

**KIM T. CHAZE**

Attorney at Law

*Mailing Address:*

P.O. Box 236  
Eufaula, AL 36072

*Phone:*

603-969-4529  
kchaze@comcast.net

February 6, 2013

Hon. Lou Ellen Adams  
Forrest County Circuit Clerk  
P. O. Box 992  
Hattiesburg, MS 39403

RE: Stark v. USM, et al  
Cause No.: CI-12-0217

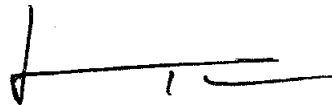
Dear Ms. Adams:

Enclosed please find to be filed an AMENDED COMPLAINT in regard to the above captioned matter.

Please conform and return to me the copies so indicated in the enclosed stamped addressed envelope.

Thank you for your kind attention to this matter.

Cordially,



KIM T. CHAZE

KTC/js

Enclosure

PC Alan M. Purdie, Esq.

J. Cal Mayo, Jr.

Exhibit

B

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

MS. DIANE STARK

PLAINTIFF

V.

CAUSE NO.: CI 12-0217

UNIVERSITY OF SOUTHERN MISSISSIPPI,  
MR. JEFF HAMMOND, INDIVIDUALLY AND OFFICIALLY,  
DR. MARTHA SAUNDERS, INDIVIDUALLY AND OFFICIALLY

DEFENDANTS

**AMENDED COMPLAINT**

**(Jury Trial Requested)**

**PLAINTIFF ALLEGES:**

1. Plaintiff is an adult, resident citizen of the State of Nebraska.
2. The identity and location of Defendant, University of Southern Mississippi [USM], is self evident.
3. Mr. Hammond is a resident citizen of the State of Mississippi. He is represented by counsel who have previously responded on his behalf.
4. Dr. Saunders was the President of USM and is represented by counsel who have previously responded herein on her behalf.
5. This Court has jurisdiction and venue herein. This Court has jurisdiction over the subject matter and the parties herein.

6. This civil action involves torts that occurred in the State of Mississippi and predominantly in Forrest County, Mississippi. It also involves Title VII, as more definitively described *infra*, the Lily Ledbetter Fair Pay Act, and the Equal Pay Act.

7. All administrative prerequisites regarding the Mississippi Tort Claims Act [MTCA] have been satisfied. The contractual violations do not require administrative prerequisites to be satisfied. Furthermore, the intentional torts do not require administrative prerequisites to be satisfied. Additionally, the administrative prerequisites regarding Title VII, Lilly-Ledbetter, and the Equal Pay Act have been satisfied.

8. Although an appropriate Notice of Claim has been provided the Defendants, no response to the notice has been rendered. Furthermore, the Plaintiff has not been provided any information by the Defendants regarding her Charges filed with the EEOC.

9. **STATE CIVIL ACTIONS:** The Plaintiff herein asserts and alleges that the Defendants have tortiously and intentionally inflicted emotional distress upon her. In the alternative, she has been the victim of the negligent infliction of emotional distress, and negligence. Plaintiff is a Whistleblower and has intentionally been retaliated against by defendants for reporting wrongful, illegal activities. She has also been the victim of other torts that will be delineated *infra*.

10. A persistent, intimidating, intolerable work place has been either created by the Defendants and/or allowed to have been created and ratified. Mr. Jeff Hammond has used his position to threaten, intrude upon, frighten, attempt to extract funds from, act outrageously, intimidate, insult, disrespect, yell at, confront, and threaten violence in the

work place of Plaintiff. Dr. Saunders intentionally ratified his misconduct and intentionally contributed to the work place hostility by her acts and ratifications.

11. Mr. Hammond made the workplace so intolerable that Plaintiff had to leave her position as an employee of Defendants. Then, the Defendants refused to provide the requisite and entitled funds and benefits that Plaintiff was and is entitled. Other funds were retaliatorily delayed. She attempted to remain employed, but, ultimately, the Defendants fired her on or about June 30, 2012.

12. As a direct and proximate result of the foregoing tortious actions of Mr. Hammond, Plaintiff filed appropriate grievances and claims with USM. President Saunders and her staff refused to provide appropriate relief to Plaintiff. Indeed, President Saunders stated, words to the effect, that Plaintiff deserved or probably "needed" her mistreatment or words to that effect. The situation was so dire that Plaintiff was fearful of returning to her normal work station/position that she had diligently and assiduously tended for many years.

