

THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MICHIGAN

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DENICE & PATRICK O'HERON,

Plaintiffs,

Case No. 1:05-CV-00556

v.

Hon. Robert Holmes Bell  
Chief, U.S. District Judge

CALVIN COLLEGE,

Defendant.

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**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**  
**TO PLAINTIFF'S COMPLAINT AND JURY DEMAND**

Defendant, Calvin College ("Calvin"), by and through its attorneys, Barnes & Thornburg LLP, hereby states the following in support of its Answer and Affirmative Defenses to Plaintiff's Complaint and Jury Demand.

**PARTIES**

1. Plaintiff, Denice O'Heron, (hereinafter Plaintiff) is a resident of Kent County Michigan, and was so at all times relevant to this Complaint.

**ANSWER: Upon information and belief, admitted.**

2. Plaintiff, Patrick O’Heron, is the lawfully married husband of Plaintiff Denice O’Heron, and was so, as well as a resident of Kent County Michigan, at all times relevant to this Complaint.

**ANSWER: Upon information and belief, admitted.**

3. Defendant, Calvin College, is a college/educational non-profit institution, registered with the State of Michigan as a Domestic Non-profit corporation, No. 747622 located in Kent County, Grand Rapids, Michigan, providing educational/instructional services to its students, and employs more than 15 employees.

**ANSWER: Defendant admits the allegations of paragraph 3.**

**JURISDICTION**

4. Plaintiff was at all times relevant to this Complaint, a qualified person with a disability, as defined by 42 USC 12102(2), who was employed by Defendant.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the legal conclusions in paragraph 4 and, therefore, denies the same.**

5. Plaintiff is also a person with a disability as defined by the Michigan Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1103(h).

**ANSWER: Defendant is without knowledge or information sufficient to respond to the legal conclusions in paragraph 5 and, therefore, denies the same.**

6. Defendant is a covered employer or covered entity under the Americans with Disability Act, 42 USC 12111(2), employing more than 15 employees.

**ANSWER: Admitted that Defendant employs more than 15 employees. Defendant is without knowledge or information sufficient to respond to the remaining legal conclusions in paragraph 6 and, therefore, denies the same.**

7. Defendant is an employer under the Michigan Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1101 et seq.

**ANSWER: Defendant admits that allegations of paragraph 7.**

8. Plaintiff filed a complaint as to her ADA claims with the EEOC on March 3, 2005 (Attached as Exhibit 1)

**ANSWER: Defendant admits that Exhibit 1 to Plaintiff's Complaint purports to be a "Charge of Discrimination" that Plaintiff filed with the EEOC on March 3, 2005. Defendant denies the allegations contained therein.**

9. A Right to Sue Letter was issued by the EEOC on or about May 20, 2005, and received in the mail by Plaintiff on May 23, 2005, (Attached as Exhibit 2)

**ANSWER: Defendant admits that Exhibit 2 to Plaintiff's Complaint purports to be a copy of a Right to Sue Letter issued by the EEOC on May 20, 2005, the document speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to when Plaintiff received the letter and, therefore, denies the same.**

10. This Court has jurisdiction over violations of the Americans with Disabilities Act, supplemental jurisdiction over Michigan state law PWDCR claims.

**ANSWER: Admitted that this Court has jurisdiction over claims brought under the Americans with Disability Act and supplemental jurisdiction over Michigan state law claims. Defendant denies that it violated any such laws, either state or federal.**

**FACTS**

11. Plaintiff was continuously employed by Defendant from 1997 until her constructive discharge June 4, 2004, in various capacities.

**ANSWER: Admitted that Plaintiff was employed continuously by Defendant from January, 1997 until her resignation from her position in the English Department on June 4, 2004. Defendant denies Plaintiff's legal conclusion that she was constructively discharged on June 4, 2004.**

12. Plaintiff first worked as the Admissions Office secretary half time, and eventually also worked half time in the Science Office.

**ANSWER: Admitted.**

13. In 1998, Plaintiff became a full time employee, shared by both the Science Division/Physics as a secretary, and the Admissions office.

**ANSWER: Admitted.**

14. On August 2, 1999, she was hired as the full-time secretary for the English Department, working 40 hours per week at \$11.68 per hour.

**ANSWER: Upon information and belief, admitted.**

15. Plaintiff worked very well, and fulfilled the duties of her positions more than satisfactorily, with very exceptional and outstanding performance appraisals in 1997, 1998, 1999.

**ANSWER: Admitted that Plaintiff received a 90-day performance evaluation from the Science department in August of 1998 where she received a rating of exceptional and a one-month review from the English department in the summer of 1999 where she**

**received a rating of outstanding. The evaluations speak for themselves. Defendant denies the remaining allegations as stated.**

16. Plaintiff received glowing letters and pay increases related to her outstanding performance, including discretionary pay increases awarded by her supervisors for exceptional work in 2000-2002.

