

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

CARA WESSELS WELLS,
Plaintiff

v.

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

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

PLAINTIFF’S OPPOSITION TO TTU’S MOTION TO DISMISS

Plaintiff Cara Wessels Wells (“Plaintiff” or “Dr. Wells”) submits this Opposition to Defendant Texas Tech University’s (“Defendant” or “TTU”) Motion to Dismiss the First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6):

I. PRELIMINARY STATEMENT

This case arises from the demeaning and harmful misconduct perpetrated and condoned by TTU, and spearheaded by two of its professors, against former student and employee, Dr. Wells. TTU’s flippant characterization of Dr. Wells’ claims as “everything but the kitchen sink” merely highlights the wide-ranging and serious harms caused by Defendants. TTU attempts to avoid all accountability for harms it caused, seeking dismissal on the basis that Plaintiff’s claims are time-barred and that Plaintiff fails to state a claim pursuant to Title VII and Title IX. TTU’s motion is without merit and should be denied in its entirety.

II. FACTS

In 2009, Dr. Wells began her career in animal sciences at TTU. (Amended Compl. Dkt. 19 (“Compl.”) ¶ 32) Early on, Dr. Prien seemed to show an interest in Dr. Wells work. (Compl. ¶ 34) However, as time went on, it became clear that Dr. Prien’s interest was far from professional. (Compl.

¶¶ 35, 39, 41, 44, 51) Indeed, with the assistance of his associate Dr. Penrose, Dr. Prien repeatedly coerced Dr. Wells into demeaning and uncomfortable situations. (Compl. ¶¶ 37, 40, 45, 52, 55, 56, 58, 60) As Dr. Prien became increasingly jealous and possessive, Dr. Wells made it clear that she was not interested and attempted to set boundaries. (Compl. ¶¶ 46, 54, 57) In retaliation, Drs. Prien and Penrose made it their mission to harm Dr. Wells career in any way they could, including, but not limited to, taking credit for Dr. Wells' work, interfering in Dr. Wells' career opportunities, and pursuing financial opportunities to which they were not entitled. (Compl. ¶¶ 46, 60, 65-70, 96-104) Dr. Wells reported this behavior to TTU. (Compl. ¶¶ 105-107) The University failed to investigate, offer any protection, or honor commitments to patents she invented. (Compl. ¶ 107) In June 2022, TTU fired Dr. Wells from her mentorship role and retaliated further by blacklisting Dr. Wells from University and related endeavors. (Compl. ¶ 112). In early 2023, Dr. Prien, fully backed by TTU, continued to spread false and defamatory lies about Dr. Wells, further harming her reputation in a small community. (Compl. ¶ 117) Defendants' actions resulted and continue to result in real harm to Dr. Wells. (Compl. ¶¶ 45, 56, 67, 90, 101-104, 112, 114-115, 117)

On November 11, 2022, 300 days after January 15, 2022, Dr. Wells filed a Charge of Discrimination with the EEOC. (Compl. ¶ 30) On December 22, 2022, the EEOC issued a Notice of Right to Sue. (Compl. ¶ 31) On March 22, 2023, Dr. Wells filed her original complaint, alleging numerous causes of action against Defendants TTU, Dr. Prien, and Dr. Penrose. (Dkt. 1) On June 22, 2023, Dr. Wells filed her First Amended Complaint. (Compl.) On July 6, 2023, TTU moved to dismiss Dr. Wells' Amended Complaint pursuant to Rule 12(b)(6) (Dkt. 24), and Dr. Prien and Dr. Penrose moved to dismiss pursuant to Rule 12(b)(1) and Rule(b)(6). The Court stayed discovery on July 19, 2023. (Dkt. 33)

III. STANDARD OF REVIEW

TTU seeks dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Such motions to dismiss are “viewed with disfavor” and “rarely granted.”¹ Facts alleged must be accepted as true as well as viewed in the light most favorable to the plaintiff.² While a complaint must state more than mere conclusions, it “need not contain detailed factual allegations.”³

In deciding the motion, courts look to the four corners of the complaint.⁴ The Court may consider—but not “rely on”—documents cited in Defendants’ motion, but only “if they are referred to in the plaintiff’s complaint and are central to the plaintiff’s claim.”⁵ Otherwise, the Court may not consider such documents unless it converts Defendants’ motion into a motion for summary judgment.⁶

IV. ARGUMENT

A. Dr. Wells’ Title VII Claims Are Timely.

TTU asserts that Dr. Wells’ claims for sexual harassment, hostile work environment, and retaliation are time-barred. A Title VII charge for discrimination must be filed no later than the 300th day after the alleged unlawful employment practice occurs.⁷ After the EEOC issues a Notice of Right to Sue, a Title VII plaintiff then has 90 days to file suit.⁸ TTU argues that Dr. Wells’ did not file her

¹ See *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011).

