

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

Jane Doe,)	
)	
Plaintiff,)	
)	
v.)	No. 18-3191-SEM-TSH
)	
Richard Macleod, Margaret Burke,)	
and Todd Sexton,)	
)	
Defendants.)	

ANSWER AND AFFIRMATIVE DEFENSES¹

Defendants, Margaret Burke and Todd Sexton, by and through their attorney, Lisa Madigan, Attorney General for the State of Illinois, hereby provide their Answer and Affirmative Defenses to Plaintiff’s Complaint [Doc. 1], stating as follows:

JURISDICTION AND VENUE

1. This is an action brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of plaintiff’s rights as secured by the United States Constitution.

ANSWER: Defendants admit Plaintiff brought this action pursuant to 42 U.S.C. § 1983. Defendants admit they were acting under color of law at all times while performing their job duties. Defendants deny violating Plaintiff’s constitutional rights or any of Plaintiff’s rights whatsoever. Defendants lack knowledge or information sufficient to form a belief about the allegations against Richard Macleod in this paragraph.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise to the claims asserted in this complaint occurred in this judicial district.

ANSWER: Defendants admit jurisdiction and venue are proper except to the extent the Court is deprived of jurisdiction as stated in Defendants’ affirmative defenses.

¹ Defendants’ Answer and Affirmative Defenses is filed based upon the representation made by Liz Mazur, counsel for Plaintiff, via email at 8:50 AM on Tuesday, November 6, 2018, as to the identity of Jane Doe. To the extent the allegations in the Complaint [Doc. 1] are made by some other person, Defendants deny the allegations.

PARTIES

3. Plaintiff Jane Doe is a 29-year-old resident of McHenry County, Illinois, who recently completed a sentence in the Illinois Department of Corrections (IDOC). She is a mother of a nine-year old daughter, and she worked as gymnastics instructor to young children for many years.

ANSWER: Defendants admit Jane Doe is 29 years old and is not currently incarcerated within the Illinois Department of Corrections. Defendants deny Plaintiff's sentence has been discharged. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

4. Defendant Richard Macleod is employed as a Correctional Counselor II by IDOC. At all times relevant to this complaint, defendant Macleod has provided counseling services for female prisoners at Logan Correctional Center.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the allegations in this paragraph.

5. Defendant Margaret Burke was the Warden of Logan Correctional Center at the time of the events giving rise to this case. Warden Burke facilitated or approved the unwarranted retaliatory action taken in response to reports that plaintiff had been sexually assaulted and harassed by Richard Macleod.

ANSWER: Defendants admit Defendant Burke was Acting Warden of Logan Correctional Center beginning in February 2016 and retired from Logan Correctional Center in December 2017. Defendants deny retaliating against Plaintiff, deny violating Plaintiff's constitutional rights, deny violating any of Plaintiff's rights whatsoever, and deny the remaining allegations in this paragraph.

6. Todd Sexton was a supervisory officer at Logan Correctional Center and a member of the prison's Internal Affairs Department at the time of the events giving rise to this case. On

information and belief, defendant Sexton was friends with Macleod and knew about Macleod's sexual misconduct.

ANSWER: Defendants admit Defendant Sexton was an Internal Affairs Lieutenant at Logan Correctional Center from approximately August, 2016, to October, 2017, and was a Lieutenant from approximately May, 2014, to August, 2016. Defendant Sexton denies the remaining allegations in this paragraph. Defendant Burke lacks knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

7. At all times relevant to this complaint, each of the defendants was acting within the scope of their employment and under color of law.

ANSWER: Defendants admit they were acting within the scope of their employment and under color of law at all times while performing their job duties. Defendants lack knowledge or information sufficient to form a belief about the allegations in this paragraph directed to Richard Macleod. Defendants deny the remaining allegations in this paragraph.

FACTUAL ALLEGATIONS

8. Ms. Doe was a prisoner in the Illinois Department of Corrections (IDOC) from March 2015 to July 2018.

ANSWER: Defendants admit Plaintiff was incarcerated within the Illinois Department of Corrections from March 13, 2015, to July 5, 2018.

9. Upon her admission to the IDOC, Ms. Doe was housed at Logan Correctional Center (Logan), where she remained until August 2017.

