

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DR. MUKUND VENGALATTORE,

Plaintiff,

v.

CORNELL UNIVERSITY,

Defendants.

**ANSWER TO SECOND
AMENDED COMPLAINT**

Civil Action No. 3:18-cv-
1124-GLS-TWD

Defendant Cornell University (the "University"), by and through Bond, Schoeneck & King, PLLC, answers Plaintiff's Second Amended Complaint ("SAC") as follows:

1. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the allegations set forth in paragraph 1 of the SAC, except admits that plaintiff is a natural person.
2. States in response to the allegations set forth in paragraph 2 of the SAC that plaintiff was, until June 30, 2018, a member of the faculty of the University's College of Arts and Sciences.
3. ADMITS the allegations set forth in paragraph 3 of the SAC,
4. States in response to the allegations set forth in paragraphs 4 and 5 of the SAC that these allegations constitute conclusions of law, and contain no averment of fact to which a responsive pleading is required; to the extent a response is deemed necessary, the University DENIES that the events pleaded in the SAC form the basis for any viable claim against it.

5. States in response to the allegations set forth in paragraph 6 of the SAC that this paragraph purports to quote from a statutory provision, and respectfully refers the Court to the source purportedly quoted for its complete and contextual content.

6. States in response to the allegations set forth in paragraph 7 of the SAC that this paragraph constitutes a conclusion of law and contains no averment of fact to which a responsive pleading is required; to the extent a response is deemed necessary, the University ADMITS that it receives certain funds from the federal government.

7. ADMITS, upon information and belief, the allegations set forth in paragraph 8 of the SAC.

8. States in response to the allegations set forth in paragraphs 9-15 of the SAC that these allegations purport to quote from or characterize the content of certain documents and respectfully refers the Court to the sources purportedly quoted or referenced for their complete and contextual content.

9. ADMITS in response to the allegations set forth in paragraph 16 of the SAC that the University was identified as one of hundreds of institutions across the country with one or more open investigations being conducted by OCR, and affirmatively states that at no time has OCR deemed the University to have been in violation of Title IX (or any other statute overseen by OCR).

10. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the SAC.

11. States in response to the allegations set forth in paragraphs 18-25 of the SAC that these allegations purport to quote from or characterize the contents of a

speech and press release and respectfully refers the Court to the sources purportedly quoted or referenced for their complete and contextual content.

12. ADMITS in response to the allegations set forth in paragraph 26 of the SAC that the referenced regulation was issued in 2020, and respectfully refers the Court to the contents of the regulation for its complete and contextual content, and DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations in said paragraph that characterize the “2011 DCL” and “2014 Q&A.”

13. States in response to the allegations set forth in paragraphs 27-30 of the SAC that these allegations purport to characterize the contents and applicability of the University’s Campus Code of Conduct, ADMITS that a Campus Code of Conduct, as amended from time to time, has existed for many years, and respectfully refers the Court to the contents of the Code of Conduct for its complete and contextual content.

14. States in response to the allegations set forth in paragraph 31 of the SAC that these allegations purport to characterize the contents and applicability of the Faculty Handbook, ADMITS that a Faculty Handbook, as amended from time to time, has existed for many years, and respectfully refers the Court to the contents of the Faculty Handbook for its complete and contextual content.

15. ADMITS in response to the allegations set forth in paragraph 32 of the SAC that the University revised Policy 6.4 in April of 2012 as it applied to student respondents only, DENIES that such amendments applied to the allegations of misconduct against plaintiff, DENIES the remaining allegations in said paragraph, and respectfully refers the Court to the contents of Policy 6.4 for its complete and contextual content.

16. States in response to the allegations set forth in paragraphs 33-36 of the SAC that these allegations purport to characterize the contents of Policy 6.4, and respectfully refers the Court to the contents of Policy 6.4 for its complete and contextual content.

17. States in response to the allegations set forth in paragraphs 37-44 of the SAC that these allegations purport to quote from or characterize the contents of Policy 6.4 and the Faculty Handbook, and respectfully refers the Court to the contents of Policy 6.4 and the Faculty Handbook for their complete and contextual content.

18. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the SAC, except ADMITS that plaintiff claims to have obtained his Ph.D. in Physics from the Massachusetts Institute of Technology and claims to have completed a postdoctoral research fellowship at the University of California at Berkeley.

19. ADMITS the allegations set forth in paragraph 46 of the SAC.

20. States in response to the allegations set forth in paragraph 47 of the SAC that plaintiff was hired by the University because it viewed him as an appropriate addition to its Physics faculty, and hoped that he would add to its complement of nationally renowned scholars in the Department of Physics, DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegation that plaintiff was “heavily recruited,” and ADMITS that plaintiff’s area of focus at the time he was hired by the University was in atomic, molecular and optical (“OMA”) physics, also commonly referenced as “cold atom” physics.

21. States in response to the allegations set forth in paragraph 48 of the SAC that plaintiff was expected to recruit graduate students and postdoctoral fellows to work in his laboratory and ADMITS, upon information and belief, Jane Roe was plaintiff's first graduate advisee and that this advisement started in or around 2009 and DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

22. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 49-50 of the SAC.

23. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the SAC, except ADMITS that Roe decided in or around October 2012 to find a new Ph.D. advisor, and to complete her graduate studies at the University while working as a research team member at the National Institute of Standards and Technology ("NIST") laboratories in Gaithersburg, Maryland.

24. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to truth of the allegations contained in paragraph 52 of the SAC.

25. DENIES the allegations set forth in paragraphs 53-54 of the SAC.

26. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the SAC, except ADMITS that in or around May 2014, members of the Physics Department became aware of Roe's allegation that plaintiff had thrown a power supply in her vicinity while plaintiff and Roe were in the laboratory.

27. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 56 of the SAC, except ADMITS that plaintiff had agreed that upon Roe's departure from his laboratory group she was to be given authorship credit with respect to certain scholarly articles then in progress, and respectfully refers the Court to the referenced article for its contents.

28. In response to the allegations set forth in paragraph 57 of the SAC, ADMITS that Roe submitted a letter dated May 10, 2014, commenting on plaintiff's application for tenure, and respectfully refers the Court to the letter for its complete and contextual content.

29. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the SAC, except ADMITS that plaintiff denied Roe's allegation that he threw a power supply and respectfully refers the Court to the referenced written "denial" and "letters of support" for their complete and contextual contents.

30. ADMITS the allegations set forth in paragraph 59 of the SAC.

31. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 60 of the SAC.

32. In response to the allegations set forth in paragraph 61 of the SAC, ADMITS that Roe contacted Professor Patterson and made certain allegations against plaintiff, and states that on November 2, 2014, Professor Patterson referred Roe to Alan Mittman of the University's Office of Workplace Policy and Labor Relations, and ADMITS that certain of Roe's allegations against plaintiff, if true, constituted a violation of the University's Romantic and Sexual Relationship Policy and DENIES

KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

33. DENIES the allegations set forth in paragraph 62 of the SAC.

34. In response to the allegations set forth in paragraph 63 of the SAC, ADMITS that Professor Patterson referred Roe to Mr. Mittman and that Mittman and Roe met to discuss Roe's allegations against Plaintiff, and DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

35. In response to the allegations set forth in paragraph 64 of the SAC, ADMITS that Mr. Mittman contact plaintiff on or around November 23, 2014 to discuss Roe's allegations against him, one of which was that plaintiff intentionally and without her consent, modified Roe's name as published on a website in a sexualized manner and refused to alter the published name, DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations concerning plaintiff's awareness and DENIES the remaining allegations in said paragraph.

36. In response to the allegations set forth in paragraph 65 of the SAC, ADMITS that Mr. Mittman informed plaintiff of Roe's allegation concerning the publication of her name and that plaintiff informed Mr. Mittman that Roe had requested that her name be published in the manner in which it was published, but states that Roe did not inform the University that she had made such a request.