**ANSWER: Admitted that Plaintiff received pay raises during her employment with Calvin. The remaining allegations of paragraph 16 are denied as stated in that Plaintiff's pay increases were dependant upon a wide variety of factors that cannot be attributed solely to Plaintiff's job performance.**

17. Plaintiff was first diagnosed with a generalized anxiety disorder and depressive disorder, in 2001 and 2002, by her internist, Peter A. Kuhl, M.D.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations in paragraph 17 and, therefore, denies the same.**

18. Dr. Kuhl prescribed various anti-depressants and sleep medicines, as these conditions were impairing Plaintiffs ability sleep, eat, concentrate at work, and otherwise function normally in various daily activities.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations in paragraph 18 and, therefore, denies the same.**

19. Plaintiff received a very negative personnel performance review in 2002 from then Chair of the English Department, Dean Ward after a lengthy delay by Ward in getting the review completed.

**ANSWER: Defendant denies the allegations of paragraph 19 to the extent Plaintiff incorrectly summarizes or mischaracterizes the performance evaluation.**

**Defendant admits that Plaintiff received a performance review in August of 2002 that rated Plaintiff exceptional for her secretarial skills, software knowledge, and willingness to assist in crisis situations, and below expectations for managing tasks, supervision of student employees, being at her desk (she had 64 sick days), making personal calls, tardiness and attitude. The performance review is the best evidence as to its contents. The remaining allegations are denied.**

20. Plaintiff informed Defendant employer through her supervisors and Human Resources officials that she had been diagnosed with depression in 2002.

**ANSWER: Admitted that Plaintiff discussed her depression with Dean Ward and Dean Netland. The remaining allegations are denied.**

21. Plaintiff was shocked by the tone of the review, and very upset.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to Plaintiff's personal feelings. Defendant admits that Plaintiff appeared to be unhappy and upset with her performance review.**

22. The review noted that she performed her job very well, but that her attitude and demeanor was negative and abrupt.

**ANSWER: Defendant denies the allegations of paragraph 22 to the extent Plaintiff incorrectly summarizes or mischaracterizes the performance evaluation. The performance evaluation is the best evidence as to its contents.**

23. Plaintiff discussed the review with outgoing Chair Ward, and incoming Chair John Netland.

**ANSWER: Admitted that Plaintiff met with Dean Ward and Dean Netland to discuss her review.**

24. Plaintiffs depression symptoms were worsened and aggravated by the content of the report, and Plaintiff discussed her depression diagnosis with both Ward and Netland as being an explanation for her what was described as “poor attitude.”

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether the review worsened and aggravated her depression and, therefore, denies the same. Defendant admits that Plaintiff offered her depression diagnosis to Dean Ward and Dean Netland as an excuse for her negative attitude.**

25. Netland encouraged Plaintiff to share her depression diagnosis with the members of the English department so they were aware that her failure to be as pleasant as they wanted her to be related to her medical condition.

**ANSWER: Defendant denies the allegations of paragraph 25 and further states that Plaintiff requested Defendant to circulate a memo to the English Department explaining that she was experiencing renewed symptoms of depression and anxiety.**

26. Netland prepared a written notice to the members of the English Department that Plaintiff was suffering from depression, upon information and belief, with the knowledge and approval of Human Resources official, Deirdre Honner, which was disseminated to all members of the Department in mid-August 2002.

**ANSWER: Admitted that Dean Netland prepared the subject notice upon the request and approval of Plaintiff. Denied that Human Resource official, Deirdre Honner, approved disseminating the notice.**

27. Plaintiff was placed on a “Personal Development Plan” by Netland and Ward, and told that her employment would be terminated if there was no improvement.

**ANSWER: Admitted that Plaintiff requested Defendant to prepare another performance review in November 2002 under the new department chair -- the November 2002 review is the best evidence as to its contents. Defendant is unaware of any personal development plan or communication with Plaintiff that she would be terminated if there was no improvement and, therefore, denies said allegations.**

28. Ward shared with Plaintiff emails and letters from faculty members detailing their dissatisfaction with her attitude and demeanor, but would not reveal who had said what.

