

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION AT COVINGTON  
CASE NO. 2:16-CV-00028-WOB-CJS

JANE DOE

PLAINTIFF

v.

**ANSWER**

NORTHERN KENTUCKY  
UNIVERSITY, et. al.

DEFENDANTS

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Come the Defendants, Northern Kentucky University (“University” or “NKU”), Geoffrey S. Mearns, Les Kachurek, Kathleen Roberts, and Ann James (collectively referred to herein as “University Defendants”), by and through counsel, and for their Answer to Plaintiff, Jane Doe’s<sup>1</sup>, Complaint, state as follows:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief may be granted, and must be dismissed, with prejudice.

**SECOND DEFENSE**

1. The University Defendants state that no answer is required to numerical paragraph 1 of the Complaint and deny any allegation contained therein.

2. Upon information and belief University Defendants admit the allegations contained in numerical paragraph 2 of the Complaint.

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<sup>1</sup> While Plaintiff has, as acknowledged in her Complaint, engaged in public statements concerning her claims, she has elected to proceed herein under a pseudonym. To ensure the University’s compliance with the Family Educational Rights and Privacy Act (FERPA), the Clery Act, the Violence Against Women Act, and implementing regulations, and to protect the confidential nature of students’ educational records, and the interests of personal privacy given the nature of the allegations involved, Plaintiff and the male student at issue shall be designated in the Defendants’ filings as Jane Doe and “Student M.” 20 USC § 1232g, 20 USC § 1092(f)(8)(B)(v), 34 CFR Part 99, 34 CFR 668.46(b)(11)(iii). Any other student whose records may be impacted as a result of these claims shall similarly be identified. All parties are well aware of the identities.

3. University Defendants admit the allegations contained in numerical paragraphs 3, 4, 5, 6, and 7 of the Complaint.

4. As to the allegations contained in numerical paragraphs 8 and 9 of the Complaint, University Defendants state these paragraphs contain legal conclusions that require no response and further state that they have exercised their right to remove this action from the Campbell Circuit Court, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

5. As to the allegations contained in numerical paragraph 10 of Complaint, the University Defendants admit Plaintiff was awarded an academic scholarship to NKU and upon information and belief continues to be an excellent student. University Defendants are without sufficient information to admit or deny the remaining allegations contained therein and therefore deny same.

6. As to the allegations contained in numerical paragraph 11 of the Complaint, the University Defendants state that Plaintiff enrolled as a student at NKU in the 2013/2014 academic year and was, and continues to be, provided academic scholarship. University Defendants are without sufficient information to admit or deny the remaining allegations contained therein and therefore deny same.

7. University Defendants deny the allegations contained in numerical paragraph 12 of the Complaint and affirmatively state that Plaintiff and/or her parents were provided with information concerning sexual assault on NKU's campus as a part of Freshmen Orientation and advised of NKU's policies concerning sexual assault, which policies are published and readily available to Plaintiff, her parents, and the public through NKU's website. <http://scra.nku.edu/policies/student-rights.html>; <http://titleix.nku.edu/sexual-misconduct-policy.html>. NKU further complies with the Jeanne Clery Disclosure of Campus Security Policy

and Campus Crime Statistics Act (Clery Act) and publishes crime statistics for the campus and other safety and crime information to members of the campus community and on its website. <https://police.nku.edu/safety/CleryAct.html>. Plaintiff was further informed of NKU policies and procedures concerning sexual assault at the time of her notice of sexual assault to NKU and throughout the investigation and hearing process.

8. As to the allegations of contained in numerical paragraph 13 of the Complaint, the University Defendants state that Plaintiff notified that she was sexually assaulted by another NKU student (“Student M”) on campus approximately nine (9) months prior to the date that she reported the assault, and University Defendants are without sufficient information to admit or deny the remaining allegations contained therein and therefore deny same.

9. As to the allegations contained in numerical paragraph 14 of Complaint, the University Defendants are without sufficient information to admit or deny the allegations contained therein and therefore deny same.

