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U.S. District Court
District of Nebraska (8 Omaha)
CIVIL DOCKET FOR CASE #: 8:19-cv-00019-BCB-SMB

Taylor v. Board of Regents for the University of Nebraska
Assigned to: Judge Brian C. Buescher
Referred to: Magistrate Judge Susan M. Bazis
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 01/16/2019
Jury Demand: Both
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Kim Taylor

represented by **Elaine A. Waggoner**
WAGGONER LAW FIRM
715 South 14th Street
Lincoln, NE 68508
(402) 475-3597
Fax: (402) 475-1495
Email: eaw@waggonerlawoffice.com
ATTORNEY TO BE NOTICED

V.

Defendant

**University of Nebraska College of
Education and Human Sciences**
*through The Nebraska International
Quilt Study Center & Museum*
TERMINATED: 05/08/2019

represented by **Bren H. Chambers**
UNIVERSITY OF NEBRASKA
3835 Holdrege
Lincoln, NE 68583-0745
(402) 473-1201
Fax: (402) 472-2038
Email: bchambers@nebraska.edu
ATTORNEY TO BE NOTICED

Defendant

Carolyn Ducey
individually
TERMINATED: 10/09/2019

represented by **Bren H. Chambers**
(See above for address)
ATTORNEY TO BE NOTICED

Tara A. Stingley
CLINE, WILLIAMS LAW FIRM -
OMAHA
12910 Pierce Street
Suite 200, Sterling Ridge
Omaha, NE 68144-1105

(402) 397-1700
 Fax: (402) 397-1806
 Email: tstingley@clinewilliams.com
ATTORNEY TO BE NOTICED

Defendant

Leslie Levy
J.D., individually
 TERMINATED: 10/09/2019

represented by **Bren H. Chambers**
 (See above for address)
ATTORNEY TO BE NOTICED

Tara A. Stingley
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

**University of Nebraska International
 Quilt Study Center & Museum**
 TERMINATED: 01/22/2019

represented by **Bren H. Chambers**
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

**Board of Regents for the University
 of Nebraska**

represented by **Bren H. Chambers**
 (See above for address)
ATTORNEY TO BE NOTICED

Tara A. Stingley
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/16/2019	<u>1</u>	COMPLAINT with jury demand <i>Plaintiff, Kim Taylor</i> against All Defendants (Filing fee \$ 400, receipt number ANEDC-3844860), by Attorney Elaine A. Waggoner on behalf of Kim Taylor(Waggoner, Elaine) (Entered: 01/16/2019)
01/16/2019	<u>2</u>	DISCLOSURE <i>Cover Sheet</i> by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor.(Waggoner, Elaine) (Entered: 01/16/2019)
01/16/2019	<u>3</u>	Summons Requested as to Leslie Levy regarding Complaint <u>1</u> . (Waggoner, Elaine) (Entered: 01/16/2019)
01/16/2019	4	TEXT NOTICE OF JUDGES ASSIGNED: Judge Robert F. Rossiter, Jr. and Magistrate Judge Susan M. Bazis assigned. In accordance with 28 U.S.C. 636(c) (2), the parties are notified that, if all parties consent, a magistrate judge may conduct a civil action or proceeding, including a jury or nonjury trial, subject to the courts rules and policies governing the assignment of judges in civil cases. See Fed. R. Civ. P. 73; NEGenR 1.4. (LKO) (Entered: 01/16/2019)
01/16/2019	<u>5</u>	Summons Requested as to State of Nebraska Attorney General regarding Complaint <u>1</u> . (Waggoner, Elaine) (Entered: 01/16/2019)

01/16/2019	6	Summons Requested as to Carlyn Ducey regarding Complaint 1 . (Waggoner, Elaine) (Entered: 01/16/2019)
01/18/2019	7	AMENDED COMPLAINT with with jury demand <i>Plaintiff, Kim Taylor</i> against Defendant All Defendants, by Attorney Elaine A. Waggoner on behalf of Kim Taylor(Waggoner, Elaine) (Entered: 01/18/2019)
01/22/2019	8	Summons Requested as to Carolyn Ducey regarding Amended Complaint 7 . (Waggoner, Elaine) (Entered: 01/22/2019)
01/22/2019	9	Summons Requested as to State of Nebraska Attorney General regarding Amended Complaint 7 . (Waggoner, Elaine) (Entered: 01/22/2019)
01/22/2019	10	Summons Requested as to Leslie Levy regarding Amended Complaint 7 . (Waggoner, Elaine) (Entered: 01/22/2019)
01/22/2019	11	Summons Issued as to defendants Carolyn Ducey, Leslie Levy, and University of Nebraska College of Education and Human Sciences. YOU MUST PRINT YOUR ISSUED SUMMONS, WHICH ARE ATTACHED TO THIS DOCUMENT. PAPER COPIES WILL NOT BE MAILED. (KLF) (Entered: 01/22/2019)
01/29/2019	12	RETURN of service of Defendant, University of Nebraska on 01/25/2019 upon Douglas Peterson, State Attorney General by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor. (Attachments: # 1 Summons Returned Executed)(Waggoner, Elaine) (Entered: 01/29/2019)
01/29/2019	13	RETURN of service of Defendant, Leslie Levy on 01/25/2019 upon Defendant, Leslie Levy by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor. (Attachments: # 1 Sumons Returned Executed)(Waggoner, Elaine) (Entered: 01/29/2019)
01/30/2019	14	UNOPPOSED MOTION for Extension of Time to File a Responsive Pleading by Attorney Bren H. Chambers on behalf of Defendants Carolyn Ducey, Leslie Levy, University of Nebraska College of Education and Human Sciences, University of Nebraska International Quilt Study Center & Museum.(Chambers, Bren) (Entered: 01/30/2019)
01/31/2019	15	TEXT ORDER granting 14 Unopposed Motion for Extension of Time to File a Responsive Pleading. Defendants shall answer or otherwise respond to the amended complaint by March 15, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 01/31/2019)
02/04/2019	16	SUMMONS Returned Executed upon <i>Defendent Carolyn Ducey</i> defendant Carolyn Ducey on 1/28/2019. (Waggoner, Elaine) (Entered: 02/04/2019)
03/15/2019	17	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Attorney Bren H. Chambers on behalf of Defendants Carolyn Ducey, Leslie Levy, University of Nebraska College of Education and Human Sciences, University of Nebraska International Quilt Study Center & Museum.(Chambers, Bren) (Entered: 03/15/2019)
03/15/2019	18	BRIEF in support of MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 17 by Attorney Bren H. Chambers on behalf of Defendants Carolyn

		Ducey, Leslie Levy, University of Nebraska College of Education and Human Sciences, University of Nebraska International Quilt Study Center & Museum. (Chambers, Bren) (Entered: 03/15/2019)
04/02/2019	19	FINAL MOTION to Extend <i>DEADLINE FOR RESPONSIVE BRIEF</i> by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor.(Waggoner, Elaine) (Entered: 04/02/2019)
04/03/2019	20	TEXT ORDER granting 19 Motion to Extend. Plaintiff shall respond to the motion to dismiss 17 by April 15, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 04/03/2019)
04/15/2019	21	MOTION to Amend Amended Complaint 7 filed by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor.(Waggoner, Elaine) (Entered: 04/15/2019)
04/16/2019	22	TEXT ORDER denying 21 Motion to Amend Complaint. Plaintiff failed to attach a proposed amended pleading to her Motion to Amend as required by this Court's Local Rules. Accordingly, Plaintiff's Motion to Amend is hereby denied without prejudice to reassertion. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 04/16/2019)
05/02/2019	23	MOTION to Amend Amended Complaint 7 (<i>2nd Amended Complaint</i>) by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor.(Waggoner, Elaine) (Entered: 05/02/2019)
05/07/2019	24	TEXT ORDER granting 23 Unopposed Motion to Amend Complaint. Plaintiff shall file her Second Amended Complaint by May 9, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 05/07/2019)
05/08/2019	25	STRICKEN - AMENDED COMPLAINT with jury demand against all defendants, by Attorney Elaine A. Waggoner on behalf of Kim Taylor (Waggoner, Elaine) Stricken on 5/9/2019 per order 27 (JSF). (Entered: 05/08/2019)
05/08/2019	28	2nd AMENDED COMPLAINT with jury demand against Defendants Board of Regents for the University of Nebraska, Carolyn Ducey, and Leslie Levy, J.D., individually by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor. (KLF) (Entered: 05/09/2019)
05/09/2019	26	STRICKEN - AMENDED COMPLAINT with jury demand against all defendants, by Attorney Elaine A. Waggoner on behalf of Kim Taylor (Waggoner, Elaine) Stricken on 5/9/2019 per order 27 (JSF). (Entered: 05/09/2019)
05/09/2019	27	TEXT STRIKE ORDER that the Amended Complaints (Filing Nos. 25 and 26) are stricken as the documents are incomplete. Ordered by Judge Robert F. Rossiter, Jr. (JSF) (Entered: 05/09/2019)
05/13/2019	29	ORDER that in light of Plaintiff Kim Taylor's Second Amended Complaint, the Motion to Dismiss for Failure to State a Claim (Filing No. 17) is denied as moot without prejudice to reassertion with respect to Plaintiff Kim Taylor's most-recent pleading. Ordered by Judge Robert F. Rossiter, Jr. (JSF) (Entered: 05/13/2019)

