law. She felt entitled to commit the violations, protected by TSU administration, which encourages and ratifies such civil rights violations committed against whites and females. Plaintiff complained to TSU about Otero’s discriminatory harassment and TSU failed to take reasonable corrective action in direct contravention of TSU’s

official policy manuals for handling discrimination complaints. Otero continued to harass the Plaintiff until she resigned and Otero is personally liable for her civil rights violations which include retaliation in violation of the Fair Labor Standards Act. Otero is personally liable for compensatory and punitive damages pursuant to 42 USC Sec. 1983 and 29 USC Sec. 215(a)(3), *inter alia*. TSU is Otero's employer and TSU is liable for Otero's misconduct.

83. Defendant Anga is also known for treating whites and certain females with disdain and abuse at TMSL. Anga abused her power as a committee member to deprive Plaintiff of due process and to attempt to making a bogus finding of discrimination against Plaintiff to harass Plaintiff based on sex and race. Anga has harassed and physically aggressed against the Plaintiff soon after she filed her first EEOC Charge in 2017 in retaliation for the Plaintiff's EEOC Charge filed just weeks prior. Plaintiff lodged a complaint with TSU Human Resources and the TMSL dean, among others but TSU never even responded. Anga also harassed another female law professor, and there are at least two official TSU Human Resources complaints against Anga in the 2017-2019 time frame. Despite this record of abusive and harassing conduct, TMSL saw fit to make Anga a dean at the law school in 2021.

84. On April 17, 2017, Professor Anga (a TMSL graduate) sat in her car near Plaintiff's reserved parking space, then pulled into Plaintiff's reserved parking space just as Plaintiff approached her parking space. Anga got out of her car, rudely told Plaintiff that Plaintiff is undeserving of a parking space, and physically charged at Plaintiff when Plaintiff asked

her to move her car. Anga got within ten inches of Plaintiff's face and repeatedly shouted in an angry and physically agitated manner, "What are you going to do about it!?" Defendant Anga's hostility and physical aggression was captured on video by the security cameras in the area. However, when Plaintiff requested the videotapes, TSU failed to produce them and claimed that they did not have the videos. James Douglas admitted that TSU's former president (Austin Lane) ordered Derrick Wilson (in charge of the videos) to destroy video footage relevant to Plaintiff's claims relating to a gender equality meeting in the law school, the March 2020 TSU Audit found that TSU was intentionally destroying evidence, and TSU's modus operandi is to destroy evidence of TSU's wrongdoing.

85. Anga intentionally caused the Plaintiff to be late to class; everyone knew there were big parking problems at the law school. Anga's conduct was in the view of security cameras, but TSU/TMSL has failed to supply the footage after repeated requests, covering up Anga's misconduct.⁹ In addition, Plaintiff went to TSU Human Resources the same day of the incident to complain, and then submitted a written complaint. TSU Human Resources never contacted the Plaintiff about the complaint against Anga, did not conduct a reasonable investigation or take corrective action.

⁹ TSU admitted that it intentionally destroyed evidence relevant to this case in 2017. James Douglas testified in 2020 that former TSU president Austin Lane told Dean Derrick Wilson to destroy an audiotape concerning the Plaintiff after Plaintiff filed her original EEOC charge.

86. Anga, in conjunction with Defendant Colon, shouted down the Plaintiff loudly in a faculty meeting as the chair recognized that the Plaintiff was the proper speaker and the others were out of order. Colon and Anga continued to shout and yell with emotion in the meeting, falsely accusing the Plaintiff of calling Colon incompetent when Plaintiff said nothing like that (as the chair told Colon on the audiotape), until the Plaintiff left the meeting. The meeting was recorded. Plaintiff will introduce the recording at trial to show the loud aggression of Anga and Colon so that her need to resign can be shown in living detail.

