No. _____

SUPREME COURT OF THE UNITED STATES

Cara Wessels Wells

Petitioner,

vs.

Texas Tech University, Samuel Prien, and Lindsay Penrose

Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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App. 1

United States Court of Appeals
for the Fifth Circuit

No. 24-10518

[Date Filed March 3, 2025]

Cara Wessels Wells

Plaintiff—Appellant,

versus

Texas Tech University; Samuel Prien; Lindsay Penrose,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:23-CV-60

Before King, Ho, and Ramirez, Circuit Judges. Per Curiam:*

Cara Wells, an unpaid mentor who was removed from a university- sponsored program, appeals the dismissal of her lawsuit against Texas Tech University (TTU) and two professors. We AFFIRM.

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

I

After Wells enrolled in TTU in 2009, she became interested in animal science research and began working as a research assistant for Samuel Prien, a professor in the Department of Animal and Food Sciences. Wells attended various conferences with Prien and another professor who worked in his lab, Lindsay Penrose. She contends Prien forced her to share a hotel room with him and Penrose during the conferences, and that the professors consistently harassed and bullied her. After she graduated, Wells continued working in Prien's lab as a Ph.D. student.

In 2014, TTU began filing applications to patent ideas and methods developed by Wells and the professors, including her "original concept for using embryo buoyancy to determine embryo sex." Even though the patent application initially listed Wells, Prien, and Penrose as co-inventors, TTU removed Wells as an inventor before the patent was awarded. Wells's portion of royalties for another patent was disproportionately lower than that of the professors, and she has not received royalties from TTU for several other patents.

Wells graduated from the doctoral program in

2017, but she struggled to find work. Prien, whom she had listed as a reference, informed her that he had "told [potential employers] that he could not recommend her for the job," allegedly "so that she would have no choice but to return to an assistant's position in his lab."

Wells eventually applied for and was accepted to TTU's Accelerator Hub program, a year-long initiative that offers funding, training, and business support to startups, and she added Prien to her team of mentors in the program. Wells and her company, Embroytics, partnered with another company, Simplot, to conduct research, for which they entered into a ten- year non-disclosure agreement. Prien, like all other mentors in the Hub program, also entered into a non-disclosure agreement.

After Embryotics dissolved, Wells founded EmGenisys—a company focused on a digital, noninvasive embryo assessment platform for livestock, and she again applied and was accepted into the Hub program. A precision livestock company called Vytelle approached EmGenisys in 2019, to collaborate on a "project that would build upon the technology" that Embryotics had been working on

before its dissolution. Because that technology had been developed at TTU, Wells needed to secure a license from the university, and Wells had repeatedly sought assurance from TTU that she would be able to license the technology but received none. TTU ultimately licensed the technology directly to Vytelle and arranged for EmGenisys and Wells to work for Vytelle, which "robbed" her of a "lucrative financial opportunity." Prien and Penrose allegedly drove this arrangement.

EmGenisys remained in the Hub program, and Wells continued to include Prien in her research. He asked to view data from a "sex selection study" she had performed for Simplot and then used it as part of an abstract for a presentation at a conference. Wells asked him to withdraw his submission because she worried that the presentation would harm her companies, breach Embryotic's non-disclosure agreement with Simplot, and violate Prien's non-disclosure agreement for the Hub program, but he refused. After the conference removed the abstract based on Wells's claim of "misconduct and misappropriation," Prien allegedly told another graduate student that he was going to "destroy" her.

Wells subsequently discussed the professors' alleged misconduct, including being forced to share a room with them, with a TTU student body representative, the managing director of the TTU Innovation Hub, and another mentor in the Hub program. In the fall of 2020, she also raised the issue with the Vice Provost for Graduate and Postdoctoral Affairs and Dean of the Graduate School during a virtual lunch discussion about how TTU could better serve its students. Wells followed up in writing, but the dean did not respond for more than a year.

In May 2022, Wells returned to the Hub program as a mentor. The selection process for mentors included interviews, background checks, and onboarding procedures. Those who are selected were added to TTU's website. Wells alleges that it was common practice for Hub program mentors to turn their roles into compensated ones by being hired in full-time roles at TTU or partnering with companies accepted into the Hub program. About a month later, the Office of the General Counsel removed Wells from her mentoring position. TTU removed her from its website and eliminated her from its publications. Wells claims that Hub program mentors were

instructed to terminate formal relationships with her and forego future programming with her. "No legitimate reason was given for removing [her]."

On November 11, 2022, Wells filed a charge with the Equal Employment Opportunity Commission (EEOC) against TTU alleging discrimination, harassment, and retaliation based on sex. She alleged that Prien subjected her to harassment and discrimination from 2012, when she was an undergraduate research assistant, through June 2022, when she was removed as a Hub mentor, and that TTU ignored and disregarded her allegations about his conduct. She also claimed that Prien and TTU retaliated against her for complaining about sharing a hotel room with him during conference trips when TTU eliminated her inventor listings from its publications, removed her as a mentor, and instructed a "third party" to not work with her. The EEOC issued a Right to Sue letter on December 22, 2022.

On March 22, 2023, Wells sued TTU, Prien, and Penrose, asserting claims under Title VII of the Civil Rights Act of 1964, Title IX of the Education Act of

Education Amendment of 1972, and state law.[1]

Wells appeals the dismissal of her claims as well as the denial of her motion for leave to amend her complaint a second time.

II

We review the grant of a motion to dismiss under Rule 12(b)(6) *de novo*. *Lindsay v. United States*, 4 F.4th 292, 294 (5th Cir. 2021). We "accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiffs." *Id.* (quoting *Anderson v. Valdez*, 845 F.3d 580, 589 (5th Cir. 2016)). To survive a motion to dismiss, a complaint must contain sufficient facts to state a claim for relief that is plausible on its face. *In re Ondova Ltd. Co.*, 914 F.3d 990, 992–93 (5th Cir. 2019) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "And while we must accept a plaintiff's factual allegations as true, we are not bound to accept as true 'a legal conclusion couched as a factual allegation.'" *Id.* at 993 (quoting

[1] Wells also asserted claims against both professors for Equal Protection violations under 42 U.S.C. § 1983, Title IX discrimination, correction of inventorship, patent invalidity, intentional infliction of emotional distress, and fraudulent concealment, and a claim against Prien for defamation per se. On appeal, she does not challenge the dismissal of those claims.

Papasan v. Allain, 478 U.S. 265, 286 (1986)).

III

Wells argues that the district court erred in dismissing her Title VII claims.[2]

Title VII makes it illegal for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2. "[A] discriminatory and hostile work environment—when sufficiently severe or pervasive—can rise to the level of altering the terms, conditions, or privileges of employment for Title VII purposes." *Hamilton v. Dallas County*, 79 F.4th 494, 503 (5th Cir. 2023) (en banc) (citing cases); *see also Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435, 440 (5th Cir. 2011) ("Title VII has long been a vehicle by which employees may remedy discrimination they

[2] The amended complaint alleges three separate Title VII claims against TTU, which the district court characterized as sexual harassment, hostile work environment, and retaliation claims. Although sexual harassment and hostile work environment may constitute distinct claims, *Hague v. Univ. of Texas Health Sci. Ctr. at San Antonio*, 560 F. App'x 328, 331 (5th Cir. 2014), the district court considered them collectively. Neither party disputes this characterization or consideration of the claims.

believe creates a hostile work environment."). This includes sexual harassment that takes the form of a hostile or abusive working environment. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986). "Title VII also prevents retaliation by 'forbid[ding] employer actions that discriminate against an employee . . . because he has opposed a practice that Title VII forbids or has made a charge, testified, assisted, or participated in a Title VII investigation, proceeding, or hearing.'" *Johnson v. Bd. of Supervisors of Louisiana State Univ. & Agric. & Mech. Coll.*, 90 F.4th 449, 455 (5th Cir. 2024) (citations omitted); *see* 42 U.S.C. § 2000e–3(a).

"Before seeking relief in federal court, Title VII plaintiffs must exhaust their administrative remedies." *Stroy v. Gibson ex rel. Dep't of Veteran Affs.*, 896 F.3d 693, 698 (5th Cir. 2018) (citing *Davis v. Fort Bend County*, 893 F.3d 300, 303 (5th Cir. 2018)). Although administrative exhaustion under Title VII is not "a jurisdictional requirement," it is "a precondition to filing suit, subject to waiver or estoppel defenses." *Id.* "Exhaustion occurs when the plaintiff files a timely charge with the EEOC and receives a statutory notice of right to sue." *Taylor v.*

Books A Million, Inc., 296 F.3d 376, 379 (5th Cir. 2002). A Title VII plaintiff must ordinarily file a charge of discrimination within 180 days from the date of the unlawful employment practice. *See* 42 U.S.C. § 2000e–5(e)(1). "In a state that, like Texas, provides a state or local administrative mechanism to address complaints of employment discrimination, a [T]itle VII plaintiff must file a charge of discrimination with the EEOC within 300 days after learning of the conduct alleged." *Huckabay v. Moore*, 142 F.3d 233, 238 (5th Cir. 1998) (citing *id.*).[3]

A

Wells argues that the district court erred in dismissing her sexual harassment and retaliation claims as untimely based on its finding that she was last employed by TTU in 2017, well over 300 days before she filed her EEO charge in November 2022. She claims she was employed by TTU as an unpaid mentor in the Hub program in 2022.

We apply the "threshold-remuneration test" to

[3] We have held that the 300–day filing period applies "whether or not these other proceedings were timely instituted under state or local law." *Urrutia v. Valero Energy Corp.*, 841 F.2d 123, 125 (5th Cir. 1988).

decide whether an unpaid person is an "employee" within the meaning of Title VII. *Juino v. Livingston Par. Fire Dist. No. 5*, 717 F.3d 431, 439 (5th Cir. 2013). Generally, an employee must receive direct remuneration (i.e., salary or wages) or significant indirect benefits that are not incidental to the service performed for the putative employer (i.e., job-related benefits). *Id.* at 438–39. Without a financial benefit, "no 'plausible' employment relationship of any sort can be said to exist." *Id.* at 439 (quoting *O'Connor v. Davis*, 126 F.3d 112, 115–16 (2d. Cir. 1997)).

Here, Wells does not allege that TTU paid her a salary or provided any other financial benefits participating in the Hub program. *See id.* at 439. Although she claims that she "underwent rigorous interviews, background checks and onboarding procedures" and was "added to the TTU website," and that it was "common practice" for Hub mentors to transform their roles into full-time roles at TTU or partnerships with Hub companies, these benefits are "purely incidental to her volunteer service." *See Juino*, 717 F.3d at 440 (holding that an unpaid firefighter was not an employee under Title VII because the benefits she received—a life insurance policy, a

uniform and badge, and training—were "purely incidental to her volunteer service") (citation omitted); *see also Sacchi v. IHC Health Servs., Inc.*, 918 F.3d 1155, 1159 (10th Cir. 2019) (noting that "others . . . obtain[ing] positions after unpaid internships does not constitute a substantial or significant indirect benefit").

Because Wells was not an "employee" for purposes of Title VII while acting as a mentor for the Hub program in 2022, the district court did not err in finding her Title VII claims untimely.

B

Wells contends that even if she was only employed until 2017, her retaliation claims are not time-barred because she engaged in protected activity during "fall 2020," and her EEO charge alleged acts of retaliation against her "occurring on January 15, 2022 or later."

Although former employees may pursue retaliation claims against former employers, this principle is not designed to permit a perpetual cause of action for any unfavorable action taken in the future. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 339 (1997). It is instead designed to ensure that employees who are discharged in retaliation for their complaints

can bring claims even though they are no longer a current employee. *Id.* "The ultimate determination in an unlawful retaliation case is whether the conduct protected by Title VII was a 'but for' cause of the adverse employment decision." *Long v. Eastfield Coll.*, 88 F.3d 300, 305 n.4 (5th Cir. 1996) (citing *McDaniel v. Temple Indep. Sch. Dist.*, 770 F.2d 1340, 1346 (5th Cir. 1985)). A former employee fails to allege Title VII retaliation when she is sufficiently removed from the employment relationship because the connection between the harm and the protected act becomes too attenuated. *Compare Robinson*, 519 U.S. at 339 (finding actionable plaintiff's claim that he received a negative reference from his former employer shortly after his termination and filing of an EEO charge), *with Allen v. Radio One of Tex. II, L.L.C.*, 515 F. App'x 295, 302 (5th Cir. 2013) (rejecting claim that nearly a year after plaintiff engaged in protected activity and 18 months after she was fired, plaintiff's former employer refused to do business with her new company).

Here, Wells alleged that she was removed from the mentor program, deleted from TTU's website, and blacklisted from the TTU community in June 2022 in

retaliation for reporting professors' misconduct in the fall of 2020. Even if her statements during the fall 2020 virtual lunch constitute protected activity, retaliatory conduct that occurred in January 2022, or later, is too attenuated from her last employment in 2017.

IV

Wells also argues that the district court erred in dismissing her Title IX claims as untimely and for failure to state a claim.

Title IX provides that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). It imposes liability only against an institution—not school officials, professors, or other individuals. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009).

Title IX is governed by state statutes of limitations for personal injury actions. *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759 (5th Cir. 2015). In Texas, the relevant limitations period is two years. *See* Tex. Civ. Prac. & Rem. Code § 16.003; *King-*

White, 803 F.3d at 761 (5th Cir. 2015) (applying Texas law to Title IX claim). Generally, a Title IX claim "accrues when the plaintiff knows or has reason to know of the injury giving rise to the claim." *Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577, 583 (5th Cir. 2020).

A

Wells argues that her "many" claims outside the two-year period are not time-barred based on the "continuing violations" doctrine because "she only later became aware of certain of the harmful misconduct that occurred during and after her tenure at TTU."

Under the continuing violation doctrine, if at least one action in a series of related misconduct falls within the limitations period, all related actions will be considered timely. *Berry v. Bd. of Sup'rs of LSU*, 715 F.2d 971, 979 (5th Cir. 1983). But a violation is not continuing if there are intervening actions that "sever the acts that preceded it from those subsequent to it, precluding liability for preceding acts outside the filing window." *Stewart v. Mississippi Transp. Com'n*,

586 F.3d 321, 328 (5th Cir. 2009).[4]

Because Wells's 2017 graduation from TTU and the 2019 dissolution of her first company that had ties with TTU are sufficient intervening actions, the district court did not err in finding her pre-2019 Title IX claims untimely.

B

Wells argues that she has alleged a plausible claim for relief for her remaining claims.

To establish a Title IX claim for employee-on-student harassment, a plaintiff must allege that (1) a person authorized to address the harassment had actual notice of the behavior; and (2) even with this notice, the program's response to the harassment amounted to "deliberate indifference." *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 358–59 (5th Cir. 2020). "The deliberate indifference standard is a high one." *Doe ex rel. Doe v. Dallas Indep. Sch. Dist.*, 220 F.3d 380, 384 (5th Cir. 2000) (quoting *Doe v.*

[4] The continuing violation doctrine is primarily associated with Title VII harassment claims, and Title IX cases routinely rely on Title VII caselaw. *Sewell*, 974 F.3d at 584 n.2; *see also Papelino v. Albany Coll. of Pharmacy of Union Univ.*, 633 F.3d 81, 89 (2d Cir. 2011) (stating that Title IX is governed by Title VII jurisprudence).

Dallas Indep. Sch. Dist., 153 F.3d 211, 219 (5th Cir. 1998)).

Wells has not alleged sufficient facts to support either of these two prongs. Her statements to the dean focused on hotel accommodations and cost-sharing. *Edgewood Indep. Sch. Dist.*, 964 F.3d at 358–59. She also did not allege facts to show the dean was a person who could address the harassment. *Id.* Although Wells argues that she did not need to provide notice because her claims were being perpetuated by "high ranking individuals," notice is required unless an official sex-based discrimination policy is alleged, which it is not. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998). And Wells has alleged no facts rising to the level of "deliberate indifference," which is a "high one" to meet. *Dallas Indep. Sch. Dist.*, 220 F.3d at 384.

The district court did not err in dismissing Wells's Title IX claims.[5]

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[5] On appeal, Wells argues that she pleaded sufficient facts to support a claim for retaliation under Title IX based on TTU's failure to investigate her complaints about having to share hotel rooms with her professors and subsequent adverse actions. Wells did not expressly assert a Title IX retaliation claim in her original or amended complaints or her response to TTU's motion to dismiss. Even if she "adequately pleaded each element of the

V

Wells argues that the district court erred in dismissing her state law claims for unjust enrichment, breach of fiduciary duty, trade secret misappropriation, and tortious interference with contractual relations under the Texas Tort Claims Act ("TTCA") because the professors' conduct was not "within the scope of their employment."[6]

"The TTCA bars tort claims against government employees when (1) the alleged tort occurred 'within the general scope of that employee's employment' and (2) 'it could have been brought under [the TTCA] against the governmental unit.'" *Espinal v. City of Houston*, 96 F.4th 741, 749 (5th Cir. 2024)

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claim," *Barron v. United States*, 111 F.4th 667, 673 (5th Cir. 2024), it is barred by the two-year statute of limitations. *See King-White*, 803 F.3d at 759–60.

[6] The professors moved to dismiss under Rules 12(b)(1) and 12(b)(6), but their motion did not identify the basis for dismissing the state law claims under the TTCA. The district court's opinion does not mention Rule 12(b)(1) and appears to dismiss all claims under Rule 12(b)(6). We have affirmed dismissals of state law claims under the TTCA raised in motions to dismiss under both Rule 12(b)(1) and Rule 12(b)(6). *See Espinal v. City of Houston*, 96 F.4th 741, 749 (5th Cir. 2024) (affirming dismissal of state law claims barred by TTCA for failure to state a claim under 12(b)(6)); *Benfer v. City of Baytown*, 120 F.4th 1272, 1285 (5th Cir. 2024) (same); *Smith v. Heap*, 31 F.4th 905, 913 (5th Cir. 2022) (same); *Huang v. Huang*, 846 F. App'x 224, 230 (5th Cir. 2021) (affirming dismissal of state law claims barred by TTCA for lack of jurisdiction under 12(b)(1)).

(quoting Tex. Civ. Prac. & Rem. Code § 101.106(f)). "The TTCA defines the term 'scope of employment' as 'the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority.'" *Alexander v. Walker*, 435 S.W.3d 789, 792 (Tex. 2014) (quoting Tex. Civ. Prac. & Rem. Code § 101.001(5)). To prevail on the scope-of-employment inquiry, a defendant need only link one's "job responsibilities to the alleged torts." *Smith v. Heap*, 31 F.4th 905, 913 (5th Cir. 2022) (citing *Garza v. Harrison*, 574 S.W.3d 389, 394 (Tex. 2019)) (cleaned up). The alleged misconduct must have "nothing to do with the employees' duties." *Wilkerson*, 878 F.3d at 160. This is an objective analysis, *see Laverie v. Wetherbe*, 517 S.W.3d 748, 752–53 (Tex. 2017), meaning a plaintiff cannot bypass the immunity issue by merely alleging a defendant was acting outside the scope of his authority. *See Heap*, 31 F.4th at 914.