05/19/2019	30	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Attorney Bren H. Chambers on behalf of Defendants Board of Regents for the University of Nebraska, Carolyn Ducey, Leslie Levy, University of Nebraska College of Education and Human Sciences, University of Nebraska International Quilt Study Center & Museum.(Chambers, Bren) (Entered: 05/19/2019)
05/19/2019	31	BRIEF in support of MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 30 by Attorney Bren H. Chambers on behalf of Defendants Board of Regents for the University of Nebraska, Carolyn Ducey, Leslie Levy, University of Nebraska College of Education and Human Sciences, University of Nebraska International Quilt Study Center & Museum.(Chambers, Bren) (Entered: 05/19/2019)
06/10/2019	32	BRIEF in opposition to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 30 by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor. (Waggoner, Elaine) (Entered: 06/10/2019)
06/10/2019	33	MOTION to Amend Amended Complaint 28 by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor.(Waggoner, Elaine) (Entered: 06/10/2019)
06/24/2019	34	TEXT ORDER granting 33 Unopposed Motion to Amend. Plaintiff shall file her Third Amended Complaint by June 26, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 06/24/2019)
06/25/2019	35	AMENDED COMPLAINT with with jury demand against Defendant All Defendants, by Attorney Elaine A. Waggoner on behalf of Kim Taylor (Waggoner, Elaine) (Entered: 06/25/2019)
07/01/2019	36	ORDER that the defendants' Motion to Dismiss (Filing No. 30) is once again denied as moot without prejudice to reassertion with respect to Taylor's most-recent pleading. Ordered by Judge Robert F. Rossiter, Jr. (JSF) (Entered: 07/01/2019)
07/09/2019	37	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Attorney Bren H. Chambers on behalf of Defendants Board of Regents for the University of Nebraska, Carolyn Ducey, Leslie Levy.(Chambers, Bren) (Entered: 07/09/2019)
07/09/2019	38	BRIEF in support of MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 37 by Attorney Bren H. Chambers on behalf of Defendants Board of Regents for the University of Nebraska, Carolyn Ducey, Leslie Levy. (Chambers, Bren) (Entered: 07/09/2019)
07/30/2019	39	BRIEF in opposition to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 37 filed by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor.(Waggoner, Elaine) (Entered: 07/30/2019)
08/28/2019	40	NOTICE of Appearance by Attorney Tara A. Stingley on behalf of Defendants Board of Regents for the University of Nebraska, Carolyn Ducey, Leslie Levy (Stingley, Tara) (Entered: 08/28/2019)
09/05/2019	41	TEXT REASSIGNMENT ORDER - that in the interest of judicial economy, this case is reassigned to Judge Brian C. Buescher for disposition. The magistrate

		judge remains assigned to the case for judicial supervision and processing of all pretrial matters. Ordered by Chief Judge John M. Gerrard. (DKM) (Entered: 09/05/2019)
10/09/2019	42	MEMORANDUM AND ORDER - Defendants' Partial Motion to Dismiss (Filing 37) is granted. Plaintiff's second cause of action in her Third Amended Complaint is dismissed with prejudice. Defendants Ducey and Levy are terminated as parties to this action. Ordered by Judge Brian C. Buescher. (KLF) (Entered: 10/09/2019)
10/23/2019	43	ANSWER to Amended Complaint 35 by Board of Regents for the University of Nebraska (Stingley, Tara) (Entered: 10/23/2019)
10/25/2019	44	SCHEDULING ORDER - Rule 26 Meeting Report Deadline set for 11/25/2019. Ordered by Magistrate Judge Susan M. Bazis. (LAC) (Entered: 10/25/2019)
10/25/2019	45	CASE CONFERENCE INSTRUCTIONS. ACCESS TO THE PDF DOCUMENT IS RESTRICTED TO CASE PARTICIPANTS AND THE COURT PURSUANT TO THE E-GOVERNMENT ACT AND FEDERAL RULE OF CIVIL PROCEDURE 5.2(a). Ordered by Magistrate Judge Susan M. Bazis. (LAC) (Entered: 10/25/2019)
11/19/2019	46	REPORT of Rule 26(f) Planning Meeting by Attorney Tara A. Stingley on behalf of Defendant Board of Regents for the University of Nebraska.(Stingley, Tara) (Entered: 11/19/2019)
11/20/2019	47	FINAL PROGRESSION ORDER - The deposition deadline is May 22, 2020. The trial and pretrial conference will not be set at this time. A telephonic status conference to discuss case progression, the parties' interest in settlement, and the trial and pretrial conference settings will be held with the undersigned magistrate judge on May 27, 2020 at 3:00 p.m. Counsel shall use the conferencing instructions assigned to this case to participate in the conference. Ordered by Magistrate Judge Susan M. Bazis. (KLF) (Entered: 11/20/2019)
12/02/2019	48	NOTICE of <i>Service of Defendant's Initial Disclosures</i> by Attorney Tara A. Stingley on behalf of Defendant Board of Regents for the University of Nebraska (Stingley, Tara) (Entered: 12/02/2019)
12/02/2019	49	NOTICE of <i>Service of Plaintiff's Initial Disclosures</i> by Attorney Elaine A. Waggoner on behalf of Plaintiff Kim Taylor (Waggoner, Elaine) (Entered: 12/02/2019)

PACER Service Center			
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12/30/2019 11:19:32			
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Description:	Docket Report	Search Criteria:	8:19-cv-00019-BCB-SMB
Billable Pages:	5	Cost:	0.50

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIM TAYLOR,	)	Case No.:
)	
Plaintiff,)	
)	
v.	)	COMPLAINT FOR DAMAGES
	)	AND JURY TRIAL
UNIVERSITY OF NEBRASKA)	
COLLEGE OF EDUCATION AND,	)	<i>Jury Trial Requested at Omaha Location</i>
HUMAN SCIENCES, UNIVERSITY OF)	
NEBRASKA INTERNATIONAL QUILT)	
STUDY CENTER & MUSEUM,)	
CAROLYN DUCEY, individually and in)	
her official capacity, LESLIE LEVY,)	
individually and in her official capacity,)	
)	
Defendants.)	

COMES NOW Kim Taylor, Plaintiff, by and through her attorney, Elaine A. Waggoner, and
for her Complaint seeking judicial review alleges and states:

JURISDICTION AND VENUE

1. Jurisdiction is founded on the existence of Federal questions and pendant State claims.
2. 42 U.S.C. § 1983 et. seq. as amended, providing for redress of deprivation of Plaintiff's civil rights and providing for damages.
3. Violation of Section 48-1114(1) of the Nebraska Fair Employment Practice Act.
4. 42 U.S.C. § 1988 providing for attorneys fees.

5. State Government Effectiveness Act, Neb. Rev. Stat. § 81-2701 to § 81-2711

6. The common law of the State of Nebraska providing for protections from any deprivation of rights.

7. Plaintiff filed charges of discrimination based on and retaliation for engaging in protected activity. Said charges were filed with the United States Equal Employment Opportunity Commission and the Nebraska Equal Opportunity Commission on or about August 30, 2018.

8. Plaintiff received her Dismissal and Notice of Rights from the U.S. Equal Employment Opportunity Commission on or about October 18, 2018. A true and correct copy of said Dismissal and Notice of Rights is attached hereto and incorporated herein by reference as Exhibit A.

9. The complained of acts all occurred within the Jurisdiction of Nebraska and in Lancaster County, Nebraska.

PARTIES

10. Plaintiff is a resident of Lancaster County Nebraska, residing in Lincoln, at all times pertinent to this action.

11. Plaintiff was, at all times pertinent to this action, an employee of Defendant as a Collections Manager. Plaintiff, at all times pertinent to this action, was and is a white female over the age of 40 years.

12. Defendant, University of Nebraska, is a state and federally funded University organized under the laws of Nebraska and registered to do business in the state of Nebraska.

13. Defendant, Ducey, is a resident of the State of Nebraska and so resided at all times pertinent to this action.

14. Defendant Ducey was, at all times pertinent to this action, the Curator of Collections at the University of Nebraska International Quilt Study Center and Museum, and was Plaintiff's immediate supervisor.

15. For all allegations asserted in this Complaint, Defendant Ducey was acting in her individual capacity.

16. Defendant Levy is a resident of the State of Nebraska and so resided at all times pertinent to this action.

17. Defendant Levy was, at all times pertinent to this action, the Director of the University of Nebraska International Quilt Study Center and Museum, and was also Plaintiff's supervisor.

18. For all allegations asserted in this Complaint, Defendant was acting in her individual capacity.

FACTS

19. Plaintiff Kim Taylor is, and at all times pertinent to this action, was a Collection Manager for the University of Nebraska International Quilt Study Center and Museum.

20. Plaintiff began her employment with the University of Nebraska on October 8, 2012, and her immediate supervisor was Defendant Carolyn Ducey.

21. At all times pertinent to this action Defendant Levy was Defendant Ducey Plaintiff Taylor's supervisor.

22. A portion of Plaintiff's job duties was to accession new acquisitions, order collection supplies, and attend to all official paperwork for loans and gifts.

23. As part of her job she would attend Board Meetings and meet with donors.

24. In or about June 2015, Plaintiff was sexually harassed by the Museum's largest donor.

25. Plaintiff reported the harassment to her supervisors and to UNL Human Resources.

26. Plaintiff was later told that her complaint had made things difficult for Defendant Levy.

27. After Plaintiff made her complaint, she was bullied and marginalized by Defendant Ducey and Defendant Levy, resulting in a hostile work environment.

28. Plaintiff was omitted from meetings and concerns in her work area were ignored and unaddressed.

29. Plaintiff was told not to talk to other staff members and her annual reviews progressively got worse.

30. In April 2018, Plaintiff was graded as "unacceptable" in two areas of her annual performance review. The examples given to plaintiff to justify the bad performance rating were not true.

31. On or about August 29, 2018, Plaintiff was notified she was discharged from her employment.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983

DUE PROCESS

Plaintiff incorporates all allegations contained in Paragraphs 1 through 31 herein as though fully set forth.

32. Plaintiff had a property interest in her employment that arose under the Constitution

and Statutes of the State of Nebraska.

33. Plaintiff has a liberty interest in her reputation.

34. Defendant Ducey, individually, violated Plaintiff's rights to due process under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution by failing to provide Plaintiff with factual documentation when termination of the Plaintiff.

35. The Defendants acted under color of state law.

36. The acts of Defendants were intentional and calculated to deprive Plaintiff of her civil rights.

37. At the time of Plaintiff's termination, Defendants Ducey and Levy knew that the allegations against the Plaintiff were false and the Plaintiff had engaged in protected speech.

38. Defendants, at the time of the termination, knew that the termination was in retaliation for Plaintiff's protected speech.

39. Because of Defendant's knowledge of Plaintiff's protected speech and prior acts of retaliation against Plaintiff by her supervisors, Defendant operated contrary to law by participating in and condoning Plaintiff's termination.

40. As a result of the Defendant's denial of due process, acting individually, Plaintiff suffered lost wages and was subjected to pain, suffering, humiliation, and loss of enjoyment of life, continues to do so, and has incurred attorneys fees and continues to do so.

41. Plaintiff suffered damages because her reputation in her specialized field was damaged by false accusations.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her first cause of action.

A. Damages for back pay and benefits as well as compensatory damages for pain, suffering and loss of enjoyment of life from the Defendants acting individually.

B. Attorneys fees under 42 U.S.C. § 1988, from the Defendant acting individually.

SECOND CAUSE OF ACTION

Nebraska Fair Labor Standards Act, Neb. Rev. Stat. §§ 48-1111

Plaintiff incorporates all allegations contained in Paragraphs 1 through 41 herein as though fully set forth.

42. The acts of the Defendant in terminating Plaintiff were discriminatory and in violation of the Nebraska Fair Labor Standards Act.

43. The acts of Defendants were intentional.

44. The Defendants articulated a business reason for her termination, but said business reason was a pretext to hide the discriminatory intent.

45. As a result of the unlawful acts of Defendant, Plaintiff suffered an adverse employment action and suffered damages for lost earnings and benefit.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her second cause of action.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983

EQUAL PROTECTION - FIRST AMENDMENT PROTECTED SPEECH

Plaintiff incorporates all allegations contained In Paragraphs 1 through 45 herein as though fully set forth.

46. Plaintiff spoke out on public concern by opposing the harassment of a University

donor and filing grievances.