**ANSWER: Defendant denies the allegations of paragraph 28 as stated. Defendant admits that the performance evaluations incorporate quotes and input from other members of the English Department which are shared with Plaintiff as part of the review process. It is further admitted that the evaluation process requires that the comments remain anonymous.**

29. Plaintiff was deeply upset and hurt by the comments and evaluation, and embarrassed that the faculty had all become aware of her mental health problems.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to Plaintiff's personal feelings. Defendant admits that Plaintiff appeared unhappy with the performance evaluation. However, there was no indication that Plaintiff was embarrassed that the faculty had become aware of her alleged depression as Plaintiff requested that her diagnosis be shared with the faculty and, furthermore, Plaintiff openly discussed her depression with faculty during the course of her employment. All remaining allegations, if any, are denied.**

30. Plaintiff received an excellent and much improved performance evaluation in December 2002, and the faculty members treated her better for a few months.

**ANSWER:** Defendant denies the allegations of paragraph 30 to the extent Plaintiff incorrectly summarizes or mischaracterizes the performance evaluation. The performance evaluation is the best evidence as to its contents. Defendant denies the remaining allegations as stated.

31. On June 3, 2003, Plaintiff received a very favorable performance evaluation, with her Department Chair, John Netland, praising her for her efforts to improve her attitude.

**ANSWER:** Defendant denies the allegations of paragraph 31 to the extent Plaintiff incorrectly summarizes or mischaracterizes the performance evaluation. Defendant admits that Plaintiff received a performance evaluation on or about June 3, 2003. Defendant denies the remaining allegations as stated.

32. Plaintiff continued to treat for her depression and anxiety with medications, but as her symptoms worsened in 2003 after a slip and fall accident at work where Plaintiff sustained a head injury, Dr. Kuhl referred Plaintiff to Pine Rest for treatment by a psychiatrist.

**ANSWER:** Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 32 and, therefore, denies the same.

33. Defendant's English Department Chair, John Netland, urged Plaintiff to seek a psychiatrist's care, and urged her to make appointments to see the doctors Dr. Kuhl suggested at Pine Rest.

**ANSWER:** Defendant denies the allegations of paragraph 33 as stated. Defendant admits that Dean Netland met with Plaintiff from time to time in the fall of 2003 and that Plaintiff would share personal information with Dean Netland. Defendant further admits that Dean Netland told Plaintiff that he was not the appropriate person to share this information with and that she should seek professional help.

34. Plaintiff presented for an initial assessment at Pine Rest in November 2003, noting that her ongoing depression and anxiety was causing her to be irritable to her coworkers and making it difficult to concentrate on her work.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 34 and, therefore, denies the same.**

35. Plaintiff was referred to Dr. Michael Thebert, M.D., a psychiatrist with the Pine Rest Caledonia clinic.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 35 and, therefore, denies the same.**

36. Dr. Thebert diagnosed Plaintiff with Major Depressive Disorder, recurrent, DMS IV Code 296.32, and Panic Disorder without agoraphobia, 300.01.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 36 and, therefore, denies the same.**

37. Thebert increased her dosage of certain anti-depressants she was already taking, and continued to see her on a regular basis.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 37 and, therefore, denies the same.**

38. Plaintiff also saw a mental health therapist at Pine Rest, at her Department Chair's request.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff saw a mental health therapist and, therefore, denies the same. Defendant admits that Dean Netland encouraged Plaintiff to seek professional help, but**

denies any suggestion that Dean Netland requested that Plaintiff visit a mental health therapist.

39. PLAINTIFF SKIPPED THIS NUMBER

**ANSWER:** Denied.

40. Plaintiff had to take time off work to leave for her appointments during the day, which was approved by her Chairman, John Netland originally.

**ANSWER:** Admitted that Dean Netland approved a lot of time off for Plaintiff. Defendant is without knowledge as to the remaining allegations and, therefore, denies the same.

41. After a few weeks of Plaintiffs visits to her therapist and doctor, Netland and other faculty members became irritated at Plaintiff not being in the office continually during the day.

**ANSWER:** Defendant denies the allegations of paragraph 41. Defendant admits that Plaintiff's significant absence from work affected her ability to perform the essential functions of the job and that Dean Netland asked if Plaintiff could try to accommodate her appointments around work.

42. Plaintiffs' doctor also sent a letter to Defendant advising that due to a worsening of Plaintiffs depression, she had to work on a part-time basis.

**ANSWER:** Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 42 and, therefore, denies the same. Defendant has no record of receiving a letter from Plaintiff's doctor.

43. Defendant refused to honor the request for restricted work hours initially, and her internal medicine doctor re-drafted the request a second time, after which a reduced work schedule of 1-5 pm was approved by Defendant.

**ANSWER: Defendant denies the allegations as stated. Defendant admits that it worked with Plaintiff to get her time off and that Defendant was required to hire students to fill in during her absence. Defendant has no record of receiving a letter from Plaintiff's internal medicine doctor.**

44. Plaintiff was then diagnosed with a possible pulmonary lesion in her throat, and had to undergo various diagnostic tests.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 44 and, therefore, denies the same.**

45. Plaintiff missed work for the testing, which was approved.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 45 and, therefore, denies the same. Defendant admits that it approved a lot of time off for Plaintiff.**

46. Some of the 25-30 English Department members criticized Plaintiff for missing work for her various medical conditions, including her depression.

