

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA, ILLINOIS**

DIANE REDWITZ,	)	
	)	
Plaintiff,	)	
	)	Case No.: 18-cv-02208-CSB-EIL
vs.	)	
	)	Judge Colin Stirling Bruce
COUNTY OF KANKAKEE, KANKAKEE	)	
COUNTY SHERIFF'S OFFICE, KENNETH	)	Magistrate Judge Eric I. Long
MCCABE, KANKAKEE COUNTY STATE'S)	)	
ATTORNEY'S OFFICE, JAMES ROWE,	)	
MARK ROGERS, LYNN MACKIN AND	)	
ANDREW DELONG,	)	
	)	
Defendants.	)	

**DEFENDANT COUNTY OF KANKAKEE'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant County of Kankakee, by its attorney, Julie A. Bruch, for the Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint, states as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this Complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C., §§ 2000e to 2000e-17, 28 U.S.C. §§ 1331, 28 U.S.C. 1343, and 29 U.S.C. 2601, et seq.

**ANSWER:** The County admit that this Court has jurisdiction but deny violating the statutes cited.

2. Venue is proper in the United States District Court for the Central District of Illinois, because the Plaintiff engaged in employment activities in Kankakee County,

Illinois.

**ANSWER:** Admitted.

3. Plaintiff, Diane Redwitz, timely filed charges alleging retaliation, age discrimination, and sex discrimination against the Defendant, County of Kankakee, with the Equal Employment Opportunity Commission (hereinafter "EEOC").

**ANSWER:** The County admit that plaintiff filed an EEOC Charge alleging retaliation, age discrimination, and sex discrimination against the Defendants, but Lack knowledge sufficient to form a belief as to whether the Charge was timely.

4. On or about April 18, 2018, Plaintiff, Diane Redwitz, was issued and received a Notice of Right to Sue Letter from the U.S. Equal Employment Opportunity Commission.

**ANSWER:** Admitted.

5. This Court has supplemental jurisdiction over Plaintiff's claims under Illinois common law because they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.

**ANSWER:** Admitted.

## **II. PARTIES**

6. Plaintiff restates and realleges paragraphs 1-5 above as if fully set forth herein.

**ANSWER:** The County restates its answers to paragraphs 1-5 for its answer to the

above paragraph as though fully set forth herein.

7. Plaintiff, Diane Redwitz, is an individual residing in Bourbonnais, Kankakee County, Illinois, female and age 65.

**ANSWER:** Admitted.

8. Defendant, County of Kankakee, is a body politic, containing various departments.

**ANSWER:** Admitted.

9. Defendant Kankakee County Sheriff's Office is the sheriff's police office for the County of Kankakee.

**ANSWER:** Denied. The Sheriff's Office is a separate governmental entity in the County.

10. Defendant Kenneth McCabe is an individual and the sheriff for the County of Kankakee.

**ANSWER:** Denied.

11. Defendant Kankakee County State's Attorney's Office is the state's attorney's office for the County of Kankakee.

**ANSWER:** Admitted.

12. Defendant James Rowe is an individual and the State's Attorney for Defendant County of Kankakee.

**ANSWER:** Admitted.

13. Defendant Mark Rogers is an individual and the County Engineer for Defendant County of Kankakee.

**ANSWER:** Admitted.

14. Defendant Lynn Mackin is an individual and the Human Resources Director for Defendant County of Kankakee.

**ANSWER:** Denied.

15. Defendant Andrew DeLong is an individual and employee of the Kankakee County Highway Department.

**ANSWER:** Admitted.

### **III. OPERATIVE FACTS**

16. Plaintiff restates and alleges paragraphs 1-15 above as if fully set forth herein.

**ANSWER:** The County restates its answers to paragraphs 1-15 for its answer to the above paragraph as though fully set forth herein.

17. In or around 2006, Plaintiff became employed with Defendant's Highway Department as a GIS Technician.

**ANSWER:** Admitted.

18. As a GIS Technician, Plaintiff worked in the Engineering Division within the Highway Department.

**ANSWER:** Admitted.

19. During all times relevant to this Complaint, the other employees of the Engineering Division of the Highway Department were Andrew DeLong (male), Shaun Luedtke (male), Tim Hamilton (male), and the supervisor of this Division was Mark Rogers (male).