² *Id.*

³ *Id.*

⁴ See *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir.1996); *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir.1992).

⁵ See *Walker v. Beaumont Independent School District*, 938 F.2d 724, 735 (5th Cir. 2019); see also *Cox v. Kaelin*, 577 F. App’x 306, 309 (5th Cir. 2014) (“[F]ederal courts are permitted to refer to matters of public record when deciding a 12(b)(6) motion to dismiss, so long as the court does not rely on those matters when deciding the motion. If the Magistrate Judge did in fact rely on pleadings from a separate case, the district court should have converted the motion to dismiss into a motion for summary judgment, given the parties notice, and then considered all of the evidence presented.”) (internal quotations and citations omitted).

⁶ *Id.*

⁷ See 42 USC 2000e-5(b), (e)(1); Tex. Labor Code 21.202(a).

⁸ See 42 U.S.C. § 2000e-5(f).

EEOC charge within the 300-day limitations period. In support, TTU argues that Plaintiff's last date of employment with TTU was in 2017 when she graduated from TTU, making the last possible date for her to file a charge in October 2018. TTU's argument fails.

As an initial matter, Dr. Wells' allegations are sufficient to allege that she was an employee until June 2022, making her charge filed in November 2022 well within the limitations period. A person may be considered an employee where the relationship at issue endows benefits to the putative employee.⁹ Even volunteers can be found to be employees where they receive benefits, including but not limited to consideration for future employment, use of utilities, and training.¹⁰ Contrary to TTU's counter-factual narrative,¹¹ Dr. Wells alleges facts that establish an employment relationship with TTU during her time as a mentor. (Compl. ¶¶ 108-110) For example, Dr. Wells alleged that the Accelerator Hub was the product of a rigorous interview process, including background checks and onboarding procedures. (Compl. ¶ 109) She was even added to the TTU website, making her new position public. (Compl. ¶ 110). Commonly, the Accelerator Hub was used to transform mentors into full-time roles or partnerships, which Dr. Wells alleges she anticipated pursuing. (Compl. ¶ 111) In any event, if there is a factual question about whether Dr. Wells was an employee, it is not an appropriate basis for a dismissal at the motion to dismiss stage.

Moreover, Plaintiff's allegations of a hostile work environment are comprised of ongoing violations and render timely all misconduct leading up to the final acts of discrimination. Indeed,

⁹ See *Karns v. McDonough*, 580 F.Supp.3d 398, 405 (W.D.Tex. 2022).

¹⁰ *Bitterman v. Zink*, 371 F.Supp.3d 974, 981 (D.N.M. 2019); *Johnston v. Espinoza Gonzalez*, 2016 WL 7188524 (D. Colo. Dec. 12, 2016).

¹¹ The web page cited by TTU is not a valid basis to find that Plaintiff was not an employee. TTU's own authority holds that courts may only consider matters of public record when the document is referred to in plaintiff's complaint. See *Walker*, 938 F.3d at 735. Not so here. Moreover, Rule 201 only applies where the interpretation of the document is "not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Of course, TTU—who is a Defendant in this case and others similar misconduct—cannot rely upon its own website as a source of information in support of its arguments for dismissal. In any event, the cited source does not establish that TTU's mentorship program is not an employment relationship. Many other relevant facts regarding the mentor program may be relevant to a determination regarding the relationship between TTU and Wells.

where a hostile work environment exists involving unlawful employment practices occurring “cumulatively” over time, “it does not matter, for purposes of the statute, that some of the components of the hostile work environment fall outside the statutory time period,” “provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court.”¹² Here, Dr. Wells alleges an alarming set of employment practices perpetrated and condoned by TTU over the course of her tenure, and ending with not only the publication of the harmful emails in June 2022 but continuing with harmful and retaliatory actions continuing through February 2023. (Compl. ¶¶ 110-115, 117) Because the last of the series of acts occurred well within the limitations period, the hostile work environment claim is timely.

Moreover, Dr. Wells alleges retaliation by TTU in June 2022 (and February 2023), which misconduct is actionable even if TTU is classified as a “former” employer at the time. Indeed, this Circuit recognizes that the “Supreme Court has long allowed claims for retaliation by former employees against former employers for post-employment adverse employment actions.”¹³ Here, Dr. Wells alleges that she engaged in protected activity, including numerous reports to TTU regarding the illicit and damaging behavior she endured. (Compl. ¶¶ 105-107). She then alleges that Defendants retaliated by, *inter alia*, terminating Dr. Wells’ mentorship and publicly blacklisting her from University sanctioned relationships. (Compl. ¶ 112) On June 10, 2022, TTU knowingly sent or allowed to be sent an email blacklisting Dr. Wells from the community. (Compl. ¶ 112)

Construing all allegations as true and in Plaintiff’s favor, Plaintiff alleges timely Title VII claims. TTU’s motion should be dismissed.