13. Ultimately, Plaintiff was wrongfully terminated on or about June 30, 2012. This occurred, paradoxically, after she had been constructively discharged on or about January 4, 2012. She had been promised she would be appropriately compensated through June 2012, but this promise was also breached and broken.

14. Mr. Hammond, among other wrongful actions, wrongfully insisted that Plaintiff make monetary contributions Plaintiff did not wish to make. Upon becoming an administrator at USM Mr. Hammond let it be known, in very clear terms, he was capable of using violence and willing to use violence to accomplish whatever he wanted. Plaintiff was in fact intimidated by his persistent angry, violent, and highly inappropriate

conduct in the workplace. At one point Mr. Hammond angrily and inappropriately leaned over the desk of Plaintiff, inches from her face, and began yelling and screaming at Plaintiff while verbally attacking her and attacking her character. He was in a complete rage. Others heard what was occurred. His conduct was threatening and menacing. He consistently engaged in this kind of misconduct in the workplace. His conduct was so intimidating and offensive that it created in Plaintiff an apprehension of imminent harmful or offensive contact.

15. Mr. Hammond let it be known or, in the alternative, contended to others in the work place that he was capable of doing bodily harm by using his alleged "twin brother".

16. In effect, Mr. Hammond became and acted as a campus and office bully. His conduct was so egregious that numerous complaints were brought against him by numerous employees regarding his misconduct but remedial, effective action was not accomplished by the Defendants.

17. This conduct extended, in a chain of tortious misconduct, from May 2011 to the constructive discharge date of January 4, 2012 and through the termination date of June 30, 2012 and, indeed, to the present. Essentially, Mr. Hammond was allowed and encouraged by USM to remain a bully and use his intimidational conduct towards Plaintiff and others in the workplace in any manner he chose. He chose to continue his misconduct. USM allowed him to continue it with impunity. Indeed, USM actually promoted Mr. Hammond in spite of his past misconduct at USM. This made it clear to Plaintiff and others that USM endorsed and ratified the intimidational misconduct of Mr. Hammond. No help would be forthcoming to Plaintiff. His conduct would be allowed to continue. The enduring of it would be a condition of employment.

18. Plaintiff complained and reported the wrongdoings of Mr. Hammond to her supervisors, Human Resources, and others to include the President, Dr. Saunders. The President was informed of Plaintiff's complaints; yet, sided with Mr. Hammond and took the position that Plaintiff deserved her mistreatment. She ratified the misconduct of Mr. Hammond and provided no relief to Plaintiff.

19. Mr. Hammond, with the approval and/or ratification of the Administrative Offices at USM, to include Dr. Saunders, engaged in a pattern or practice of the foregoing misconduct.

20. At one point, on or about December 2011, USM promised to provide funds and compensation and benefits to Plaintiff through June 2012. Then, they broke this promise, did not keep their word, and violated this contractual obligation. As a proximate result, Plaintiff has been harmed to this additional extent.

21. Additionally, the employee Handbook, as has been conceded by the President and Human Resource Director in previous litigational matters, affords the Plaintiff the contractual right to have her grievances and complaints and reporting of wrongdoing heard and addressed and investigated. These rights are contractual. They have been breached since they have not been afforded Plaintiff.

22. The Defendants, overtly, actively, and/or by ratification, and/or by and through their agents and representatives, retaliated against Plaintiff, who had reported and/or refused to engage in illegal acts or illegal conduct of Defendants. Mr. Hammond had assaulted Plaintiff and wrongfully placed her in fear of bodily harm. Although the assault was not consummated by a battery, Mr. Hammond's conduct did place Plaintiff in

reasonable apprehension of bodily harm. She reported this conduct. Then, she was retaliated against for her reporting these acts.

23. As a proximate result of Plaintiff reporting the foregoing misconduct, she was wrongfully dismissed and terminated and retaliated against. Plaintiff refused to engage in, participate, approve of, or ratify the foregoing illegal acts. Indeed, the enduring or permitting the occurrence of these acts became a condition of her employment. This practice is anathema to Mississippi's jurisprudence. Plaintiff is a classic Whistleblower as defined by Mississippi case law and jurisprudence. Consequently, she asks for relief regarding this civil action.