37. In response to the allegations set forth in paragraph 66 of the SAC, states that plaintiff agreed to revise the manner in which Roe's name was published on the website and that Mr. Mittman cautioned plaintiff against retaliating against Roe in

response to her complaints against plaintiff and DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

38. In response to the allegations set forth in paragraph 67 of the SAC, DENIES the allegations, except respectfully refers the Court to the referenced October 24, 2014 letter for its complete and contextual content.

39. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 68 of the SAC.

40. DENIES the allegations set forth in paragraph 69 of the SAC.

41. In response to the allegations set forth in paragraph 70 of the SAC, ADMITS the Faculty Advisory Committee on Tenure Appointments agreed with Dean Ritter's recommendation, states that FACTA's participation in the review of plaintiff's tenure application was in an advisory capacity and was consistent with established University procedure, and DENIES any remaining allegations in said paragraph.

42. DENIES the allegations set forth in paragraph 71 of the SAC.

43. DENIES the allegations set forth in paragraph 72 of the SAC, except ADMITS that on or about October 24, 2014, Dean Ritter issued a preliminary determination denying plaintiff's application for tenure and that on December 8, 2014, Dean Ritter issued a letter determination adhering to her preliminary decision to deny plaintiff's tenure application, and that following review and consideration by the FACTA and the University's interim Provost, on or about February 13, 2015, Dean Ritter issued a determination denying plaintiff's tenure application, and respectfully refers the Court to each of the referenced determinations for their complete and contextual content, and

further states that the University's denial of tenure was challenged by plaintiff in a state court Article 78 proceeding and that such proceeding was dismissed on May 10, 2018, by unanimous Order of the Appellate Division, Third Department.

44. In response to the allegations set forth in paragraphs 73-76 of the SAC, DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations, except ADMITS that Mr. Mittman and Ms. Affel (the University's then-Title IX Coordinator) interviewed Roe on February 16, 2015, and respectfully refers the Court to the Confidential Investigative Report of the Division of Human Resources, Workforce Policy and Labor Relations, dated September 25, 2015 (the "Investigative Report").

45. In response to the allegations set forth in paragraph 77 of the SAC, ADMITS that plaintiff appealed the denial of tenure, but DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations concerning plaintiff's awareness in said paragraph.

46. DENIES the allegations set forth in paragraph 78-80 of the SAC, except ADMITS that Mr. Mittman invited plaintiff to be interviewed and that plaintiff was interviewed on March 3, 2015 and respectfully refers the Court to the Investigative Report, and further states that paragraph 78 of the SAC appears to quote from an unknown communication between Mr. Mittman and plaintiff, and respectfully refers the Court to the source of the quote for its complete and contextual content.

47. DENIES the allegations set forth in paragraph 81 of the SAC.

48. In response to the allegations set forth in paragraph 82 of the SAC, ADMITS that the University investigated Roe's allegations against plaintiff, and

respectfully refers the Court to the Investigative Report, and DENIES the remaining allegations in said paragraph.

49. In response to the allegations set forth in paragraph 83 of the SAC, ADMITS that Roe's complaint of sexual assault was time-barred by Policy 6.4, and respectfully refers the Court to the Investigative Report, and DENIES the remaining allegations in said paragraph.

50. DENIES the allegations set forth in paragraphs 84-85 of the SAC, and respectfully refers the Court to Policy 6.4 and the Campus Code of Conduct for their complete and contextual contents.

51. DENIES the allegations set forth in paragraphs 86-87 of the SAC.

52. In response to the allegations set forth in paragraphs 88-89 of the SAC, DENIES the allegations, except ADMITS that M. Karns served as Roe's advocate pursuant to University practice, and states that pursuant to applicable University practice, both plaintiff and Roe had the opportunity to secure guidance from a University-supplied advocate.

53. DENIES the allegations set forth in paragraph 90 of the SAC, and respectfully refers the Court to the Investigative Report.

