

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**CHERYL MATORY
TOMECA BARNES**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:16-CV-989-LG-RH

**HINDS COUNTY SHERIFF VICTOR MASON,
IN HIS INDIVIDUAL CAPACITY, AND
HINDS COUNTY, MISSISSIPPI**

DEFENDANTS

**SHERIFF VICTOR MASON AND HINDS COUNTY,
MISSISSIPPI'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Come now, Sheriff Victor Mason and Hinds County, Mississippi, by and through counsel, and in response to Plaintiffs' First Amended Complaint would show unto the Court as follows:

FIRST DEFENSE

Answering defendants specifically assert and invoke all the privileges available to them as set forth in Federal R. Civ. P. 12(b)(1)-(7) for which a good faith, legal and/or factual basis exists or may exist.

SECOND DEFENSE

Insofar as any alleged cause of action for race, sex or gender discrimination, or any portion thereof, was not contained in the charge discrimination filed with the Equal Employment Opportunity Commission within the time prescribed by 42 U.S.C. § 2000e-5(e), which statute is plead as a defense and as a statute of limitations, the First Amended Complaint should be dismissed.

THIRD DEFENSE

Plaintiffs' First Amended Complaint fails to state facts against the Answering defendants which would rise to the level of a constitutional deprivation under the laws of the United States or the Constitution of the United States.

FOURTH DEFENSE

Insofar as any state law claims are concerned, Answering defendants invoke each and every restriction, limitation, requirement, privilege and immunity of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, *et seq.*

FIFTH DEFENSE

All or part of the claims asserted in this action are barred by the applicable statutes of limitations, including 29 U.S.C. § 255-256.

SIXTH DEFENSE

At all relevant times, the Plaintiff was an exempt employee and not entitled to overtime under all applicable regulations and provisions of the Fair Labor Standards Act, including without limitation 29 U.S.C. § 213(a)(1).

SEVENTH DEFENSE

Further, and in the alternative if necessary, defendants state that part or all of any time Plaintiffs allege should be paid to them is properly preliminary or postliminary time under the Portal-to-Portal Pay Act; 29 U.S.C. § 254(a), and therefore not compensable.

EIGHTH DEFENSE

Further, and in the alternative if necessary, any alleged violations are *de minimis*.

NINTH DEFENSE

In the alternative if necessary defendants state that their actions with respect to Plaintiffs were taken in good faith in conformity with and reliance on a written administrative regulation, order, ruling, approval, interpretation, and/or administrative practice or policy.

TENTH DEFENSE

Further, and in the alternative if necessary, defendants state that their actions with respect to Plaintiffs were taken in good faith with reasonable grounds to believe such conduct comported with the Fair Labor Standards Act or interpretations of the Fair Labor Standards Act. Therefore, liquidated damages are not appropriate.

ELEVENTH DEFENSE

Defendants state that Plaintiffs have received full payment for all work performed thereby barring Plaintiffs' claims.

TWELFTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the defendants have acted, at all applicable times, reasonably and in good faith.

THIRTEENTH DEFENSE

Plaintiffs' state law claims are based on an FLSA claim and are, therefore, preempted.

FOURTEENTH DEFENSE

Defendants are entitled to all setoffs available under the Fair Labor Standards Act.

FIFTEENTH DEFENSE

Answering defendants deny that they have been guilty of any actionable conduct.

SIXTEENTH DEFENSE

Plaintiff failed to exhaust internal administrative remedies and, therefore, her claims are barred.

SEVENTEENTH DEFENSE

Any and all actions taken with respect to Plaintiffs were not based upon any prohibited factors or upon any unlawful or impermissible reasons, but were taken in good faith and for legitimate reasons and based upon legitimate factors that included job performance, level of professional and judgment, level of responsibilities, market forces, salary history, total years of experience, years of experience as administrator, years of experience in the job, certification, number of contract days worked, and length of work day.

EIGHTEENTH DEFENSE

Plaintiffs have failed to mitigate their damages.

NINTEENTH DEFENSE

Plaintiffs suffered no adverse employment action.

TWENTIETH DEFENSE

Answering defendants did not engage in unfavorable or adverse employment action that gave rise to an inference of discrimination against Plaintiffs on account of race, sex or gender.

TWENTY-FIRST DEFENSE

Answering defendants did not engage in or take any cognizable adverse personnel action against Plaintiffs.