**ANSWER:** Admitted.

20. On or about March 19, 2013, Shaun Luedtke began engaging in harassing conduct towards Plaintiff, including but not limited to, yelling at her, swearing at her, and altering her work space.

**ANSWER:** Denied.

21. On or about March 19, 2013, Shaun Luedtke became angry with Plaintiff and yelled at her to “get the fuck” in her office.

**ANSWER:** Denied.

22. Shortly after that incident, also on March 19, 2013, Plaintiff complained to her supervisor, Mark Rogers, regarding Shaun Luedtke’s conduct. Mark Rogers advised Plaintiff “not to worry about” Shaun Luedtke’s conduct.

**ANSWER:** The first sentence is admitted. The second sentence is denied.

23. On March 20, 2013, Plaintiff arrived at work and discovered that green board had been placed in the windows of her office by Shaun Luedtke.

**ANSWER:** Denied.

24. On or about March 22, 2013, Plaintiff again spoke with Mark Rogers and advised that she believed Shaun Luedtke was harassing her and requested that he be written up.

**ANSWER:** Admitted.

25. Thereafter, Shaun Luedtke’s harassing conduct towards Plaintiff increased, and Andrew DeLong and Tim Hamilton also began harassing Plaintiff.

**ANSWER:** Denied.

26. Plaintiff continued to make regular complaints to Mark Rogers and Lynn Mackin regarding the harassment, but Defendants failed and refused to stop her co-workers' harassment.

**ANSWER:** Denied.

27. Because her employer failed and refused to protect her, from on or about June 22, 2017, until on or about August 18, 2017, Plaintiff began setting her cell phone on her office desk in plain sight while it recorded, in hopes of capturing her co-workers harassing behavior.

**ANSWER:** Denied.

28. On August 24, 2017, Plaintiff was sitting at her desk in her office within the Highway Department, Andrew DeLong was outside her office talking with another individual and using vulgar language.

**ANSWER:** Denied.

29. Plaintiff stepped out of her office and asked to speak with Andrew DeLong when he finished his conversation.

**ANSWER:** Denied.

30. Shortly after, Andrew DeLong came into the doorway of Plaintiff's office, blocked the door, and yelled at her with clenched fists, making Plaintiff fear for her safety.

**ANSWER:** Denied.

31. Plaintiff immediately complained to Mark Rogers regarding the harassing

conduct.

**ANSWER:** Denied.

32. On or about August 25, 2017, Plaintiff was driving to work. She began to panic about returning to the harassing work environment. She immediately drove to her doctor's office, who ordered her to take off work on medical leave.

**ANSWER:** The Defendants lack knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

33. From August 25, 2017, Plaintiff remained on medical leave pursuant to her doctor's order.

**ANSWER:** Admitted.

34. In August 2017, Defendant Lynn Mackin recommended that Plaintiff contact Sheriff Kenneth McCabe regarding the harassment she experienced.

**ANSWER:** The County lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 34.

35. On meeting with a detective from the Sheriff's Office, Plaintiff was asked if she had any proof of the harassment. At that time, she voluntarily provided the recordings she had made in her office.

**ANSWER:** The County lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. On or about September 13 or 21, 2017, Plaintiff contacted the Equal Employment Opportunity Commission ("EEOC") to file a charge of discrimination.

**ANSWER:** The County lacks knowledge sufficient to form a belief as to the truth of

the allegations contained in paragraph 36.

37. On October 31, 2017, Plaintiff went to her workplace to discuss her return to work. At that time, Mark Rogers notified her that her employment was being terminated.

**ANSWER:** Denied.

38. On or about October 31, 2017, Defendant Mark Rogers sent correspondence to Plaintiff regarding the termination of her employment. A copy of the letter is attached hereto as Exhibit A. Linda Mackin, James Rowe, and Kenneth McCabe were copied on the letter.

**ANSWER:** Admitted.

39. On many occasions from March 19, 2013, through the time she was terminated, Plaintiff complained to her supervisor, Mark Rogers and to Human Resources Director, Linda Mackin, regarding the harassment directed at her. However, Defendants failed and refused to stop the harassing behavior or otherwise protect Plaintiff.

**ANSWER:** Denied.

40. Plaintiff attempted to file a grievance with her union about the workplace harassment. However, Tim Hamilton, who participated in the harassment, was the union steward, and her grievance was not accepted.