10. University Defendants expressly deny the allegations contained in numerical paragraph 15 of the Complaint, and affirmatively state that Plaintiff reported the sexual assault to NKU counseling services, which office brought her to the office of Defendant James, who at that time served as the Associate Dean of Students and Title IX Coordinator. Defendant James also included Gabby Maxedon Molony, Coordinator for the Norse Violence Prevention Program, in her initial meeting with Plaintiff wherein Plaintiff was advised of NKU’s policies and procedures relating to claims of sexual assault. This meeting included discussion of Plaintiff’s right to file a formal complaint with NKU and initiate an investigation. Further discussion included explanation of Plaintiff’s option to file a criminal complaint with the police in addition to the

internal complaint. Defendant James and/or Ms. Molony offered to provide assistance to Plaintiff should she decide to file a criminal complaint.

11. University Defendants expressly deny the allegations contained in numerical paragraph 16 of the Complaint and affirmatively state NKU advises any student, faculty or staff member who reports sexual assault of NKU's policies and procedures and the victim's right to file a claim with NKU and/or authorities. But no victim is required to file a criminal complaint, nor can they be compelled to file such a complaint. University Defendants further affirmatively state that they have timely, reasonably and in good faith and accordance with applicable policy and procedure responded to all concerns reported by Plaintiff.

12. University Defendants admit the allegations contained in numerical paragraph 17 of the Complaint to the extent the language cite is reflected on NKU's website, but affirmatively states Plaintiff has selectively cited the information provided, which information in fact specifically advises victims of the right to file criminal complaints in relevant part as follows:

**Can I call the police? Do I have to call the police?**

Individuals may chose to take action under criminal statutes and/or University policies. The criminal and administrative (Title IX) processes are separate, but can be pursued concurrently. Survivors of sexual assault are not required to contact the police or file an administrative complaint, but are highly encouraged to reach out to the [Norse Violence Prevention Center](#) to discuss their options and receive support.

Criminal investigations are intended to determine whether or not a law has been broken, while Title IX investigations determine whether or not university policies have been violated. This is an important distinction as a criminal investigation can result in incarceration depending on the verdict, while a Title IX investigation will not result in incarceration but can result in disciplinary action by the school.

A Title IX investigation will proceed regardless of whether a criminal investigation is pursued or ongoing. Know Your IX has developed [a helpful guide](#) on the differences between the criminal and administrative processes and how having both options is a benefit to students.

If you wish to file a police report, contact University Police:

- NKU Police Emergency at 859-572-7777 OR 911
- NKU Police Non-emergency at 859-572-5500

<http://titleix.nku.edu/reporting.html>

13. As to the allegations contained in numerical paragraph 18 of the Complaint, the University Defendants admit that a hearing panel was convened to hear a charge of alleged violations of the NKU Housing Policies and Student Code of Conduct as to Student M. The panel found it more likely than not that Student M engaged in sexual misconduct/non-consensual sexual intercourse, in violation of the NKU Housing Policies and Student Code of Conduct. University Defendants deny that the panel found “she was telling the truth” or that “she had been assaulted as she described” and deny all remaining allegations contained therein.

14. University Defendants deny the allegations contained in numerical paragraph 19 and affirmatively state that sanctions were imposed against Student M, which sanctions the University Defendants have timely, reasonably, in good faith and accordance with applicable policy and procedure enforced. Plaintiff has at all times had the right to raise concerns regarding Student M’s adherence to those sanctions, which concerns were timely investigated and responded to, and has further had access to, and utilized, the support services provided by the Norse Violence Prevention program.

15. University Defendants deny the allegations contained in numerical paragraph 20 and affirmatively state that in accordance with applicable law, regulation and guidance, as well as NKU policy and procedure, Plaintiff was informed, in writing, of the outcome of the hearing and the sanctions imposed upon Student M, and further advised of her right to appeal the finding and/or sanctions. Plaintiff made no appeal.

16. University Defendants deny the allegations contained in numerical paragraph 21 and affirmatively state that sanctions were imposed against Student M, which sanctions the University Defendants have timely, reasonably, in good faith and accordance with applicable

policy and procedure enforced and deny that Student M was “constantly in and around her dorm or the housing complex” and all other remaining allegations contained therein.