¹² *Nat’l Railroad Passenger Corp v. Morgan*, 122 S.Ct. 2061, 2071 (2002).

¹³ *Allen v. Radio One of Tex. II, LLC*, 515 F.App’x 295, 302 (5th Cir. 2012) (citing *Robinson v. Shell Oil Co.*, 519 US 337, (1997)).

B. Dr. Wells' Title IX Claim Is Timely.

TTU next asserts that Plaintiff's Title IX claims are barred because she filed her claims "over three years too late." Title IX claims have a two year statute of limitations.¹⁴ TTU argues that, because Plaintiff graduated from TTU sometime in 2017, the statute of limitations ran at the end of 2019. Again, TTU's argument is without merit.

As an initial matter, as argued above, TTU's misconduct as an employer continued through at least June 2022 (and even beyond), making Plaintiff's claims based on that conduct well within a two-year statute of limitations period. Moreover, certain of Plaintiff's Title IX claims did not begin to accrue for much of the misconduct alleged until 2022, well within the two-year statutory period. Title IX claims may accrue when the conduct occurs, or when plaintiff is aware of the experience of the circumstances that would lead a reasonable person to become aware of same.¹⁵ Dr. Wells alleges that she only later became aware of certain of the harmful misconduct that occurred during and after her tenure at TTU—including her removal from academic articles and the dissemination of false and harmful information about her. (Compl. ¶¶ 101, 102-104, 114-115, 117, 146)

Further, much like Dr. Wells' Title VII claims, Dr. Wells' allegations of TTU's continuing misconduct and harms to Dr. Wells make TTU's prior misconduct timely as well. The doctrine of continuing violations applies when a defendant engages in a series of related actions, where at least one of the actions falls within the limitations period.¹⁶ Courts examine several factors when determining whether conduct constitutes a continuing violation, including: (1) the subject matter, or whether the acts involve the same type of discrimination; (2) frequency, or whether the acts are recurring or isolated; and (3) degree of permanence, or whether the acts are such the plaintiff should

¹⁴ *Lozano v. Baylor Univ.*, No. 6:16-CV-403-RP, 2022 WL 4715725, at *3 (W.D. Tex. Sept. 30, 2022).

¹⁵ *Id.*

¹⁶ *Berry v. Board of Supervisors of Louisiana State Univ.*, 715 F.2d 971, 979 (5th Cir. 1983), *cert. denied*, 479 U.S. 868, 107 S.Ct. 232 (1986); *Arredondo v. Estrada*, 120 F.Supp.3d 637, 644 (S.D. Tex. 2015).

know to assert his rights.¹⁷ Here, TTU's misconduct involves gender discrimination/sexual harassment which took place over a span over many years that eventually led Dr. Wells to realize she had experienced actionable harassment and discrimination. (Compl. ¶¶ 37, 39, 41, 45, 54-60, 65-70, 72, 89-94, 96-104, 105-107, 109, 111-117)

Construing all allegations as true and in Plaintiff's favor, Plaintiff alleges timely Title IX claims. TTU's motion should be dismissed.

C. Dr. Wells Adequately States Her Title VII Claims.

TTU asserts that Plaintiff fails to state claims for sexual harassment, hostile work environment, and retaliation. For each, TTU argues that Plaintiff's allegations are merely a "formulaic recitation" of the elements of the claims. TTU's arguments are without merit.

1. Sexual Harassment and Hostile Work Environment

In the Fifth Circuit, a plaintiff alleging discrimination is not required to "plead a prima facie case of discrimination" in order to survive a 12(b)(6) motion to dismiss for failure to state a claim.¹⁸ Rather, the key determination is "whether a defendant took the adverse employment action against a plaintiff *because of* her protected status."¹⁹

Here, Dr. Wells alleged a pattern of sexual harassment, including comments on her attire, suggestions that she pursue romantic opportunities in order to benefit the lab, repeated requirements that she reside in a hotel room with her professors, persistent demeaning remarks and bullying, and systematic degradation of her reputation and career opportunities. All actions were based on Dr. Wells' protected status as a woman, including actions taken and encouraged by Dr. Prien once Dr.

¹⁷ *Celestine v. Petroleos de Venezuela, SA*, 266 F.3d 343, 351 (5th Cir. 2001), *abrogated on other grounds*, *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S.Ct. 2061 (2002); *see also*, *Berry v. Bd. of Sup'rs of L.S.U.*, 715 F.2d 971, 980 (5th Cir. 1983).