**ANSWER:** The County lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 40.

#### **IV: COUNT I: RETALIATION**

**County of Kankakee**

41. Plaintiff restates and realleges paragraphs 1-40 above as if fully set forth herein.

**ANSWER:** The County restates its answers to paragraphs 1-40 for its answer to the above paragraph as though fully set forth herein.

42. From September 19, 2013, until the termination of her employment, Plaintiff was regularly subjected to harassing conduct from her co-workers Shaun Luedtke, Andrew DeLong, and Tim Hamilton.

**ANSWER:** Denied.

43. Throughout that time, Plaintiff frequently complained to her supervisor, who failed and refused to stop the harassment.

**ANSWER:** Denied.

44. Plaintiff also attempted to file a grievance with her union, which failed to accept or take action on the grievance.

**ANSWER:** The County lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 44.

45. On or about September 13 or 21, 2017, Plaintiff contacted the EEOC to file a charge of discrimination against Defendant.

**ANSWER:** The County lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. In late September or early October 2017, Plaintiff contacted Defendant's Human Resource Office regarding the ongoing harassment. The Human Resource

Director advised her to contact the Sheriff's Office, which Plaintiff did.

**ANSWER:** The first sentence is admitted. The County lacks knowledge sufficient to form a belief as to the truth of the allegations contained in the second sentence.

47. On October 31, 2017, Plaintiff's employment with Defendant was terminated.

**ANSWER:** Admitted.

48. The reason given for the termination of Plaintiff's employment was that Defendant intended to file a felony charge against Plaintiff.

**ANSWER:** Denied.

49. The termination of Plaintiff's employment was due to her engaging in protected activity, including complaining to her supervisor regarding the conditions of her employment, attempting to file a grievance with her union, and contacting the EEOC regarding the conditions of her employment.

**ANSWER:** Denied.

50. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

**ANSWER:** Denied.

51. As a result of Defendant's illegal retaliatory conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

**ANSWER:** Denied.

WHEREFORE, defendant County of Kankakee denies that it is liable to plaintiff and prays that the complaint be dismissed with costs against plaintiff.

**V: COUNT II: SEX DISCRIMINATION**  
**County of Kankakee**

52. Plaintiff restates and realleges by reference paragraphs 1-51 above as though fully set forth herein.

**ANSWER:** The County restates its answers to paragraphs 1-51 for its answer to the above paragraph as though fully set forth herein.

53. The Plaintiff is a member of a protected class as her sex is female.

**ANSWER:** Admitted.

54. The Plaintiff was qualified to continue serving as a GIS Technician with Defendant, as she was performing her job adequately and met the employer's expectations, having never received a negative performance review.

**ANSWER:** Denied.

55. Andrew DeLong's sex is male; Shaun Luedtke sex is male; Tim Hamilton's sex is male; and Mark Roger's sex is male.

**ANSWER:** Admitted.

56. The Defendant, through its employees, engaged in discriminatory and harassing conduct towards and then discharged Plaintiff because of Plaintiff's sex.

**ANSWER:** Denied.

57. Specifically, the Defendant's male co-worker's yelled at her, swore at her,

and otherwise harassed her because of her sex (female).

**ANSWER:** Denied.

58. The Defendant favored Andrew DeLong, Shaun Luedtke, and Tim Hamilton to the detriment of the Plaintiff in refusing to properly discipline these male employees and instead terminating Plaintiff's employment.

**ANSWER:** Denied.

59. On or about October 31, 2017, Plaintiff's employment with the Defendant was terminated. The reason given was that Defendant intended to file a felony charge against Plaintiff.

**ANSWER:** Denied.

60. The termination of Plaintiff's employment was due to her sex.

**ANSWER:** Denied.

61. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

**ANSWER:** Denied.

62. As a result of Defendant's illegal and discriminatory conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional mental anguish.

**ANSWER:** Denied.

WHEREFORE, defendant County of Kankakee denies that it is liable to plaintiff and prays that the complaint be dismissed with costs against plaintiff.

**VI: COUNT III: AGE DISCRIMINATION**  
**County of Kankakee**

63. Plaintiff restates and realleges paragraphs 1-62 above as it fully set forth herein.

**ANSWER:** The County restate its answers to paragraphs 1-62 for its answer to the above paragraph as though fully set forth herein.

