

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

CARA WESSELS WELLS,
Plaintiff,

v.

**TEXAS TECH UNIVERSITY,
SAMUEL PRIEN, and LINDSAY
PENROSE,**
Defendants.

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CAUSE NO. 5:23-CV-00060-H

**DEFENDANT TEXAS TECH UNIVERSITY’S MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6)**

TO THE HONORABLE U.S. DISTRICT JUDGE JAMES WESLEY HENDRIX:

Defendant Texas Tech University (“TTU”) files this Motion to Dismiss (“Motion”) pursuant to Federal Rule of Civil Procedure 12(b)(6), requesting the Court to dismiss Plaintiff’s claims against TTU raised in her First Amended Complaint (“Amended Complaint”). This Court should dismiss Plaintiff’s Title VII and Title IX claims against TTU because (1) all of Plaintiff’s claims are time-barred; and (2) Plaintiff fails to state a claim for both the Title VII and Title IX claims.

INTRODUCTION

Plaintiff's Amended Complaint arises out of Plaintiff's student and employment relationships with TTU, and involves TTU professors, Drs. Prien and Penrose. Plaintiff worked as a graduate assistant of Drs. Prien and Penrose until graduating with her Ph.D. in 2017. Once she graduated with her Ph.D., Plaintiff no longer had either a student or an employment relationship with TTU. Plaintiff's only subsequent involvement with TTU was a short, unpaid volunteer position with the TTU Accelerator Hub, which ended in June 2022.

Nearly six years after she left the employment of TTU, Plaintiff filed this Amended Complaint against both TTU and the Individual Defendants, alleging discrimination on the basis of sex, retaliation, equal protection, and a host of intentional tort and other claims under federal and state law. Specifically, Plaintiff's "everything but the kitchen sink" complaint alleges causes of action under Title VII for sexual harassment, hostile work environment, and retaliation; Title IX of the Education Amendments of 1972 for sexual harassment; Equal Protection under 42 U.S.C. § 1983; correction of inventorship under 35 U.S.C. § 256; declaratory judgment of patent invalidity under 28 U.S.C. § 2201; tortious interference with contractual relations; trade secret misappropriation; intentional infliction of emotional distress ("IIED"); unjust enrichment; breach of fiduciary duty; fraudulent concealment; and defamation *per se*.

Plaintiff's claims against TTU for Title VII sexual harassment, hostile work environment, and retaliation and her Title IX sexual harassment claim (Counts 1-4) should be dismissed in their entirety because they are time-barred, and Plaintiff fails to state a claim for all four claims.

BACKGROUND

Plaintiff alleges she was a student of Drs. Prien and Penrose at TTU from 2009 until graduating with her Ph.D. in 2017. *See* Dkt. 19 ¶¶ 32, 33, 64. Plaintiff alleges that she worked as a graduate assistant for Dr. Prien while at TTU. *Id.* ¶¶ 7, 34. Plaintiff also alleges that she

participated in an Accelerator Hub mentorship program at TTU during May and June of 2022. *Id.* ¶¶ 108, 110, 112.¹ Plaintiff does not allege that she had an employment relationship with TTU during her brief time as a mentor with the Accelerator Hub program, nor does she allege that she received any type of compensation or benefits as part of that program.

As a graduate assistant at TTU, Plaintiff conducted research. *Id.* ¶¶ 3, 7. Plaintiff alleges that she did not receive credit for her contributions to technological innovations, patents, and academic research. *Id.* ¶ 7. Plaintiff claims she was an inventor of patents for which TTU did not list her as an inventor, *id.* ¶¶ 102, 103, 115, 116, 163, and she is requesting this Court to correct inventorship and/or declare the patent invalid. *Id.* ¶¶ 160-68.