54. DENIES the allegations set forth in paragraph 91 of the SAC.

55. DENIES the allegations set forth in paragraphs 92-94 of the SAC, except ADMITS that plaintiff was interviewed on April 20, 2015 and respectfully refers the Court to the Investigative Report.

56. In response to the allegations set forth in paragraphs 95-98 of the SAC, DENIES that Policy 6.4 was applicable to the investigation, and respectfully refers the Court to the email referenced in paragraph 98 for its complete and contextual contents.

57. In response to the allegations set forth in paragraph 99 of the SAC, respectfully refers the Court to the referenced email for its complete and contextual contents.

58. In response to the allegations set forth in paragraph 100 of the SAC, ADMITS that Roe was interviewed on April 28, 2015, and respectfully refers the Court to the Investigative Report.

59. ADMITS the allegations set forth in paragraph 101 of the SAC.

60. In response to the allegations set forth in paragraphs 102-111 of the SAC, states that these allegations purport to quote from or characterize the contents of the Investigative Report, and respectfully refers the Court to the Investigative Report for its complete and contextual contents.

61. DENIES the allegations set forth in paragraphs 112-114 of the SAC.

62. In response to the allegations set forth in paragraph 115 of the SAC, respectfully refers the Court to the referenced letter for its complete and contextual contents.

63. In response to the allegations set forth in paragraph 116 of the SAC, respectfully refers the Court to the referenced email for its complete and contextual contents.

64. DENIES the allegations set forth in paragraph 117 of the SAC.

65. In response to the allegations set forth in paragraph 118 of the SAC, ADMITS that the denial of tenure is not at issue in this lawsuit, DENIES that the University's denial of tenure "supports [plaintiff's] claim that Dean Ritter was biased against him," respectfully refers the Court to the referenced decision and recommendation for their complete and contextual contents, and DENIES any remaining allegations in said paragraph.

66. In response to the allegations set forth in paragraph 119 of the SAC, ADMITS that the investigators recommended that a preponderance of the evidence supported a conclusion that plaintiff had a romantic or sexual relationship with Roe, and respectfully refers the Court to the Investigative Report, and DENIES the remaining allegations in said paragraph.

67. DENIES the allegations set forth in paragraph 120 of the SAC.

68. In response to the allegations set forth in paragraphs 121-122 of the SAC, respectfully refers the Court to Policy 6.4 and the Faculty Handbook for their complete and contextual contents and DENIES any remaining allegations in said paragraph.

69. In response to the allegations set forth in paragraph 123 of the SAC, respectfully refers the Court to the Investigative Report, and DENIES any remaining allegations in said paragraph.

70. In response to the allegations set forth in paragraph 124 of the SAC, ADMITS that on October 6, 2015, Dean Ritter informed plaintiff in writing of her findings, respectfully refers the Court to the October 6, 2015 findings letter for its complete and contextual contents, and DENIES any remaining allegations in said paragraph.

71. In response to the allegations set forth in paragraphs 125-126 of the SAC, states that these allegations purport to quote from or characterize the contents of the October 6, 2015 findings letter, and respectfully refers the Court to the letter for its complete and contextual contents.

72. In response to the allegations set forth in paragraphs 127-128 of the SAC, ADMITS that on February 6, 2017, Dean Ritter issued a letter to plaintiff, states that these allegations purport to quote from or characterize the contents of the February 6, 2017 letter, and respectfully refers the Court to the letter for its complete and contextual contents.

73. DENIES the allegations in paragraph 129 of the SAC, except respectfully refers the Court to the Faculty Handbook for its complete and contextual contents.

74. In response to the allegations set forth in paragraphs 130-135 of the SAC, respectfully refers the Court to the referenced letter for its complete and contextual contents.

75. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraphs 136-137 of the SAC.

76. In response to the allegations set forth in paragraph 138 of the SAC, DENIES the allegations that the University “has not allowed [plaintiff’s] research to continue,” and ADMITS that plaintiff is no longer permitted to operate out of facilities on the University’s campus because he is no longer employed at the University.

77. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraphs 139-140 of the SAC.