17. As to the allegations contained in numerical paragraph 22 of the Complaint, University Defendants admit that Student M’s sanctions were amended to permit access only to the dining facility in Norse Commons as the only other full service dining facility available to students on campus was closed due to renovations. Student M was directed not use the dining facility during hours identified by Plaintiff for her use. University records concerning the amendment speak for themselves. University Defendants deny the remaining allegations contained therein.

18. University Defendants deny the allegations contained in numerical paragraph 23 of the Complaint, and affirmatively state that Student M was provided reasonable, limited access to limited areas of the campus for specific periods of time with advance notice to Plaintiff of the specific dates and times.

19. The University Defendants deny the allegations contained in numerical paragraph 24 of the Complaint and affirmatively state that friend of Plaintiff’s, and NKU student, reported to Ms. Molony that she observed Student M in Plaintiff’s residence hall. Defendant James timely investigated this claim, but there was no reliable evidence of any violation of sanctions. As a result, no action could be taken. Plaintiff was notified of the outcome of the investigation, and the records related to such investigation speak for themselves. Plaintiff was offered relocation to another room within the Residential Village, but she declined.

20. The University Defendants deny the allegations contained in numerical paragraph 25 of the Complaint and affirmatively state that neither the external door to the dormitory, nor the door to the Plaintiff’s suite was broken. Access to University housing by individuals other

than necessary University employees and resident students is controlled. Access to University housing complexes as well as individual hall access within each building, is controlled via electronic access granted only to the housing residents. In addition, access to the each suite is via electronic access, provided only to the individuals to whom the suite is assigned and each room within the suite is further accessible only by key, issued to the individual residing in that room. As such, there are multiple access controls.

21. As to the allegations contained in numerical paragraph 26 of the Complaint, the University Defendants affirmatively state Student M was in the Norse Commons dining facility as approved, that the records related to the incident speak for themselves, and deny the remaining allegations contained therein.

22. The University Defendants deny the allegations contained in numerical paragraph 27 of the Complaint and affirmatively state that the students at issue were all subjected to a No Contact Order as a result of such conflicts, the documentation concerning which speaks for itself.

23. As to the allegations contained in numerical paragraph 28 of the Complaint, the University Defendants admit that a No Contact Order was in place. University Defendants affirmatively state that an investigation was conducted, which investigation revealed no violation of sanctions and Plaintiff was advised of the outcome of such investigation. University Defendants deny the remaining allegations contained therein and state that the documentation concerning the investigation speaks for itself.

24. The University Defendants deny the allegations contained in numerical paragraph 29 of the Complaint.

25. As to the allegations contained in numerical paragraph 30 of the Complaint, the University Defendants admit that at Plaintiff's request President Mearns agreed to meet with

Plaintiff and her family, and that Ann James, Kim Turner and Jamie McCauley were also present at that meeting. President Mearns, in accordance with NKU policy and procedure, has no direct involvement in sexual assault investigations, hearings, appeals, or sanctions. President Mearns and all University officers and employees act in good faith to protect the rights of all students pursuant to NKU policy and procedure, federal or state law. President Mearns expressed concern and empathy for Plaintiff and her family and they discussed Plaintiff's academic performance, which remained strong. University Defendants deny any remaining allegations contained therein.

26. As to the allegations contained in numerical paragraph 31 of the Complaint, the University Defendants affirmatively state that appropriate response was made to Plaintiff's expressed concerns, the documentation concerning which speaks for itself, and deny all remaining allegations contained therein.

27. As to the allegations contained in numerical paragraph 32 of the Complaint, the University Defendants affirmatively state that Plaintiff was advised that it is the obligation of NKU, in accordance with its policies and procedures as well as federal and state law, to consider the rights of both Plaintiff and Student M, and deny all remaining allegations contained therein.

28. As to the allegations contained in numerical paragraph 33 of the Complaint, the University Defendants admit that Plaintiff and her parents met with Defendant Roberts after she was newly appointed to the role of Title IX Director for NKU. Despite having no prior involvement in Doe's claims, Defendant Roberts agreed to meet with Plaintiff and her family and listened to her concerns as well as demands. Plaintiff examined Defendant Roberts with questions prepared by her counsel as to legal duties and obligations while not informing Defendant Roberts of this fact or providing her the opportunity to be advised by counsel.