Plaintiff's last date of employment with TTU was in 2017 when she graduated with her Ph.D. *Id.* ¶¶ 64-65. Since that time, Plaintiff worked at Ovation Fertility and then with her own two companies, Embryotics and EmGenisys. *Id.* ¶¶ 69, 71-86. Plaintiff did not file her EEOC Charge, which was cross-filed with the TWC, until November 11, 2022, well beyond both the 300- and the 180-day limitation periods required by law for EEOC and TWC claims. *See* Dkt. 20-1, Ex. A. The EEOC issued a Right to Sue letter on December 22, 2022. *See* Dkt. 20-2, Ex. B.

STANDARD OF REVIEW

“To survive a Rule 12(b)(6) motion, the plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face.’” *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a

¹ Defendants request the Court to take judicial notice of the TTU Innovation Hub at Research Park website page showing that mentors are experienced in their trade and offer their experience as “mentors” to the TTU Innovation Hub: depts.ttu.edu/research/research-park/meet/iTTUmentors.php. *See* Fed. R. Evid. 201(b)(2) (permitting the Court to take judicial notice of “a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).

plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations, quotations, and brackets omitted). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 550 U.S. at 555). The Court is not required to conjure up unpled allegations in order to save a complaint, and "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice" *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993).

When reviewing a motion to dismiss for failure to state a claim, "[t]he court's review is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint." *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010); *see also Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010). The Court may also consider facts subject to judicial notice under Federal Rule of Evidence 201. *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 735 (5th Cir. 2019).

ARGUMENT

I. PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED UNDER FED. R. CIV. P. 12(B)(6).

Plaintiff's claims should be dismissed as being time-barred for failure to exhaust administrative remedies, failure to file within the required statute of limitations, and failure to state a claim. Accordingly, Plaintiff's Title VII (Counts 1-3) and Title IX (Count 4) claims should be dismissed.

A. Plaintiff's Title VII (Counts 1-3) are time-barred because Plaintiff failed to exhaust her administrative remedies.

Plaintiff alleges sexual harassment, hostile work environment, and retaliation under Title VII (Counts 1-3) against TTU. All of these Title VII claims should be dismissed as time-barred because Plaintiff did not file her EEOC charge within the 300-day limitations period.

Both Chapter 21 and Title VII direct that a “charge . . . shall be filed” no later than the 180th (or, in the case of Title VII, the 300th) day “after the alleged unlawful employment practice occur[s].” Tex. Labor Code § 21.202(a); 42 U.S.C. § 2000e-5(b), (e)(1). For complaints concerning a practice occurring in a State or political subdivision that has a fair employment agency of its own empowered “to grant or seek relief,” such as the Texas Workforce Commission, Title VII instructs the complainant to file her charge first with the state or local agency. 42 U.S.C. § 2000e-5(c). The complainant then has 300 days following the challenged practice, or 30 days after receiving notice that state or local proceedings have ended, “whichever is earlier,” to file a charge with the EEOC. 42 U.S.C. § 2000(e)(1).

Federal law is clear. Before a plaintiff may pursue a cause of action under Title VII, she must exhaust her administrative remedies. *Hall v. Cont'l Airlines, Inc.*, 252 F. App'x 650, 653 (5th Cir. 2007); *see also Taylor v. Books A Million*, 296 F.3d 376, 378-79 (5th Cir. 2002), *cert. denied* (2003). A court may entertain a Title VII lawsuit *only* if the aggrieved party has (1) exhausted her administrative remedies and (2) has filed suit within the time permitted after receiving a notice of a right to sue. *Id.* Filing an EEOC charge is a mandatory “claim-processing rul[e] that must be timely raised to come into play.” *Fort Bend Cnty., Tex. v. Davis*, 139 S. Ct. 1843, 1846 (2019). “A claim-processing rule may be ‘mandatory’ in the sense that a court must enforce the rule if a party ‘properly raise[s]’ it.” *Id.* (quoting *Eberhart v. United States*, 546 U.S. 12, 19 (2005) (per curiam)).