47. Plaintiff was treated differently than other employees who had not opposed unlawful activity.

48. Defendants were acting under color of state law.

49. Defendants acted intentionally to deprive Plaintiff of her rights to equal protection while engaging in protected speech.

50. Defendants knew, at the time of Plaintiff's termination, that Plaintiff had been treated differently than other employees who had not engaged in protected speech in the following ways:

a. Plaintiff had been subjected to retaliatory discipline actions because of the protected speech.

51. Defendants knew that the termination was a violation of equal protection and willingly participated in the unlawful termination of Plaintiff.

52. As a result of the actions of the Defendant acting in her individual capacity, Plaintiff suffered lost wages and was subjected to pain, suffering, humiliation and loss of enjoyment of life and continues to do so and has incurred attorney's fees.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her third cause of action.

A. Demands for back pay and benefits as well as compensatory damages for pain, suffering and loss of enjoyment of life, from the Defendant acting individually.

B. Attorneys fees under 42 U.S.C. § 1988, from the Defendants acting individually.

FOURTH CAUSE OF ACTION

State Government Effectiveness Act, Neb. Rev. Stat. § 81-2701 to 81-2711

Plaintiff incorporates all allegations contained In Paragraphs 1 through 52 herein as though fully set forth.

53. Defendants took personnel action against the Plaintiff as a reprisal for the submission of an allegation of wrongdoing by Defendant Levy and Defendant Ducey.

54. Plaintiff reported activities by the two Defendants that caused damage to extremely valuable University property.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her fourth cause of action.

FINAL PRAYER

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, in their individual and official capacity and that the Court make a determination of:

- a. Lost earnings to date in the amount to be determined by trier of fact.
- b. Lost benefits to date in the amount to be determined by trier of fact.
- c. Compensatory damages for pain, suffering, humiliation and loss of enjoyment of life in an amount to be determined by the trier of fact.
- d. Attorney's fees and costs.

KIM TAYLOR, Plaintiff

By: /s/ Elaine A. Waggoner #15781
Elaine A. Waggoner #15781
WAGGONER LAW OFFICE
715 So. 14th Street
Lincoln, NE 68508
(402) 475-3597
Attorney for Plaintiff

DEMAND FOR JURY TRIAL AND TRIAL LOCATION

Plaintiff demands a trial by jury of all claims asserted in this Complaint and that the trial be conducted in Omaha, Nebraska.

DATED this 16th day of January, 2018.

KIM TAYLOR, Plaintiff

BY: /s/ Elaine A. Waggoner #15781
Elaine A. Waggoner #15781
WAGGONER LAW OFFICE
715 So. 14th Street
Lincoln, NE 68508
(402) 475-3597
Attorney for Plaintiff

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Kim E. Taylor**
2745 Franklin St.
Lincoln, NE 68502

From: **Kansas City Area Office**
Gateway Tower II
400 State Avenue, Suite 905
Kansas City, KS 66101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

563-2018-03112

Frank E. Ventura,
Investigator

(913) 551-6644

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Nataseha Deguire,
Area Office Director

10/18/18

(Date Mailed)

cc: **UNIVERSITY OF NEBRASKA**
International Quilt Study Center & Museum
1523 N 33rd Street
Lincoln, NE 68583



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIM TAYLOR,	)	Case No.: 8:19 cv-19
)	
Plaintiff,)	
)	
v.	)	AMENDED COMPLAINT FOR
	)	DAMAGES AND JURY TRIAL
UNIVERSITY OF NEBRASKA)	
COLLEGE OF EDUCATION AND	)	<i>Jury Trial Requested at Omaha Location</i>
HUMAN SCIENCES THROUGH THE)	
NEBRASKA INTERNATIONAL QUILT)	
STUDY CENTER & MUSEUM,)	
CAROLYN DUCEY, individually and in)	
her official capacity, LESLIE LEVY,)	
individually and in her official capacity,)	
)	
Defendants.)	

COMES NOW Kim Taylor, Plaintiff, by and through her attorney, Elaine A. Waggoner, and
for her Complaint seeking judicial review alleges and states:

JURISDICTION AND VENUE

1. Jurisdiction is founded on the existence of Federal questions and pendant State claims.
2. 42 U.S.C. § 1983 et. seq. as amended, providing for redress of deprivation of Plaintiff's civil rights and providing for damages.
3. Violation of Section 48-1114(1) of the Nebraska Fair Employment Practice Act.
4. 42 U.S.C. § 1988 providing for attorneys fees.

5. State Government Effectiveness Act, Neb. Rev. Stat. § 81-2701 to § 81-2711

6. The common law of the State of Nebraska providing for protections from any deprivation of rights.

7. Plaintiff filed charges of discrimination based on and retaliation for engaging in protected activity. Said charges were filed with the United States Equal Employment Opportunity Commission and the Nebraska Equal Opportunity Commission on or about August 30, 2018.

8. Plaintiff received her Dismissal and Notice of Rights from the U.S. Equal Employment Opportunity Commission on or about October 18, 2018. A true and correct copy of said Dismissal and Notice of Rights is attached hereto and incorporated herein by reference as Exhibit A.

9. The complained of acts all occurred within the Jurisdiction of Nebraska and in Lancaster County, Nebraska.

PARTIES

10. Plaintiff is a resident of Lancaster County Nebraska, residing in Lincoln, at all times pertinent to this action.

11. Plaintiff was, at all times pertinent to this action, an employee of Defendant as a Collections Manager. Plaintiff, at all times pertinent to this action, was and is a white female over the age of 40 years.

12. Defendant, University of Nebraska, is a state and federally funded University organized under the laws of Nebraska and registered to do business in the state of Nebraska and oversees the Quilt Study Center and Museum through the University of Nebraska College of Education and Human Sciences Department.

13. Defendant, Ducey, is a resident of the State of Nebraska and so resided at all times pertinent to this action.

14. Defendant Ducey was, at all times pertinent to this action, the Curator of Collections at the University of Nebraska International Quilt Study Center and Museum, and was Plaintiff's immediate supervisor.

15. For all allegations asserted in this Complaint, Defendant Ducey was acting in her individual capacity.

16. Defendant Levy is a resident of the State of Nebraska and so resided at all times pertinent to this action.

17. Defendant Levy was, at all times pertinent to this action, the Director of the University of Nebraska International Quilt Study Center and Museum, and was also Plaintiff's supervisor.

18. For all allegations asserted in this Complaint, Defendant was acting in her individual capacity.

FACTS

19. Plaintiff Kim Taylor is, and at all times pertinent to this action, was a Collection Manager for the University of Nebraska International Quilt Study Center and Museum.

20. Plaintiff began her employment with the University of Nebraska on October 8, 2012, and her immediate supervisor was Defendant Carolyn Ducey.

21. At all times pertinent to this action Defendant Levy was Defendant Ducey Plaintiff Taylor's supervisor.

22. A portion of Plaintiff's job duties was to accession new acquisitions, order

collection supplies, and attend to all official paperwork for loans and gifts.

23. As part of her job she would attend Board Meetings and meet with donors.

24. In or about June 2015, Plaintiff was sexually harassed by the Museum's largest donor.

25. Plaintiff reported the harassment to her supervisors and to UNL Human Resources.

26. Plaintiff was later told that her complaint had made things difficult for Defendant Levy.

27. After Plaintiff made her complaint, she was bullied and marginalized by Defendant Ducey and Defendant Levy, resulting in a hostile work environment.

28. Plaintiff was omitted from meetings and concerns in her work area were ignored and unaddressed.

29. Plaintiff was told not to talk to other staff members and her annual reviews progressively got worse.

30. In April 2018, Plaintiff was graded as "unacceptable" in two areas of her annual performance review. The examples given to plaintiff to justify the bad performance rating were not true.

31. On or about August 29, 2018, Plaintiff was notified she was discharged from her employment.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983

DUE PROCESS

Plaintiff incorporates all allegations contained in Paragraphs 1 through 31 herein as though

fully set forth.

32. Plaintiff had a property interest in her employment that arose under the Constitution and Statutes of the State of Nebraska.

33. Plaintiff has a liberty interest in her reputation.

34. Defendant Ducey, individually, violated Plaintiff's rights to due process under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution by failing to provide Plaintiff with factual documentation when termination of the Plaintiff.

35. The Defendants acted under color of state law.

36. The acts of Defendants were intentional and calculated to deprive Plaintiff of her civil rights.

37. At the time of Plaintiff's termination, Defendants Ducey and Levy knew that the allegations against the Plaintiff were false and the Plaintiff had engaged in protected speech.

38. Defendants, at the time of the termination, knew that the termination was in retaliation for Plaintiff's protected speech.

39. Because of Defendant's knowledge of Plaintiff's protected speech and prior acts of retaliation against Plaintiff by her supervisors, Defendant operated contrary to law by participating in and condoning Plaintiff's termination.

40. As a result of the Defendant's denial of due process, acting individually, Plaintiff suffered lost wages and was subjected to pain, suffering, humiliation, and loss of enjoyment of life, continues to do so, and has incurred attorneys fees and continues to do so.

41. Plaintiff suffered damages because her reputation in her specialized field was damaged by false accusations.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her first cause of action.

A. Damages for back pay and benefits as well as compensatory damages for pain, suffering and loss of enjoyment of life from the Defendants acting individually.

B. Attorneys fees under 42 U.S.C. § 1988, from the Defendant acting individually.

SECOND CAUSE OF ACTION

Nebraska Fair Labor Standards Act, Neb. Rev. Stat. §§ 48-1111

Plaintiff incorporates all allegations contained in Paragraphs 1 through 41 herein as though fully set forth.

42. The acts of the Defendant in terminating Plaintiff were discriminatory and in violation of the Nebraska Fair Labor Standards Act.

43. The acts of Defendants were intentional.

44. The Defendants articulated a business reason for her termination, but said business reason was a pretext to hide the discriminatory intent.

45. As a result of the unlawful acts of Defendant, Plaintiff suffered an adverse employment action and suffered damages for lost earnings and benefit.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her second cause of action.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983

EQUAL PROTECTION - FIRST AMENDMENT PROTECTED SPEECH

Plaintiff incorporates all allegations contained In Paragraphs 1 through 45 herein as though fully set

forth.

46. Plaintiff spoke out on public concern by opposing the harassment of a University donor and filing grievances.

47. Plaintiff was treated differently than other employees who had not opposed unlawful activity.

48. Defendants were acting under color of state law.

49. Defendants acted intentionally to deprive Plaintiff of her rights to equal protection while engaging in protected speech.

50. Defendants knew, at the time of Plaintiff's termination, that Plaintiff had been treated differently than other employees who had not engaged in protected speech in the following ways:

a. Plaintiff had been subjected to retaliatory discipline actions because of the protected speech.

51. Defendants knew that the termination was a violation of equal protection and willingly participated in the unlawful termination of Plaintiff.