Plaintiff and her family further made demands upon the University, including monetary demands, to which demands Defendant Roberts has no authority to respond on behalf of the University. Defendant Roberts informed Plaintiff she would consult with the necessary University officials and provide a response. Prior to any response, Plaintiff's representation by counsel was made known, effectively referring the matter to legal counsel for the University. University Defendants deny any remaining allegations contained therein.

29. As to the allegations contained in numerical paragraph 34 of the Complaint, the University Defendants admit that Plaintiff and others engaged in a protest on campus in an exercise of her First Amendment Rights. University Defendants specifically deny that NKU police created any interference with the right to protest and deny that they or mocked the protestors in any manner. University police were present due to information that a counter-protest might be engaged to ensure the safety and rights of all persons involved. University Defendants deny any remaining allegations contained therein.

30. As to the allegations contained in numerical paragraph 35 of the Complaint, the University Defendants affirmatively state that Defendant Kachurek sent an email to NKU police officers and his immediate supervisor advising his officers to ensure the First Amendment Rights of Plaintiff and the other protestors, which email speaks for itself. Defendants deny the remaining allegations contained therein.

31. As to the allegations contained in numerical paragraphs 36 and 37 of the Complaint, the University Defendants affirmatively state that the email speaks for itself and deny the allegations contained therein.

32. As to the allegations contained in numerical paragraph 38 of the Complaint, the University Defendants admit that Defendant Kachurek is an employee of NKU and deny all remaining allegations contained therein.

33. As to the allegations contained in numerical paragraph 39 of the Complaint, the University Defendants state that the faculty Professional Concerns Committee does not have full knowledge of the events underlying these claims as it does not have an educational need to know in accordance with the Family Educational Rights and Privacy Act entitling it to information or documents concerning the events at issue here, and further state the opinion of that Committee has no legal authority or relevance, and deny any purported allegation contained therein.

34. As to the allegations contained in numerical paragraphs 40 and 41 of the Complaint University Defendants state that the records speak for themselves and deny the allegations contained therein.

35. As to the allegations contained in numerical paragraph 42 of the Complaint, University Defendants affirmatively state that this incident was investigated and appropriate and reasonable response provided, that the results of the investigation were reported to Plaintiff, the records concerning which speak for themselves, and Defendants deny any remaining allegations contained therein.

36. University Defendants deny the allegations contained in numerical paragraph 43 of the Complaint.

37. As to the allegations contained in numerical paragraph 44 of Complaint, the University Defendants are without sufficient information to admit or deny the allegations contained therein and therefore deny same.

38. As to the allegations contained in numerical paragraph 45 of Complaint, the University Defendants affirmatively state that no sanction imposed on Student M, which sanctions Plaintiff did not exercise her right to appeal, prevents Student M's election as an officer of a fraternity, and therefore deny the allegations contained therein.

39. As to the allegations contained in numerical paragraph 46 of Complaint, the University Defendants object to Plaintiff's citation to communications by and between retained counsel for Defendants and counsel for Plaintiff subject to Federal Rule of Evidence 408. Plaintiff intentionally misstates and mischaracterizes the communication, made in direct response to a FRE 408 communication by Plaintiff's counsel, and which is clearly made for inflammatory purposes. For the limited purpose of responding in their Answer, such communication cited to Defendants' statutory right pursuant to the Family Educational Rights and Privacy Act (FERPA) to disclose those student records that are relevant to their defense in the course of this litigation. *See* 34 CFR 99.31(a)(9)(iii)(B). University Defendants deny any remaining allegations contained therein.

40. University Defendants deny the allegations contained in numerical paragraphs 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of the Complaint.

41. University Defendants deny the allegations contained in numerical paragraph 59 of the Complaint and incorporate by reference the response provided in paragraph 39 of this Answer as if fully set forth herein. As to the allegations contained therein University Defendants affirmatively state that no threat of public exposure was ever made, but a statement that Defendants have protected Plaintiff's FERPA rights, as it does the FERPA rights of all students, and declined any response in the face of Plaintiff's prior false public accusations; however, as

established by law, Defendants are entitled to rely upon the student educational records relevant to their defense in this matter.