¹⁸ *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 122 S. Ct. 992, 999 (2002).

¹⁹ *Carter v. Transp. Workers Union of Am. Loc. 556*, 353 F. Supp. 3d 556, 577 (N.D. Tex. 2019) (emphasis in original).

Wells made her discomfort with his behavior clear. (Compl. ¶¶ 37, 39, 41, 45, 54-60, 65-70, 72, 96-104, 109, 112-117)

2. Retaliation

To state a claim for retaliation, a plaintiff must state that the employer took an adverse employment actions against plaintiff in retaliation for engaging in protected conduct.²⁰ Protected conduct occurs when plaintiff “opposes any practice made an unlawful employment practice” under Title VII.

Here, Dr. Wells alleges that she engaged in protected activity, including reports to TTU regarding the illicit and damaging behavior she endured. (Compl. ¶¶ 105-107). She then alleges that Defendants retaliated by, *inter alia*, terminating Dr. Wells’ mentorship, publicly excluding her from University sanctioned relationships. (Compl. ¶ 112) Indeed, on June 10, 2022, TTU knowingly sent or allowed to be sent an email blacklisting Dr. Wells from the community. (Compl. ¶ 112)

D. Dr. Wells States A Claim Pursuant to Title IX.

TTU asserts that Plaintiff fails to state a claim pursuant to Title IX solely on the basis that Plaintiff purportedly fails to identify who at TTU had actual knowledge of the harassment.

To establish a Title IX claim, Plaintiff must show that: (1) an appropriate person who has at a minimum authority to institute corrective measures to end the discrimination (2) had actual notice of the discrimination and (3) must have failed to adequately respond to the notice.²¹ However, the determination of whether someone is an “appropriate person” for purposes of Title IX notice is necessarily a factual question to be determined by the factfinder.²² Such a decision is premature before any discovery has commenced.

²⁰ *Chavez v. Aber*, 122 F. Supp. 3d 581, 599 (W.D. Tex. 2015).

²¹ *Doe v. Beaumont Indep. Sch. Dist.*, 615 F. Supp. 3d 471, 498 (E.D. Tex. 2022).

²² *Murrell v. School Dist. No. 1*, 186 F.3d 1238, 1247 (10th Cir. 1999) (reversing lower court’s dismissal of Title IX and § 1983 claims) (“Because officials’ roles vary among school districts, deciding who exercises substantial control for the purposes of Title IX liability is necessarily a fact-based inquiry.”).

Here, Plaintiff adequately alleges that she reported the misconduct to an “appropriate person.” First, Dr. Wells alleged that she reported the misconduct of Dr. Prien and Dr. Penrose to Mark Sheridan, Vice Provost for Graduate and Postdoctoral Affairs and Dean of the Graduate School. (Compl. ¶ 106) Second, Dr. Wells alleges that high ranking individuals at TTU perpetrated much of the misconduct, including the TTU System Commercialization Director of the Office of Research Commercialization, the Vice President for Research and Innovation, Executive Director of the technology transfer office, Office of the General Counsel for TTU, TTU’s outside IP counsel, and individuals with control over TTU’s website. (Compl. ¶¶ 90-94, 102-104, 112-114, 116)

E. To The Extent Any Claims Are Dismissed, Dr. Wells Requests Dismissal Without Prejudice And Seeks Leave To Amend.

If the Court grants any part of TTU’s motion (it should not), Dr. Wells requests dismissal without prejudice and seeks leave to amend. Leave to amend is granted freely and courts are biased in favor of granting leave.²³ Courts only deny leave where the amendment is a product of undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies, undue prejudice, or futility.²⁴ None of those factors is met here. Rather, Dr. Wells seeks precautionary leave to amend at the earliest opportunity—her opposition to the court’s first-considered motion to dismiss. Dr. Wells has only amended her complaint once as of right, and no discovery has yet taken place that could arguably prejudice Defendants. As argued herein, Dr. Wells’ claims have merit. However, to the extent any claims are ruled insufficiently pleaded, the opportunity to amend at this early stage is appropriate. For these reasons, if the Court dismisses any of Dr. Wells’ claims, leave to amend should be granted.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny TTU’s motion to

²³ *Thomas v. Chevron USA, Inc.*, 832 F.3d 586, 590 (5th Cir. 2016) (noting that a formal motion for leave to amend is not required).

²⁴ *Id.*

dismiss. To the extent the court grants dismissal of any claim, Plaintiff respectfully requests, for the reasons specified herein, that the Court grant such dismissal without prejudice and with leave to amend.

Dated: August 3, 2023

Respectfully submitted,

**BREWER, ATTORNEYS &
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record on August 3, 2023, via the court's electronic filing system.

/s/ William A. Brewer, IV
WILLIAM A. BREWER IV