Wells's unjust enrichment and breach of fiduciary duty claims arise from the various patents filed by TTU. The professors' conversations and actions that allegedly caused her financial and

reputational loss are linked to research conducted on behalf of the university, a key job responsibility of the professors. *See Ho v. Univ. of Tex. at Arlington*, 984 S.W.2d 672, 688–89 (Tex. App.—Amarillo 1998, pet. denied) (finding professors had established their immunity defense because they were acting within the scope of their employment by "teaching, evaluating, and researching").[7] The patents were filed by TTU, so any discussions or actions taken regarding the patents concern the professors' scope of employment, regardless of whether they continue to receive royalties after they are no longer employed with TTU. *See Wilkerson*, 878 F.3d at 160 (recognizing that a connection between employee's job duties and alleged misconduct may exist "even if the employee performs negligently or is motivated by ulterior motives or personal animus") (citation omitted).

Wells's trade secret misappropriation and tortious interference claims concern Prien's

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[7] Although *Ho* concerned an official immunity defense, that analysis is "nearly identical" to the "scope of employment" analysis under the TTCA. *Wilkerson*, 878 F.3d at 160 n.14 ("The 'scope of . . . authority' under official immunity is nearly identical with 'scope of employment' under the Texas Tort Claims Act.") (citations omitted).

submission of data from the "sex selection study" she performed for Simplot. She alleges that this conduct is outside the scope of his authority as a TTU professor and a Hub program mentor. Because he gained access to the data through the mentorship program, this conduct is sufficiently linked to his job responsibilities. *See Heap*, 31 F.4th at 913.

Wells argues that under Texas law, "intentional torts 'perpetrated by an employee'" are not within the course and scope of an employee's authority or employment. Intentional torts generally can be within the scope of one's employment so long as the act is not a deviation from one's job duties. *Fink v. Anderson*, 477 S.W.3d 460, 467–69 (Tex. App—Houston [1st Dist.] 2015, no pet.) (rejecting the argument that an intentional tort forecloses a finding that an employee was acting within the scope of his employment and citing examples under Texas law).

Because the professors were acting within the scope of their employment at all relevant times, the district did not err by dismissing Wells's tort claims for unjust enrichment, breach of fiduciary duty, trade secret misappropriation, and tortious interference

with contractual relations as barred by § 101.106(f).[8]

VI

Wells argues that the district court erred in dismissing her trade secret misappropriation claim against Prien because the data from the "sex selection study" constituted a trade secret, she communicated it to Prien under a non-disclosure agreement, and he used it in violation of the agreement.

To state a claim under the Texas Uniform Trade Secrets Act ("TUTSA"),[9] a plaintiff must allege that "(1) a trade secret existed, (2) the trade secret was acquired through a breach of a confidential relationship or discovered by improper means, and (3) the defendant used the trade secret without authorization from the plaintiff." *CAE Integrated, LLC v. Moov Techs., Inc.*, 44 F.4th 257, 262 (5th Cir. 2022) (emphasis omitted) (quoting *GE Betz, Inc. v. Moffitt-Johnston*, 885 F.3d 318, 325 (5th Cir. 2018));

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[8] Because we affirm on this basis, we need not reach Wells's argument that her state law claims were improperly dismissed under § 101.106(e). *See Forgan v. Howard County*, 494 F.3d 518, 521 n.3 (5th Cir. 2007).

[9] Wells's amended complaint does not indicate the basis for her claim, but the district court considered it under the TUTSA because it "displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret."

Tex. Civ. Prac. & Rem. Code § 134.002(3).

As to the first element, Wells alleges that the "data from her research as part of Embryotics and EmGenisys constituted a trade secret." A "trade secret is information which derives independent economic value from being not generally known or readily ascertainable through proper means." *CAE Integrated, LLC*, 44 F.4th at 262. Texas courts weigh six factors to determine the existence of a trade secret:

> (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

GlobeRanger Corp. v. Software AG U.S. of Am., Inc., 836 F.3d 477, 492 (5th Cir. 2016) (citing *In re Union Pac. R.R. Co.*, 294 S.W.3d 589, 592 (Tex. 2009)).

Wells has not alleged sufficient facts showing that the "sex selection study" is a trade secret. Texas law does not require a specific description of the trade secret, but it requires more specificity than what Wells alleges in her amended complaint. *Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 875– 76 (5th Cir. 2013) (holding that "Wellogix presented sufficient evidence and testimony to support the jury's finding that Wellogix's technology contained trade secrets" without requiring a specific description of the trade secret). Wells does not allege the extent to which the data is "known by employees and others involved in the business" or the "value of that information to the business and its competitors." *Id.* at 875 (quoting *In re Bass*, 113 S.W.3d 735, 739–40 (Tex. 2003)). There are no allegations about "the amount of effort or money expended . . . in developing the information" or the "difficulty with which the data could be acquired or duplicated." *Id.* And Wells does not allege that the data "derives independent economic value from being not generally known or readily ascertainable through proper means." *CAE Integrated, LLC*, 44 F.4th at

262.[10]

"[W]e are not bound to accept as true 'a legal conclusion couched as a factual allegation.'" *In re Ondova*, 914 F.3d at 993. Wells alleges that the data from the "sex selection study" is a trade secret because she says it is. The district court did not err.

VII

Finally, Wells claims that the district court improperly denied her request to amend her complaint as "futile" because she only amended her complaint once and discovery had been stayed.

"We review a district court's denial of leave to amend under Rule 15(a) for an abuse of discretion." *Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 872 (5th Cir. 2000). But Rule 15 requires that a trial court "freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Accordingly, "[u]nless there is a

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[10] Notably, Wells alleges that she is the inventor—rather than the owner—of the alleged trade secrets. Simplot invited her to conduct a sex selection study, but she does not allege that she owned the subsequent research. The distinction between a trade secret owner and a trade secret inventor is an important one. *See* Tex. Civ. Prac. & Rem. Code § 134A.002(3-a) ("'Owner' means, with respect to a trade secret, the person or entity in whom or in which rightful, legal, or equitable title to, or *the right to enforce rights in, the trade secret is reposed*." (emphasis added)).

'substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.'" *Stripling*, 234 F.3d at 872 (citation omitted). An amendment is futile if "the amended complaint would fail to state a claim upon which relief could be granted." *Id*. at 873.

Here, the district court found that the defects in Wells's claims could not be cured by any factual development due to the limitations periods, sovereign immunity, or an inability to "state a claim upon which relief could be granted." *See id.* Additionally, "a movant must give the court at least some notice of what his or her amendments would be and how those amendments would cure the initial complaint's defects." *Scott v. U.S. Bank Nat'l Ass'n*, 16 F.4th 1204, 1209 (5th Cir. 2021), *as revised* (Nov. 26, 2021) (citing *Thomas v. Chevron U.S.A., Inc.*, 832 F.3d 586, 590 (5th Cir. 2016)). Wells has not explained how an amendment would—or could—cure her pleading deficiencies. We find no abuse of discretion.

* * *

The district court's judgment is AFFIRMED.

United State Court of Appeals

for the Fifth Circuit

No. 24-10518

[Filed March 3, 2025]

CARA WESSELS WELLS,

Plaintiff-Appellant,

versus

TEXAS TECH UNIVERSITY; SAMUEL PRIEN; LINDSAY PENROSE,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
USDC No. 5:23-CV-60

Before KING, HO, and RAMIREZ, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this Court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I. O. P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

[Filed May 7, 2024]

No. 5:23-CV-060-H

CARA WESSELS WELLS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY, et al.,

Defendants.

ORDER

The plaintiff, Cara Wells, asserts fourteen disparate claims against Texas Tech and two professors, ranging from employment discrimination to patent invalidation to defamation per se, based on events during her time as a student at Texas Tech University and afterward. Before the Court are four motions to dismiss. Dkt. Nos. 15; 16; 24; 25. The individual defendants and Texas Tech each filed motions to dismiss (Dkt. Nos. 15; 16), which were then superseded by an amended complaint and subsequent motions. The Court denies these motions in part as moot but grants the motion to dismiss certain tort claims against the individual defendants because the defendants have a statutory right to such dismissal that accrued upon the filing of the original motion. See

Dkt. No. 15 at 5. In their new motions to dismiss, the defendants seek dismissal of all claims. Dkt. Nos. 24; 25. The Court grants in full Texas Tech's motion to dismiss (Dkt. No. 24) and the individual defendants' motion to dismiss (Dkt. No. 25) and dismisses all of Wells's claims with prejudice. Wells's claims are not viable for a variety of reasons, including immunity bars, statute of limitations issues, or failure to plausibly allege the elements of the claims.

1. Factual and Procedural Background

A. Factual Allegations[1]

Wells's allegations span over a decade, beginning with her enrollment as an undergraduate student at Texas Tech to her time as a PhD student and concluding with her participation in a program designed to help start-up companies. See generally Dkt. No. 19. In 2009, Wells began her undergraduate studies at Texas Tech and took a course taught by Dr. Samuel Prien. Id. ¶¶ 32–33. Wells subsequently became a research assistant for Prien and worked in his lab where she met Dr. Lindsay Penrose, another Texas Tech professor. Id. ¶¶ 34–37. Wells asserts that Prien and Penrose made inappropriate and harassing comments towards her while she worked at the lab. See id. ¶ 37.

Many of Wells's allegations center around the annual American Society for Reproductive Medicine (ASRM) meeting, a research conference. See, e.g., id.

[1] These allegations are taken from Wells's amended complaint (Dkt. No. 19), which the Court accepts as true when resolving a motion to dismiss. *Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 766 (5th Cir. 2016).

¶¶ 38–40, 44– 45, 51–52, 57–58, 72, 96, 99–100. Wells first attended the conference with Prien and Penrose in 2012 to present a research poster. Id. ¶ 38. She claims that Prien demanded that she share a hotel room with him and Penrose on the trip. Id. ¶ 39. And he also instructed her to wear jeans rather than business attire. Id. ¶ 40. Prien made similar comments on her attire and required Wells to share a room with him and Penrose at subsequent conferences. E.g., id. ¶¶ 44–45, 51–52, 57–58. Wells also alleges that Prien required other students, including male students, to share a hotel room with him on these research trips. Id. ¶¶ 72, 81. Wells asserts that these trips often involved harassment from Prien and Penrose, such as a "demeaning incident" in 2014 where "Dr. Penrose heated a cookie and then crumbled it onto Dr. Wells [sic] bed while staring Dr. Wells in the eye" and Prien "did nothing to remedy or address" this incident. E.g., id. ¶ 52.

While a PhD student, Wells continued to work in Prien's lab where she and the professors developed ideas that resulted in patent applications. See id. ¶¶ 47–50, 53, 76. Wells claims the original idea of one of those patents arose from a discussion she and Prien had about embryo buoyancy. Id. ¶¶ 50, 76. However, before the patent was awarded, Texas Tech "unilaterally removed [her] as an inventor" from the patent application. Id.
¶ 102. She also alleges that her portion of royalties for another patent is disproportionately lower than the professors' and that she was never included in a conversation about the apportionment. Id. ¶ 101. She also has "not receive[d] any royalties from [Texas Tech] for several patents." Id. ¶ 115.

Wells graduated with her PhD in 2017, though she "was so traumatized that she felt she could not walk at graduation." Id. ¶ 64. She then applied for jobs with Prien listed as a reference. Id. ¶ 65. Wells applied to numerous positions over six months and was unable to find work. Id. ¶ 66. She eventually spoke to Prien about this job search where he allegedly told her that he had "told [potential employers] that he could not recommend her for the job." Id. ¶¶ 66–67. She claims that Prien did this "so that she would have no choice but to return to an assistant's position in her lab." Id. ¶¶ 67–68. But Wells found other employment working as an andrologist. Id. ¶ 69.

During her time as an andrologist, "Wells began building her first company, Embryotics." Id. ¶ 71. Her new company brought her back to Texas Tech and Prien. See id. ¶¶ 74–75, 78. In 2018, she left her job as an andrologist to work on Embryotics full time and applied for the company to participate in Texas Tech's Accelerator program. Id. ¶¶ 77–78. The Accelerator program is "a year-long program that provides selected startup companies $25,000 and additional funding opportunities, monthly business trainings, marketing and business plan support, access to regional professional events, and a team of mentors from various industries in the venture space." Id. ¶ 78. Embryotics was selected, and Wells added Prien to her team of mentors. Id. ¶ 79. Embryotics and Wells partnered with another company, Simplot, to conduct research. See id. ¶¶ 81, 97. As part of this arrangement, Embryotics executed a non-disclosure agreement with Simplot. Id. ¶ 97.

Embryotics dissolved in 2019, and Wells formed a new company, EmGenisys. Id. ¶¶ 82–83. Wells again applied to have her company in the

Accelerator program, EmGenisys was accepted, and Prien was added as a mentor. See id. ¶¶ 85–86, 95–96. With her new company, she sought to work with a livestock company, Vytelle, which executed a letter of intent "for a project that would build upon the technology" that Embryotics had been working on prior to its dissolution. Id. ¶¶ 84–85. But because the Embryotics technology had been developed at Texas Tech, EmGenisys could only use the technology with a license from the university. Id. ¶ 85. Once EmGenisys was accepted into the Accelerator program, Wells learned that Texas Tech licensed the technology to Vytelle and arranged for EmGenisys and Wells to work for Vytelle. Id. ¶ 90. Wells asserts that this arrangement was contrary to promises made to her and was driven by Prien and Penrose.
Id. ¶¶ 88–90. Wells later met with various university officials, including Penrose and Prien, in August 2019, to explain her position, but she was met with resistance. Id. ¶¶ 93–94.

Nevertheless, EmGenisys remained in the Accelerator program, and Wells continued to include Prien in her research. Id. ¶¶ 95–96. She discussed her research with him, which Prien then allegedly used as part of an abstract for a presentation at the ASRM conference. Id. ¶ 96. Wells worried that his presentation would harm her companies and would breach Embryotics's non-disclosure agreement with Simplot. Id. ¶ 97; see also id. ¶ 81. She also claims that his disclosure via the abstract violated his non-disclosure agreement with Texas Tech as a mentor. Id. ¶ 98. So she asked Prien to withdraw his presentation, and, when he refused, convinced the conference to remove his abstract due to his

"misconduct and misappropriation." Id. ¶¶ 98–99.

In 2022, Wells became a mentor in the Accelerator program. Id. ¶ 108. She "under[went] rigorous interviews, background checks and onboarding procedures" prior to taking the position, and she was listed on Texas Tech's website. Id. ¶ 110. She hoped that the unpaid mentor position could later lead to a compensated one "by being hired in [a] full-time role[] at [Texas Tech] or by partnering with one of the companies accepted into the Accelerator Hub," like other mentors commonly did. Id. ¶ 111. But Wells's time as a mentor was short-lived and not well-received. See id. ¶ 112. Shortly after she started, "Prien wrote and distributed by email a song he titled the 'Time to Move on Song,' which does not directly name Dr. Wells, but is a clear reference to her." Id. ¶ 109. Then, Texas Tech's general counsel's office directed the program to remove Wells as a mentor. Id. ¶ 112. After Wells was removed, other mentors were told "to cease 'any formal relationship with and remove any and all collaboration with'" her. Id. Further, the mentors "were specifically instructed to 'no longer engage Dr. Wells in Hub programming or involve her in the fulfillment' of the [m]entorship roles." Id. She was also "removed from many [Texas Tech] publications, including articles honoring her as a distinguished alumnus [sic] and EmGenisys founder." Id. ¶ 114.

Wells does not allege that she formally complained of harassment during her time as a student. Rather, she asserts that, at some unspecified point, she "emailed a student body representative asking for help to protect students from [Prien and

Penrose's inappropriate conduct toward] powerless students." Id. ¶ 105. She also later told a mentor in the Accelerator program and the Managing Director of the Innovation Hub that Prien had "forc[ed] her to share a hotel room with him and Dr. Penrose on all of their [u]niversity- sponsored research trips." Id. In 2020, three years after her graduation, she told Dr. Mark Sheridan, the dean of the graduate school, that the university should "prevent students from sharing hotel rooms with professors" and that "students often are faced with unnecessary additional expense," such as research costs. Id. ¶ 106. She claims that other individuals at Texas Tech complained about Prien and Penrose and that those individuals filed their complaints with the university's human resources department. Id. ¶ 107.

B. Procedural History

Based on these events, Wells filed a complaint asserting numerous claims against Texas Tech, Prien, and Penrose. Dkt. No. 1. The defendants filed motions to dismiss these claims, citing various deficiencies. Dkt. Nos. 15; 16. Of particular importance, "[Texas Tech] request[ed] the Court to dismiss [the p]laintiff's tort claims against the [i]ndividual [d]efendants, who are employees of [Texas Tech] pursuant to [Texas Civil Practice and Remedies Code S]ection 101.106." Dkt. No. 15 at 5.

After these motions were filed, Wells amended her complaint (Dkt. No. 19), and the defendants filed new motions to dismiss (Dkt. Nos. 24; 25). Wells's amended complaint asserts fourteen claims: (1) Title VII sexual harassment against Texas Tech; (2) Title

VII hostile work environment against Texas Tech; (3) Title VII retaliation against Texas Tech;

(4) Title IX discrimination against Texas Tech, Prien, and Penrose; (5) Equal Protection Clause violation against Prien and Penrose; (6) correction of inventorship against Prien and Penrose; (7) patent invalidity against Prien and Penrose; (8) tortious interference with contract against Prien; (9) trade secret misappropriation against Prien; (10) intentional infliction of emotional distress against Prien and Penrose; (11) unjust enrichment against Prien and Penrose; (12) breach of fiduciary duty against Prien and Penrose; (13) fraudulent concealment against Prien and Penrose; and (14) defamation per se against Prien. Dkt. No. 19 ¶¶ 118–217. In response, the defendants assert that these claims are all fatally flawed in light of their immunity to suit for some claims, statute of limitations bars, and insufficient factual allegations. See Dkt. Nos. 24; 25. The amended complaint and the subsequent motions to dismiss have mostly mooted the original motions to dismiss. However, for at least some of Wells's tort claims, by operation of Texas law, the original motions to dismiss are still controlling. See Section 3.D infra. The motions are fully briefed and ripe for resolution by the Court.

2. Motion to Dismiss Standard

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Therefore, a plaintiff must allege sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550

U.S. 544, 555, 570 (2007). A plaintiff's 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." Ashcroft v.
Iqbal, 556 U.S. 662, 678 (2009). This "plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted

unlawfully." Id. If a complaint pleads facts that are "'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557).