ANSWER: Defendants admit Plaintiff was housed at Logan Correctional Center from March 13, 2015 to August 4, 2017.

10. During the period of her incarceration, a court order was in effect that gave Ms. Doe phone calls with her minor daughter once a week.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

11. Ms. Doe loves her daughter dearly, and it was very difficult for her to be separated from her daughter while she was in prison. While incarcerated, the weekly phone calls to her daughter were extremely important to her.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

12. In July 2016, Ms. Doe was placed in segregation for a period of 18-days. While in segregation, Ms. Doe was not permitted to have calls with her daughter.

ANSWER: Defendants admit Plaintiff was placed in segregation from July 18, 2016, to August 4, 2016. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

13. After her discharge from segregation, on August 4, 2016, Ms. Doe was assigned to Housing Unit 7, where defendant Richard Macleod acted as counselor.

ANSWER: Defendants admit Plaintiff was released from segregation on August 4, 2016, and was housed in Housing Unit 7. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

14. Ms. Doe needed to go through Macleod in order to reinstate her phone calls with her daughter and to receive a work assignment.

ANSWER: Defendants deny the allegations in this paragraph.

15. In response in Ms. Doe's request to reinstate the phone calls and obtain a work assignment, Macleod offered to "interview" her and had Ms. Doe go into a private room alone with him.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

16. While alone in this room, Macleod told Ms. Doe that she was pretty and asked her if she would tell anyone if he had her come to his office to "help" him on the weekends, acknowledging that no other staff would be there at that time.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

17. A few days later, Macleod called Ms. Doe to his office so that she could use his phone for the call to her daughter.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

18. After Ms. Doe spoke with her daughter, Macleod kissed Ms. Doe, which shocked and surprised her. She immediately left the office after he kissed her.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

19. At all times Macleod knew how important Ms. Doe's phone calls with her daughter were to her and he knew that Ms. Doe would need to go through him in order to have the calls.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

20. Subsequently, on a weekly basis, Macleod would call Ms. Doe to his office for her phone calls, during which he would sexually assault her and subject her to sexual harassment.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

21. Macleod would regularly expose himself to Ms. Doe and make sexual comments to her while she was on the phone with her daughter. On two occasions, he coerced her to have non-consensual sexual intercourse with him and on two other occasions he coerced her to perform non-consensual oral sex on him.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

22. In November 2016, Ms. Doe was transferred to live in Housing Unit 4.

ANSWER: Defendants admit Plaintiff was transferred to Housing Unit 4 on November 3, 2016.

23. On information and belief, Ms. Doe should have been assigned a new counselor in the Housing Unit 4, but Macleod made a special effort to remain her counselor.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the allegations in this paragraph.

24. Ms. Doe did not report Macleod's misconduct because he told her that if she did so she would "get a year across the board," a phrase that plaintiff understood to mean that she would have to spend a full year in segregation and that she would have to spend an extra year at IDOC.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

25. In addition, Macleod told Ms. Doe that he had a friend in IDOC, defendant Sexton, a Lieutenant who worked for Internal Affairs, who gave him advice about how to avoid punishment if his sexual misconduct was discovered. Plaintiff understood this to mean that Macleod would not be held accountable for his actions even if she did report his misconduct.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about what Richard Macleod told Plaintiff or what Plaintiff understood the alleged comments to mean. Defendant Sexton denies Richard Macleod was his friend, denies giving advice to Richard Macleod about how to avoid punishment, and denies the remaining allegations in this paragraph. Defendant Burke lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

26. Defendant Macleod's abuse of plaintiff continued until April 2017, when plaintiff was finally assigned to a new counselor.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

27. On information and belief, defendant Sexton was aware of Macleod's treatment of Ms. Doe since September 2016.

ANSWER: Defendant Sexton denies the allegations in this paragraph. Defendant Burke lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

28. On or around August 4, 2017, defendant Sexton summoned Ms. Doe in for an interview about Macleod. Sexton told her that his request to interview her was based on information he received from an unknown source.

ANSWER: Defendant Sexton admits that because he had heard a rumor about Plaintiff, he interviewed Plaintiff on August 4, 2017. Defendant Sexton denies the remaining allegations in this paragraph. Defendant Burke admits Defendant Sexton interviewed Plaintiff on August 4, 2017. Defendant Burke lacks knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

29. At first, Ms. Doe did not say anything because she was afraid of retaliation, but eventually Ms. Doe told him about Macleod's abuse.

