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1 1. This action is brought on behalf of the United States to enforce the provisions of Title
2 VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.* (“Title VII”) and the
3 Pregnancy Discrimination Act of 1978 (the “PDA”), 42 U.S.C. § 2000e(k).

4 **JURISDICTION AND VENUE**

5 2. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. §
6 1331 and 28 U.S.C. § 1345. Venue is proper in the Reno Division of the United States District Court
7 of Nevada because all, or a substantial part, of the United States claims occurred or arose in Elko,
8 Elko County, Nevada.

9 3. Defendant NEVADA DIVISION OF FORESTRY (the “NDF”) is a government entity
10 created pursuant to the laws of the State of Nevada. The NDF is a “person” within the meaning of
11 42 U.S.C. § 2000e(a), and an “employer” within the meaning of 42 U.S.C. § 2000e(b). The NDF
12 coordinates or supervises an organized statewide system for prevention, detection and suppression
13 of unwanted wildfire and supports all risk emergency services within the NDF’s protection districts.
14 As part of this function, the NDF is part of several interagency dispatch centers, including the Elko
15 Interagency Dispatch Center (the “Elko IDC”) located in Elko, Nevada. The NDF is funded from the
16 state of Nevada and with grants from the U.S. Forest Service and other federal agencies.

17 4. The Equal Employment Opportunity Commission (the “EEOC”) received a timely
18 charge (EEOC Charge No. 550-2007-02241) filed by Tawnya Meyer (“Meyer”). In her EEOC
19 charge, Meyer alleged, *inter alia*, that she had been terminated at the end of her probationary period
20 due to her pregnancy.

21 5. Pursuant to Section 706 of Title VII, the EEOC investigated the charge, found
22 reasonable cause to believe that Meyer was subjected to gender-based discrimination when she was
23 wrongfully discharged on or about March 5, 2007, due to her pregnancy. The EEOC attempted
24 unsuccessfully to conciliate the charge, and subsequently referred the matter to the Department of
25 Justice.

26 6. All conditions precedent to the filing of suit have been performed or occurred.

CAUSE OF ACTION

7. Meyer was hired by the NDF on March 28, 2006, as a probationary Fire Control Dispatcher I for the Elko IDC.

8. As a Fire Control Dispatcher I, Meyer was responsible for operating communication equipment at the Elko IDC and for dispatching personnel, supplies, aircraft and mobile equipment to fire scenes, medial emergencies, law enforcement incidents, hazardous materials incidents and other emergency situations.

9. NDF supervisors in Meyer's chain of command from top of the chain to the bottom during the time of Meyer's employment included, but were not limited to: Jennifer Byers (ASO IV), Tim Rochelle (Support Services Program Manager); Tom Turk (Regional Forester); Sam Hicks (Fire Management Officer); and Jodi Jenkins (Fire Dispatcher III). Jenkins was Meyer's immediate supervisor during Meyer's employment.

10. In addition to NDF personnel, the Elko IDC also included federal employees with the Bureau of Land Management (the "BLM"). BLM supervisors located in the Elko IDC during Meyer's employment included William Roach (Elko Dispatch Manager) and Gina Dingman (Assistant Coordinator).

11. In August 2006, Meyer became pregnant and, upon learning of her pregnancy in late October or early November, notified Jenkins of her intent to take maternity leave over the summer of 2007 which encompassed the summer firefighting season for the firefighting division of the NDF.

12. On or about February 27, 2007, while out on temporary physician mandated leave, Meyer was notified by letter that she was terminated effective March 5, 2007, only weeks before her probationary period was complete.

13. The NDF did not follow its own personnel policy that was in place at the time of Meyer's employment with regard to her termination.

14. Meyer never received any disciplinary action, had not been notified of any performance deficiencies, and had not received any performance appraisals prior to her termination.

15. According to some of Meyer's co-workers and supervisors, Meyer was successfully performing her job duties and there was no performance related cause for her termination.

16. Prior to receiving her termination letter, Meyer had no idea that her performance was problematic or that her employer intended to terminate her.

17. The decision to terminate Meyer occurred at a meeting in or about late January or early February 2007 during which Meyer's pregnancy was discussed as a reason for her termination by NDF managers Byers, Turk and Hicks.

18. Rochelle, the person who ultimately authorized and signed Meyer's termination papers, had no independent knowledge of Meyer and relied solely on what he was told by Byers, Turk and Hicks.

19. Meyer would not have been terminated if she was not pregnant.

20. Meyer was subjected to anti-pregnancy and anti-caregiver *animus* while employed with the NDF.

21. NDF management members including Turk, Hicks, and Byers and Fire Dispatcher III, Holly Bullington, made anti-pregnancy and anti-caregiver discriminatory remarks to Meyer, to other NDF female employees and to BLM employees on multiple occasions during Meyer's employment.