52. As a result of the actions of the Defendant acting in her individual capacity, Plaintiff suffered lost wages and was subjected to pain, suffering, humiliation and loss of enjoyment of life and continues to do so and has incurred attorney's fees.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her third cause of action.

A. Demands for back pay and benefits as well as compensatory damages for pain, suffering and loss of enjoyment of life, from the Defendant acting individually.

B. Attorneys fees under 42 U.S.C. § 1988, from the Defendants acting individually.

FOURTH CAUSE OF ACTION

State Government Effectiveness Act, Neb. Rev. Stat. § 81-2701 to 81-2711

Plaintiff incorporates all allegations contained In Paragraphs 1 through 52 herein as though fully set forth.

53. Defendants took personnel action against the Plaintiff as a reprisal for the submission of an allegation of wrongdoing by Defendant Levy and Defendant Ducey.

54. Plaintiff reported activities by the two Defendants that caused damage to extremely valuable University property.

WHEREFORE, Plaintiff prays for judgment against the Defendants on her fourth cause of action.

FINAL PRAYER

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, in their individual and official capacity and that the Court make a determination of:

- a. Lost earnings to date in the amount to be determined by trier of fact.
- b. Lost benefits to date in the amount to be determined by trier of fact.
- c. Compensatory damages for pain, suffering, humiliation and loss of enjoyment of life in an amount to be determined by the trier of fact.
- d. Attorney's fees and costs.

KIM TAYLOR, Plaintiff

By: /s/ Elaine A. Waggoner #15781
Elaine A. Waggoner #15781
WAGGONER LAW OFFICE
715 So. 14th Street
Lincoln, NE 68508
(402) 475-3597
Attorney for Plaintiff

DEMAND FOR JURY TRIAL AND TRIAL LOCATION

Plaintiff demands a trial by jury of all claims asserted in this Complaint and that the trial be conducted in Omaha, Nebraska.

DATED this 16th day of January, 2018.

KIM TAYLOR, Plaintiff

BY: /s/ Elaine A. Waggoner #15781
Elaine A. Waggoner #15781
WAGGONER LAW OFFICE
715 So. 14th Street
Lincoln, NE 68508
(402) 475-3597
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIM TAYLOR,	)	Case No.: 8:19 cv-19
)	
Plaintiff,)	
)	
v.	)	2 nd AMENDED COMPLAINT FOR
	)	DAMAGES AND DEMAND
BOARD OF REGENTS FOR THE	)	FOR JURY TRIAL
UNIVERSITY OF NEBRASKA,)	
CAROLYN DUCEY, individually, and)	
LESLIE LEVY, J.D., individually,)	
)	
Defendants.)	

COMES NOW Kim Taylor, Plaintiff, by and through her attorney, Elaine A. Waggoner, and for her causes of action against the above-named Defendants alleges and states as follows:

JURISDICTION AND VENUE

1. The unlawful practices complained of herein were committed within the Federal District of Nebraska and the State of Nebraska.
2. Plaintiff brings this action under 42 U.S.C. §2000e, et. seq., also known as Title VII of the Civil Rights Act of 1964, as amended.
3. The jurisdiction of the Federal District Court is invoked with respect to Plaintiff's claims under **42 U.S.C. § 1983 (Plaintiff's deprivation of rights) and 1988 (recovery of attorney's fees)**; under the First, Fourth, Fifth, and Fourteenth Amendments of the U.S. Constitution; and because the entire action before the Court comprises one case and the claims arise out of the same operative facts, and are such that Plaintiff would ordinarily be

expected to try them in one judicial proceeding.

PARTIES

4. Plaintiff is/was a resident of Lincoln, Lancaster County, Nebraska at all times pertinent to this action.
5. Plaintiff was, at all times pertinent to this action, an employee of Defendant Board of Regents for the University of Nebraska (hereinafter “BRUN”) as a Collections Manager for the International Quilt Study Center and Museum (hereinafter “the Museum”) at the University of Nebraska-Lincoln campus, which is under the auspices of Defendant BRUN.
6. Plaintiff, at all times pertinent to this action, was and is a white female over the age of 40 years.
7. Defendant BRUN is the governing body overseeing the University of Nebraska (hereinafter “the University”), including the University of Nebraska-Lincoln (hereinafter “UNL”) campus, and its departments. The University is a public institution.
8. Defendant Carolyn Ducey, is a resident of the State of Nebraska and so resided at all times pertinent to this action.
9. Defendant Ducey was, at all times pertinent to this action, the Curator of Collections at the Museum, and was Plaintiff’s immediate supervisor.
10. For all allegations asserted in this Complaint, Defendant Ducey was acting in her individual capacity.
11. Defendant Leslie Levy, J.D., is a resident of the State of Nebraska and so resided at all times pertinent to this action.
12. Defendant Levy was, at all times pertinent to this action, the Director of the Museum and

was also Plaintiff's supervisor. Defendant Levy is a graduate of the University of Nebraska College of Law.

13. For all allegations asserted in this Complaint, Defendant Levy was acting in her individual capacity.

FACTS

14. Plaintiff began her employment with the University of Nebraska on October 8, 2012, and her immediate supervisor was Defendant Carolyn Ducey.
15. At all times pertinent to this action Defendant Levy was Defendant Ducey and Plaintiff Taylor's supervisor. Defendant Levy became employed with the University in the summer of 2014, two years after Plaintiff began her employment.
16. A portion of Plaintiff's job description was to accession new acquisitions, order collection supplies, complete all official paperwork for loans and gifts, and to follow all guidelines for the preservation of artifacts that are in the possession of the Museum. The Museum follows the guidelines of the American Alliance of Museums.
17. As part of her job, Plaintiff was required to attend Board Meetings and meet with donors.
18. In or about June of 2015, Plaintiff was sexually harassed by a wealthy donor to the University of Nebraska and the Museum.
19. Plaintiff reported the harassment, first to Defendant Ducey. Plaintiff was contacted by Defendant Levy a few days later and to Plaintiff's knowledge, Defendant Levy did report the sexual harassment to UNL Human Resources.
20. Plaintiff received a letter from UNL Human Resources confirming that the donor did indeed act in a sexually harassing manner, for which the donor was "warned".

21. After Plaintiff made her complaint, she was treated negatively by Defendants Levy and Ducey, as individuals. At one time, Plaintiff was told by Defendant Ducey that her reporting the sexual harassment “made things very difficult for [Defendant Levy].”
22. After Plaintiff made her complaint, she was omitted from meetings, and concerns in her work area were ignored and unaddressed by Defendants Ducey and Levy. Plaintiff had attempted to express several concerns related to the safety of the artifacts contained in the Museum in staff meetings, but was cut off and those concerns were ignored and not even acknowledged. In one instance, Plaintiff requested “door-sweepers” at the bottom of the doors in the building to assist in the protection of the artifacts from attack by insects. Her requests were ignored by Defendants Ducey and Levy.
23. By Fall of 2016, Plaintiff was continuously subjected to a hostile work environment by Defendants Ducey and Levy. Plaintiff was spoken to in a rude manner by Defendants Ducey and Levy and when Plaintiff would speak up in order to protect the collection artifacts, she was met with resistance and disregard for the safety of the artifacts. In one instance, Defendant Levy brought food into the Museum workroom, where food is strictly prohibited. When Plaintiff reminded Defendant Levy of that requirement, Defendant Levy responded that she was “well aware” and continued to eat her food directly over a quilt that was on the table. A few days later, Defendant Levy told Plaintiff, “Don’t ever talk to me in front of the volunteers again.” This aggressive language and disregard for the safety of the assets of the University contributed to Plaintiff’s feeling that she was placed in a hostile work environment. The tension between the parties gradually escalated throughout Plaintiff’s employment.

24. On April 24, 2017, Plaintiff reported concerns of retaliation by Defendants Levy and Ducey to the Equal Employment Opportunity/Affirmative Action Specialist that the University has on staff. After that, the work environment became increasingly hostile.
25. When new employees were added to the Museum, they had no proper education or understanding of protocols and safety procedures. When Plaintiff attempted to correct these issues, she was re-buffed and the environment became increasingly toxic and the Museum pieces were placed at greater and greater risk.
26. Plaintiff's annual reviews conducted by her supervisors steadily worsened. Communication among staff members deteriorated.
27. In April of 2018, Plaintiff's annual review for the year 2017 had the lowest scores possible in the areas of "Communication" and "Customer Focus". When Plaintiff asked for examples to warrant the low scores, the instances given to her by Defendant Ducey took place in 2018 and should not have been mentioned on her 2017 evaluation. In addition, these examples were misrepresented.
28. On or about August 29, 2018, Plaintiff was notified that she was discharged from her employment.
29. Plaintiff filed charges of discrimination based on retaliation for engaging in protected activity. Said charges were filed with the United States Equal Employment Opportunity Commission and the Nebraska Equal Opportunity Commission on or about August 30, 2018.
30. Plaintiff received her Dismissal and Notice of Rights from the U.S. Equal Employment Opportunity Commission on or about October 18, 2018. A true and correct copy of said Dismissal and Notice of Rights is attached hereto and incorporated herein by reference as

Exhibit A.

FIRST CAUSE OF ACTION

42 U.S.C. § 2000e, et. seq.

Title VII of the Civil Rights Act of 1964, as amended

Plaintiff incorporates all allegations contained in Paragraphs 1 through 30 herein as though fully set forth.

31. Plaintiff was subjected to sexual harassment by a University donor. She complained to proper authorities about the harassment. Steps were taken and the sexual harassment aimed at her stopped. She followed all procedures required by Defendant BRUN.
32. Defendants Ducey and Levy, as individuals, sought to retaliate against Plaintiff for reporting the sexual harassment and making their interactions with the donor more difficult.
33. The actions of the above Defendants, individually, were intentional and conducted to injure Plaintiff and cause her to resign or to set her up to be terminated by creating a hostile work environment and attempt to discipline her for pretextual reasons.
34. Plaintiff was eventually terminated in retaliation for notifying the University of the sexual harassment she experienced. As a result of the retaliatory treatment conducted by Defendants Ducey and Levy, Plaintiff suffered lost income, lost career opportunities, and a diminution of her reputation in a small and select professional field. In addition, Plaintiff suffered pain, loss of enjoyment of life, and continues to do so.
35. Due to the intentional nature of the acts of Defendants and each of them, Plaintiff should be entitled to punitive damages against the Defendants.
36. The above-named Defendants, in their individual capacities, are not entitled to the defense

of qualified immunity.

WHEREFORE, Plaintiff prays for judgment against Defendants Ducey and Levy, in their individual capacities, for front pay, back pay, lost benefits, compensatory damages as allowed by law, punitive damages as allowed by law, and Attorney's fees under 42 U.S.C. § 1988.

SECOND CAUSE OF ACTION

UNITED STATES CONSTITUTION

FIRST AMENDMENT - PROTECTED SPEECH

Plaintiff incorporates all allegations contained in Paragraphs 1 through 36 herein as though fully set forth.