ANSWER: Defendants admit Plaintiff initially did not talk to Defendant Sexton about the rumor but eventually told Defendant Sexton about some of her allegations against Richard Macleod. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

30. After talking to Sexton, Ms. Doe was immediately, involuntarily transferred from Logan Correctional Center to Decatur Correctional Center.

ANSWER: Defendants admit Plaintiff was transferred to Decatur Correctional Center on August 4, 2017, after speaking with Defendant Sexton. Defendant Sexton denies Plaintiff was not willing to be transferred to Decatur Correctional Center. Defendant Burke lacks knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

31. Ms. Doc did not request to be transferred to Decatur Correctional Center and, in fact, she did not want to go Decatur Correctional Center.

ANSWER: Defendants admit Plaintiff did not request to be transferred to Decatur Correctional Center. Defendant Sexton denies Plaintiff did not want to go to Decatur Correctional Center. Defendant Burke lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

32. After the transfer, Ms. Doe was unable to have her phone calls with her daughter for three weeks. Decatur was farther from other members of her family, thus they visited her less.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

33. Whereas Ms. Doe had developed friendships and an emotional support system at Logan, she did not know anybody at Decatur.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

34. Being removed from Logan also deprived Ms. Doe the opportunity to finish a cosmetology program in which she had been enrolled at Logan. Participating in this program had given her hope and greater employment opportunities for her future outside of Logan.

ANSWER: Defendants admit Plaintiff could not participate in programs at Logan Correctional Center while incarcerated at Decatur Correctional Center. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

35. Being removed from Logan also caused Ms. Doe to lose a job she cherished on the Logan garden crew. This job taught her skills that she hoped she might use when she was released from prison.

ANSWER: Defendants admit Plaintiff could not have a job at Logan Correctional Center while incarcerated at Decatur Correctional Center. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

36. On information and belief, Ms. Doe's transfer was carried out by defendant Sexton, defendant Warden Burke, and other as-yet-unidentified defendants, in retaliation for plaintiff's complaint about Macleod, and with the knowledge that it would be harmful to plaintiff.

ANSWER: Defendants deny the allegations in this paragraph.

37. On information and belief, defendant Macleod abused other women at Logan in the same way that he abused plaintiff. Other IDOC personnel at Logan, including but not limited to Sexton, knew as early as February 2017 that Macleod was in fact engaging in this pattern of abuse.

ANSWER: Defendant Sexton denies the allegations against him in this paragraph. Defendant Burke lacks knowledge or information sufficient to form a belief about the allegations against Defendant Sexton in this paragraph. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

38. On information and belief, other as-yet-unidentified defendants knew of a substantial likelihood that defendant Macleod was sexually abusing prisoners at Logan and failed to take reasonable steps to prevent it from continuing. As a result of these defendants' indifference and failure to intervene, Ms. Doe's constitutional rights were violated by defendant Macleod.

ANSWER: Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in this paragraph. Defendants deny violating Plaintiff's constitutional rights or any of Plaintiff's rights whatsoever.

39. As a result of the defendants' misconduct, Ms. Doe has suffered and continues to suffer severe emotional distress, including but not limited to humiliation, depression, rage, anxiety, panic attacks, insomnia, and post-traumatic stress.

ANSWER: Defendants deny the allegations in this paragraph.

Count I
42 U.S.C. § 1983 - Eighth Amendment

40. Plaintiff repeats and realleges each paragraph of this complaint as if fully set forth in this count.

ANSWER: Defendants repeat and fully incorporate their answers to each paragraph of this complaint.

41. In the manner described more fully above, defendant Macleod's conduct toward plaintiff violated her constitutional right to be free from cruel and unusual punishment.

ANSWER: Defendants deny violating Plaintiff's constitutional rights or any of Plaintiff's rights whatsoever. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

42. Likewise, in the manner described more fully above, defendants Sexton, Burke and other as-yet-unidentified defendants violated Ms. Doe's right to be free from cruel and unusual punishment because they knew that plaintiff's rights were being violated, had the realistic opportunity to intervene to prevent or stop the misconduct from occurring, and failed to do so. In the alternative, these defendants were on notice of a substantial risk of harm to plaintiff and they consciously disregarded that risk.