24. The foregoing misconduct of Defendants constitutes the wrongful and tortious conduct that the Mississippi Supreme Court has ruled is against Public Policy in this state.

25. The Defendants had a distinct duty to prevent the foregoing tortious, illegal acts from occurring, as described above, but they breached that duty. As a proximate result thereof, the foregoing torts, in addition to the tort regarding whistleblowing, as described above, were effected, allowed, or ratified by Defendants. Consequently, the wrongful actions of Defendants, as described herein, in addition to her Whistleblower/Retaliation civil action, have proximately triggered the following torts and proximately caused considerable damages to Plaintiff:

- A. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- B. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
- C. BREACH OF IMPLIED CONTRACT;
- D. CONSTRUCTIVE DISCHARGE;

- E. OUTRAGE;
- F. NEGLIGENCE;
- G. MENACE;
- H. PROMISSORY ESTOPPEL;
- I. EQUITABLE ESTOPPEL;
- J. DETRIMENTAL RELIANCE

26. **TITLE VII DISCRIMINATION AND RETALIATION:** In addition to the foregoing civil actions, Plaintiff has been the victim of unlawful discrimination, based upon her sex and based upon her filing charges of discrimination against USM and others representing USM. This discriminatory/retaliatory misconduct violates, *inter alia*, Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C. § 2000e, *et. Seq.*

27. The discrimination and retaliation has been intentional. The Plaintiff has been the victim of disparate treatment and disparate impact regarding the terms and conditions of her employment, in terms of promotion, and terms and conditions of compensation as well as her wrongful termination.

28. Additionally, and/or alternatively, under the civil rights act at §2000e-2(m), sex, gender, and/or retaliatory animus was a motivating factor regarding the employment practices regarding Plaintiff.

29. Consequently, Plaintiff respectfully complains of the discriminatory and retaliatory actions of USM and asks for relief to which she is entitled. Title VII does not allow for relief against individuals. Consequently, this aspect of the Amended Complaint only applies to USM.



30. All administrative prerequisites regarding the Title VII aspect of this Amended Complaint have been satisfied.

31. Although Plaintiff was forced from her workplace, deprived of remuneration and benefits, USM, according to their records, fired Plaintiff on or about June 11, 2012. As is evident, she had previously filed grievances, complaints, and Charges of Discrimination and Retaliation against USM. The complaints and Charges speak for themselves.

32. It is evident she was fired because she had complained about the harassment of her by Mr. Hammond. In spite of asking for assistance from USM, no assistance was forthcoming. Indeed, USM, via Mr. Hammond and their Human Resources Department, and Dr. Saunders aggressively mistreated Plaintiff and retaliated against her for complaining about her mistreatment.

33. Additionally, the Handbook and USM's own directives and policies entitled her to considerable benefits. However, those benefits were also withheld. These deprived benefits include, among other benefits, unused personal leave, pay and remuneration, and health care benefits.

34. All of these deprivations are part and parcel of a pattern or practice of systemic discrimination and retaliation against Plaintiff. Alternatively, they are clearly motivating factors regarding her mistreatment.

35. In the months leading up to her firing she had been, in effect, banned from the workplace because of the aforementioned intolerability. It was toxic and harmful to her health. During this period she was told she was still employed, but she would not be paid. She was not paid. Yet, males in her similar situation were in fact paid. This is

discriminatory. Other males, who were not physically on the USM campus were paid. Yet, Plaintiff was not. In effect, USM prevented Plaintiff from working on the premises. USM refused to remove, or even admonish Mr. Hammond for his misconduct and, at the same time, refused to remunerate Plaintiff. Please bear in mind Plaintiff had been an assiduous, superior employee of USM for many years. Her work record is exemplary. Only until she complained about the toxic workplace and the bullying of Mr. Hammond did her difficulties begin.

36. Consequently, even leading up to her discriminatory firing, she was discriminated against and retaliated against over the numerous, preceding months. She was discriminatorily denied and deprived of compensation, benefits, remuneration, and even a non-hostile, non-toxic, non-bullying place to work.