37. Plaintiff spoke out on matters of public concern by opposing sexual harassment perpetrated by a University donor. Plaintiff reported that not only did the donor sexually harass her, but she also reported that the same donor harassed another female employee at the Museum, who consequently changed her style of dressing and manner of interacting with the donor and other members of the public.
38. In addition, the protection and safekeeping of University assets is a matter of public concern because the artifacts educate citizens on the history of Nebraska and the world through the proper display of these items. The Museum also received items from other collects and maintains the items for display and preservation.
39. Plaintiff was treated differently than other employees who had not opposed unlawful activity.
40. Defendants were acting under color of state law.
41. Defendants acted intentionally to deprive Plaintiff of her rights to equal protection

while engaging in protected speech.

42. Defendants knew, at the time of Plaintiff's termination, that Plaintiff had been treated differently than other employees who had not engaged in protected speech in the following ways:
- a. Plaintiff had been subjected to retaliatory disciplinary actions because she engaged in protected speech.
 - b. Defendants interfered with Plaintiff's job duties, which were primarily to protect the property of the University.
43. In communication from Defendant Levy, Plaintiff's speech on matters of public concern about her job were restricted.
44. Defendants knew that the termination was a violation of equal protection and purposefully and unlawfully terminated Plaintiff based on pretextual reasons, including criticism of her for certain actions that they falsely claimed occurred in 2017.
45. The above actions of the Defendants do not allow them the protection of qualified immunity.
46. As a result of the actions of Defendants Ducey and Levy, acting in their individual capacities, Plaintiff suffered lost wages and was subjected to pain, humiliation, and loss of enjoyment of life, continues to do so, and has incurred attorney's fees.

WHEREFORE, Plaintiff prays for judgment against Defendants Ducey and Levy, in their individual capacities, for compensatory damages as allowed by law, punitive damages as allowed by law, and Attorney's fees under 42 U.S.C. § 1988.

FINAL PRAYER

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and each of

them, and that the Court make a determination of:

- a. Lost earnings to date in the amount to be determined by the trier of fact;
- b. Lost benefits to date in the amount to be determined by the trier of fact;
- c. Compensatory and punitive damages for pain, suffering, humiliation and loss of enjoyment of life in an amount to be determined by the trier of fact; and
- d. Attorney's fees and costs;

DATED this 8th day of May, 2019.

KIM TAYLOR, Plaintiff

By: /s/ Elaine A. Waggoner #15781
Elaine A. Waggoner #15781
WAGGONER LAW OFFICE
715 So. 14th Street
Lincoln, NE 68508
(402) 475-3597
Attorney for Plaintiff

DEMAND FOR JURY TRIAL AND TRIAL LOCATION

Plaintiff demands a trial by jury of all claims asserted in this Complaint and that the trial be conducted in Omaha, Nebraska.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Kim E. Taylor**
2745 Franklin St.
Lincoln, NE 68502

From: **Kansas City Area Office**
Gateway Tower II
400 State Avenue, Suite 905
Kansas City, KS 66101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

563-2018-03112

Frank E. Ventura,
Investigator

(913) 551-6644

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Natascha Deguire,
Area Office Director

10/18/18
 (Date Mailed)

cc:

UNIVERSITY OF NEBRASKA
International Quilt Study Center & Museum
1523 N 33rd Street
Lincoln, NE 68583

EXHIBIT A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **2nd Amended Complaint and Demand for Jury Trial** to be served upon the following via electronic mail on the 8th day of May, 2019:

Bren H. Chambers at bchambers@nebraska.edu

BY: /s/ Elaine A. Waggoner #15781

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIM TAYLOR,	)	Case No.: 8:19 cv-19
)	
Plaintiff,)	
)	
v.	)	3 rd AMENDED COMPLAINT FOR
	)	DAMAGES AND DEMAND
BOARD OF REGENTS FOR THE	)	FOR JURY TRIAL
UNIVERSITY OF NEBRASKA,)	
CAROLYN DUCEY, individually, and)	
LESLIE LEVY, J.D., individually,)	
)	
Defendants.)	

COMES NOW Kim Taylor, Plaintiff, by and through her attorney, Elaine A. Waggoner, and for her causes of action against the above-named Defendants alleges and states as follows:

JURISDICTION AND VENUE

1. The unlawful practices complained of herein were committed within the Federal District of Nebraska and the State of Nebraska.
2. Plaintiff brings this action under 42 U.S.C. §2000e, et. seq., also known as Title VII of the Civil Rights Act of 1964, as amended.
3. The jurisdiction of the Federal District Court is invoked with respect to Plaintiff's claims under **42 U.S.C. § 1983 (Plaintiff's deprivation of rights) and 1988 (recovery of attorney's fees)**; under the First, Fourth, Fifth, and Fourteenth Amendments of the U.S. Constitution; and because the entire action before the Court comprises one case and the claims arise out of the same operative facts, and are such that Plaintiff would ordinarily be

expected to try them in one judicial proceeding.

PARTIES

4. Plaintiff is/was a resident of Lincoln, Lancaster County, Nebraska at all times pertinent to this action.
5. Plaintiff was, at all times pertinent to this action, an employee of Defendant Board of Regents for the University of Nebraska (hereinafter “BRUN”) as a Collections Manager for the International Quilt Study Center and Museum (hereinafter “the Museum”) at the University of Nebraska-Lincoln campus, which is under the auspices of Defendant BRUN.
6. Plaintiff, at all times pertinent to this action, was and is a white female over the age of 40 years.
7. Defendant BRUN is the governing body overseeing the University of Nebraska (hereinafter “the University”), including the University of Nebraska-Lincoln (hereinafter “UNL”) campus, and its departments. The University is a public institution.
8. Defendant Carolyn Ducey, is a resident of the State of Nebraska and so resided at all times pertinent to this action.
9. Defendant Ducey was, at all times pertinent to this action, the Curator of Collections at the Museum, and was Plaintiff’s immediate supervisor.
10. For all allegations asserted in this Complaint, Defendant Ducey was acting in her individual capacity.
11. Defendant Leslie Levy, J.D., is a resident of the State of Nebraska and so resided at all times pertinent to this action.
12. Defendant Levy was, at all times pertinent to this action, the Director of the Museum and

was also Plaintiff's supervisor. Defendant Levy is a graduate of the University of Nebraska College of Law.

13. For all allegations asserted in this Complaint, Defendant Levy was acting in her individual capacity.

FACTS

14. Plaintiff began her employment with the University of Nebraska on October 8, 2012, and her immediate supervisor was Defendant Carolyn Ducey.
15. At all times pertinent to this action Defendant Levy was Defendant Ducey and Plaintiff Taylor's supervisor. Defendant Levy became employed with the University in the summer of 2014, two years after Plaintiff began her employment.
16. A portion of Plaintiff's job description was to accession new acquisitions, order collection supplies, complete all official paperwork for loans and gifts, and to follow all guidelines for the preservation of artifacts that are in the possession of the Museum. The Museum follows the guidelines of the American Alliance of Museums.
17. As part of her job, Plaintiff was required to attend Board Meetings and meet with donors.
18. In or about June of 2015, Plaintiff was sexually harassed by a wealthy donor to the University of Nebraska and the Museum.
19. Plaintiff reported the harassment, first to Defendant Ducey. Plaintiff was contacted by Defendant Levy a few days later and to Plaintiff's knowledge, Defendant Levy did report the sexual harassment to UNL Human Resources.
20. UNL Human Resources is an entity acting on behalf of Defendant BRUN as it relates to personnel matters.

21. Plaintiff received a letter from UNL Human Resources confirming that the donor did indeed act in a sexually harassing manner, for which the donor was “warned”.
22. After Plaintiff made her complaint, she was treated negatively by Defendants Levy and Ducey, as individuals. At one time, Plaintiff was told by Defendant Ducey that her reporting the sexual harassment “made things very difficult for [Defendant Levy].”
23. After Plaintiff made her complaint, she was omitted from meetings, and concerns in her work area were ignored and unaddressed by her supervisors. Plaintiff had attempted to express several concerns related to the safety of the artifacts contained in the Museum in staff meetings, but was cut off and those concerns were ignored and not even acknowledged. In one instance, Plaintiff requested “door-sweepers” at the bottom of the doors in the building to assist in the protection of the artifacts from attack by insects. Her requests were ignored.
24. By Fall of 2016, Plaintiff was continuously subjected to a hostile work environment by Defendants Ducey and Levy. Plaintiff was spoken to in a rude manner by Defendants Ducey and Levy and when Plaintiff would speak up in order to protect the collection artifacts, she was met with resistance and disregard for the safety of the artifacts. In one instance, Defendant Levy brought food into the Museum workroom, where food is strictly prohibited. When Plaintiff reminded Defendant Levy of that requirement, Defendant Levy responded that she was “well aware” and continued to eat her food directly over a quilt that was on the table. A few days later, Defendant Levy told Plaintiff, “Don’t ever talk to me in front of the volunteers again.” This aggressive language and disregard for the safety of the assets of the University contributed to Plaintiff’s feeling that she was placed in a hostile work environment. The tension between the parties gradually escalated throughout Plaintiff’s

employment.

24. On April 24, 2017, Plaintiff reported concerns of retaliation by Defendants Levy and Ducey to the Equal Employment Opportunity/Affirmative Action Specialist that the University has on staff. After that, the work environment became increasingly hostile.
25. When new employees were added to the Museum, they had no proper education or understanding of protocols and safety procedures. When Plaintiff attempted to correct these issues, she was re-buffed and the environment became increasingly toxic and the Museum pieces were placed at greater and greater risk.
26. Plaintiff's annual reviews conducted by her supervisors steadily worsened. Communication among staff members deteriorated.
27. In April of 2018, Plaintiff's annual review for the year 2017 had the lowest scores possible in the areas of "Communication" and "Customer Focus". When Plaintiff asked for examples to warrant the low scores, the instances given to her by Defendant Ducey took place in 2018 and should not have been mentioned on her 2017 evaluation. In addition, these examples were misrepresented.
28. On or about August 29, 2018, Plaintiff was notified that she was discharged from her employment.
29. Plaintiff filed charges of discrimination based on retaliation for engaging in protected activity. Said charges were filed with the United States Equal Employment Opportunity Commission and the Nebraska Equal Opportunity Commission on or about August 30, 2018.
30. Plaintiff received her Dismissal and Notice of Rights from the U.S. Equal Employment Opportunity Commission on or about October 18, 2018. A true and correct copy of said

Dismissal and Notice of Rights is attached hereto and incorporated herein by reference as Exhibit A.

FIRST CAUSE OF ACTION

42 U.S.C. § 2000e, et. seq.

Title VII of the Civil Rights Act of 1964, as amended

Plaintiff incorporates all allegations contained in Paragraphs 1 through 30 herein as though fully set forth.