87. Anga demonstrated hostility toward the Plaintiff (and other whites) in the law school on many occasions.

88. Anga acted with malice toward the Plaintiff because she is female and white. Anga knew that her conduct violated clearly established constitutional and federal law. She felt entitled to commit the violations, protected by TSU administration which encourages and ratifies such misconduct. Plaintiff complained to TSU Human Resources about Anga's discriminatory harassment and TSU completely ignored her complaint, failed even to contact the Plaintiff, and failed to conduct even a cursory investigation or make findings in direct contravention of TSU's official policy manuals for handling discrimination complaints and also in violation of Title VII and other laws. Anga was promoted to a law school dean position in 2021 despite the complaints of harassment against her on file with TSU Human Resources. Anga is personally liable for compensatory and punitive damages pursuant to 42 U.S.C. Sec. 1983 and 29 U.S.C. Sec. 215(a)(3), *inter alia*.

TSU is Anga's employer and TSU is liable for Anga's misconduct.

89. Weeden routinely accuses anyone who challenges any of the incompetent or unlawful practices at TMSL of being "racist." Weeden accused the American Bar Association (ABA) of being "racist" in a faculty meeting after the ABA informed TMSL that it was not meeting ABA accreditation standards, in part due to the bar passage rate. This is despite the fact that the ABA has bent over backwards to accommodate TMSL's sub-par performance as a law school and has repeatedly given TMSL every opportunity to comply with ABA standards and to raise the bar passage rate.

90. Weeden became a dean soon after Plaintiff sent a detailed complaint letter to Dean Gary Bledsoe concerning Weeden's treatment of the Plaintiff (as reported by numerous other professors to Plaintiff). He abused his state authority as an associate dean and chair of a faculty committee to harass and discredit Plaintiff, misrepresent her scholarly productivity, and deny her research monies. He has encouraged others to vote against Plaintiff, yelled and bullied other professors in faculty meetings to get his way in relation to denying Plaintiff employment benefits, manipulated the process by bringing in students to vote against the Plaintiff (in violation of the state funding statute) and/or made untrue statements to other committee members to influence them to vote against Plaintiff and deprive her of a sabbatical and research monies.

91. Weeden acted with malice toward the Plaintiff because she is female and white. Weeden knew that his conduct violated clearly established constitutional and federal law prohibiting discrimination based on race or gender. He felt entitled to commit the violations,

protected by TSU administration which encourages and ratifies such misconduct. Plaintiff complained to the law school dean (Gary Bledsoe) about Weeden's harassment of Plaintiff and deprivation of her employment benefits and in response Bledsoe immediately promoted Weeden to be a law school dean with an attendant pay raise of about \$40,000 such that Weeden was now making about \$106,000.00 more than Plaintiff despite performing less work, providing low-quality teaching, producing low-quality work, and refusing to do his share of law school work such as the Kaplan questions review, and harassing the Plaintiff. Bledsoe empowered Weeden to deprive Plaintiff of research monies.

92. Weeden is personally liable for compensatory and punitive damages pursuant to 42 U.S.C. Sec. 1983 and 29 U.S.C. Sec. 215(a)(3), *inter alia*. TSU is Weeden's employer and TSU is liable for Weeden's misconduct.

93. The Individual Defendants acted in concert and collectively created an intolerable and abusive working environment as TSU, deprived Plaintiff of wages, and subjected Plaintiff to various forms of exhaustion harassment, threats to personal safety, and an increased and unfair workload. By 2020, Plaintiff had no option but to resign due to the intolerable working conditions. TSU knew for many years that civil rights violations were taking place at TSU and failed and refuse to do anything about it, including failing to undertake a reasonable investigation on many occasions. TSU is liable for the damages caused by TSU employees.

H. TSU's Policy of Ratifying and Rewarding Discrimination

94. TSU and TMSL have a long history and pronounced agenda to promote black male professors to administrative positions with significant increases in pay soon after they have received official complaints or jury verdicts for discriminating against others based on race or gender. Similarly, certain TMSL male professors were promoted soon after they helped to hide, aided, or abetted others' racial and gender discrimination. A few examples follow.

95. Soon after James Douglas was found liable for compensatory and punitive damages for blatantly discriminating against white law professors, he was elevated to the position of TSU President, with an enormous raise in salary and benefits. Douglas brags about being immune from consequences for his civil rights violations. When a female librarian complained about gender-based unequal pay in or about 2017, Douglas told her that he is not afraid of being sued because the government attorneys and insurance will protect him from consequences.

