

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MARIA L. BROWN

PLAINTIFF

v.

Civil Action No. 3:07cv727

DAVID NUTT, P.A., et al.

DEFENDANTS

**ANSWER OF DAVID H. NUTT
TO FIRST AMENDED COMPLAINT**

Defendant David H. Nutt (“Defendant”) respectfully submits this Answer to the First Amended Complaint (“Complaint”).

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Defendant for which relief can be granted.

RESPONDING TO the specific paragraphs of the Complaint, the Defendant denies each and every allegation contained in each paragraph, including their subparts, except those specifically admitted below:

PARTIES

1. The Defendant admits the plaintiff is an adult female. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 and, therefore, denies the allegations.

2. The Defendant denies that David Nutt, P.A. is the plaintiff’s former employer and that David Nutt, P.A. is a corporation. The Defendant avers that David Nutt, P.A. is a professional association. The Defendant admits the remaining allegations contained in paragraph 2.

3. The Defendant denies that David Nutt & Associates, P.C. is a corporation, and avers that David Nutt & Associates, P.C. is a professional corporation. The Defendant admits the remaining allegations contained in paragraph 3.

4. The Defendant denies Nutt & McAlister, PLLC is a corporation. The Defendant admits the remaining allegations contained in paragraph 4.

5. The Defendant admits the allegations contained in paragraph 5.

6. The Defendant admits the allegations contained in paragraph 6.

7. The Defendant admits the allegations contained in paragraph 7.

8. The Defendant admits the allegations contained in paragraph 8.

9. The Defendant denies the allegations contained in paragraph 9.

JURISDICTION AND VENUE

10. The Defendant admits the allegations contained in paragraph 10.

11. The Defendant admits that the Court has subject matter jurisdiction under 28 U.S.C. § 1331 over the plaintiff's claims arising under federal law. The Defendant denies the Court has subject matter jurisdiction over the remaining claims.

12. The Defendant admits the allegations contained in paragraph 12.

13. The Defendant admits that a Charge of Discrimination and a Notice of Right to Sue are attached to the Complaint as Exhibit A and Exhibit B, respectively. The Defendant avers that he is not listed as a respondent in those documents. The Defendant denies the remaining allegations contained in paragraph 13.

STATEMENT OF FACTS

14. The Defendant admits that the plaintiff began her employment with David Nutt & Associates, P.C. in July 2004. Her employment with David Nutt & Associates, P.C. ended on March 31, 2007. As of April 1, 2007, the plaintiff was employed by Nutt & McAlister, PLLC. The Defendant admits that the plaintiff worked primarily on Katrina insurance litigation at the time of her July 27, 2007 termination from Nutt & McAlister, PLLC. The Defendant denies the plaintiff was employed by any of the other defendants during these periods.

15. The Defendant denies the allegations contained in paragraph 15.

16. The Defendant denies the allegations contained in paragraph 16.

17. The Defendant denies the allegations contained in paragraph 17.

18. The Defendant denies the allegations contained in paragraph 18.

19. The Defendant denies the allegations contained in paragraph 19.

20. The Defendant denies the allegations contained in paragraph 20.

21. The Defendant denies the allegations contained in paragraph 21.

22. The Defendant denies the allegations contained in paragraph 22.

23. The Defendant denies the allegations contained in paragraph 23.

24. The Defendant denies the allegations contained in paragraph 24.

25. The Defendant denies the allegations contained in paragraph 25.

26. The Defendant denies the allegations contained in paragraph 26.

27. The Defendant denies the allegations contained in paragraph 27.

28. The Defendant admits the allegations contained in paragraph 28.

29. The Defendant denies the allegations contained in paragraph 29.

30. The Defendant denies the allegations contained in paragraph 30.

31. The Defendant admits that on occasion the plaintiff was asked to contact the Rigsby sisters to set up conferences and avers that the conferences were for lawful purposes. The Defendant denies the remaining allegations contained in paragraph 31.

32. The Defendant denies the allegations contained in paragraph 32.

33. The Defendant denies the allegations contained in paragraph 33.

34. The allegations contained in paragraph 34 are not directed to this Defendant and require no response. However, if and to the extent the allegations are directed to this Defendant, they are denied.

35. The Defendant denies the allegations contained in paragraph 35.

36. The Defendant admits the plaintiff's employment with Nutt & McAlister, PLLC was terminated on July 27, 2007. The Defendant denies the remaining allegations contained in paragraph 36.

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

37. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 36.

38. The Defendant denies the first sentence of paragraph 38. The Defendant admits the remaining allegations contained in paragraph 38.