31. Plaintiff was subjected to sexual harassment by a University donor.
32. She complained to proper authorities about the harassment.
33. Steps were taken and the sexual harassment aimed at her stopped.
34. She followed all procedures required by Defendant BRUN.
35. Subsequently, Defendant BRUN caused Plaintiff to be retaliated against for reporting the sexual harassment.
36. Defendant BRUN allowed Plaintiff to be singled out for disparate treatment because of her reporting of the sexual harassment.
37. Plaintiff's work was scrutinized more than co-workers who had not alleged discrimination.
38. Defendant BRUN, through its employees, retaliated against Plaintiff for reporting the sexual harassment.
39. Plaintiff was informed by her supervisor that her report of the sexual harassment had "made things difficult" for her other supervisor.
40. Defendant BRUN, through its employees, acted intentionally for the purpose of injuring Plaintiff and cause her to resign or to set her up to be terminated by creating a hostile work

environment and attempt to discipline her for pretextual reasons.

41. Plaintiff was eventually terminated in retaliation for filing her internal complaint with the University, complaining of the sexual harassment by the donor.

42. As a result of the retaliatory treatment conducted by Defendant BRUN through its employees, Plaintiff suffered lost income, lost career opportunities, and a diminution of her reputation in a small and select professional field. In addition, Plaintiff suffered pain, loss of enjoyment of life, and continues to do so.

WHEREFORE, Plaintiff prays for judgment against Defendant BRUN for front pay, back pay, lost benefits, compensatory damages as allowed by law, and Attorney's fees under 42 U.S.C. § 1988.

SECOND CAUSE OF ACTION

UNITED STATES CONSTITUTION

FIRST AMENDMENT - PROTECTED SPEECH

Plaintiff incorporates all allegations contained in Paragraphs 1 through 42 herein as though fully set forth.

43. Plaintiff spoke out on matters of public concern by opposing sexual harassment perpetrated by a University donor.

44. Plaintiff reported that not only did the donor sexually harass her, but she also reported that the same donor harassed another female employee at the Museum, who consequently changed her style of dressing and manner of interacting with the donor and other members of the public.

45. In addition, the protection and safekeeping of University assets is a matter of public

concern because the artifacts educate citizens on the history of Nebraska and the world through the proper display of these items. The Museum also received items from other collections and maintains the items for display and preservation.

46. Plaintiff was treated differently than other employees who had not opposed unlawful activity.
47. Defendants were acting under color of state law.
48. Defendants acted intentionally to deprive Plaintiff of her rights to equal protection while engaging in protected speech.
49. Defendants knew, at the time of Plaintiff's termination, that Plaintiff had been treated differently than other employees who had not engaged in protected speech in the following ways:
 - a. Plaintiff had been subjected to retaliatory disciplinary actions because she engaged in protected speech.
 - b. Defendants interfered with Plaintiff's job duties, which were primarily to protect the property of the University.
50. In communication from Defendant Levy, Plaintiff's speech on matters of public concern about her job were restricted.
51. Defendants knew that the termination was a violation of equal protection and purposefully and unlawfully terminated Plaintiff based on pretextual reasons, including criticism of her for certain actions that they falsely claimed occurred in 2017.
52. The above actions of the Defendants do not allow them the protection of qualified immunity.
53. As a result of the actions of Defendants Ducey and Levy, acting in their individual capacities,

Plaintiff suffered lost wages and was subjected to pain, humiliation, and loss of enjoyment of life, continues to do so, and has incurred attorney's fees.

WHEREFORE, Plaintiff prays for judgment against Defendants Ducey and Levy, in their individual capacities, for compensatory damages as allowed by law, punitive damages as allowed by law, and Attorney's fees under 42 U.S.C. § 1988.

FINAL PRAYER

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and each of them, and that the Court make a determination of:

- a. Lost earnings to date in the amount to be determined by the trier of fact;
- b. Lost benefits to date in the amount to be determined by the trier of fact;
- c. Compensatory and punitive damages for pain, suffering, humiliation and loss of enjoyment of life in an amount to be determined by the trier of fact; and
- d. Attorney's fees and costs;

DATED this 7th day of June, 2019.

KIM TAYLOR, Plaintiff

By: /s/ Elaine A. Waggoner #15781
Elaine A. Waggoner #15781
WAGGONER LAW OFFICE
715 So. 14th Street
Lincoln, NE 68508
(402) 475-3597
Attorney for Plaintiff

DEMAND FOR JURY TRIAL AND TRIAL LOCATION

Plaintiff demands a trial by jury of all claims asserted in this Complaint and that the trial be conducted in Omaha, Nebraska.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **3rd Amended Complaint for Damages and Demand for Jury Trial** to be served upon the following via electronic mail on the 25th day of June, 2019:

Bren H. Chambers at bchambers@nebraska.edu

BY: /s/ Elaine A. Waggoner #15781

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Kim E. Taylor**
2745 Franklin St.
Lincoln, NE 68502

From: **Kansas City Area Office**
Gateway Tower II
400 State Avenue, Suite 905
Kansas City, KS 66101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

563-2018-03112

Frank E. Ventura,
Investigator

(913) 551-6644**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Natascha Deguire,
Area Office Director

10/18/18
 (Date Mailed)

cc: **UNIVERSITY OF NEBRASKA**
International Quilt Study Center & Museum
1523 N 33rd Street
Lincoln, NE 68583

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIM TAYLOR,

Plaintiff,

vs.

CAROLYN DUCEY, individually; LESLIE
LEVY, J.D., individually; and BOARD OF
REGENTS FOR THE UNIVERSITY OF
NEBRASKA,

Defendants.

8:19-CV-19

MEMORANDUM AND ORDER

This case comes before the Court on Defendants’¹ Partial Motion to Dismiss ([Filing 37](#)) under [Fed. R. Civ. P. 12\(b\)\(6\)](#). The Court finds that Plaintiff has failed to state a claim with respect to her second cause of action in her Third Amended Complaint under [42 U.S.C. § 1983](#). Accordingly, the Court grants Defendants’ Partial Motion to Dismiss.

I. BACKGROUND²

Plaintiff Kim Taylor (“Taylor”) was employed by the Board as a Collections Manager for the International Quilt Study Center and Museum (“the Museum”) located on the University of Nebraska-Lincoln (“UNL”) campus. [Filing 35 at 2](#). Taylor’s immediate supervisor at the Museum was Ducey. [Filing 35 at 2](#). In turn, Levy was the Director of the Museum and both Taylor and Ducey’s supervisor. [Filing 35 at 2-3](#). Levy graduated from the University of Nebraska College of Law. [Filing 35 at 2-3](#).

¹ The Court collectively refers to Carolyn Ducey (“Ducey”), Leslie Levy (“Levy”), and the Board of Regents for the University of Nebraska (“the Board”) as “Defendants.”

² Although some of the facts recited herein may be disputed by Defendants, when deciding a motion to dismiss, the Court “must accept a plaintiff’s factual allegations as true” and make all reasonable inferences in favor of the nonmoving party. [Retro Television Network, Inc. v. Luken Commc’ns, LLC](#), 696 F.3d 766, 768-69 (8th Cir. 2012).

Taylor began working as the Museum's Collections Manager on October 8, 2012. [Filing 35 at 3](#). Her job required her to "accession new acquisitions, order collection supplies, complete all official paperwork for loans and gifts, and to follow all guidelines for the preservation of artifacts that are in the possession of the Museum." [Filing 35 at 3](#). Her duties also included attending "Board Meetings" and meeting with donors. [Filing 35 at 3](#). Around June of 2015, a wealthy donor sexually harassed Taylor, who initially reported the harassment to Ducey. [Filing 35 at 3](#). A few days after Taylor reported the harassment to Ducey, Levy contacted Taylor about the harassment and reported the incident to UNL Human Resources. [Filing 35 at 3](#). As a result, UNL Human Resources sent Taylor a letter stating that the donor had acted in a sexually harassing manner and was "warned." [Filing 35 at 4](#).

After reporting the harassment, both Ducey and Levy treated Taylor negatively. [Filing 35 at 4](#). Examples of such negative treatment included: Ducey telling Taylor that her report "made things very difficult for [Levy]"; being omitted from meetings; having her workplace concerns ignored; Ducey and Levy continuously subjecting Taylor to a hostile work environment; Ducey and Levy speaking to Taylor in a rude manner; and Levy addressing Taylor with aggressive language. [Filing 35 at 4](#). Specifically, Taylor attempted to protect the Museum's artifacts and expressed concern about the safety of Museum artifacts at staff meetings but was rebuffed for doing so by Ducey and Levy. [Filing 35 at 3-4](#). Tension between Taylor and her supervisors continued to escalate. [Filing 35 at 4](#).

On April 24, 2017, Taylor reported her concerns of retaliation to the Equal Employment Opportunity/Affirmative Action Specialist at UNL. [Filing 35 at 5](#). Following that report, "the work environment became increasingly hostile." [Filing 35 at 5](#). Taylor's annual reviews conducted by Ducey and Levy steadily worsened. [Filing 35 at 5](#). In April of 2018, Taylor received the lowest

scores possible in certain areas. [Filing 35 at 5](#). Upon asking for examples to justify the low scores, Ducey recited instances of conduct that occurred outside of the time frame of the annual review. [Filing 35 at 5](#).

Around August 29, 2018, Taylor was discharged from her job at the Museum. [Filing 35 at 5-6](#) She subsequently filed charges of discrimination based on retaliation with both the U.S. Equal Employment Opportunity Commission and the Nebraska Equal Opportunity Commission on or about August 30, 2018. [Filing 35 at 5-6](#).

Taylor filed suit against the Board, Ducey individually, and Levy individually. *See generally* [Filing 35](#). As is relevant here, Taylor's second cause of action alleges she spoke on matters of public concern both by opposing sexual harassment and protecting the Museum exhibits for the sake of the public. [Filing 35 at 7-8](#). As a result of her actions, Taylor's second cause of action alleges as follows:

- She was treated differently by Ducey and Levy who were acting under color of state law. [Filing 35 at 78](#).
- Through their actions, Defendants intentionally deprived her of her rights to equal protection while engaging in protected speech. [Filing 35 at 8](#).
- Defendants knew that she had been subjected to retaliatory disciplinary action because she engaged in protected speech, and Defendants interfered with her job duties. [Filing 35 at 8](#).
- Defendants purposefully terminated her based on pretextual reasons knowing such a termination was a violation of equal protection. [Filing 35 at 8](#).

Defendants have filed a motion seeking to dismiss Taylor's Second Cause of Action as described above for failure to state a claim upon which relief can be granted. [Filing 37](#).