64. The Plaintiff is a member of a protected class as she is 65 years old.

**ANSWER:** Admitted.

65. The Plaintiff was qualified to continue serving as a GIS Technician with Defendant, as she was performing her job adequately and met the employer's expectations, having never received a negative performance review.

**ANSWER:** Denied.

66. Shaun Luedtke age is 39.

**ANSWER:** Admitted.

67. The Defendant, through its employees, engaged in discriminatory and harassing conduct towards and then discharged Plaintiff because of Plaintiff's age.

**ANSWER:** Denied.

68. Specifically, the Plaintiff's 39-year-old co-worker yelled at her, swore at her, and otherwise harassed her, and Defendant failed and refused to stop the harassment or otherwise protect Plaintiff.

**ANSWER:** Denied.

69. The Defendant favored Shaun Luedtke to the detriment of the Plaintiff in

refusing to properly discipline this younger employee and instead terminating Plaintiff's employment.

**ANSWER:** Denied.

70. On or about October 31, 2017, Plaintiff's employment with Defendant was terminated. The reason given was that Defendant intended to file a criminal charge against Plaintiff.

**ANSWER:** The first sentence is admitted. The second sentence is denied.

71. The termination of Plaintiff's employment was due to her age.

**ANSWER:** Denied.

72. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

**ANSWER:** Denied.

73. As a result of Defendant's illegal and discriminatory conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

**ANSWER:** Denied.

WHEREFORE, defendant County of Kankakee denies that it is liable to plaintiff and prays that the complaint be dismissed with costs against plaintiff.

**VII: COUNT IV: VIOLATION OF FAMILY AND MEDICAL LEAVE ACT**  
**County of Kankakee**

74. Plaintiff restates and realleges paragraphs 1-73 above as if fully set forth

herein.

**ANSWER:** The County restates its answers to paragraphs 1-73 for its answer to the above paragraph though fully set forth herein.

75. On August 25, 2017, due to ongoing workplace harassment, Plaintiff began leave from work under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et seq.

**ANSWER:** Denied.

76. While off work on protected leave, Plaintiff's employment was terminated on October 31, 2017.

**ANSWER:** Admitted.

77. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

**ANSWER:** Denied.

78. As a result of Defendant's illegal conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

**ANSWER:** Denied.

WHEREFORE, defendant County of Kankakee denies that it is liable to plaintiff and prays that the complaint be dismissed with costs against plaintiff.

**VIII: COUNT V: MALICIOUS PROSECUTION**

**County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe,  
Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, and Lynn**

**Mackin.**

79. Plaintiff restates and realleges paragraphs 1-78 above as if fully set forth herein.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

80. Although the severe and pervasive harassment against Plaintiff continued for years, Defendant County of Kankakee and its employees, including Mark Rogers and Linda Mackin, failed and refused to protect her.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

81. Out of necessity and to protect herself, Plaintiff began leaving her cell phone on her desk, in a public building, in an attempt to record the harassing conduct.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

82. At the recommendation of Linda Mackin, the Human Resources Director for the County of Kankakee, Plaintiff contacted Sheriff Kenneth McCabe to assist her with her harassment complaints.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

83. During a meeting with a detective from the Sheriff's Office, Plaintiff was asked if she had proof of her harassment allegations.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is

made thereto.

84. In response, Plaintiff voluntarily supplied the recordings she made in her office, part of a public building, with her cell phone in plain sight.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

85. At said time, Plaintiff informed and advised Defendants County of Kankakee and Kankakee County Sheriff's Office that said records were an effort and attempt to protect herself from ongoing severe and pervasive harassment occurring in the workplace.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

86. At no time did the detective, or any other County employee, inform or warn, Plaintiff that the recordings could constitute evidence of a crime.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

87. Rather than investigate her allegations of criminal conduct, Defendant Sheriff Kenneth McCabe then coordinated with Defendants Mark Rogers, Lynn Mackin, and James Rowe, to maliciously prosecute Plaintiff in retaliation for her complaints and to terminate her employment with the County.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

88. On or about October 31, 2017, Defendant County of Kankakee terminated

Plaintiff's employment. The County of Kankakee claimed that Plaintiff's termination was a result of its intent to file a felony charge against Plaintiff.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

89. On or about December 1, 2017, despite knowledge that Plaintiff's recordings in plain sight in a public building were an attempt to protect herself from severe and pervasive harassment, Sheriff Kenneth McCabe and States Attorney James Rowe charged Plaintiff with a Class IV Felony for Eavesdropping.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