Plaintiff graduated from TTU in 2017 with a Ph.D. *See* Dkt. 19 ¶ 64. After graduation in 2017, Dr. Prien offered Plaintiff an unpaid position in his lab, but she declined the offer. *Id.* ¶ 65. Plaintiff never alleges that she was a paid employee of TTU after graduation. *Id.* ¶¶ 65-117. Since her last date of employment at TTU, Plaintiff worked at Ovation Fertility, Embryotics, and then at EmGenisys. *Id.* ¶¶ 69, 71-86.

Since Plaintiff's last date of employment with TTU was in 2017, the limitations period began to run on any Title VII claims in 2017. However, Plaintiff's EEOC Charge, which was cross-filed with the TWC, was not filed until November 11, 2022, well beyond the 300-day limitations period for a Title VII charge. *See* Dkt. 20-1, Ex. A. For charges brought under Title VII, the deadline for filing was no later than October 27, 2018.

Notably, Plaintiff did not file her EEOC Charge alleging discrimination on the basis of sex and retaliation until November 11, 2022, or 1,776 days (almost five years) after December 31, 2017. Therefore, Plaintiff's EEOC Charge was untimely filed under federal law, and Plaintiff's Title VII claims for sexual harassment (Count 1), hostile work environment (Count 2), and retaliation (Count 3), should be dismissed.

B. Plaintiff's Title IX claim is barred by the statute of limitations (Count 4).

Plaintiff alleges sexual harassment under Title IX (Count 4) against TTU. However, the statute of limitations bars her claim because she filed over three years too late.

The Fifth Circuit has held that the two-year statute of limitations applied to § 1983 claims is applied "with equal force to Title IX claims." *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759 (5th Cir. 2015). A Title IX claim begins to accrue when plaintiff is aware of the existence of circumstances that would lead a reasonable person to investigate further. *Id.* at 762. A "plaintiff need not know that she has a legal cause of action' for her claim to accrue; 'she need know only the facts that would ultimately support a claim.'" *Id.* "[A]wareness' for accrual purposes does *not*

mean actual knowledge; rather, all that must be shown is the existence of circumstances [that] would lead a reasonable person to investigate further.” *Id.* (citation and internal quotation marks omitted) (emphasis in original). The statute of limitations requires dismissal where it is evident “from the plaintiff’s pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like.” *Jones v. Alcoa, Inc.*, 339 F.3d 359, 366 (5th Cir. 2003).

Plaintiff alleges that she graduated from TTU with her Ph.D. in 2017. *See* Dkt. 19 ¶ 64. Accordingly, the statute of limitations for Plaintiff’s alleged Title IX claim began to run on the last possible day she was a student at TTU, which (at the latest) could have been December 31, 2017. Under the applicable two-year statute of limitations, Plaintiff had until December 31, 2019, to file her claim. However, Plaintiff did not file a Title IX claim until she filed this lawsuit on March 22, 2023. She was over three years too late. Because the statute of limitations bars her Title IX claim (Count 4), the Court should dismiss it.

C. Plaintiff fails to state a claim for sexual harassment, hostile work environment, and retaliation under Title VII (Counts 1-3).

Plaintiff’s Title VII claims fail to state a claim for sexual harassment, hostile work environment, and retaliation.

1. Sexual Harassment and Hostile Work Environment Under Title VII

To state a claim for sexual harassment under Title VII, a plaintiff must allege: “(1) that the employee belongs to a protected class; (2) that the employee was subject to unwelcome sexual harassment; (3) that the harassment was based on [sex]; and (4) that the harassment affected a ‘term, condition, or privilege’ of employment.” *See E.E.O.C. v. Boh Bros. Const. Co.*, 731 F.3d 444, 453 (5th Cir. 2013). Similarly, to state a claim for hostile work environment under Title VII, “the plaintiff must show that: (1) the victim belongs to a protected group; (2) the victim was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic;

(4) the harassment affected a term, condition, or privilege of employment; and (5) the victim’s employer knew or should have known of the harassment and failed to take prompt remedial action.” *Eyob v. Mitsubishi Caterpillar Forklift Am., Inc.*, 745 F. App’x 209, 215 n.2 (5th Cir. 2018), *as revised* (Aug. 10, 2018).