Defendants can challenge the sufficiency of a complaint through a motion to dismiss under Rule 12(b)(6). See Fed. R. Civ. P. 12(b)(6). In resolving a motion to dismiss, a court must "accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff." Richardson v. Axion Logistics, L.L.C., 780 F.3d 304, 306 (5th Cir. 2015) (cleaned up) (quoting Bustos v. Martini Club, Inc., 599 F.3d 458, 461 (5th Cir. 2010)). However, this tenet does not extend to legal conclusions. Iqbal, 556 U.S. at 678. Further, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id.

3. Analysis

The Court dismisses all of Wells's claims. Her Title VII claims are untimely, and she has not plausibly alleged deliberate indifference to any sex-based harassment or discrimination as necessary for a Title IX claim. Her patent claims are barred by

sovereign immunity and are missing an indispensable defendant. Her tort claims are all asserted against the professors within the scope of their employment and therefore must be dismissed under Texas law. To the extent she is raising a statutory trade secret misappropriation claim, she has failed to plausibly allege that Prien misappropriated a trade secret that belonged to her. Finally, her equal protection claim is not cognizable against the professors in their official capacity because she has not alleged any ongoing violation of federal law.

Accordingly, the Court grants in part the defendants' original motions to dismiss (Dkt. Nos. 15; 16) as to certain tort claims, denies in part as moot the other portions of the original motions, and grants in full the defendants' new motions to dismiss (Dkt. Nos. 24; 25).

A. Title VII Claims

Wells first asserts claims under Title VII against Texas Tech for sexual harassment, hostile work environment, and retaliation. Dkt. No. 19 ¶¶ 118–40. The Court dismisses these claims as time-barred because she did not file her EEOC charge within the 300-day limitations period.[2]

[2] The Court notes that Wells alleges only that she sought relief from the EEOC, not any authorized state agency, and that as a result, the 180-day limitations period would ordinarily apply. 42 U.S.C. § 2000e-5(e)(1); Dkt. No. 19 ¶ 30. However, Texas Tech bases its motion to dismiss on the 300- day limitations period, claiming that Wells cross-filed her complaint with the Texas Workforce Commission. *See* Dkt. No. 24 at 3–4. In light of Texas Tech's own arguments and because Wells's claims are untimely under either limitations period, the Court applies the more generous statute of limitations for purposes of resolving the motions to dismiss.

Title VII claims are subject to a mandatory claims-processing rule that requires a plaintiff to first administratively exhaust her claims before bringing a lawsuit. See 42 U.S.C. § 2000e-5; Taylor v. Books A Million, Inc., 296 F.3d 376, 378–79 (5th Cir. 2002). One aspect of this requirement is the employee must file a charge with the EEOC within 300 days after the unlawful employment practice occurred. 42 U.S.C. § 2000e-5(e)(1). Wells filed her EEOC charge on November 11, 2022. Dkt. No. 19 ¶ 30 & n.1. However, she has not been an employee of Texas Tech since her PhD graduation in 2017. See id. ¶¶ 67–117. Accordingly, her EEOC charge was clearly filed more than 300 days after any unlawful employment practice occurred. As a result, Wells failed to timely file a charge as required to properly administratively exhaust her claims.

Nevertheless, Wells argues that, despite not being formally employed, she was an "employee" of Texas Tech for purposes of Title VII when she volunteered as an unpaid mentor for the Accelerator program, and therefore her removal from serving as a mentor was an adverse action. Dkt. No. 35 at 3–5. But Fifth Circuit precedent forecloses her argument that an unpaid position counts as employment. See Juino v. Livingston Par. Fire Dist. No. 5, 717 F.3d 431, 439 (5th Cir. 2013). To determine whether a non-traditional hire may be classified as an "employee," the Fifth Circuit applies a two-step approach. Id. at 434, 437, 439. The first asks whether the putative employee received remuneration in the form of "salary, wages, or significant indirect benefits that are not incidental to the service performed." Id. at 437, 439. Only if the putative employee shows some

remuneration may a court proceed to the second step of the economic realities and common law agency test. Id. at 434, 439. Applying this test, the Fifth Circuit rejected the argument that a volunteer firefighter who received some compensation, a life insurance policy, a uniform, and training had shown sufficient renumeration. Id. Therefore, the firefighter was not covered by Title
VII. Id. at 439–40.

Here, Wells does not allege that she received a salary, wages, or significant indirect benefit from her mentor position. Dkt. No. 19 ¶¶ 108, 110–11. Instead, she asserts that she interviewed for the position, had the position listed on a Texas Tech website, and hoped that she would be able to transform the position into a compensated position. Id. Her mere hope of possible future remuneration is insufficient to show any significant benefits that are not incidental to the position. See Juino, 717 F.3d at 437, 439–40. At best, her one-sided expectation is an indirect benefit and is substantially less than the actual compensation and insurance benefits that were found insufficient in Juino. See id. As a result, she has not plausibly alleged that she was an employee of Texas Tech when she served as an unpaid mentor, and 2017 remains her last relevant employment date for actionable harassment or hostile work environment. Accordingly, her 2022 EEOC charge—five years after her last date of employment with Texas Tech—was not timely filed. See 42 U.S.C. § 2000e-5(e)(1).

Wells's retaliation claim fares no better. True, former employees can fall within Title VII's protections against retaliation. Robinson v. Shell Oil Co., 519 U.S. 337, 339, 346 (1997). But that is typically

a principle to ensure that employees who are discharged in retaliation for their complaints are able to bring claims even though they are no longer a current employee, see id., not to give someone who was once employed by a company a perpetual right of action for any unfavorable action that the company may take at some point in the future. Consequently, a former employee fails to plausibly allege Title VII retaliation when she is sufficiently removed from the employment relationship because the alleged harm is so attenuated that it would not dissuade a reasonable worker from making a discrimination charge. See Allen v. Radio One of Tex. II, L.L.C., 515 F. App'x 295, 302 (5th Cir. 2013) (citing Robinson, 519 U.S. at 339). In Allen, for example, the Fifth Circuit rejected the plaintiff's claim of retaliation when her former employer refused to do business with her new company, which occurred more than a year after her protected activity and 18 months after she was fired. Id. In contrast, retaliation by a former employer was actionable when the plaintiff asserted that he received a negative reference shortly after he was fired and had filed an EEOC charge. Robinson, 519 U.S. at 339.

Here, given the 300-day limitations period and that Wells filed her EEOC charge on November 11, 2022, the only possibly actionable claims of retaliation would be those occurring on January 15, 2022, or later. See 42 U.S.C. § 2000e-5(e)(1); Dkt. No. 19 ¶ 30 & n.1. But Wells has not been a Texas Tech employee since 2017, and the only date provided by Wells for any possible complaint by her of inappropriate actions is "fall 2020," more than a year earlier. See Dkt. No. 19 ¶ 106. Such claims of adverse actions that occurred roughly five years after her last date of employment—and over a year after any complaints about

impropriety—are simply too attenuated from her employment relationship to state a Title VII claim. See Allen, 515 F. App'x at 302–03; see Dkt. No. 19 ¶¶ 105–06, 112. No reasonable worker would refuse to make or support a discrimination charge because, several years later, after initially leaving her employment on her own terms, she may be removed from an unpaid position by the former employer. Even if this could be actionable, she provides no factual allegations to allow a plausible inference that she was removed from the mentor program or blacklisted from the mentor committee in retaliation for any protected activity. See Dkt. No. 19 ¶ 112. And the extended amount of time between any protected activity and her removal "present[s] too attenuated a time frame for legal causation." Allen, 515 F. App'x at 303 (finding a year between the EEOC charge and the adverse action to be too removed).

In light of these deficiencies, the Court dismisses Well's Title VII claims.

B. Title IX Claims

Wells next asserts a Title IX claim against Texas Tech and the professors. These claims are dismissed because the professors cannot be liable under Title IX, and Wells has not plausibly alleged deliberate indifference by Texas Tech.

Title IX prohibits intentional sex discrimination "under any education program or activity receiving [f]ederal financial assistance." 20 U.S.C. § 1681(a); Doe v. Edgewood Indep. Sch. Dist., 964 F.3d 351, 358 (5th Cir. 2020). It imposes liability

only against an institution—not school officials, professors, or other individuals. Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 257 (2009). Accordingly, her Title IX claim against the individual professors must be dismissed.

Wells's Title IX claim against Texas Tech presents numerous problems. For one, Title IX is governed by a state statute of limitations for personal injury, so Wells's claim is subject to Texas's two-year statute of limitations. See King-White v. Humble Indep. Sch. Dist., 803 F.3d 754, 759–60 (5th Cir. 2015). Moreover, Title IX generally contains an implied private right of action for students challenging sex-based discrimination in an education program, rather than a general right of action for anyone interacting with a university. See, e.g., Lowrey v. Tex. A&M Univ. Sys., 117 F.3d 242, 247–48 (5th Cir. 1997); Lakoski v. James, 66 F.3d 751, 754 (5th Cir. 1995).[3] Many of Wells's allegations fall outside of the two-year window, and she has not been a Texas Tech student since 2017. See generally Dkt. No. 19.
Wells does not address this problem in her briefing, instead arguing that her "employment" as a mentor makes her claims within the two-year period. Dkt. No. 35 at 6. Besides the fact that she was not an employee as previously explained, see Section 3.A supra, it is unclear what relevance that could possibly have for her Title IX claims. Employees do not have a private right of action under Title IX for discrimination unless

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[3] *See also Doe v. Brown Univ.*, 270 F. Supp. 3d 556, 561–62 (D.R.I. 2017); *K.T. v. Culver-Stockton Coll.*, No. 4:16-CV-165 CAS, 2016 WL 4243965, at *6 (E.D. Mo. Aug. 11, 2016); *Lopez v. San Luis Valley, Bd. of Coop. Educ. Servs.*, 977 F. Supp. 1422, 1425–26 (D. Colo. 1997).

they are asserting a retaliation claim for reporting a Title IX violation, which is not at issue here. See Lowrey, 117 F.3d at 247–48; Lakoski, 66 F.3d at 754; Dkt. No. 19 ¶¶ 141–49. Moreover, even if she could possibly have a claim as a non-student, besides a conclusory statement, she does not explain how removing her name from news articles on Texas Tech's website, from her role as a mentor, or instructing people to stop contacting her constituted denying her the benefits of an education program. See Dkt. No. ¶¶ 112, 114, 144, 146. To the extent that the Accelerator program could fall within the scope of Title IX, Wells's own allegations are that she was removed from her role as a mentor, not a participant or beneficiary of the program. See Dkt. No. ¶¶ 108, 112. It is unclear what possible educational benefits she was receiving in that position. Accordingly, her complaint does not appear to plausibly allege that she falls under Title IX's protections.

Beyond these roadblocks, assuming arguendo that any of her allegations were actionable under Title IX, she has failed to plausibly allege a claim for relief. A university is not liable unless it had actual notice of the discrimination given to an appropriate official and responded with deliberate indifference. Doe, 964 F.3d at 358–59. An appropriate official is someone with "authority to both 'repudiate th[e] conduct and eliminate the hostile environment.'" Id. at 360 (emphasis and alteration in original) (quoting Rosa H. v. San Elizario Indep. Sch. Dist., 106 F.3d 648, 661 (5th Cir. 1997)). And this notice must inform the official of the sex-based discrimination or harassment. Id. at 364.

Wells has not plausibly alleged that such notice was given. She argues that her conversation with Sheridan, the dean of the graduate school, in fall 2020 provided this notice. See Dkt. No. 35 at 9. Putting aside the clear statute of limitations problem, her factual allegations as to what she told Sheridan do not include any statements about her experiencing sex-based discrimination. See Dkt. No. 19 ¶ 106. Instead, she told Sheridan that she thought the university should "prevent students from sharing hotel rooms with professors" and that "students often are faced with unnecessary additional expense," such as having to fund their own research. Id. None of that includes any notice that she was experiencing sexual harassment or sex-based discrimination. And to the extent she tries to rely on complaints by other students, she does not explain how that put Texas Tech on notice that she was experiencing sex-based discrimination. Id.; see also Doe, 964 F.3d at 364. Further, while Wells seems to argue that she did not need to provide any notice to an appropriate official for some of her claims because they were perpetuated by "high ranking officials," Dkt. No. 35 at 9, the actual notice requirement applies unless an official policy of sex-based discrimination is alleged. See Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998). She does not allege any such policy nor did her amended complaint indicate that her Title IX claim was based on the actions of these "high ranking officials." Dkt. No. 19 ¶¶ 141–49 (alleging that "Dr. Prien and Dr. Penrose carried out the harassment"). In light of the foregoing, Wells's Title IX claim fails as a matter of law and is dismissed.

C. Patent Claims

Wells next asserts claims for correction of inventorship and a declaration of patent invalidity against Prien and Penrose. Id. ¶¶ 160–68. She seeks to have the Court direct the Patent and Trademark Office to include her as a listed inventor for U.S. Patent No. 11,169,064, or alternatively to declare that the patent is invalid because she was knowingly and deceptively removed as an inventor. Id. The defendants argue that these claims should be dismissed because they are barred by sovereign immunity, and Texas Tech is an indispensable party to any resolution of the patent claims because it owns the patent. Dkt. Nos. 25 at 12–14; 37 at 3–6. Wells argues that her claims are brought under the Ex parte Young doctrine and are not barred because they seek prospective relief. Dkt. No. 34 at 6.

The Court dismisses these claims because (1) Prien and Penrose are not proper defendants under the Ex parte Young doctrine; and (2) even if they were, Texas Tech is an indispensable party to any claim implicating the validity of the patent, and its absence as a defendant to these claims requires dismissal.

As a general matter, Texas Tech has sovereign immunity as an agency of Texas from private suits. Pickett v. Tex. Tech Univ. Health Scis. Ctr., 37 F.4th 1013, 1025 (5th Cir. 2022). When sued in their official capacity, Prien and Penrose are treated like Texas Tech itself and therefore such claims are barred against them unless sovereign immunity is waived. *Id.*

And while 35 U.S.C. § 296(a) purports to abrogate a state's sovereign immunity for violations of federal patent laws, the Supreme Court has held that such waiver is unconstitutional. Fla. Prepaid

Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank, 527 U.S. 627, 647–48 (1999). Accordingly, Texas Tech—and, by extension, Prien and Penrose—are cloaked with sovereign immunity for Wells's patent claims. See Xechem Int'l, Inc. v. Univ. of Tex. M.D. Anderson Cancer Ctr., 382 F.3d 1324, 1332 (Fed. Cir. 2004) (applying sovereign immunity to a correction of inventorship claim).

However, the Ex parte Young doctrine provides an exception to this principle by permitting a plaintiff to seek injunctive or declaratory relief against a state official who is violating federal law. City of Austin v. Paxton, 943 F.3d 993, 997 (5th Cir. 2019); see Ex parte Young, 209 U.S. 123, 155–57 (1908). Importantly, an Ex parte Young claim may only be maintained against a state official who "by virtue of his office has some connection with the enforcement of the challenged act, or else the suit is merely making him a party as a representative of the state, and thereby attempting to make the state a party." City of Austin, 943 F.3d at 997 (cleaned up) (quoting Ex parte Young, 209 U.S. at 157). This "requires some scintilla of 'enforcement' by the relevant state official," such as "compulsion or constraint" of the plaintiff. Id. at 1002.

Here, Wells has failed to plead any facts establishing that Prien and Penrose have any connection to the claimed ongoing violation of federal law. See Dkt. No. 19 ¶¶ 102, 160–68. Instead, she alleges that "the University, through its attorney Kristopher Lance Anderson, unilaterally removed Dr. Wells as an inventor from [the patent application]," resulting in her omission as a listed inventor. Id. ¶ 102. She does not explain what future

action Prien and Penrose are significantly likely to take that would constitute a violation against Wells. Nor does she provide any examples of activities in her response to the motion to dismiss. See Dkt. No. 34 at 6. The complaint provides no basis to plausibly infer that Prien and Penrose have "some scintilla of 'enforcement'" regarding Wells's cited violations of patent law, and therefore they are not susceptible to an Ex parte Young claim. See City of Austin, 943 F.3d at 1002; see also Pennington Seed, Inc. v. Produce Exch. No. 299, 457 F.3d 1334, 1342–43 (Fed. Cir. 2006) (dismissing an Ex parte Young claim because "[a]llegations that a state official directs a University's patent policy are insufficient to causally connect that state official to a violation of federal patent law").

Moreover, even if Prien and Penrose were proper defendants, Wells's patent claims cannot be maintained without Texas Tech as a party to these claims. And because Texas Tech is immune from suit, it cannot be added as a party here and her claims must be dismissed regardless. As the defendants note, Texas Tech owns the patent at issue and is, therefore, a necessary party to this litigation. See U.S. Patent No. 11,169,064 (filed Nov. 9, 2021), at [73][4]; Dkt. Nos.

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[4] In resolving a Rule 12(b)(6) motion, the Court may consider matters of which it can take judicial notice. *Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1017–18 (5th Cir. 1996). "Courts routinely take judicial notice of patents, prosecution history, and patent applications," as such information is available as part of the public record on the Patent and Trademark Office's database. *See, e.g.*, *SB IP Holdings, LLC v. Vivint Smart Home, Inc.*, No. 4:20-cv-886, 2021 WL 1721715, at *1 (E.D. Tex. Apr. 30, 2021); *Vervain, LLC v. Micron Tech., Inc.*, No. 6:21-cv-487-ADA, 2022 WL 23469, at *5 n.2 (W.D. Tex. Jan. 3, 2022); *Jenny Yoo*

25 at 13; 37 at 6. Given that "[t]he validity of a patent requires that the inventors be correctly named," any "part[y] with an economic stake in a patent's validity [is] entitled to be heard on inventorship issues once a putative inventor has sued to correct inventorship." Chou v. Univ. of Chi., 254 F.3d 1347, 1359 (Fed. Cir. 2001); see also 35
U.S.C. § 256 (noting that a court "may order correction of the patent on notice and hearing of all parties concerned"). And clearly Wells's alternative request for invalidation of the patent would implicate Texas Tech's ownership interest. Because Texas Tech has an interest in the patent and resolving these claims in its absence "may as a practical matter impair or impeded [its] ability to protect the interest," it must be joined to these claims. See Fed. R. Civ. P. 19(a)(1)(B); Lee v. Anthony Lawrence Collection, L.L.C., 47 F.4th 262, 266–67 (5th Cir. 2022).

However, in light of Texas Tech's sovereign immunity, it cannot be joined as a defendant to these claims. See Lee, 47 F.4th at 267–68; Gensetix, Inc. v. Bd. of Regents of Univ. of Tex. Sys., 966 F.3d 1316, 1323 (Fed. Cir. 2020). When a party "who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). While this determination typically involves considering four factors, see id., the Fifth Circuit has

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Collection, Inc. v. Watters Design, Inc., No. 3:17-cv-3197-M, 2018 WL 3330025, at *5 n.8 (N.D. Tex. June 6, 2018). Accordingly, the Court takes judicial notice of the patent.

instructed that a state's sovereign immunity is a substantial interest that is alone "enough to require dismissal of the action because there is a potential for injury to the university's interest as the absent sovereign." Lee, 47 F.4th at 268 (cleaned up) (quoting Republic of Philippines v. Pimental, 553 U.S. 865, 867 (2008)).[5] Sovereign immunity justifies such dismissal because this "sovereign interest is necessarily impaired when plaintiffs try to use the state's sovereign immunity to lure it into a lawsuit against its will." Id. at 267.