96. When McKen Carrington was the law school dean and numerous EEOC Charges were filed against him for his horrific misogynist behavior and statements toward female law professors (including telling a 50-year-old childless professor that she needed to "go have a baby" to become less aggressive and physically jumping back and forth in front of a female professor to prevent her from walking down the law school hallway after she made a gender discrimination complaint), a group of female professors set up a call faculty meeting to obtain a vote of no-confidence to oust Carrington from the dean's office. At that meeting,

Gabriel Aitsebaomo, a junior faculty member, interrupted and filibustered the no-confidence faculty meeting and made such a loud and aggressive spectacle of himself that the faculty meeting ended quickly. Soon thereafter, he was promoted to a law school dean position with a significant pay raise around \$45,000.000 per year and remained in the dean's position for many years, with a partial and very easy teaching schedule.

97. TSU and TMSL have shown a clear pattern of rewarding the most racist and misogynist people on TSU campus and handing to them the reins of authority at TSU. TSU's policy of allowing and ratifying abusive civil right violations aimed at whites and females – and white females such as the Plaintiff in particular – renders TSU liable for TSU's employees' misconduct. TSU is both vicariously liable and liable for TSU's institutional misconduct. Injunctive relief against TSU's longstanding discrimination is proper.

I. Events Causing Termination of Multiple Female Professors

98. Abusive conduct toward women and whites increased after James Douglas returned to the law school and in particular once he became the interim dean in 2016. Plaintiff and a white male were stripped of their titles and were never paid in full for title money they earned and TSU agreed to pay.

99. Between 2018-2020, after Plaintiff filed her EEOC Charge in 2017 and suffered immediate harassment and abuse as noted above, the harassment and abuse became intolerable. Five female law professors resigned 2019-2020, three of whom did not secure another tenured position – this is unheard of in the legal academy and exemplifies the level of

intolerable abuse at TMSL, where women are forced to resign to preserve their health.

100. In or about 2018, Plaintiff made an internal complaint to interim Dean Gary Bledsoe concerning Defendant Weeden's ongoing harassment and intentional deprivation of Plaintiff's wages and perks via misuse of his power as a chair or committee member with authority over Plaintiff's benefits and wages. Plaintiff relayed to Dean Bledsoe that Weeden strong-armed a vote against Plaintiff the year prior by falsely informing other committee members that person who have never had a sabbatical have priority and then in 2018 brought in uniformed students to vote against Plaintiff's sabbatical application in direct contravention of the Texas funding statute governing sabbaticals. The invalid two student votes created a vote outcome to deprive Plaintiff of a sabbatical again. Weeden then attempted to persuade other committee members to misrepresent to the dean the outcome of the committee vote so that Dean Bledsoe would not know that two students were brought in by Weeden to vote against the Plaintiff in violation of state law.

101. Instead of investigating Weeden's misconduct and reprimanding Weeden for his dishonesty and attempts to harm the Plaintiff by depriving her of employment benefits, Bledsoe promptly promoted Weeden to be an associate dean in the law school with an attendant pay raise of about \$45,000.00 for the dean title. After his promotion, Weeden's compensation was \$106,000.00 more than Plaintiff's despite Weeden's horrible teaching evaluations and dismal, low-quality scholarship, and failure to perform law school duties while externalizing those time-intensive duties to the female professors.

102. In or about 2019 a female law student was sexually assaulted by the TMSL student body president in his law school office provided to him by TMSL administration. Two professors, including Okezie Chukwumerijie, advised her *not* to make a Title IX complaint about the sexual assault because the student body president was “popular.” Finally, the female student told the Plaintiff about the incident and the other professors’ responses to her verbal complaints to them. The student decided not to file a complaint in part due to Chukwumerijie’s advice. Soon thereafter, in 2020, Chukwumerijie was promoted to a law school dean position with an attendant pay raise of approximately \$45,000.00 per year. He had been given a title for scholarship in 2017 over the Plaintiff as well, despite Plaintiff’s far superior scholarship record, with an attendant \$20,000.00 per year. These enormous pay increases to a male professor who thwarted a sexual assault complaint caused him to be making around \$65,000.00 more than the Plaintiff and about \$90,000.00 more than Rebecca Stewart by 2020, despite the white females’ heavier teaching load and overall law school workload, their superior academic background and extraordinary teaching and work ethic, and their superior record of scholarly and educational production. TMSL’s response to the many sex discrimination complaints and ABA reprimand was to double down on the same conduct that landed TMSL the ABA reprimand and \$15,000.00 fine in 2017.