90. The charge was brought and filed against Plaintiff not to uphold the law, but with a malicious intent to retaliate against her for making complaints of harassment and to terminate her employment and constitute an abuse of the justice system.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

91. On or about July 17, 2018, Plaintiff pled guilty to a misdemeanor charge of disorderly conduct at the advice of counsel in order to avoid a trial on a felony charge for which she could have been sentenced to jail if convicted and in order to qualify for eventual expungement of her record.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

92. As a direct result of the criminal felony charge, Plaintiff suffered damages in the form of losing her job, loss of reputation, costs for a criminal defense, compensatory damages, emotional and mental anguish, and attorney's fees as a result of the baseless proceedings.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

**VIII: COUNT VI: CONSPIRACY**

**County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe,  
Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, and Lynn  
Mackin**

93. Plaintiff restates and realleges paragraphs 1-92 above as if fully set forth herein.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

94. Although the severe and pervasive harassment against Plaintiff continued for years, Defendant County of Kankakee and its employees, including Mark Rogers and Linda Mackin, failed and refused to protect her.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

95. Out of necessity and to protect herself, Plaintiff began leaving her cell phone on her desk, in a public building, in an attempt to record the harassing conduct.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

96. At the recommendation of Linda Mackin, the Human Resources Director for the County of Kankakee, Plaintiff contacted Sheriff Kenneth McCabe to assist her with her harassment complaints.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

97. During a meeting with a detective from the Sheriff's Office, Plaintiff was asked if she had proof of her harassment allegations.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

98. In response, Plaintiff voluntarily supplied the recordings she made in her office, part of a public building, with her cell phone in plain sight.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

99. At said time, Plaintiff informed and advised Defendants County of Kankakee and Kankakee County Sheriff's Office that said records were an effort and attempt to protect herself from ongoing severe and pervasive harassment occurring the workplace.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

100. At no time did the detective, or any other County employee, inform or warn Plaintiff that the recordings could constitute evidence of a crime.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is

made thereto.

101. Rather than investigate her allegations of criminal conduct, Defendant Sheriff Kenneth McCabe then coordinated with Defendants Mark Rogers, Lynn Mackin, and James Rowe, to maliciously prosecute Plaintiff in retaliation for her complaints and to terminate her employment with the County.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

102. On or about October 31, 2017, Defendant County of Kankakee terminated Plaintiffs employment. The County of Kankakee claimed that Plaintiffs termination was a result of its intent to file a felony charge against Plaintiff.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

103. On or about December 1, 2017, despite knowledge that Plaintiffs recordings in plain sight in a public building were an attempt to protect herself from severe and pervasive harassment, Sheriff Kenneth McCabe and States Attorney James Rowe charged Plaintiff with a Class IV Felony for Eavesdropping.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

104. The charge was brought and filed against Plaintiff not to uphold the law, but with a malicious intent to retaliate against her for making complaints of harassment and to terminate her employment.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is

made thereto.

105. On or about July 17, 2018, Plaintiff pled guilty to a misdemeanor charge of disorderly conduct at the advice of counsel in order to avoid a trial on a felony charge for which she could have been sentenced to jail if convicted and in order to qualify for eventual expungement of her record.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

106. Plaintiff's prosecution and the termination of her employment were the result of a concerted effort by Defendants.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

107. Defendants County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, and Lynn Mackin coordinated their efforts to retaliate against Plaintiff, terminate her employment, and charge her with a felony, although they knew, or should have known, that Plaintiff's actions did not warrant a felony charge for eavesdropping.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is made thereto.

108. As a direct result of Defendant's conduct, Plaintiff suffered damages in the form of losing her job, loss of reputation, costs for a criminal defense, compensatory damages, emotional and mental anguish, and attorney's fees.

**ANSWER:** The County is filing a Motion to dismiss this claim, thus no response is

made thereto.

**IX: COUNT VI: ASSAULT**

**Andrew DeLong**

109. Plaintiff restates and realleges paragraphs 1-108 above as if fully set forth herein.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

110. On August 24, 2017, while working at her office desk, Plaintiff overheard Andrew DeLong outside her office talking with other individuals and using vulgar language.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

111. Plaintiff stepped out of her office and asked to speak with Andrew DeLong when he finished his conversation.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

112. Shortly after, Andrew DeLong came into the doorway of Plaintiff's office, blocked the door, and yelled at her. DeLong's conduct made Plaintiff fear for her safety.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

113. Defendant Andrew DeLong's physical conduct was done purposely and with an intent to make Plaintiff fear for her safety.