The present case exemplifies this problem. If these claims proceeded without Texas Tech, it would have to choose between waiving its sovereign immunity by moving to be joined as a defendant or having other defendants who do not own the patent defend its validity. While the professors may take a similar stance as the university would if forced to defend the claims, their interests are not identical because only Texas Tech has ownership of the patent. See id. at 269. Accordingly, to adequately protect its interest in the patent's validity, Texas Tech would be forced to waive its immunity against its will. Thus, "in the interest of 'equity and good conscience,'" Wells's patent claims must be dismissed. See id. at 268.

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[5] Even in patent cases, Rule 19 is analyzed under the law of the regional circuit. *Univ. of Utah v. Max- Planck-Gesellschaft Zur Forderung Der Wissenschaften E.V.*, 734 F.3d 1315, 1320 (Fed. Cir. 2013).
Accordingly, this Court is bound by the Fifth Circuit's adoption of the controlling weight of a state's sovereign immunity in the Rule 19(b) analysis, rather than the Federal Circuit's contrary conclusion in *Gensetix, Inc.* *Compare Lee*, 47 F.4th at 267–68, *with Gensetix, Inc.*, 966 F.3d at 1325– 27.

D. Tort Claims

Wells next raises several tort claims against Prien and Penrose. Specifically, she asserts claims of intentional infliction of emotional distress, unjust enrichment, breach of fiduciary duty, and fraudulent concealment against both Prien and Penrose. Dkt. No. 19 ¶¶ 180–210. She also alleges claims of tortious interference with contractual relations, trade secret misappropriation, and defamation per se against Prien. Id. ¶¶ 169–79; 211–17. The defendants argue that all of these claims are subject to dismissal under the Texas Tort Claims Act because these claims are within their general scope of employment with Texas Tech.[6] See Dkt. No. 25 at 9–11; Tex. Civ. Prac. & Rem. Code § 101.106.

The Court dismisses these claims. First, her claims of intentional infliction of emotional distress, fraudulent concealment, and defamation per se are subject to mandatory dismissal. She made an irrevocable decision to sue them in their official capacities by raising such claims against both them and Texas Tech in her original complaint, and Texas Tech requested dismissal of these claims in the original motions to dismiss. See Dkt. Nos. 1 ¶¶ 180–86, 200–08, 213–24; 15 at 5. Upon the filing of that motion, those tort claims against the individual defendants were subject to immediate dismissal, and Wells's attempts to undo that election to avoid

[6] Texas law governs Wells's various tort claims because "[a] federal court exercising pendent jurisdiction over state law claims[] must apply the substantive law of the state in which it sits." *Sommers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan*, 883 F.2d 345, 353 (5th Cir. 1989).

dismissal are futile. Second, as for the other tort claims, they arise from conduct within the scope of the professors' employment and, therefore, the professors are immune from suit.

i. Wells's claims against the professors for intentional infliction of emotional distress, fraudulent concealment, and defamation per se are subject to mandatory dismissal.

When a plaintiff seeks to bring a tort claim against a Texas governmental entity or its employees, she must proceed with caution in light of the Texas Tort Claims Act's (TTCA) election of remedies provision. Specifically, Section 101.106 requires a plaintiff to "decide at the outset" before filing her complaint "whether an employee acted independently and is thus solely liable, or acted within the general scope of his or her employment such that the governmental unit is vicariously liable." Univ. of Tex. Health Sci. Ctr. at Hous. v. Rios, 542 S.W.3d 530, 536 (Tex. 2017) (emphasis in original) (quoting Mission Consol. Indep. Sch. Dist. v. Garcia, 253 S.W.3d 653, 657 (Tex. 2008)); see Tex. Civ. Prac. & Rem. Code § 101.106. In other words, a plaintiff cannot raise both alternative theories that an employee acted within the scope of employment or instead beyond that scope. Rios, 542 S.W.3d at 536. And this selection of tort theory—independent action or scope of employment—is "an irrevocable election at the time suit is filed." Id. (emphasis in original) (quoting Garcia, 253 S.W.3d at 657). Once the plaintiff files her complaint, under Texas law, she is bound by that choice even if she subsequently amends her complaint. See id. at 537;

McLemee v. Van Zandt County, No. 6:20-CV-420, 2021 WL 2535945, at *3 (E.D. Tex. June 21, 2021).

One major consequence of Section 101.106 arises when a plaintiff seeks to sue both the governmental entity and the employees. Bringing the same claim against both parties acts as "an election to sue only the government." Rios, 542 S.W.3d at 537. So, under Section 101.106(e), "[i]f a suit is filed under [the TTCA] against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit." Tex. Civ. Prac. & Rem. Code § 101.106(e). And once such a motion is filed, the individual defendants' statutory right to dismissal of those tort claims is perfected and cannot be undone by a subsequent amended pleading. Rios, 542 S.W.3d at 537–38; McLemee, 2021 WL 2535945, at *3. Accordingly, a plaintiff cannot simply drop her claims against the governmental entity after Section 101.106(e) is asserted and proceed with her claims solely against the employees. Rios, 542 S.W.3d at 537–38. Nor can she then amend her pleading to claim that the individual employees acted outside the scope of their employment. McLemee, 2021 WL 2535945, at *3. Instead, once a motion asserting the right to dismissal under Section 101.106(e) is raised, the individual employees become immune from suit as to the relevant claims, and no subsequent pleading can remove that protection. Rios, 542 S.W.3d at 537–38.

Here, Wells's original complaint asserted her claims of intentional infliction of emotional distress, fraudulent concealment, and defamation per se against both the individual defendants and Texas

Tech. Dkt. No. 1 ¶¶ 180–86, 200–08, 213–24. This constituted her "irrevocable election" to proceed with these claims against the individual professors in their official capacity. See Rios, 542 S.W.3d at 536–37 (quotation omitted); McLemee, 2021 WL 2535945, at *3. And pursuant to Section 101.106(e), "[Texas Tech] request[ed] the Court . . . dismiss [her] tort claims against the [i]ndividual [d]efendants, who are employees of [Texas Tech]." Dkt. No. 15 at 5. While Wells has since amended her complaint to remove Texas Tech as a defendant for these claims and to cursorily allege that these claims arise from actions "outside the scope of [the professors'] authority," see Dkt. No. 19 ¶¶ 185, 209, 217, "Texas law forbids such maneuvering." Arismendez v. Coastal Bend Coll., No. 2:19-CV-312, 2020 WL 977231, at *4 (S.D. Tex. Feb. 27, 2020) (citing Rios, 542 S.W.3d at 538). Upon Texas Tech's confirmation of the professors' status as employees and invocation of Section 101.106(e), see Dkt. No. 15 at 5, the professors "accrued their right to dismissal," and Wells "[cannot] avoid this result by amending [her] petition to drop the tort claims against [Texas Tech]." Rios, 542 S.W.3d at 538.

Wells does not argue that Section 101.106 or its irrevocable-election principle are procedural rules rather than substantive rules such that they would not apply in federal court. See Dkt. No. 34 at 3–5; Hanna v. Plumer, 380 U.S. 460, 465 (1965) (noting that "federal courts are to apply state substantive law and federal procedural law" when resolving state law claims). Nevertheless, even if she had raised such an argument, the Court concludes that these rules apply in federal court. Several federal courts in Texas have previously dismissed TTCA claims even when the plaintiff later amended the complaint to

drop the claims against the governmental entity or alternatively have found amendment to be futile based on the reasoning of Rios. E.g., Arismendez, 2020 WL 977231, at *4; McLemee, 2021 WL 2535945, at *3; Silguero ex rel. T.S. v. Rio Hondo Indep. Sch., No. 1:18–CV-128, 2019 WL 13261515, at *5-6 (S.D. Tex. Jan. 2, 2019); see also Vardeman v. City of Houston, No. H- 20-3242, 2022 WL 267591, at *1 n.1 (S.D. Tex. Jan. 28, 2022), aff'd in part and rev'd in part on other grounds by 55 F.4th 1045 (5th Cir. 2022). This Court agrees. Texas's irrevocable-election principle is a substantive rule that is outcome-determinative and would undermine the twin aims of the Erie doctrine if not applied in federal court.

At first blush, Section 101.106's irrevocable-election principle and its resulting nullification of subsequent efforts to amend may seem to sound in procedure, particularly as the Federal Rules of Civil Procedure address amending pleadings and direct a court to "freely give leave [to amend] when justice so requires." See Fed. R. Civ. P. 15(a). And in federal court, "[a]n amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading," so a plaintiff generally can adopt a new legal theory or alter a previous one, at least at an early stage in the proceedings. See King v.
Dogan, 31 F.3d 344, 346 (5th Cir. 1994); Mayeaux v. La. Health Sci. & Indem. Co., 376 F.3d 420, 427 (5th Cir. 2004). In contrast, Section 101.106 creates a strict requirement that a plaintiff must carefully make a final decision prior to filing as to her selected tort liability theory, limiting her ability to cure certain

deficiencies through amendment. See Rios, 542 S.W.3d at 536–38.

But simply because the rule relates to pleadings and amendments does not dictate that it is procedural under Erie. See Hanna, 380 U.S. at 465–66. For one, Section 101.106 does not actually prohibit a plaintiff from amending her complaint nor does it alter the procedures surrounding amendment; it simply prevents an amendment from nullifying an employee's statutory right to dismissal based on immunity. See Rios, 542 S.W.3d at 537–38. It therefore does not conflict with the Federal Rules of Civil Procedure themselves, though it does conflict with the standard federal principle of the impact of amended pleadings. See Dogan, 31 F.3d at 346. So this is not a case where the state law automatically does not apply because a valid "Federal Rule of Civil Procedure answers the same question as the state law or rule." Klocke v. Watson, 936 F.3d 240, 244 (5th Cir. 2019) (cleaned up) (quoting Abbas v. Foreign Policy Grp., 783 F.3d 1328, 1333 (D.C. Cir. 2015)).

Instead, the Court must consider whether the irrevocable-election rule would implicate the "twin aims of the Erie rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws." Hanna, 380 U.S. at 468 (emphasis added); Walker v. Armco Steel Corp., 446 U.S. 740, 745, 752–53 (1980). Ultimately, this analysis is rooted in the belief that it is unfair for the result of a lawsuit to materially differ because it was brought in federal court. Hanna, 380 U.S. at 467. If Section 101.106's irrevocable- election principle did not apply in federal court, such material differences in litigation between a TTCA claim in state and

federal court would arise. See id. As Rios demonstrates, it is indisputable that Wells's claims of intentional infliction of emotional distress, fraudulent concealment, and defamation per se would be permanently barred against the professors based on her election in her original complaint. See Rios, 542 S.W.2d at 536–38. Her decision to bring the claims based on their official capacity would shield them from the costs and burdens of litigation by making them immune from suit, and this protection could not be removed by subsequent attempts to amend after the proper Section 101.106(e) dismissal request is made. Id. However, without this rule, the professors—or other similar government employees—would have to address dueling theories of liability or at least the possibility that a plaintiff would rethink the initial tort theory after dismissal is sought.

The defendants' inability to obtain the immunity to which they would be entitled in state court is a substantial consequence that would result in inequitable administration of the laws, which leads the Court to apply Section 101.106's irrevocable-election requirement.
See Walker, 446 U.S. at 753. Given the sovereign immunity overlay to the TTCA, permitting such claims to proceed in federal court would be particularly harmful. After all, the TTCA does not waive Texas's sovereign immunity to suit in federal court. Sherwinski v. Peterson, 98 F.3d 849, 852 (5th Cir. 1996). So TTCA claims against Texas, its subcomponents, and its employees in their official capacity are subject to dismissal in federal court. See id. at 851–52. Accordingly, allowing these amendments to evade Section 101.106(e) dismissal

despite a plaintiff's previous indication that the claims at issue are truly against Texas would allow further litigation in the very forum where Texas and its employees generally have no obligation to respond to such claims. See Rios, 542 S.W.3d at 536–37; Sherwinski, 98 F.3d at 851–52. Even in state court, the only immunity waiver applicable to official-capacity claims applies when they are asserted against the employer— an employee may assert his immunity and require dismissal or substitution of his employer, or, as here, the employer may demand dismissal of the claims against its employees. See Sherwinski, 98 F.3d at 851–52; Tex. Civ. Prac. & Rem. Code §§ 101.102, 101.106. It would be inequitable to deny immunity that a government employee would have in state court when the state court is ordinarily the only forum where sovereign immunity as to these claims is partially waived. And it would improperly "give [the cause of action] longer life in the federal court than it would have had in state court." Walker, 446 U.S. at 746 (alteration in original) (quoting Ragan v. Merchs. Transfer & Warehouse Co., 337 U.S. 530, 533–34 (1949)). In state court, these tort claims against the professors in their individual capacity would have been forfeited upon filing of the original complaint. The mere fortuity of being in federal court should not resurrect these claims.

Accordingly, this Court follows the trend of other federal district courts in Texas and applies the irrevocable-election rule. See Arismendez, 2020 WL 977231, at *4; McLemee, 2021 WL 2535945, at *3; Silguero ex rel. T.S., 2019 WL 13261515, at *5-6; Vardeman, 2022 WL 267591, at *1 n.1. Consequently, Wells's original pleading of these claims against both

the defendants and Texas Tech signified that she brought them in their official capacity and made them subject to dismissal under Section 101.106(e). Texas Tech sought such dismissal, Dkt. No. 15 at 5, and her subsequent amendment is futile because she cannot alter her irrevocable election made at the time she filed this case. Rios, 542 S.W.3d at 536–
38. The Court therefore dismisses the claims of intentional infliction of emotional distress, fraudulent concealment, and defamation per se against the individual defendants pursuant to the Section 101.106(e) dismissal request made in the original motions to dismiss. See Dkt. No. 15 at 5.

ii. Wells's other tort claims—unjust enrichment, breach of fiduciary duty, trade secret misappropriation, and tortious interference with contractual relations—must also be dismissed.

Wells also asserts four additional tort claims against the professors: tortious interference and trade secret misappropriation against Prien; and unjust enrichment and breach of fiduciary duty against Prien and Penrose. Dkt. No. 19 ¶¶ 169–79, 188–210. To the extent these claims are not subject to dismissal under Section 101.106(e), they are dismissed under Section 101.106(f).

First, as to subsection (e), while these claims were not clearly alleged against Texas Tech in the original complaint, Dkt. No. 1 ¶¶ 167–74, 187–94, they are still barred under the irrevocable election to

the extent they arise from "the same subject matter as the action brought against the governmental entity." Williams v. Bolin, No. H-23-302, --- F. Supp. 3d.----, 2023 WL 6282834, at *8–9 (S.D. Tex. Sept. 26, 2023) (quoting Holland v. City of Houston, 41 F. Supp. 2d 678, 717 (S.D. Tex. 1999)); White v. Texas, No. 4:23-cv-925-P, 2023 WL 8074126, at *8 (N.D. Tex. Nov. 21, 2023) (citing Goodman v. Harris County, 571 F.3d 388, 394 (5th Cir. 2009)), appeal filed, No. 23-11190 (5th Cir. Nov. 27, 2023). Thus, even if these specific claims were brought only against the professors, any aspect of these claims that rely on the same substantive facts as those tort claims originally brought against Texas Tech are also subject to dismissal under Section 101.106(e).[7] See White, 2023

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[7] Wells's original unjust enrichment and breach of fiduciary duty claims are particularly unclear as to their original basis and original defendants. *See* Dkt. No. 1 ¶¶ 187–99. For the unjust enrichment claim, she refers to "[d]efendants" generally rather than specifying who "knowingly accepted the benefit" at issue. *Id.* ¶¶ 187–90. Given that this claim pertains the patent and its royalties, Texas Tech's ownership of the patent and the inclusion of Texas Tech in the original patent claims suggests that Texas Tech was originally a defendant as to this claim. *See id.* ¶¶ 160–66, 187–90.

Wells also asserted breach of fiduciary duty claims against both Texas Tech and the professors. *Id.* ¶¶ 191–99. Given that the fiduciary duties claimed to be owed to Wells result from different relationships, these could conceivably arise from separate events. *See id.* But Wells's claim lacks any specification as to the particular facts at issue, creating a substantial likelihood that the substantive facts for both claims arise from the same subject matter. Moreover, these claims appear to be substantially related to the fraudulent concealment claims. *See id.* ¶¶ 187–210; Dkt. No. 19 ¶¶ 200–08. The Court need not parse these claims further because these claims are barred by other portions of Section 101.106

WL 8074126, at *8; Rios, 542 S.W.3d at 536–38; Dkt. No. 15 at 5.

Second, "[i]f a suit is filed against an employee of a government unit based on conduct within the general scope of that employee's employment and if it could have been brought under [the TTCA] against the government unit, the suit is considered to be against the employee in the employee's official capacity only." Tex. Civ. Prac. & Rem. Code § 101.106(f). This provision is a corollary to subsection (e): it requires dismissal of the claims against the employee and of the claims altogether unless the governmental entity is made a defendant. See id.; Franka v. Velasquez, 332 S.W.3d 367, 380 (Tex. 2011). This provision favors "quickly dismiss[ing] government employees when the suit should be brought against their employer," and the Section 101.106 inquiry must avoid "partial litigation of the underlying [tort] claim itself." Laverie v. Wetherbe, 517 S.W.3d 748, 755 (Tex. 2017).

Section 101.106(f)'s application is broad: its "two conditions are met in almost every negligence suit against a government employee." Franka, 332 S.W.3d at 381. All claims "in tort and not under another statute that independently waives immunity" are claims that "could have been brought under" the TTCA, even if the TTCA does not waive immunity against the governmental entity. See id.; Garcia, 253 S.W.3d at 659–60; Tex. Civ. Prac. & Rem. Code § 101.106(f). Thus, though a plaintiff cannot use the TTCA to bring an intentional tort claim against the

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regardless of whether subsection (e) applies.

governmental entity, such intentional tort claims still are "under" the TTCA for purposes of Section 101.106. Garcia, 253 S.W.3d at 658–69; see also Tex. Civ. Prac. & Rem. Code. § 101.057. And "the scope-of-employment inquiry under Section 101.106(f) focuses on whether the employee was doing his job," asking only whether "a connection exists between the employee's job duties and the alleged tortious conduct." Garza v. Harrison, 574 S.W.3d 389, 394 (Tex. 2019) (cleaned up) (quoting Laverie, 517 S.W.3d at 753).