TWENTY-SECOND DEFENSE

No causal link exists between any protected activity engaged in by Plaintiffs and any unfavorable or adverse employment action against Plaintiffs.

TWENTY-THIRD DEFENSE

Plaintiffs' failure to show that they have been treated differently from other employees in similar situations is fatal to their claim of race, sex or gender discrimination violative of Title VII and requires dismissal.

TWENTY-FOURTH DEFENSE

ADMISSIONS AND DENIALS

FIRST AMENDED COMPLAINT

And now, without waiving any defense heretofore or hereinafter set forth, Answering defendants respond to the allegations of Plaintiffs' First Amended Complaint, paragraph by paragraph, as follows:

JURISDICTION AND VENUE

1. Answering defendants admit that jurisdiction in this matter is appropriate. Answering defendants deny the remaining allegations of paragraph 1 of Plaintiffs' First Amended Complaint.

2. Answering defendants admit that venue in this matter is proper. Answering defendants deny the remaining allegations of Plaintiffs' First Amended Complaint.

PARTIES

3. Answering defendants admit the allegations of paragraph 3 of Plaintiffs' First Amended Complaint.

4. Answering defendants admit the allegations of paragraph 4 of Plaintiffs' First Amended Complaint.

5. Answering defendants admit that Victor Mason is the duly elected Sheriff of Hinds County, Mississippi and that he may be served with process pursuant to the Federal Rules of Civil Procedure. Answering defendants lack information sufficient to make a determination as to the truth of the remaining allegations of paragraph 5 of Plaintiffs' First Amended Complaint and, as such, deny the same.

6. Answering defendants admit that Hinds County, Mississippi, is a political subdivision organized and existing under and by virtue of the laws of the State of Mississippi and that it may be served with process pursuant to the Federal Rules of Civil Procedure. Answering defendants deny the remaining allegations of paragraph 6 of the Plaintiffs' First Amended Complaint.

STATEMENT OF FACTS

7. Answering defendants admit that in 2015, Mason asked, among others, Matory to assist him in his seeking election as the Sheriff of Hinds County, Mississippi.

Answering defendants deny the remaining allegations of paragraph 7 of Plaintiffs' First Amended Complaint as stated.

8. Answering defendants deny the allegations of paragraph 8 of Plaintiffs' First Amended Complaint as stated.

9. Answering defendants deny the allegations of paragraph 9 of Plaintiffs' First Amended Complaint as stated.

10. Answering defendants admit that Victor Mason defeated then Sheriff Tyrone Lewis in the primary election in 2015. Answering defendants deny the remaining allegations of paragraph 10 of Plaintiffs' First Amended Complaint as stated.

11. Answering defendants deny the allegations of paragraph 11 of Plaintiffs' First Amended Complaint as stated.

12. Answering defendants admit that Mason attended a victory party and that photographs were taken, Answering defendants deny the remaining allegations of paragraph 12 of Plaintiffs' First Amended Complaint.

13. Answering defendants deny the allegations of paragraph 13 of Plaintiffs' First Amended Complaint as stated.

14. Answering defendants deny the allegations of paragraph 14 of Plaintiffs' First Amended Complaint as stated.

15. Answering defendants deny the allegations of paragraph 15 of Plaintiffs' First Amended Complaint as stated.

16. Answering defendants deny the allegations of paragraph 16 of Plaintiffs' First Amended Complaint as stated.

17. Answering defendants deny the allegations of paragraph 17 of Plaintiffs' First Amended Complaint as stated.

18. Answering defendants deny the allegations of paragraph 18 of Plaintiffs' First Amended Complaint as stated.

19. Answering defendants deny the allegations of paragraph 19 of Plaintiffs' First Amended Complaint as stated.

20. Answering defendants deny the remaining allegations of paragraph 20 of Plaintiffs' First Amended Complaint as stated.

21. Answering defendants admit that Sheriff Mason was sworn in as the Sheriff of Hinds County, Mississippi on December 31, 2016. Furthermore, answering defendants admit that Sheriff Mason subsequently hired Matory as undersheriff and Barnes as supervisor of the Internal Affairs Division. Answering defendants deny the remaining allegations of paragraph 21 of Plaintiffs' First Amended Complaint.