103. In 2019, TMSL hired the first female dean, Joan Bullock, who promptly made clear that she would not address the sex discrimination issues and in fact continued to further the agenda to overwork, underpay, and abuse females in the law school, and

white females in particular. She created additional menial tasks for the professors, failed and refused to address the enormous male-female pay gap, failed to address the sexual assault and harassment complaints, and promoted professors who were known to harass others or to cover up others' harassment. When Rebecca Stewart complained about the male professors being "underutilized" and Bullock's unfair workload for women being a result of her desire not to "ruffle male feathers," Bullock pushed Stewart to resign by assigning Stewart a much more onerous and undesirable workload. Plaintiff saw Bullocks' offensive written response to the highly talented Rebecca Stewart and was upset because it made very clear that Bullock had no intention of correcting or even addressing the outrageous sex discrimination going on at TMSL. There was no choice but to resign and lose the many years of hard work credit that tenure represents. Numerous females resigned in the first year of Bullock's deanship, including all white female law professors (including the Plaintiff).

104. Defendant Anga has a documented history of harassment against whites and other females, resulting in multiple complaints to TSU Human Resources against Anga. In late 2020 or early 2021, despite multiple harassment complaints on file with TSU's Human Resources concerning Anga's abusive conduct, Dean Bullock promoted Anga to a law school dean position, completely ignoring Anga's official record of misconduct.

105. During this same time frame, as TMSL administrators were promoting discriminators and those who cover up discrimination and giving them tens of thousands of dollars in additional compensation,

TMSL did not give Plaintiff even a cost of living wage increase, widening the already huge pay gap between Plaintiff and the male law professors. It was clear that TMSL and TSU had no intention of ever following the law against discrimination despite many years of harassment and nonstop complaints, and that hiring the first female dean was not going to change anything. In fact, the situation became so intolerable that multiple tenured female professors resigned in self-preservation, despite terrible financial consequences.

106. TSU employees continued to harass Plaintiff post-termination as well and continued to retaliate against her for complaining about sex and race discrimination. For example, after Plaintiff's resignation, she was blocked from accessing her payroll records through TSU's system, which she needed for wage calculations and she was notified that her health insurance had been canceled by TSU despite Plaintiff's written option to continue coverage on file with TSU.

V. CAUSES OF ACTION

Count 1-Title VII

Constructive Termination Against TSU

107. The preceding paragraphs are fully incorporated as if set forth fully herein.

108. TSU's conduct violates Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race and sex and also prohibits retaliation and constructive termination for complaining about discrimination.

109. Plaintiff is a racial minority at Texas Southern University and female. She has been subjected to harassment for years while in the law school or in the parking lot. She filed an EEOC complaint and then a federal lawsuit in 2018. The harassment became intolerable in 2019-2020 when known harassers and those who covered up for them were promoted and rewarded for civil rights violations while TMSL continued to ignore and encourage discrimination, a new dean arrived and greatly increased the workload of the female professors while failing to address the gross gender pay and workload gaps, and it became very clear that TMSL intends to retaliate against those who complain about civil rights violations as opposed to following the law and investigating/correcting the violations. The Individual Defendants retaliated against the Plaintiff for filing the lawsuit after it was sent to all TMSL faculty via a law school global email. TMSL ignored Plaintiff's complaints of discrimination and promoted Individual Defendants who aggressively harassed the Plaintiff. TSU continued to fail to pay Plaintiff's wages and made clear that TSU had no intention of complying gender equal pay laws, other civil rights law, or the common law.

110. The conduct became severe and pervasive to the point that it permeated every aspect of the Plaintiff's job including compensation, physical safety, access to/use of technology, class overload, and an overall much heavier work schedule with far less compensation than the men. The harassment was motivated by race and gender and was sufficiently severe to be termed "intolerable" by 2020 by any reasonable person's standards. Three white TMSL female employees described the work environment as "intolerable."

111. Plaintiff was forced to resign in 2020 due to the intolerable and abusive work environment and TSU's ongoing refusal to abide by civil rights laws while consistently creating false evidence to defend the many employee lawsuits.