II. DISCUSSION

A. Standard of Review

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\(a\)\(2\)](#). To satisfy this requirement, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” [Corrado v. Life Inv’rs Ins. Co. of Am.](#), 804 F.3d 915, 917 (8th Cir. 2015) (quoting [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” [Barton v. Taber](#), 820 F.3d 958, 964 (8th Cir. 2016) (quoting [Ashcroft v. Iqbal](#), 556 U.S. 662, 678, 192 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)).

In analyzing a motion to dismiss, the Court must “accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party, but [is] not bound to accept as true ‘[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements’ or legal conclusions couched as factual allegations.” [McDonough v. Anoka Cty.](#), 799 F.3d 931, 945 (8th Cir. 2015) (citations omitted) (quoting [Iqbal](#), 556 U.S. at 678). “When considering a [Rule 12\(b\)\(6\)](#) motion, the court generally must ignore materials outside the pleadings, but it may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are necessarily embraced by the pleadings.” [Ashford v. Douglas Cty.](#), 880 F.3d 990, 992 (8th Cir. 2018) (quoting [Smithrud v. City of St. Paul](#), 746 F.3d 391, 395 (8th Cir. 2014)).

B. Analysis

The basis of Defendants’ motion is their individual qualified immunity to § 1983 liability. Qualified immunity is an affirmative defense. [Ulrich v. Pope Cty.](#), 715 F.3d 1054, 1058 (8th Cir.

2013). “The doctrine of qualified immunity generally shields public and government officials performing discretionary functions from civil liability ‘insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Kulkay v. Roy*, 847 F.3d 637, 642 (8th Cir. 2017) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)). “[D]efendants seeking dismissal under Rule 12(b)(6) based on an assertion of qualified immunity ‘must show that they are entitled to qualified immunity on the face of the complaint.’” *Id.* at 642 (quoting *Carter v. Huterson*, 831 F.3d 1104, 1107 (8th Cir. 2016)).

In order to determine whether a public official is entitled to immunity, the Court conducts a two-pronged analysis. *Id.* Under the first prong, the Court determines “whether the plaintiff has stated a plausible claim for violation of a constitutional or statutory right.” *Id.* Under the second prong, the Court determines “whether the right was clearly established at the time of the alleged infraction.” *Id.* The Court may exercise its discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first. *Id.* (quoting *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)). Officials are entitled to qualified immunity until both prongs are met; therefore the Court’s analysis ends if the plaintiff fails either prong. *Id.*

1. Taylor’s Sexual Harassment Report

The Court begins and ends by analyzing the first prong to determine whether Taylor has stated a plausible claim for retaliation in violation of her First Amendment and equal protection rights based on her sexual harassment report. To establish employer retaliation in violation of the First Amendment, a public employee must prove (1) she engaged in activity protected by the First Amendment; (2) the defendants took an adverse employment action against her; and (3) the

protected conduct was a substantial or motivating factor in the defendants' decision to take the adverse employment action. *Lyons v. Vaught*, 875 F.3d 1168, 1172 (8th Cir. 2017).

Assuming the veracity of Taylor's complaint, she was discharged as a result of her sexual harassment report and has thus satisfied both the second and third requirements of plausibly claiming retaliation in violation of her First Amendment and equal protection rights. See [Filing 35 at 8](#). Therefore, the only remaining question is a legal one: whether Taylor engaged in protected First Amendment activity.³ See *Nord v. Walsh Cty.*, 757 F.3d 734, 742 (8th Cir. 2014) (noting that the "inquiry into the protected status of speech is one of law, not fact") (quoting *Connick v. Myers*, 461 U.S. 138, 147-48, 103 S. Ct. 1684, 1690, 75 L. Ed. 2d 708 (1983)).

In order for a public employee's speech to be protected activity under the First Amendment, the employee must have spoken as a citizen on a matter of public concern. *Id.* (citing *Garcetti v. Ceballos*, 547 U.S. 410, 417, 126 S. Ct. 1951, 1957, 164 L. Ed. 2d 689 (2006)). "Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Id.* (quoting *Connick*, 461 U.S. at 147-48, 103 S. Ct. at 1690, 75 L. Ed. 2d 708 (1983)). When an employee's speech relates both to his or her private interests and matters of public concern, the speech is only protected if it is primarily motivated by public concern. *Anzaldúa v. Ne. Ambulance & Fire Prot. Dist.*, 793 F.3d 822, 833 (8th Cir. 2015) (citing *McCullough v. Univ. of Ark. for Med. Scis.*, 559 F.3d 855, 866 (8th Cir. 2009) and *Altonen v. City of Minneapolis*, 487 F.3d 554, 559 (8th Cir. 2007)).

In *McCullough*, 559 F.3d at 866, the Court focused on the plaintiff's failure both to report sexual harassment outside of his organization and to inform the public when determining that his

³ Taylor distinguishes cases cited by Defendants on the grounds that said cases involve summary judgment. See [Filing 39 at 2](#). However, the issue of whether speech is protected is a question of law; therefore the legal analysis of whether speech is protected is still applicable.

speech was not primarily motivated by public concern. Here, Taylor initially reported sexual harassment to Ducey and to the Equal Employment Opportunity/Affirmative Action Specialist at UNL nearly two years after the incident. [Filing 35 at 3](#), 5. Although Taylor pled that she reported externally to both the U.S. Equal Employment Opportunity Commission and the Nebraska Equal Opportunity Commission regarding retaliation, she only did so after her discharge. [Filing 35 at 5-6](#).

Taylor's complaint demonstrates that her sexual harassment report was not primarily motivated by public concern but rather by private concern. Taylor's sexual harassment report was not protected activity under the First Amendment; therefore she has not stated a plausible claim for retaliation in violation of her First Amendment and equal protection rights. As a result, she has failed the first prong of the qualified immunity analysis, and Defendants Ducey and Levy are entitled to qualified immunity as it relates to Taylor's sexual harassment report.

2. Taylor's Speech Regarding Protection and Safekeeping of UNL Artifacts

The Court will next address whether Taylor has stated a plausible claim for a violation of her First Amendment and equal protection rights based on her speech pertaining to the protection and safekeeping of UNL artifacts. The Court's analysis begins and ends by analyzing the first prong: whether Taylor has stated a plausible claim for violation of a constitutional or statutory right. [Kulkay](#), 847 F.3d at 642.

As previously discussed, Taylor must prove she engaged in activity protected by the First Amendment in order to establish employer retaliation in violation of the First Amendment. *See Lyons*, 875 F.3d at 1172. Once again assuming the veracity of Taylor's complaint, she was discharged as a result of her speech pertaining to the protection and safekeeping of UNL artifacts

and has thus satisfied both the second and third requirements of plausibly claiming retaliation in violation of her First Amendment and equal protection rights. *See* [Filing 35 at 4-5](#), 7-8.

The issue is whether Taylor’s speech related to the protection and safekeeping of UNL artifacts is protected under the First Amendment. The Court must look to Taylor’s complaint to determine whether she spoke on a matter of private or public concern. *See Nord*, 757 F.3d at 742.

[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. ... Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.

Lyons, 875 F.3d at 1173 (alteration in original) (quoting at *Garcetti*, 547 U.S. at 421-22, 126 S. Ct. 1951). Determining whether an employee’s speech was pursuant to official duties is a practical inquiry, and speech can be “‘pursuant to’ a public employee’s official job duties even though it is not required by, or included in, the employee’s job description, or in response to a request by the employer.” *Lyons*, 875 F.3d at 1168.

Here, Taylor’s job required her to “follow all guidelines for the preservation of artifacts that are in the possession of the Museum.” [Filing 35 at 3](#). Indeed, her job title is “Collections Manager”. [Filing 35 at 2](#). Her job also required her to “accession new acquisitions, order collection supplies, complete all official paperwork for loans and gifts.” [Filing 35 at 3](#). She held or tried to hold others to the same standard by attempting to express concerns about artifact safety at staff meetings, requesting supplies to help protect the artifacts, correcting new employees’ understanding of protocols and safety procedures related to artifact safety, and numerous other examples. [Filing 35 at 4-5](#). Reviewing Taylor’s allegations leads the Court to conclude that taking care of the Museum’s artifacts was a significant part of Taylor’s job. As such, her speech regarding the artifacts was pursuant to her duties and not protected under the First Amendment.

While Taylor's complaint notes that "protection and safekeeping of [UNL] assets is a matter of public concern," [Filing 35 at 7](#), the fact that the public would have an interest in Taylor's speech is not enough to change the motivation of her speech from private to public. *See Anzaldúa*, 793 F.3d at 833 (holding that an employee's speech is not protected if the main motivation for the speech was not raising issues of public concern, regardless of whether the public would have an interest in an employee's speech). Taylor has not stated a plausible claim for retaliation in violation of her First Amendment and equal protection rights, and she has failed the first prong of the qualified immunity analysis. Accordingly, Defendants Ducey and Levy are entitled to qualified immunity as it relates to Taylor's speech pertaining to the protection and safekeeping of UNL artifacts.

3. *Dismissal with Prejudice*

Taylor's 3rd Amendment Complaint represents her fourth attempt to allege a 42 U.S.C. § 1983 claim against Ducey and Levy. *See* [Filing 1](#); [Filing 7](#); [Filing 28](#); [Filing 35](#). The Court has already twice provided leave to Taylor to file amended complaints in this matter upon Defendants filing motions to dismiss allegations against Ducey and Levy pursuant to [42 U.S.C. § 1983](#). *Filing 24*; *Filing 34*. Plaintiff's fourth attempt at pleading her § 1983 claim makes clear to the Court that Taylor cannot reasonably state a claim against Ducey and Levy in light of their qualified immunity. As a result, the Court dismisses Taylor's Second Cause of Action with prejudice. *See Gardner v. Minnesota*, No. 16-CV-3999 (JNE/KMM), 2019 WL 1086338, at *1 (D. Minn. Mar. 7, 2019) (granting motion to dismiss based on qualified immunity with prejudice); *Human Rights Def. Ctr. v. Union Cty.*, No. 17-CV-01064, 2018 WL 1832973, at *5 (W.D. Ark. Apr. 17, 2018) (same); *Gamble v. Minnesota State-Operated Servs.*, No. CV 16-2720 (JRT/KMM), 2017 WL 4325702, at *7 (D. Minn. Sept. 28, 2017) (same); [Masters v. City of Indep., No. 16-01045-CV-W-GAF,](#)

[2017 WL 11085840](#), at *6 (W.D. Mo. Aug. 28, 2017) (same); *Love v. Coats*, No. 4:14CV00715 SWW, 2015 WL 3972959, at *5 (E.D. Ark. June 30, 2015) (same); *Milliman v. Cty. of Stearns*, No. CIV. 13-136 DWF/LIB, 2013 WL 5426049, at *16 (D. Minn. Sept. 26, 2013) (same); *Stephenson v. United States*, 961 F. Supp. 221, 224 (W.D. Ark. 1996) (same).