Here, Plaintiff wholly fails to state specific facts to support a sexual harassment or hostile work environment claim. For her sexual harassment claim, Plaintiff generically alleges that “Defendant subjected Plaintiff to adverse employment actions.” *See* Dkt. 19 ¶ 125. For her hostile work environment claim, she blanketly alleges “Defendant subjected Plaintiff to a pervasive pattern of abuse, hostility, neglect, disregard, intentional sabotage, penalization, and adverse employment actions.” *Id.* at ¶ 131. Plaintiff fails to allege how a term, condition, or privilege of her employment as a graduate student with TTU (until 2017) was affected for both claims. Plaintiff’s “formulaic recitation of the elements of a cause of action” is legally insufficient to state a claim for sexual harassment or hostile work environment under Title VII. *See Twombly*, 550 U.S. at 555; *see also Fernandez-Montes*, 987 F.2d at 284 (noting that “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice”). Thus, the Court should dismiss those claims (Counts 1 and 2).

2. Retaliation Under Title VII

To state a retaliation claim under Title VII, Plaintiff must allege that “(1) the employee engaged in [an] activity protected by Title VII; (2) the employer took [an] adverse employment action against the employee; and (3) a causal connection exists between that protected activity and the adverse employment action.” *Cooper v. Dallas Police Ass’n*, 278 F. App’x 318, 320 (5th Cir. 2008) (quoting *Brazoria Cnty., Tex. v. E.E.O.C.*, 391 F.3d 685, 692 (5th Cir. 2004) (emphasis omitted) (internal quotation marks omitted)).

Again, Plaintiff makes bare bone, conclusory allegations. She alleges that she “engaged in opposition activity” and that “Defendant took adverse employment action against Plaintiff that a reasonable employee would consider adverse.” *See* Dkt. 19 ¶¶ 138-39. Her “formulaic recitation of the elements of a cause of action” is legally insufficient to state a claim. *See Twombly*, 550 U.S. at 555; *Fernandez-Montes*, 987 F.2d at 284. Plaintiff’s retaliation claim fails. She neglects to allege a protected activity during her time as an employee of TTU up through sometime in 2017. Likewise, Plaintiff fails to allege any adverse employment action taken by TTU and against her in her role as a graduate assistant. Because Plaintiff fails to state the first two elements, she has not and cannot sufficiently allege causation.

Therefore, Plaintiff fails to state a claim for retaliation under Title VII, and the Court should dismiss that claim (Count 3).

D. Plaintiff fails to state a claim for sexual harassment under Title IX (Count 4).

To state a claim for sexual harassment under Title IX, Plaintiff must allege that the school had “actual knowledge” of sexual harassment and that the school failed to adequately respond. *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 358, 359 (5th Cir. 2020). For a school to “have knowledge, it is not enough that *any* employee knew of the harassment; it must be someone authorized to rectify it.” *Id.* at 359 (emphasis in original).

Plaintiff fails to allege who at TTU had actual knowledge of any alleged sexual harassment (and what authority that individual may have had to address it). *See* Dkt. 19 ¶¶ 141-49. Plaintiff claims that “Defendants had actual notice of this harassment.” *Id.* at ¶ 147. It is not enough to allege that “Defendants” had actual notice. Plaintiff fails to allege that she reported any alleged sexual harassment to the authorized person at TTU to receive such knowledge. As with her Title VII claims, Plaintiff’s conclusory and “formulaic recitation of the elements of a cause of action”

is legally insufficient to state a claim. *See Twombly*, 550 U.S. at 555; *Fernandez-Montes*, 987 F.2d at 284. Accordingly, the Court should dismiss Plaintiff's Title IX claim (Count 4).

CONCLUSION

For the foregoing reasons, Defendant TTU respectfully requests that this Court dismiss all of Plaintiff's claims against TTU in their entirety.

Dated: July 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2023, the foregoing *Defendant Texas Tech University's Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(6)* was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to the following counsel of record:

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