112. Plaintiff has suffered damages as a result of the retaliatory termination, including lost wages and other employment benefits as a result of employment termination. TSU is liable for constructive termination and Plaintiff's damages.

113. Plaintiff timely met all filing prerequisites and filed this lawsuit timely.

**Count 2-Retaliation and Constructive
Termination for EPA Complaint
29 U.S.C. Sec. 215(a)(3) Against All Defendants**

114. All preceding paragraphs are fully incorporated as if set forth fully herein.

115. Defendant TSU's misconduct and the Individual Defendants' misconduct violates the Equal Pay Act anti-retaliation provisions, 29 USC Section 215(a)(3), which provide for individual liability against any person who furthers a retaliatory scheme subsequent to an Equal Pay Act complaint, in addition to employer liability.

116. Plaintiff participated in protected activities and lodged both informal and formal EEOC complaints and a lawsuit concerning the Equal Pay Act violations, hostile work environment and, discriminatory and harassing treatment. Thereafter, the Individual Defendants and TSU retaliated against Plaintiff and forced Plaintiff to resign her tenured position as described more fully herein above.

117. Defendants' behavior that necessitated Plaintiff's resignation caused substantial damages, including unpaid wages of more than \$300,000.00, lost wages post-termination, and large retirement account losses.

118. The Individual Defendants acted with malicious intent and abused their state power, subjecting them to punitive damages.

119. The Individual Defendants and TSU are jointly and severally liable for all of Plaintiff's damages because they acted intentionally and in concert, and Plaintiff's damages are indivisible.

**Count 3-42 U.S.C. Section 1983 Civil Rights
Violations (Predicated on
42 U.S.C. Section 1981, the Equal Protection
Clause, and the Due Process Clause)
Against All Individual Defendants**

120. The preceding paragraphs are fully incorporated as if set forth fully herein.

121. Pursuant to 42 U.S.C. Section 1983, Plaintiff may bring a claim for damages and injunctive relief for Individual Defendants' violation of Plaintiff's rights secured by the Constitution or federal law, including rights secured by the Equal Protection Clause, the Due Process Clause, and 42 U.S.C. Sec. 1981.

122. 42 U.S.C. Section 1981 is a federal law that prohibits racial discrimination, harassment, and retaliation with respect to the making, performance, modification and termination of contracts, and the benefits, privileges, terms and conditions of the contractual relationship. The constitutional clauses protect Plaintiff from the loss of her employment based on intolerable racial and gender harassment and retaliation for

complaining about it. Plaintiff had a property interest in her tenured professorship.

123. Individual Defendants have acted under color of state law. They have abused their power as government employees and they have subverted official TSU processes for their personal, malicious racist and misogynist purposes, in violation of the clearly established law.

124. Individual Defendants have taken the action they have based on racial animus and misogyny, have misused their official powers delegated to them by TSU/TMSL knowing that their conduct violates clearly established law prohibiting racial and gender discrimination. This conduct renders punitive damages proper.

125. TSU ratified this conduct and encouraged it against women and whites in particular. TSU violated TSU's own faculty manuals that set forth due process for discrimination complaint and in fact promoted blacks who discriminated against others.

126. As a result of Individual Defendants' violations of Plaintiff's clearly established rights federal statutory and constitutional rights, she has suffered lost pay and benefits, and other injury.

Count 4-Breach of Contract Against TSU

127. The preceding paragraphs are fully incorporated as if set forth fully herein.

128. TSU was obligated to pay Plaintiff monies owed in accordance with TSU's agreement with Plaintiff to pay her certain sums and to pay her in accordance with the law. TSU failed to pay the Plaintiff because she is female and white and withheld tens of thousands

of dollars owed to the Plaintiff in breach of its agreement to pay. TSU waived immunity by accepting the full contract benefits then refusing to pay its employee earned wages under the contract. Immunity for TSU's conduct was also abrogated by Congress pursuant to the passage of the EPA, 29 USC Section 206(d)(3), which prohibits TSU from wage-withholding based on sex.

129. Plaintiff performed all of her obligations pursuant to her agreement with TSU, and exceeded all expectations at TSML by holding additional classes for her students, creating original teaching materials, and publishing high-quality scholarship above and beyond the law school's expectations or requirements.