**ANSWER:** This Count is not directed at the County, thus no response is made

thereto.

114. As a result of DeLong's purposeful conduct, Plaintiff feared that Andrew DeLong planned to seriously physically harm her and incurred damages as a result.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

**X: COUNT VI: VIOLATION OF ILLINOIS GENDER VIOLENCE ACT**  
**Andrew DeLong**

115. Plaintiff restates and realleges paragraphs 1-114 above as if fully set forth herein.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

116. At all times relevant hereto, there was in effect in the State of Illinois a statute known as the Gender Violence Act, 740 ILCS 8211, et seq.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

117. On August 24, 2017, while working at her office desk, Plaintiff overheard Andrew DeLong outside her office talking with other individuals and using vulgar language.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

118. Plaintiff stepped out of her office and asked to speak with Andrew DeLong when he finished his conversation.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

119. Shortly after, Andrew DeLong came into the doorway of Plaintiff's office, blocked the door, and yelled at her. DeLong' s conduct made Plaintiff fear for her safety, including fear that Andrew DeLong intended to physically harm her.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

120. Defendant Andrew DeLong's physical conduct was done purposely and with an intent to make Plaintiff fear for her safety.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

121. As a result of DeLong's purposeful conduct, Plaintiff feared that Andrew DeLong planned to seriously physically harm her and incurred damages as a result.

**ANSWER:** This Count is not directed at the County, thus no response is made thereto.

### **AFFIRMATIVE DEFENSES**

Defendant, County of Kankakee, by its attorneys, for its affirmative defenses to the second amended complaint of plaintiff Diane Redwitz, states as follows:

#### **First Affirmative Defense**

Plaintiff failed to state a claim for relief that is plausible on its face when she provided only conclusory legal statements and abstract recitations of the elements of a

cause of action which are insufficient to state a proper claim. *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404-05 (7<sup>th</sup> Cir. 2010); Fed.R.Civ.P. 12(b)(6).

### **Second Affirmative Defense**

Defendants County of Kankakee, Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, Lynn Mackin and Andrew DeLong e cannot be liable under Title VII and the ADEA for any alleged conduct which occurred more than 300 days before plaintiff filed her charge of discrimination with the EEOC. *E.E.O.C. v. Harvey L. Walner & Assocs.*, 91 F.3d 963, 970 (7<sup>th</sup> Cir. 1996).

### **Third Affirmative Defense**

Plaintiff failed to exhaust her administrative remedies when she filed a claim of retaliation under Title VII in federal court without first filing a charge of retaliation under Title VII with the EEOC and therefore such claim is barred. The scope of the complaint brought before the administrative agency limits the scope of subsequent civil proceedings in federal court to only those claims that could reasonably be expected to grow out of the administrative charges. A claim of retaliation under Title VII could not be expected from a charge of age discrimination under the ADEA. *Reynolds v. Tangherlini*, 737 F.3d 1093, 1099-100 (7<sup>th</sup> Cir. 2013).

### **Fourth Affirmative Defense**

Plaintiff's claims as set forth in her Complaint are barred, in whole or in part, by the doctrines of unclean hands, estoppel, and/or after-acquired evidence. The doctrine of unclean hands bars equitable relief when the party seeking that relief is guilty of misconduct in connection with the subject matter of the litigation. *Thomson*

*Learning, Inc. v. Olympia Props., LLC*, 365 Ill. App. 3d 621, 634 (Ill. App. Ct. 2d Dist. 2006). Plaintiff plead guilty in *People v. Redwitz*, Case No. 2018 CM 000499, in the Circuit Court of the Twenty First Judicial Circuit, Kankakee County, to Disorderly Conduct in violation of 720 ILCS 5/26-1(a)(1) in that Redwitz knowingly used her personal cell phone to secretly record conversations between Andrew DeLong, Shaun Luedtke, Timothy Hamilton, and Diane Redwitz, in an unreasonable manner as to alarm or disturb Andrew DeLong, Shaun Luedtke, and Timothy Hamilton, and to provoke a breach of the peace. Plaintiff's conviction has not been reversed or expunged and the County advised plaintiff that she was being terminated for the acts set forth in her Disorderly Conduct conviction.