39. The Defendant denies the allegations contained in paragraph 39.

40. The Defendant denies the allegations contained in paragraph 40.

COUNT II

WRONGFUL TERMINATION

41. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 40.
42. The Defendant denies the allegations contained in paragraph 42.

COUNT III

CONSPIRACY/AIDING AND ABETTING

43. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 42.
44. The Defendant denies the allegations contained in paragraph 44.
45. The Defendant denies the allegations contained in paragraph 45.

COUNT IV

**SEX DISCRIMINATION/SEXUAL HARASSMENT/SEXUALLY
HOSTILE WORK ENVIRONMENT**

46. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 45.
47. The Defendant denies the allegations contained in paragraph 47.
48. The Defendant denies the allegations contained in paragraph 48.
49. The Defendant denies the allegations contained in paragraph 49.

COUNT V

RETALIATION

50. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 49.

51. The Defendant denies the allegations contained in paragraph 51.

52. The Defendant denies the allegations contained in paragraph 52.

COUNT VI

VIOLATION OF THE FAIR LABOR STANDARDS ACT

53. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 52.

54. Paragraph 54 contains only legal conclusions to which no response is required.

55. The provisions of the FSLA speak for themselves, and no further response is required. To the extent a response is required, the Defendant denies that paragraph 55 is an accurate summary of the provisions of 29 U.S.C. § 207(a).

56. The Defendant denies the allegations contained in paragraph 56.

57. The Defendant denies the allegations contained in paragraph 57.

COUNT VII

**INTENTIONAL INFLICTION AND/OR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS**

58. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 57.

59. The Defendant denies the allegations contained in paragraph 59.

60. The Defendant denies the allegations contained in paragraph 60.

61. The Defendant denies the allegations contained in paragraph 61.

COUNT VIII

NEGLIGENCE PER SE

62. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 61.

63. The Defendant denies the allegations contained in paragraph 63.

COUNT IX

NEGLIGENT SUPERVISION

64. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 63.

65. The Mary McAlister was an employee of Defendant David Nutt & Associates, P.C. until 2005 when she became a member of Nutt & McAlister, PLLC. The Defendant denies that Ms. McAlister was an agent or employee of any of the other defendants.

66. The Defendant denies the allegations contained in paragraph 66.

67. The Defendant denies the allegation contained in the first sentence of paragraph 67. The Defendant admits the allegation contained in the second sentence of paragraph 67.

68. The Defendant denies the allegations contained in paragraph 68.

COUNT X

NEGLIGENCE

69. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 68.

70. The Defendant admits that certain federal and state authorities preclude termination of employment for certain specified reasons and may mandate, in certain circumstances, investigation of claims of termination for one of those impermissible reasons. However, other than the very specific circumstances addressed by these authorities, which did not occur in this case, the Defendant could terminate the plaintiff for any reason at all or for no reason at all. The Defendant denies the remaining allegations contained in paragraph 70.

71. The Defendant denies the allegations contained in paragraph 71.

COUNT XI

PUNITIVE DAMAGES

72. The Defendant reasserts the responses to the allegations contained in paragraphs 1 through 71.

73. The Defendant denies the allegations contained in paragraph 73.

PRAYER FOR RELIEF

Unnumbered Paragraph and Subparts The Defendant denies the plaintiff is entitled to the relief she seeks, or to any relief whatsoever.

SECOND AFFIRMATIVE DEFENSE

The Complaint does not satisfy the minimum pleading requirements of Federal Rules of Civil Procedure 8 and 9.

THIRD AFFIRMATIVE DEFENSE

One or more of the plaintiff's claims are barred by the applicable statutes of limitation.

FOURTH AFFIRMATIVE DEFENSE

The plaintiff did not present one or more of her claims to the relevant administrative agency within the allowable time period.

FIFTH AFFIRMATIVE DEFENSE

The Court does not have subject matter jurisdiction under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e *et seq.*) over any issues raised in the Complaint that were not made subject to a timely, sworn Charge of Discrimination filed with the Equal Employment Opportunity Commission within 180 days of the alleged discriminatory conduct.

SIXTH AFFIRMATIVE DEFENSE

Any cause of action brought pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e *et seq.*) based on alleged acts of discrimination of which the plaintiff knew or should have known that occurred more than 180 days before the date on which she filed a Charge of Discrimination with the Equal Employment Opportunity Commission are barred by the statute of limitations set forth in 42 U.S.C. § 2000e-5(e).

SEVENTH AFFIRMATIVE DEFENSE

One or more of the plaintiff's claims are pre-empted by federal law.

EIGHTH AFFIRMATIVE DEFENSE

The conditions precedent for maintaining one or more claims in this action have not been met.

