

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. DOE,

Plaintiff,

15 CIV 7825 (CS)

-against-

ANSWER

KURT LUDWIGSEN, in his individual capacity,
KIRSTEN LAMBERTSON, in her individual capacity,
MICHAEL G. SCALES, individually and as President of
Nyack College, DAVID C. JENNINGS, individually and as
Executive Vice President of Nyack Collage, KEITH DAVIE,
individually and as Athletic Director for Nyack College,
AMANDA AIKENS, individually and as Assistant Athletic
Director for Nyack College, TAYLOR BROWN, individually
and as Assistant Softball Coach for Nyack College,
NYACK COLLEGE, and DOES 1-10

Defendants.
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Defendant Kurt Ludwigsen (“Defendant”), by his attorneys, Burke, Miele & Golden, LLP,
as and for his Answer to the First Amended Complaint, respectfully alleges as follows:

1. Denies the allegations stated or contained in Paragraphs “1,” “2,” “11,” “21,” “22,”
“32,” “33,” “34,” “35,” “36,” “37,” “38,” “39,” “40,” “49,” “50,” “51,” “54,” “55,” “56,” “57,”
“60,” “61,” “62,” “64,” “65,” “66,” “68,” “71,” “72,” “74,” “76,” “77,” and “79” of the First
Amended Complaint.

2. Denies the allegations stated or contained in Paragraph “3” of the First Amended
Complaint, except denies knowledge or information sufficient to form a belief about the truth or
falsity of the allegations therein as to what information was publicly available.

3. Denies knowledge or information sufficient to form a belief about the truth or
falsity of the allegations stated or contained in Paragraph “4” of the First Amended Complaint

except denies that there was outrageous conduct by Defendant in connection with his female student athletes.

4. Neither admits nor denies the allegations stated or contained in Paragraph “5” of the First Amended Complaint, as Plaintiff’s characterization of her lawsuit requires no response. To the extent that this Court deems a response necessary, Respondent denies each and every allegation stated or contained in Paragraph “5” of the First Amended Complaint.

5. Denies the allegations stated or contained in Paragraph "6" of the First Amended Complaint except admits that jurisdiction is conferred for a federal question under Title 28 U.S.C. § 1331 and that supplemental jurisdiction is conferred under Title 28 U.S.C. § 1367.

6. Denies the allegations stated or contained in Paragraph “7” of the First Amended Complaint except admits that venue in general is provided under 28 U.S.C. § 1391(b).

7. Denies knowledge or information sufficient to form a belief about the truth or falsity of the allegations stated or contained in Paragraphs “8,” “9,” “12,” “13,” “30,” “31,” “43,” “44,” “45,” “46,” “67,” “70,” “73,” and “78” of the First Amended Complaint.

8. Denies the allegations stated or contained in Paragraph “10” of the First Amended Complaint except admits that Defendant resided in Ridgewood, New Jersey while he was employed by Nyack College as Head Coach of the Nyack College women’s softball team; that Defendant previously was employed by the University of Arizona’s prestigious women’s softball program on a coaching scholarship, under the leadership of coach Mike Candrea, who coached eight national champion softball teams and two Team USA Olympic women’s softball teams; that during Defendant’s tenure at the University of Arizona, the university’s women’s softball program won its first two national championships; that Defendant’s employment at the University of Arizona ended when he graduated.

9. Denies knowledge or information sufficient to form a belief about the truth or falsity of the allegations stated or contained in Paragraphs “14,” “15,” “16,” and “17” of the First Amended Complaint except denies that there was any misconduct by Defendant that others could have been present for and/or witnessed.

10. Denies the allegations stated or contained in Paragraph “18” of the First Amended Complaint except admits that Defendant was Head Coach of the Nyack College women’s softball team.

11. Admits the allegations stated or contained in Paragraph “19” of the First Amended Complaint, except denies that Defendant hosted numerous mandatory social gatherings for team members and made frequent after-hours contact with team members via telephone, text messages and/or instant messaging, including but not limited to Facebook Chat.

12. Denies the allegations stated or contained in Paragraphs “20” of the First Amended Complaint, including the allegations stated or contained in subparagraphs “a,” “b,” “c,” and “d” of Paragraphs “20.”

13. Denies the allegations stated or contained in Paragraph “23” of the First Amended Complaint including the allegations stated or contained in subparagraphs “a,” “b,” “c,” “d,” “e,” “f,” “g,” and “h” of Paragraph “23,” except admits that on or about November 14, 2014 the Softball Team went to New York City where they visited the Waldorf Astoria and a nearby museum and then to the Whiskey Café restaurant in Lyndhurst, New Jersey and that they were transported by Nyack College vans, and that in or about March 2015 the team stayed at a rented house for a tournament in Arizona.