22. Meyer was replaced by a non-pregnant female.

23. By its conduct, the NDF has discriminated against Meyer in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e2(a), among other ways, by discharging Meyer because of her sex and pregnancy status.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

(a) Enjoin Defendant NDF from discriminating against employees based on their sex in violation of Title VII including, but not limited to, the PDA;

(b) Order the NDF to develop and implement appropriate and effective measures designed to prevent gender discrimination in violation of Title VII including, but not limited to, the PDA;

1 (c) Award compensatory damages to Meyer to fully compensate her for the injuries caused
2 by Defendant NDF's discriminatory conduct, pursuant to, and within the statutory limitations of
3 Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;

4 (d) Award Meyer make whole remedial relief, including back pay with interest, to
5 compensate Meyer for the damages she has suffered as a result of the discriminatory conduct of the
6 NDF as alleged in this Complaint; and

7 (e) Award such additional relief as justice may require, together with Plaintiff's costs and
8 disbursements in this action.

9 **JURY DEMAND**

10 The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38
11 of the Fed. R. Civ. P. and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

12 Dated this 18th day of May, 2012.

13 Respectfully submitted,

14 THOMAS E. PEREZ
15 Assistant Attorney General
16 Civil Rights Division

17 /s/ Delora L. Kennebrew
18 DELORA L. KENNEBREW
19 Chief

20 /s/ Sharyn A. Tejani
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 NEVADA DIVISION OF FORESTRY,)
)
 Defendant.)

3:12-cv-00265-RCJ-VPC

**DEFENDANT'S ANSWER TO
COMPLAINT**

COMES NOW, Defendant, NEVADA DIVISION OF FORESTRY ("NDF"), by and through counsel, CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada, and CAMERON P. VANDENBERG, Deputy Attorney General, and hereby answers Plaintiff's Complaint (#1) filed herein by Plaintiff United States of America as follows:

1. Defendant admits that the United States has brought an action claiming violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a). Defendant denies any and all other allegations contained in paragraph 1.

JURISDICTION AND VENUE

2. Defendant admits that this Court has jurisdiction over civil actions brought by the United States Attorney General pursuant to 42 U.S.C. §2000e-5(f), that this Court has federal question jurisdiction pursuant to 28 U.S.C. §1331, and that this Court has jurisdiction of all civil actions commenced by the United States pursuant to 28 U.S.C. §1345. Defendant admits that

1 venue is proper in the U.S. District Court, District of Nevada-Reno for an action brought under
2 42 U.S.C. §2000e-5(f) for unlawful employment practices alleged to have been committed in
3 Elko, Nevada. Defendant denies any and all other allegations contained in paragraph 2.

4 3. Defendant admits that NDF is a governmental agency. Defendant admits that the
5 term “person” within the meaning of 42 U.S.C. §2000e(a) includes governmental agencies and
6 that the term “employer” within the meaning of 42 U.S.C. §2000e(b) and (h) includes any
7 governmental industry, business or activity. Defendant admits that the NDF coordinates or
8 supervises an organized statewide system for prevention, detection and suppression of
9 unwanted wildfire and supports all risk emergency services within the NDF’s protection
10 districts. Defendant admits that the NDF is physically in two interagency dispatch centers,
11 one of which is the Elko Interagency Dispatch Center (the “Elko IDC”) located in Elko,
12 Nevada. Defendant admits that the NDF is funded from the State of Nevada and with grants
13 from the U.S. Forest Service and other federal agencies. Defendant denies any and all other
14 allegations contained in paragraph 3.

15 4. Defendant denies that the Equal Employment Opportunity Commission (the
16 “EEOC”) received a timely charge filed by Tawnya Meyer (“Meyer”). Defendant admits that
17 Tawnya Meyer alleged, *inter alia*, in a formal charge signed on January 17, 2008, that she was
18 discharged on March 5, 2007, and that she believes she has “been discriminated against
19 because of her sex, pregnant female, in violation of Title VII of the Civil Rights Act of 1964, as
20 amended.” Defendant denies any and all other allegations contained in paragraph 4.

21 5. Defendant admits that the EEOC conducted an investigation and issued a
22 Determination on or about September 29, 2010, finding that there is reasonable cause to believe
23 NDF discriminated against the Charging Party based on her pregnancy. Defendant denies that
24 the EEOC made a finding that NDF wrongfully discharged Meyer. Defendant admits that, on or
25 about December 13, 2010, NDF received an Invitation to Conciliate and that NDF participated in
26 conciliation in good faith. Defendant admits that conciliation efforts were unsuccessful and that
27 this matter was referred to the Department of Justice. Defendant denies any and all other
28 allegations contained in paragraph 5.