130. Plaintiff presented a claim for her contract damages pursuant to Texas CPRC, Chapter 38, but TSU failed to tender payment or even respond to the presentment before the expiration of 30 days, entitling Plaintiff to an award of attorneys' fees pursuant to Chapter 38.

131. As a result of TSU's breach, Plaintiff has suffered damages in an amount to be proven at trial and attorney's fees in pursuing the claim.

VI. CONDITIONS PRECEDENT

132. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

VII. DEMAND FOR JURY TRIAL

133. Plaintiff, DEANA POLLARD SACKS, asserts her rights under the Seventh Amendment to the U.S. Constitution and other federal law, and demands a

trial by jury on all issues in accordance with Federal Rule of Civil Procedure 38.

VIII. CONCLUSION AND PRAYER

WHEREFORE, Plaintiff prays that as follows:

134. On The First Cause of Action

- a) For an award of damages to compensate Plaintiff for her economic losses, including back pay, lost wages, unpaid wages, front pay and other lost benefits of employment;
- b) For an award of pre-judgment interest on the amounts owed at the maximum rate allowed by law;
- c) For an award of costs of this action, together with reasonable attorneys' fees and expert witness fees;
- d) For an award of post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law; and
- e) For such other and further relief to which the Plaintiff is justly entitled.

135. On The Second Cause of Action

- a) For an award of damages to compensate Plaintiff for her economic losses, including back pay, unpaid wages, lost wages, front pay, and other lost benefits of employment;
- b) For an award of pre-judgment interest on the amounts owed at the maximum rate allowed by law;

- c) For an award of costs of this action, together with reasonable attorneys' fees and expert witness fees;
- d) For an award of post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law;
- e) For an award of punitive damages against each Individual Defendant; and
- f) For such other and further relief to which the Plaintiff is justly entitled.

136. On The Third Cause of Action

- a) For an award of damages to compensate Plaintiff for her economic losses, including back pay, lost wages, unpaid wages, and other lost benefits of employment, as well as special compensatory damages;
- b) For an award of pre-judgment interest on the amounts owed at the maximum rate allowed by law;
- c) For an award of costs of this action, together with reasonable attorneys' fees and expert witness fees;
- d) For an award of post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law;
- e) For an award of punitive damages against each Individual Defendant; and
- f) For such other and further relief to which the Plaintiff is justly entitled.

137. On The Fourth Cause of Action

- a) For an award of damages to compensate Plaintiff for her economic losses, including back pay, lost wages, unpaid wages, and other lost benefits of employment, as well as special compensatory damages;
- b) For an award of pre-judgment interest on the amounts owed at the maximum rate allowed by law;
- c) For an award of costs of this action, together with reasonable attorneys' fees and expert witness fees;
- d) For an award of post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law;
- e) For such other and further relief to which the Plaintiff is justly entitled.

Respectfully submitted,

/s/ David J. Sacks

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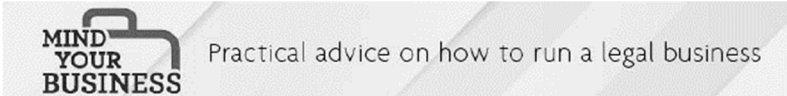
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June 27, 2022

EXHIBIT 1 TO COMPLAINT
ABA JOURNAL – TEXAS SOUTHERN’S LAW
SCHOOL RECEIVES ABA PUBLIC CENSURE
AFTER SEX DISCRIMINATION ALLEGATIONS
(JULY 20, 2017)



By Stephanie Francis Ward
(<https://www.abajournal.com/authors/20/>)
July 20, 2017, 2:14 PM CDT



Texas Southern University Thurgood Marshall School of Law has been publicly censured by the ABA’s Section of Legal Education and Admissions to the Bar after gender discrimination allegations from a female associate dean.

Also, the section council found that the law school was out of compliance with standards involving admissions, education programs, academic advising and equal opportunity.

The council released two separate decisions for its findings. One decision (https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/PublicNoticeAnnouncements/2017_july_texas_southern_104_205_censure_remedial_action.authcheckdam.pdf) (PDF) involves Standard 104, which deals with law school questionnaires submitted to the ABA, and Standard 205(b), which

addresses and equal opportunity for students, faculty and staff.