14. Denies the allegations stated or contained in Paragraphs “24” of the First Amended Complaint, including the allegations stated or contained in subparagraphs “a,” “b,” “c,” “d,” “e,” “f,” “g,” “h,” “i,” and “j” of Paragraph “24.”

15. Denies the allegations stated or contained in Paragraph “25” of the First Amended Complaint, except denies knowledge or information sufficient to form a belief about the truth or falsity of the allegations that the Team members collectively confronted Mr. Davie and Mrs. Aikens to complain about Defendant.

16. Denies the allegations stated or contained in Paragraph “26” of the First Amended Complaint as to Defendant and denies knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations stated or contained therein.

17. Denies the allegations stated or contained in Paragraph “27” of the First Amended Complaint as to Defendant, including the allegations stated or contained in subparagraphs “a,” “b,” “c,” “d,” and “e” of Paragraph “27,” and denies knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations stated or contained therein.

18. Denies knowledge or information sufficient to form a belief about the truth or falsity of the allegations stated or contained in Paragraph “28” of the First Amended Complaint, including the allegations stated or contained in subparagraphs “a” and “b” of Paragraph “28,” except denies that Defendant was terminated and denies allegations of sexual harassment by Defendant.

19. As to Paragraphs “29,” “41,” “47,” “52,” “58,” “63,” “69,” and “75” of the First Amended Complaint, Defendant repeats and realleges each and every response previously and hereinafter set forth in response to the allegations stated or contained in the Paragraphs referenced

in Paragraphs "29," "41," "47," "52," "58," "63," "69," and "75" of the First Amended Complaint, as though set forth at length in this Paragraph "19."

20. Denies knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations stated or contained in Paragraph "42" of the First Amended Complaint, except denies the allegations of sexual harassment by Defendant.

21. Denies knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations stated or contained in Paragraph "48," "53," and "59" of the First Amended Complaint, except admits that Nyack College and Defendant were in an employer-employee relationship during the time Defendant was employed by Nyack College, from in or around June or July 2014 through on or about March 13, 2015 or March 14, 2015.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

22. Plaintiff's sixth and eighth causes of action are time-barred under New York's one-year statute of limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

23. Plaintiff failed to properly serve Defendant. The purported service at 782 Berkshire Drive, Millbrae, CA 94010 was ineffective and improper, as Defendant does not have a dwelling house or usual place of abode at 782 Berkshire Drive, Millbrae, CA 94010.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

24. This Court lacks personal jurisdiction over Defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

25. Plaintiff failed to state a cause of action upon which relief may be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

26. Plaintiff consented explicitly or implicitly to Defendant's conduct.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

27. The injuries, if any, alleged to have been sustained by Plaintiff were caused, in whole or in part, by the culpable conduct of Plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

28. Defendant did not intend to harm Plaintiff in any way.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

29. Plaintiff's claim for punitive damages must be stricken for failure to state a claim upon which relief may be granted.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

30. Plaintiff has failed to mitigate her damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

31. As to any damages allegedly suffered by Plaintiff, Defendant is entitled to a setoff, contribution, collateral sources and/or apportionment from Plaintiff and/or other individuals and/or entities.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

32. As to any damages allegedly suffered by Plaintiff, Defendant is entitled to contribution and/or indemnification from the Codefendants.

AS AND FOR A FIRST COUNTERCLAIM AGAINST PLAINTIFF

33. Defendant repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "32" above, with the same force and to the same effect as though set forth at length in this Paragraph "33."

34. Defendant commenced employment with Nyack College in or around June or July 2014 and continued said employment through on or about March 13, 2015 or March 2015.

35. Defendant had a valid employment contract with Nyack College and/or employment relationship with Nyack College under which Defendant worked as the Head Coach of the Softball Team.

36. Plaintiff had knowledge of Defendant's contract and/or employment relationship with Nyack College as she was on the Softball Team that Defendant was employed to coach.

37. Plaintiff's knowledge of Defendant's contract and/or employment relationship is confirmed by her pleading in this action that Nyack College and Defendant were engaged in an employer-employee relationship.

38. Plaintiff intentionally interfered with Defendant's contract and/or employment relationship by making false accusations of sexual harassment against Defendant to his employer Nyack College and/or its employees.

39. Plaintiff intentionally and improperly procured a breach of Defendant's contract without justification in that as a result of Plaintiff's false allegations, Defendant was forced to resign from his position as Head Coach or otherwise be terminated.

40. Plaintiff's tortious interference with Defendant's employment contract was willful and Defendant has incurred damages thereby.

41. Defendant has been unable to find comparable employment as a softball coach elsewhere.

AS AND FOR A SECOND COUNTERCLAIM AGAINST PLAINTIFF

42. Defendant repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "41" above, with the same force and to the same effect as though set forth at length in this Paragraph "42."

43. Plaintiff engaged in extreme and outrageous conduct in making false allegation of sexual harassment by Defendant to his employer Nyack College, other employees of Nyack College, the police, the press, and numerous other individuals and/or entities.