78. DENIES the allegations set forth in paragraphs 141-144 of the SAC.

79. Repeats and responds to the inclusive allegations set forth in paragraph 145 consistent with the responses set forth above.

80. In response to the allegations set forth in paragraphs 146-149 of the SAC, states that these allegations constitute conclusions of law and contain no averment of fact to which a responsive pleading is required, and further states that these allegations purport to quote from or characterize the contents of a statute and regulations, and respectfully refers the Court to the statute and regulations for their complete and contextual contents, and, to the extent any responsive pleading is required, DENIES any allegations in said paragraphs.

81. DENIES the allegations set forth in paragraphs 150-160.

82. Repeats and responds to the inclusive allegations set forth in paragraph 161 consistent with the responses set forth above.

83. In response to the allegations set forth in paragraph 162 of the SAC, states that this allegation quotes from the contents of Dean Ritter's October 6, 2015 findings letter and respectfully refers the Court to the referenced letter for its complete and contextual contents.

84. DENIES the allegations set forth in paragraphs 163-172 of the SAC.

85. DENIES each and every other allegation set forth in the SAC that is not otherwise admitted or specifically responded to herein.

DEFENSES

FIRST DEFENSE

86. The SAC fails to state a viable claim for relief.

SECOND DEFENSE

87. Plaintiff's gender discrimination claim fails, as no action was taken against plaintiff because of his gender, he was not treated disparately on the basis of gender, and the outcome of his disciplinary proceeding was neither erroneous nor gender biased. Rather, all actions were taken for legitimate, non-discriminatory reasons.

THIRD DEFENSE

88. Plaintiff's defamation claim fails because, through his improvident, unprofessional, and unethical actions and communications, plaintiff has rendered himself defamation proof.

FOURTH DEFENSE

89. Plaintiff's defamation claim fails because the communications he complains of are non-actionable statements of opinion.

FIFTH DEFENSE

90. Plaintiff's defamation claim fails because the communications he complains of are true.

SIXTH DEFENSE

91. Plaintiff's defamation claim fails because plaintiff himself – not the University – published or caused to be published allegedly defamatory communication(s) at issue in this action.

SEVENTH DEFENSE

92. Plaintiff's defamation claim fails because of plaintiff's status as a limited purpose public figure with respect to the allegations underlying said claim.

93. Plaintiff, or individuals acting on plaintiff's behalf, has/have repeatedly published content on various media sources concerning his employment status and his disputes with the University.

EIGHTH DEFENSE

94. Plaintiff's defamation claim is barred by the common interest privilege.

95. Plaintiff cannot overcome the common interest privilege because he cannot establish that any allegedly defamatory communication at issue in this action was motivated by malice or was made in bad faith.

NINTH DEFENSE

96. Plaintiff's claims for relief are barred by the doctrine of unclean hands.

TENTH DEFENSE

97. Plaintiff did not suffer damages as a result of any act or omission of Defendant.

ELEVENTH DEFENSE

98. Some or all of plaintiff's alleged damages were caused solely or substantially by his own culpable conduct.

TWELFTH DEFENSE

99. Some or all of plaintiff's alleged damages were caused by third persons over which the University has no influence or control.

THIRTEENTH DEFENSE

100. Some or all of plaintiff's alleged damages are barred due to his failure to mitigate, if he did in fact incur damages.

FOURTEENTH DEFENSE

101. Plaintiff's alleged damages are speculative and uncertain and therefore are barred.

Defendant reserves the right to raise additional defenses as may be identified during the course of the litigation.

WHEREFORE, Defendant Cornell University respectfully demands judgment dismissing the Complaint, awarding it costs and disbursements, and granting such other and further relief as the Court may deem just and proper.

Dated: October 7, 2022

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*Attorneys for Defendant Cornell
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, I electronically filed the above Answer to Second Amended Complaint with the Clerk of the Court using the CM/ECF filing system, which sent notification of the filing to:

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Dated: October 7, 2022

s/Suzanne M. Messer
Suzanne M. Messer