After a site visit to Thurgood Marshall School of Law at which complaints were raised about gender discrimination and sexual harassment, the ABA's accreditation committee determined that the law school had not established it was in compliance with Standard 205(b). Fact finders were appointed to examine the law school and university's policies related to gender discrimination and harassment and look at how the law school applied the policies in question.

Faith Joseph Jackson, Thurgood Marshall School of Law's associate dean of internal affairs, in 2016 filed a U.S. District Court for the Southern District of Texas lawsuit (https://www.abajournal.com/files/Jackson_v._texas_southern1.pdf) (PDF) against the school alleging gender discrimination. She is also an associate professor who is pursuing a full professorship. Parties in the lawsuit recently agreed to mediation, her attorney told the ABA Journal.

The lawsuit claims that the ABA had flagged the law school in 2008. It also alleges that since 2012 she'd repeatedly complained to Danyne R. Holley, who resigned as law school dean in 2016, that she was not being paid as much as a male counterpart. Holley only acknowledged that two weeks before that ABA fact-finding team's January 2016 visit, according to the complaint.

The June 2017 council decision states that based on the fact-finding team's report and the law school's response, the accreditation committee found the law school was not in compliance with Standard 205(b).

Thurgood Marshall School of Law appealed the committee's decision. At a hearing, its interim dean acknowledged that a perception of gender bias exists at the law school. According to the council decision, he "was appointed subsequent to the particular actions that formed the basis for the site visit report." The president of the university also attended the hearing, and stated that "gender discrimination would not be tolerated."

James M. Douglas, a contracts professor, currently serves as the law school's interim dean, according to its website (https://www.tsulaw.edu/faculty/James_%20Douglas.html). He was not available for comment when contacted by the ABA Journal. Holley (https://www.tsulaw.edu/faculty/Dannye_Holley.html), now a criminal law professor at the school, served as its dean from 2010 to 2016. He did not immediately respond to an ABA Journal interview request.

After the hearing, the council of the ABA's Section of Legal Education and Admissions to the Bar found that Thurgood Marshall School of Law remains non-compliant with the standard addressing equal opportunity. The decision also states that the law school violated Standard 104, which is focused on information law schools provide the ABA.

The council finding directs the law school to develop a reliable plan addressing how it will try to have an environment free of gender discrimination and sexual harassment, what it will provide in training for faculty, staff and administration regarding gender discrimination and how that will be communicated and implemented.

According to Jackson's lawsuit, Holley also refused to allow Jackson to reprimand employees in breach of university policies, kept her from participating in meetings with direct staffers and did not include her in emails regarding planning and preparation.

Jackson also alleges that the law school retaliated against her after discovering that she filed an Equal Employment and Opportunity Commission complaint against the school, denied her a full professorship despite a majority faculty vote in her favor, and applied different standards for her in the evaluation process.

Additionally, the lawsuit alleges that Holley encouraged staff to "engage in hostile office rants" regarding Jackson. One staff member allegedly called her the "HNIC," which traditionally refers to the expression "Head N— In Charge," and others would speak of a "Team Against Faith Campaign."

"Despite the complexity of bringing a discrimination case against a public institution, our client brought the suit to hopefully change the culture of gender bias in selecting its faculties and administrators," Scott Khoa Bui, Jackson's lawyer, told the ABA Journal in an email.

The council's other decision (https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/PublicNoticeAnnouncements/2017_july_texas_southern_301_309_501_remedial_action.authcheckdam.pdf) (PDF) regarding Thurgood Marshall School of Law stems from an accreditation committee finding that the law school was out of compliance with accreditation standards 301(a), 309(b) and 501(b), which deal with program objectives, academic support and admissions. The law

school also appealed the finding, which the section council affirmed.

The law school must post both council decisions on its website, according to the documents, and pay a \$15,000 fine to the ABA's Section of Legal Education and Admissions to the Bar. It also must submit a reliable plan to come into compliance with the standards addressing program objectives, academic advising and admissions, and share with the accreditation committee data involving admissions for the Fall 2017 class. If something beside an LSAT score or GPA was used to support an admissions decision, that must be reported to the accreditation committee.

Also, the law school must submit admissions practices and policies adopted for recruiting the fall 2018 entering class.