6. Defendant denies that all conditions precedent to the filing of suit have been performed or occurred.

CAUSE OF ACTION

7. Defendant admits that Meyer was hired by the NDF on or about March 26, 2006, as a probationary "All-Risk" Fire Control Dispatcher I at the Elko IDC.

8. Defendant admits that, as a Fire Control Dispatcher I, Meyer was responsible for operating communication equipment at the Elko IDC and for dispatching personnel, supplies, aircraft and fire apparatus to fire scenes, medical emergencies, vehicle accidents, law enforcement incidents, hazardous materials incidents, public assists and other emergency situations. Defendant denies any and all other allegations contained in paragraph 8.

9. Defendant admits that Jodi Jenkins was Meyer's immediate supervisor during Meyer's employment. Defendant denies any and all other allegations contained in paragraph 9.

10. Defendant admits that Elko IDC cooperators include the Elko District Bureau of Land Management. Defendant denies any and all other allegations contained in paragraph 10.

11. Defendant is without knowledge sufficient to admit or deny whether Meyer became pregnant in August 2006 or whether she learned of her pregnancy in late October or early November. Defendant denies any and all other allegations contained in paragraph 11.

12. Defendant denies each and every allegation contained in paragraph 12.

13. Defendant denies each and every allegation contained in paragraph 13.

14. Defendant denies each and every allegation contained in paragraph 14.

15. Defendant denies each and every allegation contained in paragraph 15.

16. Defendant denies each and every allegation contained in paragraph 16.

17. Defendant denies each and every allegation contained in paragraph 17.

18. Defendant denies each and every allegation contained in paragraph 18.

19. Defendant denies each and every allegation contained in paragraph 19.

20. Defendant denies each and every allegation contained in paragraph 20.

21. Defendant denies each and every allegation contained in paragraph 21.

22. Defendant denies each and every allegation contained in paragraph 22.

23. Defendant denies each and every allegation contained in paragraph 23.

PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

Defendant denies any and all liability in this matter and alleges and avers as follows:

First Affirmative Defense

Plaintiff has failed to state a claim upon which relief can be granted.

Second Affirmative Defense

Defendant is protected by sovereign immunity under the Eleventh Amendment to the United States Constitution.

Third Affirmative Defense

Defendant asserts the defense of qualified immunity.

Fourth Affirmative Defense

Defendant asserts all applicable common law and statutory immunities.

Fifth Affirmative Defense

Defendant asserts the defense of waiver and estoppel.

Sixth Affirmative Defense

Plaintiff's and Meyer's claims are barred by applicable periods of limitations and statutes of limitations.

Seventh Affirmative Defense

Plaintiff and Meyer have failed to mitigate their damages, if any.

Eighth Affirmative Defense

Any damages suffered by Meyer were a direct and proximate result of her own negligent act(s) and/or omission(s).

Ninth Affirmative Defense

Plaintiff's and Meyer's claims are barred by the doctrine of unclean hands.

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Tenth Affirmative Defense

Exhaustion of administrative remedies is a prerequisite to filing an employment discrimination suit under Title VII.

Eleventh Affirmative Defense

Plaintiff's and Meyer's claims are barred by laches.

Twelfth Affirmative Defense

Plaintiff's complaint is barred by the doctrine of Accord and Satisfaction.

Thirteenth Affirmative Defense

Defendant has a strong anti-discrimination policy that is enforced.

Fourteenth Affirmative Defense

Plaintiff and Meyer have not exhausted their procedural or legal remedies.

Fifteenth Affirmative Defense

The federal discrimination claims are barred to the extent they were not alleged or encompassed within the administrative charge filed by Meyer or the administrative investigation.

Sixteenth Affirmative Defense

The claims are barred to the extent that Plaintiff and Meyer failed to timely and properly exhaust all necessary administrative, statutory and/or jurisdictional prerequisites for the commencement of this action.

Seventeenth Affirmative Defense

At all times and places relevant hereto, Defendant acted within good faith, with justification, with probable cause and without malice toward the Plaintiff or Meyer. All acts and conduct of Defendant were done by virtue of and under the laws of the State of Nevada.

Eighteenth Affirmative Defense

The provisions of Chapter 41 of the Nevada Revised Statutes bar the recovery of any damages in excess of \$75,000.00 and the recovery of punitive damages for state tort claims.

Nineteenth Affirmative Defense

If liability is determined to exist, Defendant is entitled to a setoff and/or an apportionment of liability to the harm, if any, caused by Defendant.

Twentieth Affirmative Defense

Plaintiff's and Meyer's claims are barred by *res judicata*, i.e., claim and issue preclusion.

Twenty-First Affirmative Defense

Defendant is protected from liability because it held an objective, good-faith belief that its actions were privileged, and justified.

