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FEB 07 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

JANE DOE

Plaintiff,

vs.

BERRY COLLEGE AND MARCUS
SANDELOWSKY

Defendant.

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(CIVIL ACTION
(FILENO. 1:04-CV-3420-HTW
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ANSWER OF DEFENDANT BERRY COLLEGE, INC.

Comes now Berry College, Inc. ("Berry"), named as a defendant in the above-referenced action, and answers plaintiff's complaint for damages as follows:

FIRST DEFENSE

For a first defense, this defendant shows that the complaint fails to state a claim against it upon which relief can be granted.

SECOND DEFENSE

For a second defense, this defendant shows that venue is improper.

THIRD DEFENSE

For a third defense, this defendant shows that this action should be transferred to the Rome Division of this Court consistent with this defendant's motion to transfer venue filed concurrently herewith.

FOURTH DEFENSE

For a fourth defense, this defendant shows that the present complaint has not been brought in the name of the real party in interest as required by Rule 17 of the Federal Rules of Civil Procedure.

FIFTH DEFENSE

For a fifth defense, this defendant responds to the numbered paragraphs of the complaint as follows:

1.

In response to the allegations of paragraph 1, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the United States or the laws of the State of Georgia. In further response, this defendant specifically denies that a viable federal claim has been asserted herein to confer subject matter jurisdiction in this Court or to invoke this Court's pendant jurisdiction to hear and decide any purported state law

claims. Except as expressly admitted herein, the allegations of paragraph 1 are denied.

2.

In response to the allegations of paragraph 2, this defendant denies that venue is appropriate in this Court. In further response, this defendant admits that it is a resident of Floyd County, Georgia, which is located in the Rome Division of this Court. This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Sandelowsky resides in Fulton County, Georgia. Except as expressly admitted herein, the allegations of paragraph 2 are denied.

3.

In response to the allegations of paragraph 3, this defendant shows that plaintiff was enrolled at Berry at various times from 2001 to the present as a full time student. Except as expressly admitted herein, the allegations of paragraph 3 are denied.

4.

The allegations of paragraph 4 are admitted.

5.

In response to the allegations of paragraph 5, this defendant shows that Sandelowsky was enrolled at Berry from 2001 through 2004 as a full time student. This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Sandelowsky presently resides in Fulton County. Except as expressly admitted herein, the allegations of paragraph 5 are denied.

6.

The allegations of paragraph 6 are admitted.

7.

The allegations of paragraph 7 are denied.

8.

The allegations of paragraph 8 are admitted.

9.

In response to the allegations of paragraph 9, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's broad generalizations concerning the social behavior of college students or their

preparation for the freedoms of an adult life. To the extent that a response is required, said allegations are denied as pled.

10.

In response to the allegations of paragraph 10, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's speculation about the possible causes of sexual assaults on college campuses or the likelihood of such assaults. To the extent that a response is required, said allegations are denied as pled.

11.

In response to the allegations of paragraph 11, this defendant shows that the unidentified "authoritative studies" to which plaintiff makes reference will speak for themselves regarding any conclusions reached therein. Except as expressly admitted herein, the allegations of paragraph 11 are denied as pled.

12.

In response to the allegations of paragraph 12, this defendant shows that the unidentified "authoritative studies" to which plaintiff makes reference will speak for themselves regarding any conclusions reached therein. Except as expressly admitted herein, the allegations of paragraph 12 are denied as pled.

13.

In response to the allegations of paragraph 13, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the United States, the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 13 are denied as pled.

14.

The allegations of paragraph 14 are denied.

15.

In response to the allegations of paragraph 15, this defendant shows that it provides reasonable security for the safety and protection of its students. Except as expressly admitted herein, the allegations of paragraph 15 are denied.

16.

The allegations of paragraph 16 are admitted.

17.

In response to the allegations of paragraph 17, this defendant shows that it provides reasonable security for the safety and protection of its students. Except as expressly admitted herein, the allegations of paragraph 17 are denied as pled.

18.

In response to the allegations of paragraph 18, this defendant shows that it provides reasonable security for the safety and protection of its students. Except as expressly admitted herein, the allegations of paragraph 18 are denied as pled.

19.

In response to the allegations of paragraph 19, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the United States, the laws of the State of Georgia or the legal responsibilities of this defendant under federal or state law. In further response, this defendant shows that it takes affirmative steps to reasonably provide for the safety and protection of its students and makes every effort to do so in a non-negligent manner. Except as expressly admitted herein, the allegations of paragraph 19 are denied as pled.

20.

In response to the allegations of paragraph 20, this defendant shows that Marcus Sandelowsky enrolled as a freshman at Berry College in the Fall of 2001 and that he lived in a college dormitory on the Berry College campus at that time. Except as expressly admitted herein, the allegations of paragraph 20 are denied.