44. The nature of the allegations against Defendant is so outrageous and goes beyond all possible bounds of decency. Plaintiff has alleged that Defendant sexually harassed her and other members of the Softball team.

45. In making its false allegations Plaintiff intended to cause Defendant severe emotional distress and/or recklessly disregarded a substantial probability of causing Defendant severe emotional distress.

46. As a college student, Plaintiff knew or should have known that her false allegations would, at the very least, cause Defendant to lose his employment and subject Defendant to potentially serious criminal charges.

47. Plaintiff's allegations have forced Defendant to resign from his employment with Nyack College and subjected him to serious criminal college. Her conduct has also caused severe damage to his relationships with his family; hurt Defendant financially and affected his ability to be financially successful in the future; rendered it impossible for Defendant to lead a normal life, for Defendant to ever work at the same capacity, or for Defendant to ever coach another softball team; subjected Defendant and his family to public outlash including, but not limited to, the receipt of threatening hate mail; and damaged all future relationships.

48. As a result of Plaintiff's extreme and outrageous conduct, Defendant has suffered extreme emotional distress.

AS AND FOR A FIRST CROSSCLAIM AGAINST NYACK COLLEGE

49. Defendant repeats and realleges each and every allegation stated or contained in Paragraphs “1” through “48” above, with the same force and to the same effect as though set forth at length in this Paragraph “49.”

50. In or around June or July 2014, Defendant entered into an employment agreement with Nyack College under which, for good and valuable consideration, Nyack College agreed to employ Defendant for at least a one-year period.

51. Under the employment contract, Defendant agreed to perform services for Nyack College as head coach of the women’s softball team, and Nyack College agreed to pay Defendant and annual salary of \$10,000.00, plus other benefits.

52. Defendant satisfactorily performed all duties required under the employment contract and coached the Nyack College women’s softball team from fall 2014 through mid-March 2015.

53. On or about March 13, 2015 or March 14, 2015, the conduct of Nyack College and/or its employees resulted in a breach of the employment contract and constructive discharge of Defendant.

54. Specifically, on or about March 13, 2015, members of the softball team Defendant coached made false accusations against Defendant to Nyack College, and/or its employees. Nyack College failed to investigate or attempt to substantiate said accusations. Without pursuing any investigation, the Athletic Director for Nyack College, Keith Davie, informed Defendant that, in sum or substance, he would be terminated. This occurred while the team was away at a tournament in Arizona.

55. Nyack College deliberately created working conditions that were so unpleasant to difficult that a reasonable person in Defendant's place would have been compelled to reason. Nyack College refused to investigate the false accusations and did not permit Defendant to defend himself against said accusations. Defendant was pressured to resign by the Athletic Director for Nyack College, Keith Davie. Knowing that Nyack College would not give him an opportunity to defend himself when he returned to New York, Defendant resigned.

56. Defendant was forced to resign from his employment with Nyack College or be fired. Nyack College breached said employment contract by constructively discharging Defendant.

AS AND FOR A SECOND CROSSCLAIM AGAINST NYACK COLLEGE

57. Defendant repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "56" above, with the same force and to the same effect as though set forth at length in this Paragraph "57."

58. If Plaintiff were caused to sustain damages at the time and place set forth in the plaintiffs' complaint through any fault other than Plaintiff's own fault, the damages were sustained due to the sole or primary fault of Codefendant Nyack College, its agents, servants, and/or employees, with the negligence if any on the part of this answering defendant being secondary and/or derivative only.

59. In the event judgment is recovered by Plaintiff, Codefendant Nyack College shall be liable to the answering Defendant for the full amount of the judgment or in an amount equal to the excess over and above this answering Defendant's equitable share of the judgment, as determined in accordance with the relative culpability of this answering Defendant and all Codefendants.

WHEREFORE, Defendant demands judgment dismissing the complaint as to him and further demands judgment on its Counterclaims and Crossclaims as follows:

- (i) an award of damages against Plaintiff in an amount to be determined at trial to compensate Defendant for physical injury, mental anguish, humiliation, embarrassment, and emotional injury;
- (ii) an award of damages against Plaintiff and Codefendant Nyack College for loss of compensation and financial harm, including lost salary, bonuses, commissions, and income, including all applicable fringe benefits;
- (iii) an award for any and all other economic loss in an amount to be determined at trial;
- (iv) an award of punitive damages against Plaintiff and Codefendant Nyack College;
- (v) against Codefendant Nyack College, the amount of any judgment which may be obtained herein by Plaintiff against Defendant, or in an amount equal to the excess over and above Defendant's equitable share of any such judgment;
- (vi) costs, disbursements and fees, and such other and further relief as this Court deems just and proper.

Dated: March 4, 2016
Goshen, New York

/s/ Michael K. Burke
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