ANSWER: Defendants deny the allegations against them in this paragraph. Defendants lack knowledge or information sufficient to form a belief about the allegations against unidentified individuals in this paragraph.

43. The misconduct described in this count was objectively unreasonable and was undertaken intentionally, with malice and knowing disregard for plaintiff's clearly established constitutional rights, and not for any legitimate penological purpose.

ANSWER: Defendants deny violating Plaintiff's constitutional rights, deny violating any of Plaintiff's rights whatsoever, and deny the allegations in this paragraph.

44. As a result of the misconduct described in this count, plaintiff suffered harm.

ANSWER: Defendants deny any action or inaction by them caused Plaintiff any harm, deny violating Plaintiff's constitutional rights, and deny violating any of Plaintiff's rights whatsoever.

Count II
42 U.S.C. § 1983 - First Amendment Retaliation

45. Plaintiff repeats and realleges each paragraph of this complaint as if fully set forth in this count.

ANSWER: Defendants repeat and fully incorporate their answers to each paragraph of this complaint.

46. In the manner described more fully above, defendants Sexton, Burke, and other as-yet-identified defendants retaliated against Ms. Doe for engaging in protected First Amendment activity when she reported Macleod's misconduct.

ANSWER: Defendants deny violating Plaintiff's constitutional rights, deny violating any of Plaintiff's rights whatsoever, and deny the allegations in this paragraph.

47. The misconduct described in this count was objectively unreasonable and was undertaken intentionally, with malice and knowing disregard for plaintiff's clearly established constitutional rights, and not for any legitimate penological purpose.

ANSWER: Defendants deny violating Plaintiff's constitutional rights, deny violating any of Plaintiff's rights whatsoever, and deny the allegations in this paragraph.

48. As a result of the defendants' retaliatory actions, plaintiff suffered harm.

ANSWER: Defendants deny any action or inaction by them caused Plaintiff any harm, deny violating Plaintiff's constitutional rights, and deny violating any of Plaintiff's rights whatsoever.

Jury Demand

Defendants demand a trial by jury.

Relief Requested

Defendants deny Plaintiff is entitled to any relief whatsoever.

Affirmative Defenses

A. Sovereign Immunity

Under the Eleventh Amendment, Plaintiff's constitutional claims for monetary damages against Defendants in their official capacities are barred by sovereign immunity. To the extent Plaintiff is suing Defendants for injunctive relief that is not intended to address ongoing constitutional violations, the Eleventh Amendment and sovereign immunity bar such claims.

B. Statutes of Limitations

Plaintiff's claims arising more than two years before filing to which tolling does not apply are barred by the applicable statutes of limitations.

C. Qualified Immunity

At all times relevant to the plaintiff's claims, the defendants charged herein acted in good faith in the performance of their official duties without violating Plaintiff's clearly established statutory or constitutional rights of which a reasonable person would have been aware. Defendants are therefore protected from liability by the doctrine of qualified immunity.

WHEREFORE, for the above and foregoing reasons, Defendants respectfully request this honorable Court deny Plaintiff any relief whatsoever.

Respectfully submitted,

Margaret Burke and Todd Sexton,

Defendants,

Clayton J. Ankney, #6320224
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 782-2077 Phone
(217) 524-5091 Fax
Email: cankney@atg.state.il.us

Lisa Madigan, Illinois Attorney General,

Attorney for Defendants,

By: s/ Clayton J. Ankney
Clayton J. Ankney
Assistant Attorney General

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Plaintiff,)	
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v.)	No. 18-3191-SEM-TSH
)	
Richard Macleod, Margaret Burke,)	
and Todd Sexton,)	
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Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2018, the foregoing document, *Defendants' Answer and Affirmative Defenses*, was electronically filed with the Clerk of the Court using the CM/ECF system which will electronically send notice to:

Alan Mills:	alan@uplcchicago.org
Elizabeth N. Mazur:	liz@uplcchicago.org
Nicole Rae Schult:	nicole@uplcchicago.org

s/ Clayton J. Ankney _____
 Clayton J. Ankney
 Assistant Attorney General