42. University Defendants deny the allegations contained in numerical paragraph 60 of the Complaint and affirmatively state that the communication referenced, which is misstated and mischaracterized by Plaintiff, was made in direct response to a FRE 408 communication by Plaintiff's counsel, and is clearly made for inflammatory purposes.

43. University Defendants deny the allegations contained in numerical paragraphs 61, 62, 63, and 64 of the Complaint.

44. As to the allegations contained in numerical paragraph 65 of the Complaint University Defendants state that the email speaks for itself and deny the allegations contained therein.

45. University Defendants deny the allegations contained in numerical paragraph 66 of the Complaint.

46. As to the allegations contained in numerical paragraph 67 of the Complaint University Defendants state that the email speaks for itself and deny the allegations contained therein.

47. As to the allegations contained in numerical paragraph 68 of the Complaint University Defendants incorporate by reference the response provided in paragraph 30 of this Answer as if fully set forth herein and deny the allegations contained therein.

48. As to the allegations contained in numerical paragraph 69 of the Complaint, University Defendants admit that President Mearns has advised that "[t]he police chief's email message was well intended - he was advising his officers to protect the students First Amendment right to protest," and deny any allegations contained therein.

49. University Defendants deny the allegations contained in numerical paragraphs 70, 71, and 72 of the Complaint.

50. University Defendants admit the allegations contained in numerical paragraph 73 of the Complaint.

51. University Defendants deny the allegations contained in numerical paragraphs 74 and 75 of the Complaint.

52. As to the allegations contained in numerical paragraph 76 of the Complaint University Defendants state that University directors, officers, and employees act in good faith to ensure compliance with all federal and state laws and deny the allegations contained therein.

53. University Defendants deny the allegations contained in numerical paragraphs 77 and 78 of the Complaint.

54. As to the allegations contained in numerical paragraphs 79, 80, and 81 of the Complaint, University Defendants state that to the extent these paragraphs contain legal conclusions they require no response, that any statute or law referenced therein speaks for itself, and deny any allegations contained therein.

55. University Defendants deny the allegations contained in numerical paragraphs 82, 83, 84, 85 of the Complaint.

56. As to the allegations contained in numerical paragraphs 86 and 87 of the Complaint, the University Defendants affirmatively state that they carried out their obligations in good faith pursuant to University policy and procedure and all applicable federal and or state statutes, regulations and guidance promulgated or issued thereunder; further, to the extent these paragraphs contain legal conclusions they require no response and any statute or law referenced therein speaks for itself, and deny any allegations contained therein.

57. University Defendants deny the allegations contained in numerical paragraphs 88, 89, 90 and 91 of the Complaint.

58. University Defendants deny any allegations contained in numerical paragraph 92 of the Complaint and affirmatively state to the extent this paragraph contains legal conclusions they require no response, that any statute or law referenced therein speaks for itself, and deny any allegations contained therein.

59. As to the allegations contained in numerical paragraph 93 of the Complaint University Defendants state that Defendant Roberts did not serve as Title IX Coordinator at all times relevant to the claims herein; Defendants further state that to the extent this paragraph contains any legal conclusion it requires no response, any statute or law referenced therein speaks for itself, and deny any remaining allegations contained therein.

60. As to the allegations contained in numerical paragraphs 94, 95 and 96 of the Complaint, to the extent these paragraphs contain legal conclusions they require no response, that any statute, regulation, law or guidance or law referenced therein speaks for itself, and University Defendants deny any allegations contained therein.

61. University Defendants deny any allegations contained in numerical paragraphs 97, 98 and 99 of the Complaint.

62. University Defendants admit the allegation contained in numerical paragraph 100 of the Complaint.

63. The allegations contained in numerical paragraph 101 of the Complaint require no response by University Defendants and any allegations contained therein are denied.

64. University Defendants deny any allegations contained in numerical paragraph 102, 103, 104, and 105 of the Complaint.

65. The University Defendants deny each and every allegation not specifically admitted herein.

### **THIRD DEFENSE**

The Defendants, Northern Kentucky University, including its branches, subdivisions and employees acting in their official capacities, including Geoffrey S. Mearns, Les Kachurek, Kathleen Roberts, and Ann James, are agencies/agents of the Commonwealth of Kentucky, and are entitled to all of the rights, privileges and immunities of the Commonwealth, including, but not limited to, the protections afforded by the Eleventh Amendment to the Constitution of the United States, §231 of the Kentucky Constitution, and the principles of sovereign, qualified and/or official immunity, and, accordingly, all or part of the Plaintiff's claims herein are barred.