Twenty-Second Affirmative Defense

Plaintiff and Meyer have failed to exhaust available administrative remedies as required by Title VII.

Twenty-Third Affirmative Defense

Plaintiff's and Meyer's claims are barred by assumption of risk.

Twenty-Fourth Affirmative Defense

Plaintiff's and Meyer's damages, which damages are denied, were caused by intervening causes so as to negate any proximate cause resulting from any act or omission of Defendant.

Twenty-Fifth Affirmative Defense

Plaintiff's and Meyer's damages, which damages are denied, were caused by the contributory negligence of Plaintiff and/or Meyer in greater part than any negligence by Defendant, which negligence is denied.

Twenty-Sixth Affirmative Defense

The claims must be dismissed because Defendant exercised reasonable care to prevent and to promptly correct any alleged discriminatory conduct in its workplace.

Twenty-Seventh Affirmative Defense

As a matter of law, Plaintiff and Meyer are not entitled to general or special damages, nor are they entitled to punitive damages.

Twenty-Eighth Affirmative Defense

Defendant did not enact or enforce any policy, statute, ordinance, or custom that denied Plaintiff or Meyer rights under the Constitutions or laws of the State of Nevada or the United States of America.

. . . .

Twenty-Ninth Affirmative Defense

Defendant did not fail to enact or enforce any policy, statute, ordinance, or custom that denied Plaintiff or Meyer rights under the Constitutions or laws of the State of Nevada or the United States of America.

Thirtieth Affirmative Defense

There is no policy, practice or custom sufficient to establish liability pursuant to Title VII or the Pregnancy Discrimination Act of 1978, and Plaintiff's Complaint should be dismissed.

Thirty-First Affirmative Defense

The Statute of Limitations bars any and all claims which occurred prior to two (2) years of the filing of Plaintiff's Complaint.

Thirty-Second Affirmative Defense

Defendant is immune from liability pursuant to the provisions of NRS 41.031 through 41.039, inclusive.

Thirty-Third Affirmative Defense

Defendant is shielded from liability for civil damages because its conduct did not violate any clearly established statutory and/or constitutional rights of which a reasonable person would have known.

Thirty-Fourth Affirmative Defense

Defendant never acted with malice or reckless indifference regarding Meyer.

Thirty-Fifth Affirmative Defense

Any damage sustained by the Plaintiff or Meyer was caused by acts or omissions of other third persons who were not agents, employees or servants of Defendant.

Thirty-Sixth Affirmative Defense

Damages, if any, suffered by Plaintiff or Meyer were caused by unknown parties not defendants to this suit.

Thirty-Seventh Affirmative Defense

The claims must be dismissed because Defendant did not aid, abet, ratify, condone, encourage or acquiesce in any alleged discriminatory or unlawful conduct.

Thirty-Eighth Affirmative Defense

Any earnings and benefits Meyer may have earned or could have earned reduce the Defendant's liability for back pay and benefits, if any are owing.

Thirty-Ninth Affirmative Defense

Defendant acted with due care and circumspection at all relevant times in the performance of any and all duties imposed upon them by law.

Fortieth Affirmative Defense

Plaintiff's and Meyer's claims are barred and Plaintiff's Complaint should be dismissed because Meyer failed to file a timely Charge of Discrimination with the EEOC or the Nevada Equal Rights Commission.

Forty-First Affirmative Defense

Plaintiff's Complaint should be dismissed for failure to bring the action in the name of the State of Nevada on relation of the Nevada Department of Conservation and Natural Resources, Division of Forestry pursuant to NRS 41.031(2).

Forty-Second Affirmative Defense

All possible defenses may not have been alleged herein, insofar as sufficient facts were available after reasonable inquiry upon the filing of Plaintiff's Complaint, and therefore, Defendant reserves the right to amend its Answer to the Complaint to allege additional affirmative defenses, if subsequent investigation so warrants. Any other allegations not specifically responded to herein are hereby denied.

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1 **WHEREFORE** Defendant NDF prays that Plaintiff's complaint be dismissed with
2 prejudice, that Plaintiff and Meyer take nothing, and that Defendant NDF be awarded its
3 reasonable costs, expenses and attorney's fees.

4 DATED this ____ day of June, 2012.

5 CATHERINE CORTEZ MASTO
6 Attorney General

7
8 By: /s/ Cameron P. Vandenberg
9 CAMERON P. VANDENBERG
10 Deputy Attorney General
11 Bureau of Litigation
12 Personnel Division
13 *Attorneys for Defendant Nevada Division of*
14 *Forestry*

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 20th day of June, 2012, I have caused a copy of the foregoing DEFENDANT'S ANSWER TO COMPLAINT to be served, by U.S. District Court CM/ECF Electronic Filing, to the following:

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/s/ Shirley J. Susich

An employee of the Office of the Attorney General