NINTH AFFIRMATIVE DEFENSE

One or more of the plaintiff's claims are barred because she failed to exhaust administrative remedies.

TENTH AFFIRMATIVE DEFENSE

The plaintiff unreasonably failed to utilize the preventative and corrective avenues provided to her because she failed to notify her superiors of any alleged inappropriate behavior or alleged sexually hostile working environment.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent the plaintiff asserts harassment or discrimination claims other than those asserted in a timely charge of discrimination, such claims are barred.

TWELFTH AFFIRMATIVE DEFENSE

Any and all actions taken by the defendants against the plaintiff were taken for legitimate, non-discriminatory reasons having nothing to do with her gender or in retaliation for any actions she may have taken.

THIRTEENTH AFFIRMATIVE DEFENSE

The Defendant has not engaged in any discriminatory practices with malice or reckless indifference to the plaintiff's federally protected rights so that, in the event liability is found to exist, punitive damages should not be awarded.

FOURTEENTH AFFIRMATIVE DEFENSE

The plaintiff was an employee terminable at will, and as such, her employment could be terminated for any reason not made unlawful by federal or state law.

FIFTEENTH AFFIRMATIVE DEFENSE

This Defendant did not employ the plaintiff. However, the defendants that did employ the plaintiff had policies that prohibited unlawful harassment, discrimination and retaliation, and had a procedure for the resolution of complaints alleging harassment, discrimination and retaliation. The plaintiff did not avail herself of that procedure.

SIXTEENTH AFFIRMATIVE DEFENSE

The plaintiff was properly paid for all hours worked and reported. Therefore the doctrine of payment bars one or more of the plaintiff's claims.

SEVENTEENTH AFFIRMATIVE DEFENSE

The doctrine of accord and satisfaction bar one or more of the plaintiff's claims.

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent the plaintiff was paid wages for periods when no work or services were performed, the Defendant should be entitled to a set-off of wages, if any, found due to the plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

The doctrines of waiver or estoppel bar one or more of the plaintiff's claims.

TWENTIETH AFFIRMATIVE DEFENSE

The plaintiff's own negligence was the sole or contributing cause of all or part of the damages she alleges.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The assumption of risk doctrine bars one or more of the plaintiff's claims.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The plaintiff failed to mitigate her damages, if any.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The plaintiff's claim for punitive damages violates the United States Constitution, the Mississippi Constitution and Miss. Code Ann. § 11-1-65.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The plaintiff's conspiracy claims and claims asserted under 28 U.S.C. § 1985 must fail because a legal entity cannot conspire with itself or its agents and employees.

TWENTY-FIFTH AFFRIMATIVE DEFENSE

At all times the Defendant acted in good-faith conformity with and in reliance on the regulations, orders, rulings and interpretations of the Department of Labor's Wage and Hour Division.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The sole proximate cause, or alternatively a contributing cause, of the alleged damages claimed by the plaintiff arose from actions or the inaction of persons or entities other than the Defendant for which the plaintiff cannot hold the Defendant liable.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Statute of Frauds bars one or more of the plaintiff's claims.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Defendant hereby gives notice that he intends to rely on any other defenses that may become legally available or appear during the discovery proceedings in this case and hereby reserves his right to amend his answer to assert any such defense.

TWENTY-NINTH AFFIRMATIVE DEFENSE

To the extent applicable, the Defendant incorporates by reference each and every affirmative defense pled by other parties to this action.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests this Court to dismiss with prejudice the Complaint filed against him in this action and to award the Defendant reasonable attorneys' fees and all costs. The Defendant requests such other and further relief as the Court deems appropriate.

Dated: February 11, 2008

Respectfully submitted,

DAVID H. NUTT

By: s/ Lawrence E. Allison, Jr.
One of His Attorneys

OF COUNSEL:

Christopher A. Shapley (MSB No. 6733)
(e-mail: cshapley@brunini.com)
Lawrence E. Allison, Jr. (MSB No. 1534)
(e-mail: lallison@brunini.com)
Joseph Anthony Sclafani (MSB No. 99670)
(e-mail: jsclafani@brunini.com)
Brian C. Kimball (MSB No. 100787)
(e-mail: bkimball@brunini.com)
Brunini, Grantham Grower & Hewes, PLLC
1400 Trustmark Building
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: (601) 948-3101
Facsimile: (601) 960-6902

CERTIFICATE OF SERVICE

I hereby certify that, on February 11, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Louis H. Watson, Jr.
(louis@louiswatson.com)
Robert Nicholas Norris
(nick@louiswatson.com)
520 East Capitol Street
Jackson, Mississippi 39201-2703

By: s/ Lawrence E. Allison, Jr.