37. The terms and conditions of her employment were clearly impacted.

38. Plaintiff filed three Charges of Discrimination. USM provided no relief to her. These Charges were in addition to her previous written complaints with USM. Still, no action was taken to eliminate the discrimination or retaliation. Indeed, one of her complaints dealt with the discriminatory hiring of Mr. Hammond as Athletic Director and Interim Athletic Director. Dr. Saunders was determined to provide him the position even though he was not qualified for it. Indeed, Plaintiff was the person with the most qualifications and knowledge regarding the Athletic Director position. Yet, she, and no female, was even provided the opportunity to apply for the position. There was no advertisement for Interim Athletic Director, and the Athletic Director position was also covertly handled by USM.

39. Plaintiff, and all females and all minorities and all races but Caucasians, were blocked from competing for the Athletic Director position since no published advertising regarding it was provided Plaintiff or made known to her. The process was a secret one - - unrevealed to the public.

40. **EQUAL PAY ACT; LILY LEDBETTER FAIR PAY ACT:** Additionally, the lack of remuneration to Plaintiff, as compared to Mr. Giannini and other males, not only evidences Title VII violations regarding discrimination and retaliation, but it also violates the Equal Pay Act as well as the Lilly Ledbetter Fair Pay Act.

41. Certainly the Plaintiff should not have been deprived of her deserved remuneration while Mr. Giannini and other males are paid in full when they are not actually working at USM.

42. Plaintiff's numerous verbal and written complaints and Charges were not heeded by USM. No relief regarding the substance of her complaints was provided. Indeed, the intimidational, hostile conduct of Mr. Hammond remained, and still remains, a hostile and viable threat. USM has not, to this day, informed Plaintiff that the workplace concerns have been alleviated.

43. All of the foregoing, summarizes the contentions of Plaintiff regarding Title VII, Lilly Ledbetter Fair Pay Act violations, and the Equal Pay Act violations.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff asks for all appropriate, following relief herein:

A. An appropriate amount of compensatory and actual damages that a jury deems appropriate. The Plaintiff submits that this amount is in excess of the jurisdictional limits herein. Although Plaintiff respects and defers to what a jury

deems appropriate damages, she submits her actual damages are in excess of \$500,000;

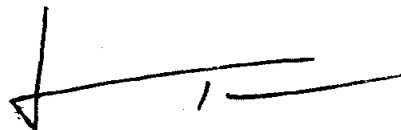
B. Plaintiff further asks for injunctive relief and all equitable relief with which this Court is empowered to include specific performance so that she is returned to her former position, that Mr. Hammond be removed, that a fair competitive environment be established so that the position of Athletic Director is not accompanied by discriminatory animus;

C. Prejudgment and post judgment interest, and all equitable relief to which she is entitled;

D. Plaintiff also asks for attorney fees and all other relief she is entitled by Title VII and the Equal Pay Act and the Lily Ledbetter Fair Pay Act;

E. If the Plaintiff has asked for inappropriate relief, she asks for all relief she is entitled in law, in equity, and which is just and proper.

RESPECTFULLY SUBMITTED this the 6<sup>th</sup> day of February, 2013.



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Kim T. Chaze  
Attorney for Plaintiff  
MSB#5974  
P.O. Box 236  
Eufaula, AL 36072  
603-969-4529  
(kchaze@comcast.net)

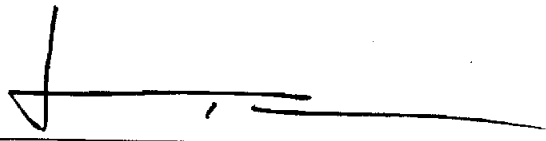
**CERTIFICATE OF SERVICE**

I, Kim T. Chaze, do hereby certify that I have, this day, caused to be served, a true and correct copy of the foregoing AMENDED COMPLAINT to the following:

Alan M. Purdie  
PURDIE & METZ, PLLC  
P.O. Box 2659  
Ridgeland, MS 39158  
*apurdie@purdieandmetz.com*

J. Cal Mayo, Jr.  
Mayo Mallette PLLC  
P.O. Box 1456  
Oxford, MS 38655-1456  
*cmayo@mayomallette.com*

THIS, the 6<sup>th</sup> day of February, 2013.

  
KIM T. CHAZE