### **FOURTH DEFENSE**

That at all times relevant hereto University Defendants have acted in conformity with all applicable statutes, regulations, ordinances, common law and in conformity with the Constitutions of the United States and the Commonwealth of Kentucky, and, accordingly, all or part of the Plaintiff's claims herein are barred.

### **FIFTH DEFENSE**

That at all times relevant hereto, the University Defendants acted in good faith, in accordance with law, without wrongful intent or malice, with proper justification and within the scope of their authority, and/or exercised reasonable professional judgment with respect to Plaintiff rights, and the University Defendants rely upon said good faith as a complete bar to Plaintiff's Complaint.

**SIXTH DEFENSE**

At all times relevant, the actions of Defendants were reasonable, proper, legal, without wrongful intent and without malice which bars Plaintiff's claims for punitive damages, and, otherwise, Plaintiff's claims for punitive damages are barred and/or limited by case law and/or statute including Kentucky and Federal case law and law of the Supreme Court of the United States and also the municipal and/or governmental and/or immunity and/or limitation on actions defense that are available to local governmental entities and/or their agents or officials.

**SEVENTH DEFENSE**

None of the University Defendants actions or omissions, if any, were motivated or based, in whole or in part, on any or exercise of free speech, nor any alleged retaliatory reasons nor alleged protected status or activities, nor any considerations related to any of the above, but were in fact based upon the legitimate exercise of their professional duties, rights and responsibilities.

**EIGHTH DEFENSE**

Any statements of fact allegedly made about Plaintiff, when taken in the context they were actually made, did not constitute an restraint upon or violation of Plaintiff's exercise of her First Amendment Rights and University Defendants rely upon same as a bar to Plaintiff's claims.

**NINTH DEFENSE**

The alleged communications concerning Plaintiff, if any, are protected in whole or in part by the doctrine of qualified and/or absolute privilege and University Defendants rely upon same as a bar to Plaintiff's claims.

**TENTH DEFENSE**

Plaintiff may have failed to mitigate any and all of her alleged damages and/or aggravated same by her own actions or inactions, which bars in whole or in part her claim for

damages.

**ELEVENTH DEFENSE**

The University Defendants provisionally plead the affirmative defenses of the Federal Rules of Civil Procedure 8 and 12, as if fully restated herein and to the extent not already expressly stated herein, with the applicability thereof, if any, to be determined during discovery with amendment to pleadings accordingly.

**TWELVETH DEFENSE**

The University Defendants reserve the right to raise any other affirmative defense that may become known in the course of discovery.

WHEREFORE, the University Defendants respectfully request judgment as follows:

- (a) that Plaintiff's claims be dismissed with prejudice;
- (b) that the University Defendants be awarded their costs, including reasonable attorney fees incurred in defending this action; and
- (c) for any and all relief to which the University Defendants may be entitled.

Respectfully Submitted,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

/s/ Katherine M. Coleman

Katherine M. Coleman (KBA#84089)

Joshua M. Salsburey (KBA#89038)

333 West Vine Street, Suite 1500

Lexington, KY 40507

Telephone: (859) 255-8581

[kcoleman@sturgillturner.com](mailto:kcoleman@sturgillturner.com)

[jsalsburey@sturgillturner.com](mailto:jsalsburey@sturgillturner.com)

COUNSEL FOR UNIVERSITY DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing, if applicable, to the following:

Kevin L. Murphy  
Kevin L. Murphy PLLC  
2400 Chamber Center Drive, Suite 301  
P.O. Box 17534  
Ft. Mitchell, KY 41017-0534  
[KLMurphy@kevinlmurphy.com](mailto:KLMurphy@kevinlmurphy.com)  
Attorney for Plaintiff

/s/ Katherine M. Coleman  
COUNSEL FOR DEFENDANTS

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