21.

In response to the allegations of paragraph 21, this defendant shows that it never received a complaint from any student named “Jane Doe” that Sandelowsky had sexually assaulted her. Except as expressly admitted herein, the allegations of paragraph 21 are denied as pled.

22.

In response to the allegations of paragraph 22, this defendant shows that the Berry Police Department never received a complaint from any student named “Jane Doe” that Sandelowsky had sexually assaulted her. Except as expressly admitted herein, the allegations of paragraph 22 are denied as pled.

23.

In response to the allegations of paragraph 23, this defendant shows that Dean Carol Willis never received a complaint from any student named “Jane Doe” regarding Sandelowsky. Except as expressly admitted herein, the allegations of paragraph 22 are denied as pled.

24.

This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 24 and, therefore, this defendant can neither admit nor deny the same.

25.

In response to the allegations of paragraph 25, this defendant shows that there is no student enrolled at Berry College by the name of "Jane Doe." Except as expressly admitted herein, the allegations of paragraph 25 are denied as pled.

26.

The allegations of paragraph 26 are denied.

27.

The allegations of paragraph 27 are denied.

28.

The allegations of paragraph 28 are denied.

29.

In response to the allegations of paragraph 29, this defendant shows that there is no student enrolled at Berry College by the name of "Doe 2." Except as expressly admitted herein, the allegations of paragraph 29 are denied pled.

30.

In response to the allegations of paragraph 30, this defendant shows that there is no student enrolled at Berry College by the name of "Doe 3." Except as expressly admitted herein, the allegations of paragraph 30 are denied as pled.

31.

In response to the allegations of paragraph 31, this defendant shows that Marcus Sandelowsky was employed for some period of time during his tenure at Berry in the Financial Aid Office. Except as expressly admitted herein, the allegations of paragraph 31 are denied.

32.

In response to the allegations of paragraph 32, this defendant shows that Marcus Sandelowsky was enrolled as a student at Berry College in the period from 2001 through 2004. Except as expressly admitted herein, the allegations of paragraph 32 are denied.

33.

The allegations of paragraph 33 are denied.

34.

In response to the allegations of paragraph 34, this defendant shows that there are no students enrolled at Berry College by the name of “Doe 2” or “Doe 3.” Except as expressly admitted herein, the allegations of paragraph 34 are denied
pled.

35.

In response to the allegations of paragraph 35, this defendant shows that a grievance was filed in 2004 by three (3) female students at Berry regarding the actions of Marcus Sandelowsky, that a hearing was convened shortly thereafter to consider said grievance, affording due process to all parties concerned, and that the transcript of said hearing will speak for itself regarding the allegations made therein, the testimony and evidence submitted and the witnesses who provided testimony therein. Except as expressly admitted herein, the allegations of paragraph 35 are denied as pled.

36.

In response to the allegations of paragraph 36, this defendant shows that a grievance was filed in 2004 by three (3) female students at Berry regarding the actions of Marcus Sandelowsky, that a hearing was convened shortly thereafter to

consider said grievance, affording due process to all parties concerned, and that the transcript of said hearing will speak for itself regarding the allegations made therein, the testimony and evidence submitted and the witnesses who provided testimony therein. Except as expressly admitted herein, the allegations of paragraph 36 are denied as pled.

37.

In response to the allegations of paragraph 37, this defendant shows that a grievance was filed in 2004 by three (3) female students at Berry regarding the actions of Marcus Sandelowsky, that a hearing was convened shortly thereafter to consider said grievance, affording due process to all parties concerned, and that the transcript of said hearing will speak for itself regarding the allegations made therein, the testimony and evidence submitted and the witnesses who provided testimony therein. Except as expressly admitted herein, the allegations of paragraph 37 are denied as pled.

38.

In response to the allegations of paragraph 38, this defendant shows that a grievance was filed in 2004 by three (3) female students at Berry regarding the actions of Marcus Sandelowsky, that a hearing was convened shortly thereafter to

consider said grievance, affording due process to all parties concerned, and that the transcript of said hearing will speak for itself regarding the allegations made therein, the testimony and evidence submitted and the witnesses who provided testimony therein. Except as expressly admitted herein, the allegations of paragraph 38 are denied as pled.

39.

In response to the allegations of paragraph 39, this defendant shows that the transcript of the subject grievance hearing, the appeal filed by Sandelowsky thereafter and the decision on said appeal will speak for themselves regarding the matters discussed in paragraph 39. Except as expressly admitted herein, the allegations of paragraph 39 are denied as pled.

40.

In response to the allegations of paragraph 40, this defendant shows that the agreement reached between Berry and Sandelowsky regarding his decision to voluntarily withdraw from Berry and the circumstances under which that would occur will speak for itself regarding the matters discussed in paragraph 40. Except as expressly admitted herein, the allegations of paragraph 40 are denied as pled.