Importantly, an employee does not need to have the specific authority to commit the tort at issue so long as he was generally discharging assigned duties. Richardson v. Univ. of Tex. Sys., No. 5-19-CV-271-XR, 2019 WL 5306782, at *3 (W.D. Tex. Oct. 18, 2019); see also City of Lancaster v. Chambers, 883 S.W.2d 650, 658 & n.9 (Tex. 1994). And the mere fact that "an official's act is unlawful does not determine whether that act is within the scope of his employment." Smith v. Heap, 31 F.4th 905, 914 (5th Cir. 2022). So a claim that the official "stepped outside of his official duties by engaging in malicious conduct" does not remove Section 101.106(f)'s immunity. Id. (cleaned up). Moreover, the mere fact that personal motives played a role in the employee's decision does not mean that he acted outside the scope of his employment. Anderson v. Bessman, 365 S.W.3d 119, 126 (Tex. App.—Houston [1st Dist.] 2011, no pet.). In other words, "the employee's state of mind, motives, and competency are irrelevant so long as the conduct itself was pursuant to the employee's job responsibilities." Garza, 574 S.W.3d at 401. Ultimately, so long as the acts are "of the same general nature as the conduct authorized or incidental to the conduct authorized,"

they are within the scope of employment. Wilkerson v. Univ. of N. Tex., 878 F.3d 147, 159 (5th Cir. 2017) (emphasis in original) (quoting Laverie, 517 S.W.3d at 753).

It is undisputed that Prien and Penrose are government employees and that all of these tort claims could have been brought under the TTCA against Texas Tech. See Dkt. Nos. 19 ¶¶ 18–19; 34 at 3–5; Franka, 332 S.W.3d at 381; Garcia, 253 S.W.3d at 659–60. The sole issue is whether they were acting within the scope of their employment when this allegedly tortious conduct occurred. See Dkt. Nos. 25 at 9–11; 34 at 3–5. The Court concludes that they were, and, as a result, dismisses these claims pursuant to Section 101.106(f).

As a preliminary matter, Wells appears to be under the mistaken belief that her own factual allegations are an insufficient basis to apply Section 101.106 and instead the defendants must provide summary judgment evidence for immunity to apply. See Dkt. No. 34 at 4. But courts routinely resolve such Section 101.106 immunity claims in favor of governmental employees based solely on the complaint's allegations. E.g., Smith, 31 F.4th at 910, 913–14; Jackson v. Tex. S. Univ., 31 F. Supp. 3d 884, 886, 888–89 (S.D. Tex. 2014); Wheeler v. Law Off. of Frank Powell, No. 01-22-479-CV, 2023 WL 5535670, at *2–3, 10–11 (Tex. App.—Houston [1st Dist.] Aug. 29, 2023). If the facts alleged giving rise to the claim show that the conduct at issue is connected to the employee's job responsibilities, Section 101.106(f) applies and requires dismissal. E.g., Jackson, 31 F. Supp. 3d at 888–89.

Here, each of the claims at issue arise from conduct connected to the professors' job responsibilities. As a preliminary matter, all of these claims arise from Wells's interactions with the professors through Texas Tech, whether through research or the mentorship program. See generally Dkt. No. 19. When claims "all arise from communications and interactions with the individual [d]efendants at [the university]," that demonstrates that the actions at issue were within the scope of their employment. See Hundall v. Univ. of Tex. at El Paso, No. EP-13-CV-365-DCG, 2014 WL 12496895, at *12 (W.D. Tex. Feb. 21, 2014). For example, a physical assault by a professor was within the scope of his employment because the assault occurred while the professor was proctoring an exam. Jackson, 31 F. Supp. 3d at 887–88. As in Jackson, the actions underlying each of Wells's tort claims are tied to the professors' general job duties and arise in the context of her interactions with them in their employment.

Moreover, the tortious interference and trade secret misappropriation claims against Prien are connected to Prien's role as a mentor in the Accelerator program, which was part of his job as a professor at Texas Tech. See Dkt. No. 19 ¶¶ 78–79, 96–98, 169–78. Wells specifically alleges that the information at issue was disclosed by her to Prien during discussion "in the [Texas Tech] Accelerator Mentor program." Id. ¶ 96. His alleged wrongful disclosure related to a presentation at the annual ASRM conference. Id. ¶¶ 96–100. Based on his duties as a Texas Tech professor of reproductive physiology, Prien routinely attends and presents research at this conference, which is exactly what the alleged

wrongful disclosure in his abstract of his research presentation entailed. See id. ¶¶ 18, 38, 44, 51, 57, 72, 96–100. Wells's conclusory claim that these actions were in bad faith and outside the scope of his authority provide no reason to ignore the clear factual allegations giving rise to the claims that refute her assertions. See Smith, 31 F.4th at 914. And the wrongfulness of the disclosure or malicious motives are irrelevant. Garza, 574 S.W.3d at 401. Again, a defendant's actions exceed the scope of his employment only when "the alleged misconduct ha[s] nothing to do with the employee's duties." Wilkerson, 878 F.3d at 160. Obtaining information about the research Wells and her company were conducting through his work as a mentor in the Accelerator program and giving presentations at the annual conference are of the general nature of Prien's job responsibilities as a professor, making this conduct within the scope of his employment and therefore covered by Section 101.106(f). See Wilkerson, 878 F.3d at 159–60; Jackson, 31 F. Supp. 3d at 887–88.

As for the unjust enrichment and breach of fiduciary duty claims against Penrose and Prien, these claims also arise from the scope of their employment. These claims are based on patented inventions that, as alleged, resulted from Wells's work with the professors in their labs and conversations with them related to that research during her time as a student. See Dkt. No. 19 ¶¶ 47–50, 53, 76, 101, 188–97. Such claims would clearly not exist without these actions within the scope of their work as professors. Wells's claims arise from their alleged relationship as co-inventors which was created through these interactions while the professors were carrying out

their job duties. Id. ¶¶ 190–91, 194. Also, the revenue and royalty issues clearly stem from Texas Tech's policies and the arrangement that Prien need to submit to the university as part of obtaining a patent. See id. ¶¶ 49, 76. From these allegations, it is evident that the actions giving rise to these claims pertain to the individual defendants' work as professors and their responsibilities related to research, interactions with students, and arranging royalty shares for patent inventions derived from their research. See id. ¶¶ 47–50, 53, 76, 101, 188–97. To the extent the nondisclosure of the specifics of the arrangement or the arrangement itself harmed Wells, this arises from the research and conversations leading to the patent and the manner in which they determined and submitted the royalty information to Texas Tech—conduct within the scope of their employment. Accordingly, these claims also must be dismissed under Section 101.106(f).

In sum, all of Wells's tort claims are subject to dismissal under Section 101.106 either because she irrevocably elected to pursue them against the professors in their official capacity, or the factual allegations make clear that such actions arise from their official duties, making them immune. The Court therefore dismisses Wells's tort claims.

E. Statutory Trade Secret Misappropriation Claim

Next, to the extent Wells is also asserting a statutory trade secret misappropriation claim based on the Texas Uniform Trade Secrets Act (TUTSA),

the Court also dismisses this claim.[8] Wells's amended complaint does not plausibly allege that she owned any trade secret that was misappropriated.

To state a TUTSA claim, a plaintiff must allege that "(1) a trade secret existed, (2) the trade secret was acquired through a breach of a confidential relationship or discovered by improper means, and (3) the defendant [disclosed or] used the trade secret without authorization from the plaintiff." See CAE Integrated, LLC v. Moov Techs., Inc., 44 F.4th 257, 262 (5th Cir. 2022) (emphasis omitted) (quoting GE Betz, Inc. v. Moffitt-Johnston, 885 F.3d 318, 325 (5th Cir. 2018)); Well Cell Global LLC v. Calvit, No. H-22-3062, 2024 WL 709657, at *5 (S.D. Tex. Feb. 21, 2024); Tex. Civ. Prac. & Rem. Code § 134.002(3). The statute defines a trade secret as

> all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype,

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[8] Wells's amended complaint does not provide any indication that she is bringing a TUTSA claim. Dkt. No. 19 ¶¶ 174–79. She does not cite or otherwise reference it in the complaint. *See generally id.* Nevertheless, both parties address the trade secret claim as under tort and the TUTSA. Dkt. Nos. 25 at 8–10, 16–18; 34 at 5, 7–8. Given that the TUTSA preempts other state remedies based on trade secret misappropriation, such as any tort claims based on facts related to misappropriation, it does not seem that she could bring a trade secret misappropriation claim on any state law basis other than the TUTSA. *See* Tex. Civ. Prac. & Rem. Code § 134A.007; *Baylor Scott & White v. Proj. Rose MSO, LLC*, 633 S.W.3d 263, 287 n.14 (Tex. App.—Tyler 2021, no pet.).

> pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:
>
> (A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
>
> (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Tex. Civ. Prac. & Rem. Code § 134A.002(6). Importantly, a plaintiff must actually own the alleged trade secret at issue. E.g., Morris-Shea Bridge Co. v. Cajun Indus., LLC, No. 3:20-cv- 342, 2021 WL 4084516, at *7 (S.D. Tex. Feb. 22, 2021); Penthol, LLC v. Vertex Energy Operating, LLC, No. 4:21-cv-416, 2024 WL 987568, at *12 (S.D. Tex. Mar. 7, 2024).

Wells's amended complaint fails to identify any trade secret that she owned that was allegedly misappropriated by Prien. She argues that she has alleged a trade secret based on "the information subject to her agreement with Simplot." Dkt. No. 34

at 8. But, for a litany of reasons, she has not plausibly alleged that she can bring a trade secret misappropriation claim based on this data. For one, her own allegations demonstrate that, assuming a trade secret existed, it belongs to her past or present companies, not to her. See Dkt. No. 19 ¶¶ 81–82, 87, 95–99, 175. The only factual allegations related to an "agreement with Simplot" is that of her now-defunct company Embryotics, which "had an existing non-disclosure agreement in place with Simplot." Id. ¶¶ 81, 97. Without ownership of the trade secret, Wells cannot sue for any alleged misappropriation. See Morris-Shea Bridge Co., 2021 WL 4084516, at *7. And even if Wells were the proper owner of the supposed trade secret, she has not alleged how "the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret." See Tex. Civ. Prac. & Rem. Code § 134A.002(6) (emphasis added). Instead, by her own claims, she provided the information to Prien without any agreement between him and her or her companies to maintain the secrecy of the information. See Dkt. No. 19 ¶¶ 96–98. She cites other agreements between her companies and Simplot and Prien and other entities regarding confidentiality, but no measure that she—the putative owner of the secret—took. Id. Her mere reliance on other entities' secrecy efforts makes it implausible that she took reasonable measures to ensure secrecy given that her allegations indicate that she took no actions at all.

Independent of these problems, Wells's allegations also fail to adequately allege a trade secret in the first place. A trade secret must be identifiable and "derive[] independent economic value, actual or potential, from not being generally known." Tex. Civ.

Prac. & Rem. Code § 134A.002(6). Wells does not properly identify a trade secret or explain how it derives economic value from not being generally known. While a plaintiff does not need to provide a specific description of the trade secret, GlobeRanger Corp. v. Software AG USA, Inc., 836 F.3d 477, 493 (5th Cir. 2016), her "definition of a trade secret cannot be too vague or inclusive," Utex Indus., Inc. v. Wiegand, No. H-18-1254, 2020 WL 873985, at *10 (S.D. Tex. Feb. 21, 2020). At minimum, a plaintiff must "identify specific groupings of information that contain trade secrets, identify the types of trade secrets contained in the groupings, and explain how the alleged trade secrets were maintained and treated as trade secrets." Vianet Grp. PLC v. Tap Acquisition, Inc., No. 3:14-CV-3601-B, 2016 WL 4368302, at *20 (N.D. Tex. Aug. 16, 2016). Wells's amended complaint merely identifies the information as "data from her research as part of Embryotics and EmGenisys." Dkt. No. 19 ¶ 175. This definition is incredibly vague and overinclusive. It provides no "specific groupings of information" and does not identify how this data has any economic value. Cf. Vianet Grp. PLC, 2016 WL 4368302, at *19–20 (finding sufficient identification of a trade secret based on identified specific documents and explanation of the information contained within and the economic value of it). The only allegation giving any indication of value is that "Embryotics covered all the expenses" for research related to this data. Dkt. No. 19 ¶ 81. This is a far cry from typical sufficient allegations explaining the significant expense and time of obtaining the secret and the competitive advantage its secrecy provides. See, e.g., Vest Safety Med. Servs., LLC v. Arbor Environmental, LLC, No. H-20-812, 2020 WL 4003642, at *4 (S.D. Tex. July 15, 2020); Vianet Grp.

PLC, 2016 WL 4368302, at *19. Instead, it is a broad description that "fails to point to specificities that convey the unique capabilities of the [research]" and is therefore insufficient. WeInfuse, LLC v. InfuseFlow, LLC, No. 3:20-CV-1050-L, 2021 WL 1165132, at *3 (N.D. Tex. Mar. 26, 2021).

In light of the foregoing, the Court dismisses Wells's TUTSA claim as well because she has not plausibly alleged that she owned any trade secret. Her allegations reveal that the information at issue belonged to her companies and are too conclusory to properly identify a trade secret.

F. Equal Protection Claim

Finally, Wells asserts a claim under 42 U.S.C. § 1983 that Prien and Penrose violated the Equal Protection Clause of the Fourteenth Amendment. Dkt. No. 19 ¶¶ 150–59. The Court dismisses this claim as well.

Section 1983 provides a cause of action when a person, acting under color of a State law, "subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. While "state officials literally are persons," when sued in their official capacity, they are not "persons" under Section 1983 because they are mere stand-ins for a State itself. Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). The defendants assert that they are immune because she has sued them in their official capacity, and they therefore do not count as "persons" under Section

1983. Dkt. No. 25 at 11. Wells does not dispute that she has sued these defendants in their official capacity for the Section 1983 claim. Dkt. No. 34 at 6.

Nevertheless, Wells argues that the claim is not barred because "she alleges ongoing violations of federal law." Id. Since "official-capacity actions for prospective relief are not treated as actions against the State," an official is a "person" under Section 1983 when a plaintiff seeks injunctive relief. Will, 491 U.S. at 71 n.10. For this theory to be viable, her "lawsuit must allege that the defendants' actions are currently violating federal law," not "a prior violation of federal law." Williams ex rel. J.E. v. Reeves, 954 F.3d 729, 737 (5th Cir.
2020) (emphasis in original). But Wells's own amended complaint belies any argument that this claim is based on an ongoing violation. Dkt. No. 19 ¶¶ 150–59. Each portion of her Section 1983 claim points to past harassment—none is forward-looking:

> 152. Dr. Prien and Dr. Penrose subjected Dr. Wells to the foregoing harassment and adverse actions because of her sex.
>
> 153. The harassment and differential treatment Dr. Prien and Dr. Penrose subjected Dr. Wells to did not serve any compelling state interest or government objective.
>
> 154. Dr. Prien and Dr. Penrose did not have a rational basis for discriminating against Dr. Wells that was linked to a legitimate government interest.

> 155. Dr. Prien and Dr. Penrose were motivated by animus towards Dr. Wells because of her sex.
>
> 156. Dr. Prien and Dr. Penrose deprived Dr. Wells of her right to Equal Protection in violation of the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. §1983.
>
> 157. Dr. Prien and Dr. Penrose acted intentionally, or with deliberate indifference or callous disregard for Dr. Wells' right to Equal Protection in violation of the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. §1983.
>
> 158. As a direct and proximate result of Dr. Prien and Dr. Penrose's violation of the equal protection guarantee of the Fourteenth Amendment as set forth in this complaint, Dr. Wells suffered irreparable harm, including loss of her fundamental constitutional rights, entitling her to relief against Dr. Prien and Dr. Penrose.

Id. ¶¶ 152–58 (emphasis added).

Nor do her factual allegations plausibly indicate any ongoing harassment. See generally id. There are no claims of current or future interactions

between the professors and Wells.[9] Id. The last dated factual allegation regarding Penrose pertains to a meeting on August 19, 2019. Id. ¶ 93. And there is no indication of any possible harassment by Penrose after that time. See generally id. As for Prien, there are no factual allegations related to possible harassment or discrimination by him after he emailed the "Time to Move on Song" about Wells at some point in May or June 2022. See id. ¶¶ 108–10. By her own account, Wells has not been involved with anything at Texas Tech since June 2022, besides other university representatives attempting to speak to her about her claims. Id. ¶¶ 112, 116. Wells has provided no plausible basis to infer that she is facing ongoing violations of her federal rights.

Moreover, Wells's assertion that her request for declaratory relief saves her claim is also meritless. See Dkt. No. 34 at 6. The mere fact that a declaratory judgment would be awarded in the future does not make it prospective relief. Instead, she asks the Court to provide—as explicitly stated in her amended complaint—"declaratory relief finding that Dr. Prien and Dr. Penrose violated Dr. Wells' [c]onstitutional right to Equal Protection." Dkt. No. 19 ¶ 159 (emphasis added). This amounts to a request for a "declaratory judgment[] expressly adjudicating the question of past violations" and is the exact kind of retrospective relief that the Court cannot order against the State or its officials acting in their official capacity absent a waiver of sovereign immunity. Green v. Mansour, 474 U.S. 64, 67–68, 73– 74 (1985); Williams ex rel. J.E., 954 F.3d at 737. Accordingly,

[9] Much less ones occurring under color of state law. *See* 42 U.S.C. § 1983.

Wells has failed to allege a cognizable Section 1983 claim against the professors.

4. Conclusion

In sum, the Court grants the original motions to dismiss (Dkt. Nos. 15; 16) as to Wells's tort claims that are barred by Section 101.106(e), denies them as moot as to the other claims, and grants in full the new motions to dismiss (Dkt. Nos. 24; 25). While Wells has requested leave to amend, Dkt. Nos. 34 at 8–9; 35 at 9, the Court denies her request. Given the litany of problems with each of her claims and the fact that many of these defects are immunity or statute-of-limitations issues that cannot be cured by amendment, amendment would be futile. She has given no indication of how she would fix any defect, and she has already amended her complaint following the defendants' first motions to dismiss, which outlined many of these issues. Wells is not pro se, and there is no reason to think she has not already pled her best case. For these reasons, the Court dismisses all of Wells's claims with prejudice.

So ordered on May 7, 2024.

JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CASE NO. 23-cv-00060-H
JURY TRIAL DEMANDED

[Filed on June 22, 2023]

CARA WESSELS WELLS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY, SAMUEL PRIEN, LINDSAY PENROSE, et. al.

Defendants.