III. CONCLUSION

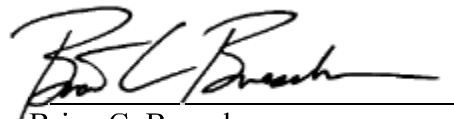
For the foregoing reasons, the Court finds that Taylor has failed to state a claim upon which relief could be granted.

IT IS THEREFORE ORDERED:

1. Defendants' Partial Motion to Dismiss ([Filing 37](#)) is granted;
2. Plaintiff's second cause of action in her Third Amended Complaint is dismissed with prejudice;
3. Defendants Ducey and Levy are terminated as parties to this action.

Dated this 9th day of October, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIM TAYLOR,

Plaintiff,

v.

BOARD OF REGENTS FOR THE
UNIVERSITY OF NEBRASKA,

Defendant.

Case No. 8:19-cv-19

**DEFENDANT'S ANSWER
TO PLAINTIFF'S THIRD AMENDED
COMPLAINT**

On October 9, 2019 ([Filing No. 42](#)), the Court entered a Memorandum and Order dismissing the Second Cause of Action in the Third Amended Complaint ("Complaint") filed by the Plaintiff, Kim Taylor ("Plaintiff"). For its Answer to the remaining cause of action in Plaintiff's Complaint, the Defendant, Board of Regents of the University of Nebraska ("BRUN"), admits, denies, and states the following:

JURISDICTION AND VENUE

1. In response to Paragraph 1 of Plaintiff's Complaint, BRUN admits that this is an action in which Plaintiff purports to seek redress for alleged violations occurring within the State of Nebraska and the United States District of Nebraska. BRUN denies that there is any proper factual or legal basis for such claims in this case, that BRUN violated such laws, or that Plaintiff is entitled to any relief. BRUN denies the remaining allegations in Paragraph 1 of Plaintiff's Complaint.

2. In response to Paragraph 2, BRUN admits that this is an action in which Plaintiff's sole remaining claim is purportedly brought under 42 U.S.C. § 2000e *et seq.*, also known as Title VII of the Civil Rights Act of 1964. BRUN denies that there is any proper factual or legal basis for such claims or that Plaintiff is entitled to any relief under

the identified statutory provisions. BRUN denies the remaining allegations in Paragraph 2 of Plaintiff's Complaint.

3. In response to Paragraph 3, BRUN admits jurisdiction is proper in the United States District Court for the District of Nebraska. BRUN denies that there is any proper factual or legal basis for Plaintiff's claims. BRUN denies the remaining allegations in Paragraph 3 of Plaintiff's Complaint.

PARTIES

4. In response to Paragraph 4, BRUN states that it is without sufficient knowledge or information to either admit or deny whether Plaintiff was at all relevant times a resident of Nebraska, and therefore denies the same.

5. BRUN admits Paragraph 5 of Plaintiff's Complaint.

6. BRUN admits Paragraph 6 of Plaintiff's Complaint.

7. In response to Paragraph 7, BRUN admits BRUN is the governing body overseeing the University of Nebraska system, including the University of Nebraska-Lincoln. BRUN denies the remaining allegations in Paragraph 7 of Plaintiff's Complaint.

8. In response to Paragraph 8, BRUN admits Carolyn Ducey ("Ducey") is a resident of the State of Nebraska; however, Ducey is no longer a named defendant in this action.

9. In response to Paragraph 9, BRUN admits Ducey was the Curator of Collections at the International Quilt Study Center and Museum ("the Museum") and was Plaintiff's immediate supervisor; however, Ducey is no longer a named defendant in this action.

10. BRUN denies Paragraph 10 of Plaintiff's Complaint.

11. In response to Paragraph 11, BRUN admits Leslie Levy ("Levy") is a resident of the State of Nebraska; however, Levy is no longer a named defendant in this action.

12. In response to Paragraph 12, BRUN admits Levy is the Director of the Museum, was Plaintiff's supervisor, and is a graduate of the University of Nebraska College of Law; however, Levy is no longer a named defendant in this action.

13. BRUN denies Paragraph 13 of Plaintiff's Complaint.

FACTS

14. BRUN admits Paragraph 14 of Plaintiff's Complaint.

15. BRUN admits Paragraph 15 of Plaintiff's Complaint.

16. In response to Paragraph 16, BRUN admits the Museum follows the guidelines of the American Alliance of Museums relating to the preservation of artifacts. BRUN denies the remaining allegations in Paragraph 16 of Plaintiff's Complaint.

17. BRUN denies Paragraph 17 of Plaintiff's Complaint.

18. In response to Paragraph 18, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies the remaining allegations in Paragraph 18 of Plaintiff's Complaint.

19. In response to Paragraph 19, BRUN admits that Plaintiff expressed concerns to Ducey about a member of the Museum Board of Directors and that BRUN took immediate actions to address Plaintiff's concerns. BRUN denies the remaining allegations in Paragraph 19 of Plaintiff's Complaint.

20. BRUN denies Paragraph 20 of Plaintiff's Complaint.

21. BRUN denies Paragraph 21 of Plaintiff's Complaint.

22. BRUN denies Paragraph 22 of Plaintiff's Complaint.

23. BRUN denies Paragraph 23 of Plaintiff's Complaint.

24. BRUN denies both paragraphs numbered Paragraph 24 of Plaintiff's Complaint.

25. BRUN denies Paragraph 25 of Plaintiff's Complaint.

26. BRUN denies Paragraph 26 of Plaintiff's Complaint.

27. In response to Paragraph 27, BRUN admits that in April 2018 Plaintiff received performance ratings of "unacceptable" in the areas of "Communication" and "Customer Focus" on her annual performance review. BRUN denies the remaining allegations in Paragraph 27 of Plaintiff's Complaint.

28. In response to Paragraph 28, BRUN admits it exercised its authority to terminate Plaintiff's at-will employment.

29. In response to Paragraph 29 of Plaintiff's Complaint, BRUN admits that Plaintiff filed an administrative charge against BRUN with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Nebraska Equal Opportunity Commission ("NEOC"). BRUN is without sufficient information to admit or deny the remaining allegations in Paragraph 29 and therefore denies the same.

30. In response to Paragraph 30, BRUN admits the EEOC issued a Dismissal and Notice of Rights dated October 18, 2018. BRUN is without sufficient information to admit or deny the remaining allegations in Paragraph 30 and therefore denies the same.

FIRST CAUSE OF ACTION

31. In response to the First Cause of Action of Plaintiff's Complaint, BRUN restates and incorporates by reference each and every response to the allegations contained in Paragraphs 1 through 30 of Plaintiff's Complaint. In response to Paragraph 31, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies the remaining allegations in Paragraph 31.

32. BRUN denies Paragraph 32 of Plaintiff's Complaint.

33. In response to Paragraph 33, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN admits that Plaintiff contacted Ducey to express concerns about a member of the Museum Board of Directors

and that BRUN took immediate actions to address Plaintiff's concerns. BRUN denies the remaining allegations in Paragraph 33 of Plaintiff's Complaint.

34. BRUN denies Paragraph 34 of Plaintiff's Complaint.

35. In response to Paragraph 35, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies it took any retaliatory action against Plaintiff at any time. BRUN denies the remainder of allegations in Paragraph 35 of Plaintiff's Complaint.

36. In response to Paragraph 36, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies the remaining allegations in Paragraph 36 of Plaintiff's Complaint.

37. BRUN denies Paragraph 37 of Plaintiff's Complaint.

38. In response to Paragraph 38, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies the remaining allegations in Paragraph 38 of Plaintiff's Complaint.

39. In response to Paragraph 39, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies the remaining allegations in Paragraph 39 of Plaintiff's Complaint.

40. BRUN denies Paragraph 40 of Plaintiff's Complaint.

41. In response to Paragraph 41, BRUN denies Plaintiff was subjected to sexual harassment within the meaning of applicable law. BRUN denies the remaining allegations in Paragraph 41 of Plaintiff's Complaint.

42. BRUN denies Paragraph 42 of Plaintiff's Complaint.

SECOND CAUSE OF ACTION

43-53. On October 9, 2019 ([Filing No. 42](#)), the Court dismissed Plaintiff's Second Cause of Action with prejudice. To the extent a response is required, BRUN denies each and every allegation contained in Paragraphs 43 through 53 of Plaintiff's Complaint.

54. BRUN is not required to respond to the Complaint's final prayer for relief. To the extent a response is required, BRUN denies that Plaintiff is entitled to any of the relief sought in the Complaint.

55. BRUN denies all allegations in Plaintiff's Complaint not specifically admitted or denied, except those which constitute an admission against Plaintiff's interests.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

56. BRUN affirmatively alleges Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

57. BRUN affirmatively alleges that it, at all times, acted in good faith and without discriminatory motive.

THIRD AFFIRMATIVE DEFENSE

58. BRUN affirmatively alleges Plaintiff's claims fail to the extent Plaintiff has failed to utilize and/or exhaust available remedies or satisfy prerequisites to filing suit.

FOURTH AFFIRMATIVE DEFENSE

59. BRUN affirmatively alleges that Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by BRUN or to otherwise avoid harm by not taking advantage of reporting procedures outlined in BRUN's policies.

FIFTH AFFIRMATIVE DEFENSE

60. BRUN affirmatively alleges Plaintiff's claims are barred to the extent that they are untimely and/or barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

61. BRUN affirmatively alleges Plaintiff has failed to exercise reasonable diligence to mitigate her alleged damages, if any, and therefore Plaintiff's claim for damages is barred in whole or in part.

SEVENTH AFFIRMATIVE DEFENSE

62. BRUN affirmatively alleges any awarded damages must be reduced by any third-party payments made to Plaintiff for unemployment compensation or other compensation.

EIGHTH AFFIRMATIVE DEFENSE

63. BRUN affirmatively alleges that to the extent Plaintiff's claims concern matter outside the scope of her Charge of Discrimination filed with the NEOC and EEOC, those claims are barred.

NINTH AFFIRMATIVE DEFENSE

64. BRUN affirmatively alleges that Plaintiff's claims fail to the extent that they are barred by the doctrines of waiver, laches, and/or estoppel.

65. BRUN reserves and does not waive the right to assert additional defenses that may become known to BRUN during the pendency of this suit, as a result of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant, Board of Regents of the University of Nebraska, prays that the same be dismissed, in its entirety and with prejudice, at Plaintiff's costs; that Defendant be awarded its costs expended

herein, including reasonable attorney's fees; and that the Court award such other and further relief as it deems just and appropriate.

Dated October 23, 2019.

Respectfully submitted,

BOARD OF REGENTS FOR THE
UNIVERSITY OF NEBRASKA,
Defendant.

By: s/ Tara A. Stingley
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CERTIFICATE OF SERVICE

I, Tara A. Stingley, hereby certify that on this 23rd day of October, 2019, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska using the CM/ECF system, which sent notification of such filing to the following:

Elaine A. Waggoner
eaw@waggonerlawoffice.com

s/ Tara A. Stingley _____