22. Answering defendants deny the allegations of paragraph 22 of Plaintiffs' First Amended Complaint.

23. Answering defendants deny the allegations of paragraph 23 of Plaintiffs' First Amended Complaint.

24. Answering defendants deny the allegations of paragraph 24 of Plaintiffs' First Amended Complaint.

25. Answering defendants deny the allegations of paragraph 25 of Plaintiffs' First Amended Complaint.

26. Answering defendants deny the allegations of paragraph 26 of Plaintiffs' First Amended Complaint.

27. Answering defendants deny the allegations of paragraph 27 of Plaintiffs' First Amended Complaint.

28. Answering defendants admit that Matory and Barnes were both moved to different positions than those they originally began working in. Answer defendants deny the remaining allegations of paragraph 28 of Plaintiffs' First Amended Complaint.

29. Answering defendants admit that Matory was assigned a crime scene investigative position. Answer defendants deny the remaining allegations of paragraph 29 of Plaintiffs' First Amended Complaint.

30. Answering defendants admit that Matory was directed to appear at the office of Claire Barker, Counsel for Hinds County Sheriff's Department. Answering defendants deny the remaining allegations of paragraph 30 of Plaintiffs' First Amended Complaint as stated.

31. Answering defendants admit that Matory left her vehicle in the middle of the street and threw her service weapon on the seat of the same. Answering defendants deny the remaining allegations of paragraph 31 of Plaintiffs' First Amended Complaint as stated.

32. Answering defendants admit that Matory was given correspondence regarding her termination from Hinds County, Mississippi Sheriff's Department. Answering defendants deny the remaining allegations of paragraph 32 of Plaintiffs' First Amended Complaint.

33. Answering defendants deny the allegations of paragraph 33 of Plaintiffs' First Amended Complaint.

34. Answering defendants deny the allegations of paragraph 34 of Plaintiffs' First Amended Complaint.

35. Answering defendants deny the allegations of paragraph 35 of Plaintiffs' First Amended Complaint as stated.

36. Answering defendants deny the allegations of paragraph 36 of Plaintiffs' First Amended Complaint as stated.

37. Answering defendants deny the allegations of paragraph 37 of Plaintiffs' First Amended Complaint as stated.

CAUSE OF ACTIONS

SECUALLY HOSTILE WORK ENVIRONMENT
QUID PRO QUO SEXUAL HARASSMENT

38. Answering defendants repeat and incorporate by reference each and every defense, admission, and denial to paragraphs 1-37 hereinabove as if the same were specifically set out herein.

39. Answering defendants deny the allegations of paragraph 39 of Plaintiffs' First Amended Complaint.

40. Answering defendants deny the allegations of paragraph 40 of Plaintiffs' First Amended Complaint.

41. Answering defendants deny the allegations of paragraph 41 of Plaintiffs' First Amended Complaint.

SEX DISCRIMINATION

42. Answering defendants repeat and incorporate by reference each and every defense, admission, and denial to paragraphs 1-41 hereinabove as if the same were specifically set out herein.

43. Answering defendants deny the allegations of paragraph 43 of Plaintiffs' First Amended Complaint.

44. Answering defendants deny the allegations of paragraph 44 of Plaintiffs' First Amended Complaint.

45. Answering defendants deny the allegations of paragraph 45 of Plaintiffs' First Amended Complaint.

RACE DISCRIMINATION

46. Answering defendants repeat and incorporate by reference each and every defense, admission, and denial to paragraphs 1-45 hereinabove as if the same were specifically set out herein.

47. Answering defendants deny the allegations of paragraph 47 of Plaintiffs' First Amended Complaint.

48. Answering defendants deny the allegations of paragraph 48 of Plaintiffs' First Amended Complaint.

RETALIATION - FIRST AMENDMENT AND TITLE VII

49. Answering defendants repeat and incorporate by reference each and every defense, admission, and denial to paragraphs 1-48 hereinabove as if the same were specifically set out herein.

50. Answering defendants deny the allegations of paragraph 50 of Plaintiffs' First Amended Complaint.

51. Answering defendants deny the allegations of paragraph 51 of Plaintiffs' First Amended Complaint.

52. Answering defendants deny the allegations of paragraph 52 of Plaintiffs' First Amended Complaint.

BREACH OF CONTRACT/DETRIMENTAL RELIANCE

53. Answering defendants repeat and incorporate by reference each and every defense, admission, and denial to paragraphs 1-52 hereinabove as if the same were specifically set out herein.