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff ("Dr. Wells" or "Plaintiff") files this, her original complaint against Texas Tech University ("TTU," or "the University"), Dr. Samuel D. Prien ("Dr. Prien"), and Dr. Lindsay Penrose ("Dr. Penrose," and collectively "Defendants"), as follows:

I. PRELIMINARY STATEMENT

1. In its mission statement, Texas Tech University highlights the institution's alleged commitment to education, ethics and student success. It reads, "As a public research university, Texas Tech advances knowledge through innovative and creative teaching, research and scholarship. The university is dedicated to student success by preparing learners to be ethical leaders for a diverse and globally competitive workforce. The university is committed to enhancing the cultural and economic development of the state, nation and world."

2. Unfortunately, Dr. Cara Wells' experiences at TTU stand in stark contrast to these principles. Over the course of more than a decade, Dr. Wells was sexually harassed and degraded at the hands of her professor, Dr. Samuel Prien, aided by his associate, Dr. Lindsay Penrose. Threatened by Dr. Wells'

academic success—and later, business acumen—Dr. Prien and Dr. Penrose soon made it their mission to "put Dr. Wells in her place." Their campaign against her involved taking credit for her work, interfering with her job prospects, and pursuing financial opportunities to which they were not entitled. When Dr. Wells reported their behavior to TTU, the University failed to investigate her accusations, offer her protection from Dr. Prien, or honor its commitment with respect to patents that she created and owns.

3. At the outset, Dr. Wells viewed the chance to participate in TTU's Agricultural Department, under the direction of Dr. Prien and Dr. Penrose, as an exciting opportunity to conduct important research and launch her career in animal science.

4. Even during her early days in the program, Dr. Wells' experience was sexualized and gendered.

Indeed, Dr. Prien often "showed off" the young and then-inexperienced Dr. Wells around to his peers at industry conferences and events.

5. However, as Dr. Wells began to exhibit signs of independence and receive recognition on her own well-earned successes, Dr. Prien, who is frequently accused of misconduct by his students, used his position of power to initiate a campaign to bring Dr. Wells into submission.

6. During her tenure at TTU, Dr. Prien and Dr. Penrose subjected Dr. Wells to a constant barrage of harassment and a hostile educational environment. The misconduct perpetrated by the professors included forcing a young Dr. Wells—on numerous occasions—to share hotel rooms with Dr. Prien and Dr. Penrose when they traveled for academic conferences. After Dr. Wells attempted to politely decline those experiences—which she should have

never had to endure—the ridicule and humiliation delivered by Dr. Prien and Dr. Penrose ranged from belittling comments about her clothing choices to comments questioning her dedication and talent.

7. To add insult to injury, Dr. Prien and Dr. Penrose took advantage of Dr. Wells' academic and commercial achievements. Beginning with her time as an undergraduate research assistant, Dr. Wells did not receive credit for her contributions to technological innovations, patents, and academic research. Dr. Wells was made to believe that she was simply "paying her dues" as a student researcher. In reality, she was being denied credit she was due. TTU failed to protect her from these harms.

8. Having excelled as an undergraduate, Dr. Wells returned to TTU as a PhD candidate. She looked forward to making major contributions in her lab studies, and she held out hope that she would

finally be treated with respect. Unfortunately, she soon learned that the mistreatment would only worsen. She had no choice, given the required pathway to professional success.

9. As a PhD student, Dr. Penrose took credit for more of Dr. Wells' work, including an important embryo technology patent. As the mistreatment exacerbated, it became clear that Dr. Prien felt some sense of entitlement to insert himself into all aspects of Dr. Wells' life, including the personal and social aspects of it.

10. Dr. Prien made it his mission to sabotage her newly emerging career, even going so far as to attempt to block her from obtaining post-graduation employment.

11. Nevertheless, after she completed her doctorate at TTU, Dr. Wells founded her first company. She returned to TTU—the community

where she had invested years of her life— to seek support. To Dr. Wells' excitement, her company, Embryotics, was accepted into TTU's Accelerator Program, a program that fosters and supports entrepreneurs launching innovative startups. Soon after, Dr. Wells founded a second company, called EmGenisys. Dr. Wells embarked on exciting and innovative research related to determining embryo viability for creating pregnancy.

12. Despite her obvious and well-earned success, Dr. Wells was unable to rid herself of the continued antagonistic behavior and meddling of Dr. Prien and Dr. Penrose. Dr. Prien stole research from Dr. Wells that he obtained as a result of a position of confidence based on his role as a TTU Mentor. True to form, he submitted that research for publication at a conference for his own gain, a violation of several ongoing non-disclosure agreements.

13. Despite her professors' behavior, Dr. Wells believed that she could rely on the resources and support of TTU. Soon after, however, Dr. Wells learned that Dr. Prien and Dr. Penrose had already sowed seeds of distrust towards Dr. Wells within the TTU research faculty, making unsubstantiated accusations that Dr. Wells' company's technology was stolen. Without a proper investigation, TTU accepted the lies of Dr. Prien and Dr. Penrose and removed Dr. Wells—without notifying her—from patents, articles, and various TTU websites, where she had previously been given recognition.

14. Dr. Wells' relationship with TTU ended in 2022 when, after being recruited to serve as a Mentor to other TTU inventors, the school unceremoniously fired her from the committee within the Accelerator Hub. TTU subsequently sent out a defamatory message to others in the TTU community forbidding

them from contacting Dr. Wells or doing further work with her.

15. Dr. Wells has dedicated her entire adulthood to advanced and innovative research in the space of reproductive sciences, and in particular, the selection of embryos likely to be successful in in vitro fertilization (IVF) transfer procedures for humans and animals, alike. She is the exact type of student, scholar, and businesswoman that any professor or university would be proud to support and encourage to return to provide mentorship and expertise to the next generation of students. She exhibits the traits and aspirational goals celebrated in TTU's mission statement. The harms perpetrated by TTU and its senior faculty are serious, ongoing, and must be remedied.

II. PARTIES

16. Plaintiff Dr. Cara Wells is the founder and

CEO of EmGenisys, Inc, a start-up biotechnology and software company. She attended TTU for both her bachelor's degree and PhD, where she was a research assistant during the years she was obtaining both of her degrees.

17. Defendant Texas Tech University (TTU) is a public research university in Lubbock, TX.

18. Defendant Dr. Samuel Prien ("Dr. Prien") is a professor of reproductive physiology at Texas Tech Health Sciences Center (TTUHSC). He resides in Shallowater, TX.

19. Defendant Dr. Lindsay Penrose ("Dr. Penrose") is an associate professor at TTUHSC. She resides in Lubbock, TX.

III. RELEVANT NONPARTIES

20. Cameron Smith is a Texas-barred attorney serving as the TTU System Commercialization Director of the Office of Research Commercialization,

which not only serves TTU, but also Angelo State University, Texas Tech Health Sciences Center, and the TTUHSC Paul L. Foster School of Medicine in El Paso. He resides in Lubbock, TX.

21. Dr. Joseph Heppert is the Vice President for Research and Innovation at TTU. He resides in Lubbock, TX.

22. Kimberly Gramm is the Chief Innovation and Entrepreneur Officer at Tulane University and previously served as the vice president of innovation and entrepreneurship at TTU. She resides in New Orleans, LA.

23. Dr. David Snow was the Executive Director of the technology transfer office, where he focused on intellectual property and licensing for all the TTU System campuses. He is now the Executive Director of Technology Ventures at the University of Arkansas. He resides in Fayetteville, AR.

24. Julie Isom is the Associate Director for the Center of Integration of STEM Education and Research (CISER) at TTU. She resides in Idalou, TX.

25. Taysha Williams is the Managing Director at the Innovation Hub at Research Park and is in charge of overall management of programming at the Hub. She resides in Lubbock, TX.

IV. JURISDICTION AND VENUE

26. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, because there are federal questions of law at issue, namely violations of Title VII of the Civil Rights Act of 1964 ("Title VII") and Title IX of the Education Amendments of 1972 ("Title IX"). This court has supplemental jurisdiction over Plaintiff's related claims arising under state and local laws pursuant to 28 U.S.C. §1367(a).

27. This court has personal jurisdiction because

Defendants maintain physical offices and continuously conduct business in Lubbock, Texas.

28. Venue is proper pursuant to 42 U.S.C. §2000e-5(f)(3) because a substantial portion of the unlawful acts giving rise to Plaintiff's claims occurred in Texas.

29. Venue is proper pursuant to 28 U.S.C. §1391 because Defendants are deemed to reside in this District and a substantial part of the events and omissions giving rise to the claim occurred in this District.

V. EXHAUSTION OF ADMINISTRATIVE PROCEDURES

30. Dr. Wells timely filed with the Equal Employment Opportunity Commission ("EEOC") a charge of sex discrimination against Defendants.[1]

31. Dr. Wells received a Notice of Right to Sue

[1] Attached hereto as Exhibit A is a true and correct copy of the EEOC Charge of Discrimination, filed November 11, 2022.

from the EEOC within 90 days of filing this complaint.[2]

VI. FACTUAL BACKGROUND

A. Dr. Wells Begins Her Academic Career at TTU and Pursues Her Passion for Animal Science.

32. In 2009, Dr. Wells enrolled at TTU in the Department of Animal and Food Sciences with hopes of becoming a veterinarian.

[2] Attached hereto as Exhibit B is a true and correct copy of the Notice of Right to Sue, issued on December 22, 2022.

33. As a requirement for her degree in Animal Science at TTU, Dr. Wells enrolled in Dr. Prien's course. As an extra credit assignment, Dr. Wells attended an undergraduate research conference where, much to her excitement, she fell in love with animal science research and decided that she would dedicate her undergraduate academic career to researching complex and novel concepts in the field.

34. At this time, Dr. Prien seemed to show an interest in Dr. Wells' work, so she scheduled a meeting with him during office hours to discuss her

interest in his research. After their initial meeting, Dr. Prien accepted her as a research assistant in his lab and helped her attain a research internship at the Howard Hughes Medical Institute. Dr. Wells was hopeful that the scholastic and professional relationship between them would flourish.

35. Before beginning her work in the lab, Dr. Prien warned Dr. Wells that she could not be "easily offended" and that sexual humor was "part of the job." Dr. Wells brushed this off as Dr. Prien awkwardly attempting to explain the nature of a reproduction lab. Unfortunately, Dr. Wells would soon learn that Dr. Prien was more than a "quirky" science professor.

36. It was also at this time that Dr. Wells met Dr. Penrose, a senior female colleague of Dr. Prien. Dr. Penrose had been a student of Dr. Prien's during her time as an undergraduate and was accepted into

the TTUHSC by Dr. Prien. Dr. Penrose and her family have both on occasions stated that they credit Dr. Prien with Dr. Penrose's life—a sentiment which explains her unwavering support of Dr. Prien, at all costs.

37. An early incident foreshadowed that Dr. Penrose would not be an ally against Dr. Prien's inappropriate conduct, but rather an accomplice and perpetrator of the harassment. One day working in the lab, Dr. Wells had a disturbing encounter with one of Dr. Prien's colleagues, an older male physician. He made inappropriate remarks to the undergraduate Dr. Wells and even asked for her phone number. When Dr. Wells confided her discomfort in Dr. Penrose, rather than supporting her or reporting the inappropriate conduct, Dr. Penrose shockingly told Dr. Wells to actively pursue the man, because he was a well-known doctor who could "do good things" for Dr. Prien's lab.

B. Persistent Harassment and Bullying by Dr. Prien and Dr. Penrose Continues.

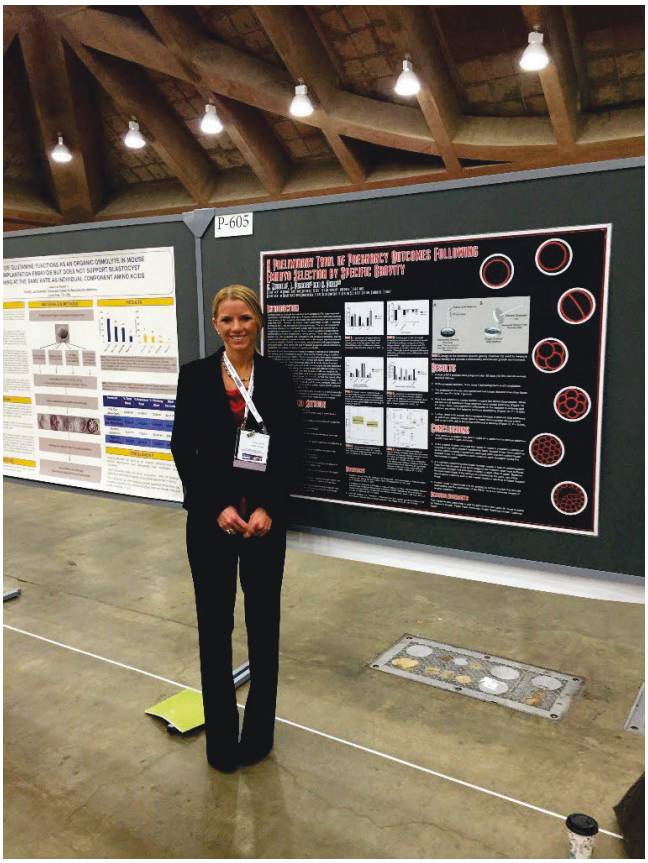
38. In October 2012, Dr. Wells was invited to present a poster at the annual American Society for Reproductive Medicine (ASRM) meeting in San

Diego, California. The ASRM conference is held in a different city each year and brings together the top experts in the industry to present cutting edge research. In order to be eligible for the event, presenters must submit new and original research. Dr. Wells worked on her presentation for months and was excited for the opportunity to showcase the results of her hard work.

39. Dr. Wells' excitement soon turned to dread, however, when Dr. Prien—much to Dr. Wells' surprise—demanded that Dr. Wells share a hotel room with him and Dr. Penrose. Being an undergraduate on a trip to an important event with scholars she looked up to, Dr. Wells acquiesced to the demand.

40. At the conference, wanting to put her best foot forward, Dr. Wells arrived dressed in business attire. Looking disapprovingly at Dr. Wells' attire, Dr.

Penrose told Dr. Wells that "lab people wear jeans," and required that she, Dr. Prien, and Dr. Penrose dress alike.



41. In April 2013, Dr. Wells was selected by TTU to represent the University at Undergraduate

Research Week in Austin, Texas. Dr. Wells was again required to share a hotel room with her professors.

42. That spring, Dr. Wells graduated from TTU with a B.S. in Animal Science and moved to College Station to attend Veterinary School at Texas A&M.

43. After beginning veterinary school, however, Dr. Wells realized that her true passion lied in research, like the work she had done as an undergraduate. She resolved to pursue a PhD. In fall 2013, Dr. Wells gained admission into TTU's doctoral program. Unfortunately, Dr. Prien served as the program's committee chair.

44. In fall 2013, Dr. Wells attended the annual ASRM conference in Boston, Massachusetts after being asked to present the research she submitted prior to graduating from TTU. She once again was required to share a hotel room with Dr. Prien and Dr.

Penrose.

45. After being embarrassed and being made to dress unprofessionally at the previous ASRM conference, Dr. Wells followed her instincts and wore a blazer (pictured here). Dr. Prien and Dr. Penrose incessantly mocked Dr. Wells for her attire. The comments intimidated Dr. Wells and caused her mental distress.

46. At the conference, an editor of *Human Reproduction*, a peer-reviewed scientific journal, approached Dr. Wells and offered to publish her research in the journal. Without basis, but with perceived authority, Dr. Prien told Dr. Wells that she could not be the named first author on her own research article and stated that he needed to be listed as the author. He went on to say that this would be the "biggest paper of his career," and viewed being listed as the first author as improving

his chances of winning a grant. When the article was published by the journal in September 2015, Dr. Prien was listed as the first author. To Dr. Wells' dismay and shock, Dr. Penrose was also listed as an author – despite her complete lack of contribution and no one having mentioned her potential inclusion to Dr. Wells.

C. Dr. Wells returns to TTU to Pursue her PhD and the Harassment Intensifies.

47. In spring 2014, after leaving veterinary school, Dr. Wells officially returned to TTU and resumed her role in Dr. Prien's lab.

48. After months of work, on June 30, 2014, via the University, Dr. Wells, Dr. Prien, and Dr. Penrose filed Provisional Patent Application No. 62/019,034 entitled System and Method for Assessing Embryo Viability. The concept behind the patent application was Dr. Prien's, but Dr. Wells did the hands-on work. Dr. Wells' contributions were innovative, and she

was excited when she learned she would be included as an inventor on the patent.

49. Dr. Prien told Dr. Wells that TTU's policy was to give 40% of any revenue gained from the patent to the inventors, 30% of the revenue to the department from which the idea came, and 30% to the institution. No one ever told Dr. Wells that the revenue for the inventors would not be split evenly.

50. Around that time, Dr. Wells served as a teaching assistant to Dr. Prien's class. As a result, Dr. Prien and Dr. Wells often discussed ideas that either of them might consider patentable. In one such discussion, Dr. Wells brought up the original concept for using embryo buoyancy to determine embryo sex based on the fact that X chromosomes weigh more than Y chromosomes.

51. In fall 2014, the annual ASRM conference was held in Baltimore, Maryland, and Dr. Wells was

again required to sleep in a room with Dr. Prien and Dr. Penrose.

52. Following Dr. Wells' presentation, numerous scientists approached her to give praise. This observably angered Dr. Prien and Dr. Penrose. Dr. Penrose spent the remainder of the conference bullying Dr. Wells. In one demeaning incident, Dr. Penrose heated a cookie and then crumbled it onto Dr. Wells bed while staring Dr. Wells in the eye. Dr. Prien knew about the incident and did nothing to remedy or address it.

53. On June 30, 2015, the University, on behalf of Drs. Prien, Penrose and Wells, filed international patent application PCT/US2015/038665 corresponding to provisional patent application 62/019,034 filed June 30, 2014, and named all three joint inventors of the disclosed technology.[3]

[3] Patent protection for the invention referred to as System and

54. By this time, Dr. Wells observed that Dr. Prien had grown more possessive and controlling—and was increasingly emboldened to behave inappropriately.

55. Often self-righteous in tone, he lectured her frequently about what he termed "morality." Dr. Prien attempted to make Dr. Wells feel guilty if she was not, as he described it, on the "straight and narrow." He enjoyed finding "imperfections" in her that he could exploit or ridicule. As a result, Dr. Wells resolved to try her best to set boundaries with Dr. Prien, keeping all conversations focused on science. He did not respect those boundaries.

56. In fall 2015, Dr. Prien sent a student to Dr.

Method for Assessing Embryo Viability was first-filed as US Provisional Patent Application No. 62/019,034 on June 30, 2014. One year later, on June 30, 2015, the corresponding international patent application PCT/US2015/038665 was filed that claimed priority to the provisional patent application. Out of the PCT application, US Patent Application No. 15/323,017 was filed (nationalized) on December 29, 2016. Each of these three patent applications is entitled System and Method for Assessing Embryo Viability and contains description of the same invention(s).