#### **Fifth Affirmative Defense**

Defendants are immune from liability regarding the payment of punitive damages for plaintiff's claims. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271, 101 S. Ct. 2748, 2762, 69 L. Ed. 2d 616 (1981).

#### **Sixth Affirmative Defense**

Plaintiff's claims are barred, in whole or in part, due to plaintiff's failure to mitigate any alleged damages. In the alternative, to the extent plaintiff has mitigated any alleged damages, Defendant is entitled to a set-off for any interim earnings, benefits or other income. *LaSalle Bank Nat'l Assoc. v. Paramount Properties*, 588 F. Supp. 2d 840, 861 (N.D. Ill. 2008).

#### **Seventh Affirmative Defense**

In the event that any of the allegations of unlawful conduct contained in the complaint are found to have merit, defendants would have made the same decisions irrespective of plaintiff's legally protected status.

**Eighth Affirmative Defense**

Plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87, 114 S.Ct. 2364 (1994), which bars claims for damages for harm caused by actions whose unlawfulness would render a conviction or sentence invalid, because plaintiff plead guilty in *People v. Redwitz*, Case No. 2018 CM 000499, in the Circuit Court of the Twenty First Judicial Circuit, Kankakee County, to Disorderly Conduct in violation of 720 ILCS 5/26-1(a)(1) in that Redwitz knowingly used her personal cell phone to secretly record conversations between Andrew DeLong, Shaun Luedtke, Timothy Hamilton, and Diane Redwitz, in an unreasonable manner as to alarm or disturb Andrew DeLong, Shaun Luedtke, and Timothy Hamilton, and to provoke a breach of the peace. Plaintiff's conviction has not been reversed or expunged and the County advised plaintiff that she was being terminated for the acts set forth in her Disorderly Conduct conviction.

**Ninth Affirmative Defense**

In the event that any of the allegations of unlawful conduct contained in the complaint are found to have merit, defendants took prompt and effective action reasonably calculated to remedy any such acts and have no liability for them.

Defendants reserve the right to amend their answers and to add additional affirmative defenses as plaintiff's claims are more fully disclosed in the course of this litigation.

Respectfully submitted,

**COUNTY OF KANKAKEE, KANKAKEE  
COUNTY STATE'S ATTORNEY'S OFFICE,  
JAMES ROWE, MARK ROGERS, LYNN  
MACKIN AND ANDREW DELONG**

By: *s/Julie A. Bruch*

Defendants' attorney

Julie A. Bruch, #6215813  
O'Halloran Kosoff Geitner & Cook, LLC  
650 Dundee Road, Suite 475  
Northbrook, Illinois 60062  
Phone: 847/291-0200  
Fax: 847/291-9230  
Email: [jbruch@okgc.com](mailto:jbruch@okgc.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA, ILLINOIS

DIANE REDWITZ,	)	
	)	
Plaintiff,	)	
	)	Case No.: 18-cv-02208-CSB-EIL
vs.	)	
	)	Judge Colin Stirling Bruce
COUNTY OF KANKAKEE, KANKAKEE	)	
COUNTY SHERIFF'S OFFICE, KENNETH	)	Magistrate Judge Eric I. Long
MCCABE, KANKAKEE COUNTY STATE'S)	)	
ATTORNEY'S OFFICE, JAMES ROWE,	)	
MARK ROGERS, LYNN MACKIN AND	)	
ANDREW DELONG,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2019, I electronically filed Defendant County of Kankakee's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following registered CM/ECF participant:

Mario P. Carlasare/Carl R. Buck/Meghan E. Preston  
Rathbun Cservenyak & Kozol  
[cbuck@rcklawfirm.com](mailto:cbuck@rcklawfirm.com)  
[mcarlasare@rcklawfirm.com](mailto:mcarlasare@rcklawfirm.com)  
[mpreston@rcklawfirm.com](mailto:mpreston@rcklawfirm.com)

*s/Julie A. Bruch* \_\_\_\_\_

Julie A. Bruch, #6215813  
O'Halloran Kosoff Geitner & Cook, LLC  
650 Dundee Road, Suite 475  
Northbrook, Illinois 60062  
Telephone: (847) 291-0200  
Fax: (847) 291-9230  
e-mail: [jbruch@okgc.com](mailto:jbruch@okgc.com)