41.

The allegations of paragraph 41 are denied.

42.

The allegations of paragraph 42 are denied.

43.

The allegations of paragraph 43 are denied.

44.

The allegations of paragraph 44 are denied.

45.

The allegations of paragraph 45 are denied.

46.

The allegations of paragraph 46 are denied.

47.

The allegations of paragraph 47 are denied.

48.

In response to the allegations of paragraph 48, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the United States, the laws of the State of Georgia or

the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 48 are denied as pled.

49.

In response to the allegations of paragraph 49, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the United States the laws of the State of Georgia or legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 49 are denied as pled.

50.

The allegations of paragraph 50 are denied.

51.

The allegations of paragraph 51 are denied.

52.

The allegations of paragraph 52 are denied.

53.

In response to the allegations of paragraph 53, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any

party herein. To the extent that a response is required, the allegations of paragraph 53 are denied as pled.

54.

In response to the allegations of paragraph 54, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 54 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

55.

In response to the allegations of paragraph 55, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 55 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

56.

In response to the allegations of paragraph 56, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 56 are denied as pled. In further response, this defendant shows that it provides adequate and reasonable security for the safety and protection of its students.

57.

In response to the allegations of paragraph 57, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 57 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

58.

In response to the allegations of paragraph 58, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any

party herein. To the extent that a response is required, the allegations of paragraph 58 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

59.

In response to the allegations of paragraph 59, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 59 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

60.

The allegations of paragraph 60 are denied.

61.

In response to the allegations of paragraph 61, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 61 are denied as pled.

62.

In response to the allegations of paragraph 62, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 62 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

63.

In response to the allegations of paragraph 63, this defendant shows that it is not required to respond to those allegations merely setting forth plaintiff's interpretation of the laws of the State of Georgia or the legal responsibilities of any party herein. To the extent that a response is required, the allegations of paragraph 63 are denied as pled. In further response, this defendant shows that it provides reasonable security for the safety and protection of its students.

64.

The allegations of paragraph 64 are denied.

65.

The allegations of paragraph 65 are denied.

66.

The allegations of paragraph 66 are denied.

67.

The allegations of paragraph 67 are denied.

68.

This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 68 and, therefore, this defendant can neither admit nor deny the same.

69.

This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 69 and, therefore, this defendant can neither admit nor deny the same.

70.

This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 70 and, therefore, this defendant can neither admit nor deny the same.

71.

This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 71 and, therefore, this defendant can neither admit nor deny the same.

72.

This defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 72 and, therefore, this defendant can neither admit nor deny the same.

73.

This defendant realleges and incorporates by reference as if fully set forth herein its responses to paragraphs 1 through 72, inclusive.

74.

The allegations of paragraph 74 are denied.

75.

This defendant realleges and incorporates by reference as if fully set forth herein its responses to paragraphs 1 through 74, inclusive.

76.

The allegations of paragraph 76 are denied.

77.

The allegations of paragraph 77 are denied.

78.

The allegations of paragraph 78 are denied.

79.

Any other allegations in the complaint not specifically admitted or otherwise addressed are hereby denied.

SIXTH DEFENSE

For a sixth defense, this defendant shows that it was not deliberately indifferent to any known act of harassment which would amount to an intentional violation of Title IX sufficient to support a private damages action.

SEVENTH DEFENSE

For a seventh defense, this defendant shows that plaintiff's complaint is barred, in whole or in part, by the applicable statute of limitations.

EIGHTH DEFENSE

For an eighth defense, this defendant pleads the defenses of waiver, estoppel and laches.

NINTH DEFENSE

For a ninth defense, this defendant shows that Berry did not deny plaintiff equal access to education in violation of Title IX.

TENTH DEFENSE


For a tenth defense, this defendant shows that the actions or inactions of Berry did not have the systemic effect of denying plaintiff equal access to an educational program or activity in violation of Title IX.

ELEVENTH DEFENSE

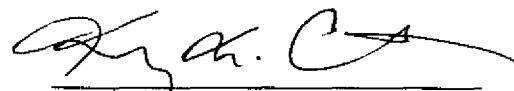
For an eleventh defense, this defendant shows that punitive damages are not recoverable under Title IX in the present context.

Wherefore, having fully answered, Berry prays that plaintiff's complaint against it be dismissed, with all costs cast against plaintiff, and that Berry have such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted this 7th day of February, 2005.

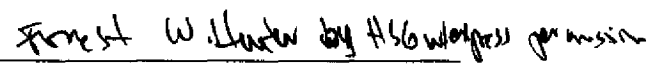


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JANE DOE

Plaintiff,

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Defendant.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **Answer of Defendant Berry College, Inc.** upon all counsel of record by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to:

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This 7th day of February, 2005.



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