Wells' home to monitor her after she did not respond to his phone calls. Dr. Wells had simply fallen asleep. Inexplicably, Dr. Prien accused Dr. Wells of abusing drugs. Dr. Prien's aggressive and unsubstantiated accusations—and complete lack of respect for Dr. Wells' personal boundaries— resulted in psychological and emotional turmoil for Dr. Wells.

57. In 2016, the ASRM conference was held in Salt Lake City, Utah, and, once again, Dr. Wells attended. Having learned from previous experience that she would be expected to share a hotel room with Dr. Prien and Dr. Penrose, Dr. Wells preemptively invited her mother, using it as an excuse to share a room with her instead. Dr. Prien and Dr. Penrose were visibly angered by Dr. Wells' decision not to sleep in their hotel room. In retaliation, Dr. Prien and Dr. Penrose ignored Dr. Wells and her mother during the conference.

58. At the conference, Dr. Wells had the opportunity to present to a large group of professionals about her research. She dressed professionally, in a knee length skirt. After the successful presentation, in one of the only instances in which the professors deigned to acknowledge her, Dr. Penrose told Dr. Wells that no one was paying attention to the presentation because they had been looking at Dr. Wells' legs the entire time. Dr. Penrose asked Dr. Wells why she felt it was necessary to dress "that way." Sadly, not even the presence of Dr. Wells' mother, herself a professional engineer, had a chilling effect on the harassment.

59. By this time, Dr. Wells understood that she had to either silently suffer harassment by her professors or face retaliation—to the detriment of her education and career.

60. In summer 2016, Dr. Wells began writing her dissertation. Despite Dr. Wells' hard work on the dissertation, in what seemed a concerted effort, Dr. Prien and Dr. Penrose baselessly accused Dr. Wells of failing to take her studies seriously. This harassment caused Dr. Wells to second-guess her dedication and ability during a key time in her education.

61. Dr. Wells ultimately published her literature review from her dissertation. As the supervising professors, Dr. Prien and Dr. Penrose were expected to offer feedback, support, and constructive criticism. They offered none of those things. Nevertheless, they demanded that they be listed as co-authors despite their lack of contribution and, indeed, unprofessional treatment of Dr. Wells throughout the experience.

62. By 2017, Dr. Wells began to prepare for her PhD defense, an already anxiety- inducing affair on

the best of terms. Her apprehension was heightened by relentless undermining and mistreatment by Dr. Prien and Dr. Penrose.

63. As testament to her professionalism and quality of work, Dr. Wells passed her defense. On the day of the defense, despite having worked with Dr. Wells for over seven years, Dr. Prien ignored her entirely. Dr. Prien's behavior did not go unnoticed by Dr. Wells' family members, who were in attendance and similarly ignored by Dr. Prien.

64. In 2017, Dr. Wells graduated with her PhD in Animal Science. Sadly, Dr. Wells was so traumatized that she felt she could not walk at graduation.

D. Dr. Prien and Dr. Penrose Begin Their Campaign to Undermine Dr. Wells' Success Following Graduation.

65. After graduation, Dr. Wells applied for jobs in her field. Given Dr. Prien's involvement in her work and status at TTU, Dr. Wells listed him as a referral.

During this time, Dr. Prien called Dr. Wells on a constant basis to discuss *his* views on *her* future. He offered Dr. Wells an unpaid position in his lab. Dr. Wells respectfully declined this offer, hoping to find a paid position more commensurate with her qualifications and experience.

66. After more than six months of applying to what seemed like hundreds of jobs, Dr. Wells was frustrated and disheartened that she had not yet landed a position. She and her now-husband needed income and healthcare, so reluctantly she submitted her application to work at a Tory Burch retail store. During one of the numerous telephone calls from Dr. Prien, he asked Dr. Wells how things were going. She truthfully told him that she was frustrated that she had to apply to a retail position after working hard to obtain her PhD.

67. Much to Dr. Wells' shock and dismay, Dr.

Prien told her that he had been waiting for this moment—and conveyed his excitement that Dr. Wells was now "humbled." He went on to admit that, when potential employers had contacted him as one of Dr. Wells' references, he told them that he could not recommend her for the job. Dr. Prien's casual revelation of such deceit was physically sickening to Dr. Wells. Her career prospects had been sabotaged.

68. In hindsight, Dr. Wells sees Dr. Prien's pathological behavior for what it was: When Dr. Prien could no longer intrude beyond Dr. Wells' set boundaries, he began actively campaigning against her success. For example, when Dr. Wells made it known that she planned to leave TTU and pursue a career elsewhere after obtaining her PhD, Dr. Prien's hostility observably heightened. After all, Dr. Wells leaving TTU would mean that Dr. Prien could no longer direct or take credit for her successes. Dr.

Prien interfered with her job application process so that she would have no choice but to return to an assistant's position in his lab—a job offer she had rejected.

69. Eventually, Dr. Wells was offered and accepted a position as an andrologist at a company called Ovation Fertility. The lab director at Ovation was thrilled to have Dr. Wells because she was over-qualified for the role, which typically only requires a bachelor's degree. The lab director told Dr. Wells that he hoped to promote her quickly and she accepted the job in order to have income and health insurance.

70. Toxic as ever, Dr. Penrose told Dr. Wells that she was not qualified to hold this position, despite Dr. Wells' stellar academic record in both her bachelor's degree and PhD.

E. Dr. Wells Founds her First Company, Embryotics.

71. While working at Ovation, Dr. Wells began

building her first company, Embryotics.

Embryotics was created to develop embryo selection technology that relied on noninvasive embryo and oocyte assessment techniques to determine embryo quality, viability, oocyte competency, and cell survival of cryopreservation using a novel specific gravity device. Some of the concepts stemmed from Dr. Wells' graduate work.

72. In 2017, the annual ASRM conference was in San Antonio, Texas, and Dr. Wells attended as a TTU representative to present the research she conducted as a PhD student. This time, Dr. Prien insisted that Dr. Wells share a hotel room with him and a male graduate student. This was more that Dr. Wells could endure, and she left the event early. Before she did, however, the male graduate student pleaded with her to stay, stating that he was uncomfortable sharing a room with Dr. Prien.

73. Over the next months, Embryotics, led by Dr. Wells, achieved numerous accolades.

74. In the beginning of 2018, Dr. Wells participated in the U.S. National Science Foundation's Innovation Corps (I-Corps), a program focusing on training scientists and engineers to move towards commercialization of their research. Dr. Prien was designated the Principal Investigator on the project, meaning he was in charge of submitting the proposal and managing the award.

75. In April 2018, Embryotics represented TTU at the Rice Business Plan Competition and won 8th place overall out of more than 700 applicants. Embryotics was awarded $42,000 in prizes. The same month, Embryotics won the TTU iLaunch Competition, and was awarded $10,000.

76. On March 30, 2018, TTU filed a Provisional Patent Application 62/650,038 entitled System and

Method for non-invasive embryo sexing. Dr. Prien, Dr. Penrose, and Dr. Wells were all listed as inventors. Dr. Prien sent Dr. Wells a text message stating that Dr. Penrose would receive a larger share of the royalty rate because she came up with the idea for the patent. Dr. Wells corrected Dr. Prien and reminded him of their discussions in 2014 in which Dr. Wells came up with the idea of using embryo buoyancy to assess viability. Dr. Prien refused to negotiate with Dr. Wells, his co-inventor whose idea was the brainchild for this patent, and submitted the royalty rate without further discussion. She still was not told how exactly the royalty rate would be divided.

77. In April 2018, Dr. Wells left her job at Ovation Fertility. She resolved to dedicate all of her time to help Embryotics thrive.

78. Dr. Wells applied for Embryotics to be

accepted into the Accelerator Program at the TTU Innovation Hub, a year-long program that provides selected startup companies $25,000 and additional funding opportunities, monthly business trainings, marketing and business plan support, access to regional professional events, and a team of mentors from various industries in the venture space.

79. Embryotics was accepted into the Accelerator and awarded the license to the embryo buoyancy technology that Dr. Wells helped to create during her time as a TTU student. Dr. Prien was upset that she was "given" the license to the technology. Dr. Wells attempted to appease Dr. Prien by adding him to the team of Mentors at the Accelerator Program. As part of his involvement with the Accelerator, Dr. Prien, like all the Mentors, was required to sign an agreement to keep confidential the information he learned from the Accelerator Program's participating

companies, including Embryotics.

80. In June 2018, Dr. Wells got engaged to her now-husband. Dr. Wells' other TTU Mentors congratulated her and celebrated her good news. In contrast, Dr. Prien, was clearly miffed. His reaction to Dr. Wells' news was so obviously negative that afterwards other Mentors reached out to Dr. Wells to see if she was okay. In fact, in an email exchange in 2022 discussing other matters, an Accelerator Mentor told Dr. Wells that he retains "a vivid, and unsettling memory" of Dr. Prien's reaction to Dr. Wells' engagement announcement.

81. Around this time, Dr. Wells was invited by Simplot, a large agribusiness company, to do a sex selection study funded independently of TTU. Dr. Wells invited (and paid) one of Dr. Prien's graduate students with whom she had worked to provide her assistance for the study. Embryotics covered all the expenses

with no financial support from TTU. During this trip, the student confided in Dr. Wells that she was nervous and uncomfortable about being required to share a room with Dr. Prien on research trips.

82. In spring 2019, Embryotics dissolved as a company. The company was made up of all first-time entrepreneurs and they "learned that while [the technology] was accurate, it wasn't fast enough to be performed at scale, and ultimately the company didn't work out."[4]

F. EmGenisys Rises from the Ashes of Embryotics.

83. Dr. Wells continued pursuing her passion for research and formed a new company called EmGenisys. The original intention for creating EmGenisys was to pick up where Embryotics left off

[4] Dr. Wells addressed the dissolution of Embryotics and her focus on EmGenisys in an interview following EmGenisys' success at the Grow-NY Competition in 2022. https://www farmprogress.com/technology/grow-ny-competition-offers-glimpse-future-ag-tech

using the TTU embryo selection technologies. However, due to TTU's lack of cooperation in the process to license this technology to EmGenisys, Dr. Wells and the company pivoted away from the TTU technology. EmGenisys currently provides a digital, non-invasive, embryo assessment platform for livestock.

84. In January 2019, at the National Cattleman's Beef Association meeting, Dr. Wells met the executive team at a company called Vytelle. Vytelle is a precision livestock company that focuses on emerging technologies, particularly those which relate to genetics and cattle. Dr. Wells was excited about the prospect of working with Vytelle and stayed in contact with them as EmGenisys was formed.

85. A few months later, Dr. Wells obtained a letter of intent from Vytelle for a project that would build

upon the technology Embryotics was developing. However, TTU was pursuing IP protection for the base technology which had been developed at TTU. Therefore, Dr. Wells began plans to license that IP, for which she is an inventor, from TTU. The plan was to secure the license from TTU and then apply once again to the Accelerator Program as EmGenisys. To this end, as the shepherd of all things IP at the University, Cameron Smith, Director of the Office of Research Commercialization at TTU, asked Dr. Wells to create and present a business plan which he instructed should include *her* relationship with Vytelle.

86. Dr. Wells worked on the business plan with Kimberly Gramm, who at the time was the Managing Director of the Innovation Hub and, therefore, key in selecting the startup companies accepted into the Accelerator Program. Ms. Gramm

quickly became an advocate for Dr. Wells, which put Ms. Gramm in the crosshairs of Dr. Prien and others at TTU. In fact, once EmGenisys was accepted into the Accelerator, Dr. Prien accused Ms. Gramm of "nepotism," claiming she was the only reason EmGenisys was accepted.

G. TTU Office of Research and Innovation Uses Dr. Wells' Successful New Company as a Means to Poach More of Her Intellectual Property.

87. Dr. Wells presented her business plan as part of the Accelerator vetting process, and during which Mr. Smith asked numerous questions about Vytelle and showed extraordinary interest in the company. EmGenisys was accepted into the Accelerator Program, and Dr. Wells moved forward with the expectation that EmGenisys would receive the license from TTU for the technology based on promises made by Mr. Smith to Ms. Gramm.

88. Relying on these promises, throughout the

spring of 2019, Dr. Wells sought confirmation from Mr. Smith and the Accelerator Hub that EmGenisys would indeed receive the license to the embryo technology as promised. However, TTU refused to provide assurances.

89. It was around this time that the tenor of TTU's relationship with Dr. Wells' changed drastically. Dr. Wells now knows that Dr. Prien and Dr. Penrose had, by this time, begun their campaign to thwart Dr. Wells' obtaining the license.

90. In breach of all assurances made, instead of granting Dr. Wells and her company the license to TTU's embryo technology, Mr. Smith licensed the technology directly to Vytelle, robbing Dr. Wells and, in turn, EmGenisys of a lucrative financial opporrtunity. Cameron Smith also promised Vytelle that Dr. Wells would work for them, despite having ***no*** discussion with Dr. Wells about this, nor the

power to otherwise make such assurances to Vytelle. When Ms. Gramm pressed harder as to why the University issued the license to Vytelle instead of Dr. Wells' company, EmGenisys, she was told that Dr. Wells did not get the license because she was too "emotionally charged," a clear dig from Dr. Prien and Dr. Penrose.

91. Even more devastating, at about this same time, Dr. Heppert, Vice President for Research and Innovation at the University, told Dr. Wells that a student had accused Dr. Wells of stealing inventions. Dr. Wells now knows that Dr. Heppert accepted a malicious, unsubstantiated accusation originating from Dr. Prien and Dr. Penrose without proper investigation, and almost certainly amplified it to the University and beyond. Though this was a baseless and clearly false claim, it was harmful for Dr. Wells, given that the accusation was levelled by high-

ranking, powerful individuals at the University.

92. TTU's deception and run-around continued through the acts of Dr. David Snow, who was in charge of the University's IP and licensing programs at the time, and who insisted Dr. Wells disclose, with proof, company formation, identifying information for parties in interest, feedback regarding semen technologies, an updated business plan, and funding structure for embryo technology. It was Dr. Wells' understanding that upon submitting this information, she would finally obtain the license for the embryo technology she had long been pursuing for EmGenisys.

93. On August 19, 2019, a meeting was held among Dr. Heppert, Dr. Wells, Dr. Snow, Cameron Smith, Dr. Tim Dallas, Dr. Mike Ryan, Kimberly Gramm, Dr. Prien, and Dr. Penrose. The intention of this meeting was to finalize details of which

technologies EmGenisys could license and to discuss the fact that the University had erroneously promised Vytelle that Dr. Wells would work for them.

94. The meeting was a disaster from the start. Dr. Heppert was the one who called the meeting, which required Dr. Wells to fly to Lubbock to attend. All knew Dr. Wells was short of funds, trying to get her start-up company off the ground and only recently having obtained her PhD from TTU. In an act demonstrating Dr. Heppert's unearned distaste for Dr. Wells, he left the meeting after less than 10 minutes. Subsequently, Dr. Prien and Dr. Penrose each made it clear that they did not support Dr. Wells getting access to *any* of the University's technologies. Dr. Snow continued to irrationally insist that Dr. Wells really wanted Vytelle to directly license the TTU technology, instead of through Dr.

Wells' EmGenisys. Dr. Wells corrected Dr. Snow and futilely explained that she wanted Vytelle to be a *customer* and that Dr. Snow was weaponizing her contacts against her, a fact he did not deny. Overall, nothing was resolved, and the TTU representatives lied about, among other things, promising Vytelle that Dr. Wells would work for them.

H. Dr. Wells Tries to Keep the Peace with Dr. Prien and He Takes Further Advantage of Her Personal Success.

95. Dr. Wells tried to remain positive and gain as much benefit as possible in the Accelerator program. Under the advice of Ms. Gramm, Dr. Wells endeavored to make Dr. Prien feel included in the new research, in hopes that if his ego was stroked, he would stop his campaign against her.

96. Dr. Wells discussed sex selection data in the TTU Accelerator Mentor program and, in follow up, Dr. Prien asked to see more of Dr. Wells' data. In an

attempt to placate Dr. Prien, Dr. Wells shared the data with him. True to form, Dr. Prien took the data as if it were his own and used it as a basis to submit an abstract that *he* sought to present at the ASRM conference. Among other things, this was in violation of the Accelerator Program's non- disclosure agreement with its Mentors. Ironically, Dr. Prien has taught a course at the undergraduate and graduate level titled "Ethics in Scientific Research" for many years, but intentionally violated ethical standards in his role as a professor, co-inventor, and Mentor.

97. Dr. Wells was concerned that if Dr. Prien was allowed to present this data, it could negatively impact relationships between her current company, past company, and third parties. Among others, Embryotics had an existing non-disclosure agreement in place with Simplot, which continued for a period of ten years after the date it went into effect

(July 29, 2018). The agreement required Simplot's permission in order to disclose the research in which they were participants.

98. Dr. Prien's actions were also in violation of the non-disclosure agreement that Mentors in the Accelerator Hub signed, which terms provided that the Mentors shall not disclose any proprietary information disclosed to it for any *unauthorized* purpose.

99. Charitably, Dr. Wells explained her position to Dr. Prien. Instead of apologizing, Dr. Prien acknowledged Dr. Wells' concerns, then refused to withdraw the submission. Dr. Wells had no choice but to contact ASRM and inform them of the misconduct and misappropriation by Dr. Prien. ASRM removed Dr. Prien's abstract.

100. Upon finding out that he had been removed from ASRM, Dr. Prien told another graduate student

that he was going to "destroy" Dr. Wells. His behavior escalated into the frenetic.

101. As this conflict escalated, Dr. Wells uncovered further disturbing details. First, Dr. Wells discovered that despite being a primary inventor on the embryo-related patent applications by the University, her allotted proportion of royalties was disproportionately lower in comparison to Drs. Prien and Penrose. Moreover, Dr. Wells was never included in so much as a conversation about how the inventors' royalties should be allotted; naturally, Dr. Wells had always presumed they would be distributed on an equal basis.

102. Second, Dr. Wells learned that Dr. Prien claimed (and spread the rumor) that EmGenisys' new technology infringed upon TTU patents. Again, these untruthful claims were made maliciously and without basis and have inflicted considerable damage

on Dr. Wells. In truth, the technology pioneered by EmGenisys is entirely novel. However, without explanation or notice to Dr. Wells, on September 29, 2021, just a month before the patent was issued, the University, through its attorney Kristopher Lance Anderson, unilaterally removed Dr. Wells as an inventor from US Patent Application No. 15/323,017 on the System and Method for Assessing Embryo viability. The patent issued on November 9, 2021, as US Patent No. 11,169,064 ("the '064 patent"), without Dr. Wells as an inventor. Dr. Wells tried to discuss these purposeful, harmful and erroneous accusations with Mr. Smith (the attorney serving as the TTU System Commercialization Director of the Office of Research Commercialization), but he refused to speak with her unless she agreed *not* to bring her attorneys. This coercive misconduct by Mr. Smith, TTU's agent, was a power-play by the

University over Dr. Wells, with the clear purpose being to avoid her discovering their bad acts.