54. Answering defendants deny the allegations of paragraph 54 of Plaintiffs' First Amended Complaint.

55. Answering defendants deny the allegations of paragraph 55 of Plaintiffs' First Amended Complaint.

56. Answering defendants deny the allegations of paragraph 56 of Plaintiffs' First Amended Complaint.

FAIR LABOR STANDARDS ACT

57. Answering defendants repeat and incorporate by reference each and every defense, admission, and denial to paragraphs 1-56 hereinabove as if the same were specifically set out herein.

58. Answering defendants deny the allegations of paragraph 58 of Plaintiffs' First Amended Complaint.

59. Answering defendants deny the allegations of paragraph 59 of Plaintiffs' First Amended Complaint.

DAMAGES

60. Answering defendants deny the allegations of paragraph 60 of Plaintiffs' First Amended Complaint.

61. Answering defendants deny the allegations of paragraph 61 of Plaintiffs' First Amended Complaint.

RELIEF

62. Answering defendants deny the allegations of paragraph 62 of Plaintiffs' First Amended Complaint including subparagraphs a-f and would affirmatively aver that the Plaintiffs are not entitled any relief whatsoever.

As for the unnumbered paragraph, which commences, "WHEREFORE PREMISES CONSIDERED..." answering defendants deny each and every allegation contained therein and would affirmatively aver that Plaintiffs are not entitled to any relief whatsoever.

TWENTY-FIFTH DEFENSE

Answering defendants is protected by and invokes all the immunities granted by judicial, common law, and statutory sovereign immunity.

TWENTY-SIXTH DEFENSE

Answering defendants alleges that it met or exceeded the requirements of law and due care and that it is guilty of no acts or omissions which either caused or contributed to the incident in question.

TWENTY-SEVENTH DEFENSE

Answering defendants alleges that Plaintiffs' claims are barred by the applicable statute of limitations, *res judicata*, collateral estoppel, laches, waiver, contributory negligence, accord and satisfaction, lack of standing, release, and/or estoppel.

TWENTY-EIGHTH DEFENSE

Answering defendants assert the defense specified in *Faragher v. Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) to the extent applicable.

TWENTY-NINTH DEFENSE

The Plaintiffs are not entitled to recover any enhanced, punitive, or exemplary damages, as provided by Miss. Code Ann. § 11-46-15, insofar as any state law claims are concerned. Additionally, Answering defendants would affirmatively state that the Plaintiffs are not entitled to recover enhanced, punitive, or exemplary damages, the same being violative of the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and Article III, Section 14 of the Constitution of the State of Mississippi, inclusive of, but not necessarily limited to, the following separate and several grounds:

(a) The procedures may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing.

(b) The procedures fail to provide means for awarding separate judgments against alleged joint tortfeasors.

(c) The procedures fail to provide a limit on the amount of the award against the defendants.

(d) The procedures fail to provide specific standards for the amount of the award of punitive damages.

(e) The procedures permit award of punitive damages upon satisfaction of a standard of proof less than that applicable to the imposition of criminal sanctions.

(f) The procedures permit multiple awards of punitive damages for the same alleged act.

(g) The procedures fail to provide a clear consistent appellate standard of review of an award for punitive damages.

(h) The procedures may permit the admission of evidence relative to punitive damages in the same proceedings during which liability and compensatory damages are determined.

(i) The standard of conduct upon which punitive damages are sought is vague.

THIRTIETH DEFENSE

Answering defendants reserve the right to add additional defenses as the same become known during the course of discovery of this cause.

And now, having answered the First Amended Complaint filed against them, Answering defendants request that the same be dismissed, that it be discharged, and that costs be assessed against the Plaintiffs.

DATE: March 2, 2017.

Respectfully submitted,

**SHERIFF VICTOR MASION AND
HINDS COUNTY, MISSISSIPPI**

BY: /s/William R. Allen
One of Their Attorneys

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CERTIFICATE

I, the undersigned of Allen, Allen, Breeland & Allen, PLLC, hereby certify that on this day, I electronically filed the foregoing Sheriff Victor Mason and Hinds County, Mississippi's Answer to Plaintiffs' First Amended Complaint with the Clerk of the Court which gave notice of the same to:

Lisa M. Ross, Esq.
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The 2nd day of March, 2017.

/s/William R. Allen
OF COUNSEL