103. Indeed, Dr. Wells only found out about being removed as an inventor when reading an article online. In this regard, it should be appreciated that the naming of inventors is not arbitrary; correct inventorship specification is a matter of law, and misrepresentations regarding inventorship result in the patent being unenforceable.

104. Dr. Prien continued his meddling in Dr. Wells affairs into 2022. Late in 2021, EmGenisys participated in the Grow-NY Competition, in which food and agriculture businesses compete for the opportunity to win prize money and business development support. EmGenisys was named as a finalist and awarded $250,000 for its innovative embryo assessing system. TTU published an article celebrating this achievement, but Dr. Wells was

notified that it had subsequently been removed early in 2022 after Dr. Prien demanded that the article be taken down from TTU's website. The calculated campaign against Dr. Wells became increasingly distressing, especially because it was based on false accusations which could have easily been investigated and disproven.

I. TTU Refuses to Acknowledge or Address Dr. Wells' Reports on Dr. Prien's and Dr. Penrose's Misconduct.

105. Dr. Wells emailed a student body representative asking for help to protect students from the relentless and inappropriate conduct of Dr. Prien and Dr. Penrose on powerless students. She also spoke candidly with Kimberly Gramm and Dr. Tim Dallas, another Accelerator Mentor, about Dr. Prien forcing her to share a hotel room with him and Dr. Penrose on all of their University-sponsored research trips.

106. During fall 2020, Dr. Mark Sheridan, the Vice Provost for Graduate and Postdoctoral Affairs and Dean of the Graduate School, hosted a virtual lunch to obtain feedback on how the graduate school at TTU can better help its students. Dr. Wells stated that the University needed to prevent students from sharing hotel rooms with professors. She also conveyed her view that students often are faced with unnecessary additional expense. For example, Dr. Wells detailed how she paid the expenses for all her large animal studies out of her own pocket while earning her PhD. She followed up this conversation with a letter to Dr. Sheridan reiterating her concerns. He did not respond for over a year.

107. After Dr. Wells made known her claims concerning Dr. Prien and Dr. Penrose, several other individuals at TTU made independent claims against them alleging similar misconduct. Another individual

reached out to Dr. Sheridan to share his experience and specifically stated that Dr. Penrose belittled him but explained that he was fearful that if he came forward to complain, she may retaliate by blocking him from graduating with his master's degree. This was a story to which Dr. Wells related. Furthermore, these complaints were fielded through the University's Human Resources Department, assuring the University's awareness of Dr. Prien's and Dr. Penrose's bad acts and impacts. The University still refused to address or remedy them.

J. TTU Retaliates by Perpetuating Baseless Claims that Dr. Wells Stole Intellectual Property.

108. In May 2022, Dr. Wells executed an agreement to be on the Mentor committee in the Accelerator Hub. Because of her experiences, she hoped to be a positive source of mentorship to TTU entrepreneurs.

109. Shortly thereafter, Dr. Prien wrote and

distributed by email a song he titled the "Time to Move on Song," which does not directly name Dr. Wells, but is a clear reference to her. The song is dedicated to "those who believe rumor over fact" and references "accusations" against Dr. Prien that he has "survived."

110. Dr. Wells' role as a Mentor in the Accelerator Hub was finalized in June 2022, after she underwent rigorous interviews, background checks and onboarding procedures with Taysha Williams, who had been appointed Program Director at the Innovation Hub following Kimberly Gramm's departure. Dr. Wells was added to the TTU website, making her new position public.

111. It was common practice that Accelerator Hub mentors could transform their roles into compensated ones by being hired in full-time roles at TTU or by partnering with one of the companies

accepted into the Accelerator Hub. As this was a common occurrence for former Mentors, Dr. Wells anticipated the same opportunities after serving as a Mentor.

112. On June 10, 2022, the Office of the General Counsel for TTU called Taysha Williams and instructed that she remove Dr. Wells as a Mentor immediately. No legitimate reason was given for removing Dr. Wells. Nevertheless, Ms. Williams followed TTU's orders and removed Dr. Wells from the website and sent the email as instructed to the other TTU Mentors telling them that, based on the guidance of the Office of General Counsel and the Vice President for Research and Innovation (Dr. Heppert), they were to cease "any formal relationship with and remove any and all collaboration with" Dr. Wells. The other Mentors were specifically instructed to "no longer engage Dr. Wells in Hub programming

or involve her in the fulfillment" of the Mentorship roles.

113. Dr. Wells was never approached by the General Counsel, his Office, or any other University or Accelerator representative regarding these adverse actions taken by TTU.

114. Later that month, Dr. Wells became aware that she had been removed from many TTU publications, including articles honoring her as a distinguished alumnus and EmGenisys founder. Dr. Wells received no contact or explanation from TTU about her removal from the University's publications.

115. After her firing, Dr. Wells discovered that Dr. Prien claimed that all of his patented technologies for which he is an inventor have been licensed to industry. If this is true, this means that Dr. Wells did not receive *any* royalties from TTU for several patents, on which she is an inventor-in-fact.

116. Since Dr. Wells filed her EEOC charge against TTU, University representatives seem to be taking a disingenuous interest in at least some of her claims and have reached out, through the University lawyer, Cameron Smith, attempting to justify their removal of Dr. Wells as an inventor and the defamatory campaign launched against her.

117. Additional insight into the scheme to tarnish the professional reputation of Dr. Wells in order to profit off her work product continues to come to light even now. For example, in February of 2023, Dr. Wells was informed by a colleague at a research conference that Dr. Prien spread some story that he had hired armed security for the graduate student dissertation defenses in 2020, claiming that he thought Dr. Wells might show up to the event. Dr. Prien and Dr. Penrose have continued to paint the narrative that Dr. Wells is a villain for asserting her

rights to her own intellectual property and bodily autonomy. TTU has fully endorsed this destructive campaign and the continued harassment, bullying, and defamation of Dr. Wells weighs upon her constantly. What should have been a formative academic experience that she could look upon fondly, has turned into a living nightmare for Dr. Wells.

VII. CAUSES OF ACTION

Count One: Violation of Title VII of the Civil Rights Act of 1964 (against TTU)

118. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

119. Plaintiff is a woman.

120. At all material times, Plaintiff was an "employee" as defined by Title VII, 42 U.S.C. §2000e et. seq.

121. Defendant, TTU, is an "employer" as defined by Title VII, 42 U.S.C. §2000e et. seq.

122. Plaintiff was subject to unwelcome sexual

harassment.

123. The harassment was based on sex.

124. The harassment has inflicted serious harm on and caused severe damage to Plaintiff.

125. Defendant subjected Plaintiff to adverse employment actions.

126. Plaintiff suffered harm as a result of Defendant's actions.

Count Two: Hostile Work Environment in Violation of Title VII of the Civil Rights Act of 1964 (against TTU)

127. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

128. Plaintiff is a woman.

129. At all material times, Plaintiff was an employee" as defined by Title VII, 42 U.S.C. § 2000e et seq.

130. Defendant is an "employer" as defined by Title VII, 42 U.S.C. § 2000e et seq.

131. Defendant subjected Plaintiff to a pervasive pattern of abuse, hostility, neglect, disregard, intentional sabotage, penalization, and adverse employment actions.

132. Defendant's misconduct seriously interfered with Plaintiff's ability to perform her work.

133. Defendant TTU was on notice of the misconduct based on Plaintiff's and others' repeated calls for assistance.

134. Defendant TTU did not take any steps to correct or prevent the misconduct.

135. A reasonable person would find Defendant's conduct abusive and hostile.

136. Plaintiff suffered harm as a result of Defendant's actions.

Count Three: Retaliation Under Title VII of the Civil Rights Act of 1964 (against TTU)

137. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

138. Plaintiff engaged in opposition activity which is protected under §704(a) of Title VII.

139. Defendant took adverse employment action against Plaintiff that a reasonable employee would consider adverse.

140. There is an existing causal connection between the Plaintiff's activity and the adverse employment action.

Count Four: Violation of Title IX of the Education Amendments of 1972 (against TTU, Dr. Prien and Dr. Penrose)

141. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

142. Plaintiff was subject to harassment and unequal treatment by Defendants Dr. Prien and Dr. Penrose.

143. This misconduct was based on sex and not another motivation.

144. This harassment had the effect of denying

Plaintiff the benefits of an education program.

145. The misconduct was of an ongoing nature, beginning as early as the Fall of 2012 and ongoing through Summer 2022.

146. Evidence of the misconduct, including removal of Plaintiff from academic articles and dissemination of false and harmful information about Dr. Wells, was not discovered by Plaintiff until July 2022.

147. Defendants had actual notice of this harassment.

148. The harassment was reported to the appropriate person who had the power to address and remedy this harassment.

149. Defendants Dr. Prien and Dr. Penrose carried out the harassment against Plaintiff, and Defendant TTU was deliberately indifferent to the harassment Plaintiff faced.

Count Five: Denial of Equal Protection Based Upon Sex In Violation of 42 U.S.C. §1983

(against Dr. Prien and Dr. Penrose)

150. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

151. At all material times, Dr. Prien and Dr. Penrose were persons acting under color of state law within the meaning of 42 U.S.C. §1983 ("§1983").

152. Dr. Prien and Dr. Penrose subjected Dr. Wells to the foregoing harassment and adverse actions because of her sex.

153. The harassment and differential treatment Dr. Prien and Dr. Penrose subjected Dr.

Wells to did not serve any compelling state interest or government objective.

154. Dr. Prien and Dr. Penrose did not have a rational basis for discriminating against Dr.

Wells that was linked to a legitimate government interest.

155. Dr. Prien and Dr. Penrose were motivated by

animus towards Dr. Wells because of her sex.

156. Dr. Prien and Dr. Penrose deprived Dr. Wells of her right to Equal Protection in violation of the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. §1983.

157. Dr. Prien and Dr. Penrose acted intentionally, or with deliberate indifference or callous disregard for Dr. Wells' right to Equal Protection in violation of the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. §1983.

158. As a direct and proximate result of Dr. Prien and Dr. Penrose's violation of the equal protection guarantee of the Fourteenth Amendment as set forth in this complaint, Dr. Wells suffered irreparable harm, including loss of her fundamental constitutional rights, entitling her to relief against Dr. Prien and Dr. Penrose.

159. Dr. Wells seeks judgment in her favor against

Dr. Prien and Dr. Penrose in addition

to relief sought below, for compensatory and punitive damages, declaratory relief finding that Dr. Prien and Dr. Penrose violated Dr. Wells' Constitutional right to Equal Protection, injunctive relief enjoining Dr. Prien and Dr. Penrose from harassing or otherwise discriminating on the actual or perceived gender, and attorneys' fees and costs pursuant to 42 U.S.C. §1988, and such other relief as the Court may deem just and equitable.

Count Six: Correction of Inventorship Pursuant to 35 U.S.C. §256 (against Dr. Prien and Dr. Penrose)

160. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

161. Dr. Wells made independent conceptual contributions to the inventions claimed in US Patent No.11,169,064 that issued on November 9, 2021.

162. Dr. Wells has a financial interest in being

listed as an inventor on the patent.

163. Dr. Wells is not listed on the '064 patent as an inventor of inventions claimed in the patent. The failure to include Dr. Wells is ongoing.

164. This error occurred without the deceptive intent of Dr. Wells and the patent is therefore subject to correction to name Plaintiff as an inventor.

165. Under 35 U.S.C. § 256, this Court may order correction of the '064 patent which Dr. Wells has been either removed from or otherwise not listed as an inventor.

166. The Court should order that Dr. Wells be added back to the patent.

Count Seven: Declaratory Judgment of Patent Invalidity Under 28 U.S.C. § 2201
(against Dr. Prien and Dr. Penrose)

167. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

168. In the alternative to Count Six, the removal of

Dr. Wells as an inventor just over a month before US Patent No. 11,169,064 issued was done knowingly and with deceptive intent by the remaining applicants of the '064 patent. The '064 patent should therefore be found invalid.

Count Eight: Tortious Interference with Contractual Relations (against Dr. Prien)

169. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

170. A valid contract existed between Dr. Wells, Embryotics, and Simplot which was subject to interference by Defendant, Dr. Prien.

171. Dr. Prien's interference was willful and intentional and this interference proximately caused injury to Plaintiff.

172. Defendant Dr. Prien's interference caused actual damage or loss to Dr. Wells.

173. Dr. Prien acted in bad faith and outside the scope of his authority as a Professor at TTU and

Mentor at the Accelerator Hub.

Count Nine: Trade Secret Misappropriation (against Dr. Prien)

174. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

175. Dr. Wells' data from her research as part of Embryotics and EmGenisys constituted a trade secret.

176. Dr. Wells had and has a financial interest in those trade secrets.

177. These trade secrets were communicated to Defendant Dr. Prien pursuant to their confidential relationship governed by a non-disclosure agreement.

178. Dr. Prien subsequently used that trade secret in violation of that confidence, directly causing harm to Plaintiff, Dr. Wells.

179. Dr. Prien acted in bad faith and outside the scope of his authority as a Professor at TTU and Mentor in the Accelerator Hub.

Count Ten: Intentional Infliction of Emotional Distress (against Dr. Prien and Dr. Penrose)

180. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

181. Defendants acted intentionally or recklessly by perpetuating and allowing the harassment of Plaintiff. Defendants either desired to cause the consequences of these actions or knew that these consequences were substantially certain to result from the actions.

182. Defendants' conduct was extreme and outrageous.

183. Defendants' actions caused the Plaintiff emotional distress.

184. The resulting emotional distress was severe. Plaintiff suffered from embarrassment, humiliation, worry, and fright, among other negative harms.

185. Dr. Prien and Dr. Penrose acted in bad faith

and outside the scope of their authority as Professors at TTU.

186. Plaintiff's severe emotional distress cannot be remedied by any other cause of action.

187. Plaintiff seeks damages within the jurisdictional limits of this Court.

Count Eleven: Unjust Enrichment (against Dr. Prien and Dr. Penrose)

188. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

189. There is no enforceable contract to govern the dispute between Plaintiff and Defendants Prien and Penrose.

190. Dr. Wells had and has a financial interest in the patented inventions.

191. Plaintiff conferred a benefit that enriched the Dr. Prien and Dr. Penrose, including the royalties resulting from patented inventions and unearned professional stature and reputation.

192. Dr. Prien and Dr. Penrose knowingly accepted the benefit under circumstances that make it unjust to keep it without paying Plaintiff for its value.

193. Dr. Prien and Dr. Penrose acted in bad faith and outside the scope of their authority as Professors at TTU.

Count Twelve: Breach of Fiduciary Duty (against Dr. Prien and Dr. Penrose)

194. Defendants Prien and Penrose owed a formal or informal fiduciary duty to Plaintiff as her co-inventor.

195. Defendants Prien and Penrose negligently or intentionally failed to act in good faith and solely for Plaintiff's benefit or failed to use reasonable care in carrying out the fiduciary duty owed to Plaintiff.

196. Defendants Dr. Prien and Dr. Penrose actions proximately caused harm to Plaintiff.

197. Defendants Dr. Prien and Dr. Penrose benefitted from this breach of fiduciary duty.

198. Dr. Prien and Dr. Penrose acted in bad faith and outside the scope of their authority as Professors at TTU.

Count Thirteen: Fraudulent Concealment (against Dr. Prien and Dr. Penrose)

199. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

200. Defendants Dr. Prien and Dr. Penrose concealed and/or failed to disclose material facts related to the intellectual property rights and royalties at issue in this action.

201. Dr. Wells had and has a financial interest in the intellectual property and royalties at issue.

202. Defendants Dr. Prien and Dr. Penrose had a duty to disclose material information to Plaintiff because Defendants were co-inventors with Plaintiff.

203. The information was material because it was important to Plaintiff in making decisions about continuing to work with Defendants Dr. Prien and

Dr. Penrose and a reasonable person would attach importance to the information concealed by Defendants Dr. Prien and Dr. Penrose.

204. Defendants Dr. Prien and Dr. Penrose knew Plaintiff was ignorant of the information and did not have an equal opportunity to discover the truth because of her inferior position as a student and employee.

205. Defendants Dr. Prien and Dr. Penrose deliberately remained silent and did not disclose the information to Plaintiff.

206. By deliberately remaining silent, Defendants Dr. Prien and Dr. Penrose intended for Plaintiff to act without the information.

207. Plaintiff acted in justifiable reliance on Defendants Dr. Prien and Dr. Penrose's concealment.

208. By deliberately remaining silent, Defendants Dr. Prien and Dr. Penrose proximately caused injury

to Plaintiff, which resulted in damages.

209. Dr. Prien and Dr. Penrose acted in bad faith and outside their authority as Professors at TTU.

210. As a result of Dr. Prien and Dr. Penrose's concealment, Plaintiff was not able to discover the information until after her graduation from TTU.

Count Fourteen: Defamation *Per Se* (against Dr. Prien)

211. Dr. Wells incorporates the paragraphs above as though copied verbatim herein.

212. Defendant Prien made defamatory statements about Plaintiff.

213. Defendant Prien published these statements by communicating them to a third person.

214. Statements made by Defendant Prien alleging academic misconduct and intellectual property theft by Plaintiff are false.

215. Defendant Prien acted intentionally in making such statements.

216. Defendant's statements concerned Plaintiff's profession and were so obviously harmful that damage to Plaintiff may be presumed.

217. Dr. Prien acted in bad faith and outside his authority as a Professor at TTU.

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues of fact to which she is entitled to a jury trial in this action.

IX. PRAYER

For all the foregoing reasons, Plaintiff requests that the Court enter judgment in her favor and award her the following relief against Defendants:

a. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all harm, including but not limited to, compensation for emotional distress,

suffering, inconvenience, mental anguish, reputational harm, loss of enjoyment of life, and special damages;

b. An award of punitive damages;

c. An order declaring that Dr. Prien and Dr. Penrose violated Dr. Wells' constitutional right to Equal Protection;

d. An order enjoining Dr. Prien and Dr. Penrose from harassing or otherwise discriminating on the actual or perceived sex;

e. An order that Defendants disgorge all profits obtained as a result of their wrongful conduct;

f. An order that Defendants correct authorship of all publications at-issue to include Dr. Wells' as a co-author;

g. An order that the Director of the United States Patent and Trademark Office correct the inventorship of the '064 patent to name Dr. Wells as

a joint inventor to the individuals currently listed as inventors on the '064 patent;

h. Alternatively, an order that Defendants sign the requisite documents to correct inventorship of the '064 patent to name Dr. Cara Wells as a joint inventor on the '064 patent;

i. Alternatively, an order that '064 patent is invalid or unenforceable due to improper inventorship; An award of punitive damages in an amount to be determined at trial;

j. Liquidated damages;

k. An award of attorneys' fees and costs;

l. An award of costs of court;

m. Any such other and further relief as the Court deems just and proper.

Dated: 6/22/2023 Respectfully submitted,

BREWER, ATTORNEYS & COUNSELORS

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