**ANSWER: Defendant denies the allegations of paragraph 46 as stated. Defendant admits that some members of the English Department were concerned with the amount of time Plaintiff was absent from work as the demands of her job required that she be present during regular business hours.**

47. Plaintiffs' treatment required that she take time off of work.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff's treatment required that she take time off and, therefore, denies the same. Defendant admits that Plaintiff did, in fact, take a lot of time off from work.**

48. Dr. Thebert adjusted her medications for sleep, anxiety and depression, and Plaintiffs symptoms seemed to improve over the course of the early months of 2004.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 48 and, therefore, denies the same.**

49. Chairman John Netland began to meet with Plaintiff weekly, and advised her that various faculty members of the Department were unhappy with her glum and sad demeanor, and wanted her to smile more, and "get over it."

**ANSWER: Defendant admits that Chairman Netland met with Plaintiff frequently (not weekly) and discussed some of the difficulties Plaintiff had working with people. The remaining allegations are denied.**

50. Plaintiff became very upset and more depressed, and was told by Netland that she had to deal with what he called a "personality conflict" with one professor, Karen Saupe.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to Plaintiff's personal feelings. Defendant admits that Dean Netland discussed with Plaintiff her working relationship with Professor Saupe. The remaining allegations of paragraph 50, if any, are denied.**

51. Professor Saupe had been refusing to speak to Plaintiff.

**ANSWER: Defendant admits that Professor Saupe did not interact much with Plaintiff as a result of Plaintiff's history of being difficult and unpleasant to be around. The remaining allegations of paragraph 51, if any, are denied.**

52. Plaintiff was afraid to confront her, but asked that the Professor discuss whatever problems she had with her work performance.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff was afraid to confront Professor Saupe. Defendant admits that Professor Saupe met with Plaintiff at her request and that no one else was present. The remaining allegations of paragraph 52 are denied.**

53. Professor Saupe met with Plaintiff in her office privately, at Plaintiff's request.

**ANSWER: Defendant admits that Professor Saupe and Plaintiff met in her office at Plaintiff's request and no one else was present.**

54. Professor Saupe angrily berated Plaintiff, and told her that everyone there wanted to see her leave, and that no one there liked her.

**ANSWER: Defendant denies the allegations of paragraph 54.**

55. She told Plaintiff she was sick of walking on eggshells around her because of her depression and bad moods, and accused Plaintiff of holding everyone emotionally hostage because of claimed emotional and medical conditions.

**ANSWER: Defendant admits that Professor Saupe expressed empathy for Plaintiff's situation and that she felt, at times, that she was being held as an emotion hostage when Plaintiff failed to perform her job satisfactorily. The remaining allegations of paragraph 55 are denied.**

56. The professor told Plaintiff to shut up and not speak to her ever again.

**ANSWER: Defendant denies the allegations of paragraph 56.**

57. Plaintiff made a complaint to the Human Resources Department and Chairman John Netland about the Professor's behavior, and similar behavior from a male professor.

**ANSWER: Defendant admits that Plaintiff made complaints to Chairman Netland regarding her interaction with Professor Saupe. Defendant denies the truth of said complaints and further denies that Plaintiff reported similar behavior from a male professor at the same time. By contrast, Defendant admits that Plaintiff complained on other occasions about her working relationship with retired Professor Ed Erickson. The remaining allegations of paragraph 57, if any, are denied.**

58. Plaintiffs restricted work hours were not honored by the Department, and she was forced to come in early in the morning and beyond her work hours or face complaints and anger from the faculty.

**ANSWER: Defendant admits that there were times when her absence from work caused significant difficulties within the English Department and that the faculty expressed concerns over the need to have someone present and capable of performing the job during regular business hours. The remaining allegations of paragraph 58 are denied.**

59. Netland became irate with Plaintiffs reduced work hours, which he had approved, and told her she had to be there when work needed to be done, regardless of what her doctor told them.

**ANSWER: Defendant denies the allegations of paragraph 59 as stated. Defendant admits that Dean Netland discussed with Plaintiff the need for her to be present and working during regular business hours in order to perform her essential job functions.**

60. Netland told Plaintiff that some of the faculty resented all the time Plaintiff was taking off and felt that her moodiness was just too disruptive to the office.

**ANSWER: Defendant denies the allegations of paragraph 60 as stated. Defendant admits that Dean Netland explained to Plaintiff that it was an essential function of her job as head secretary of the English department to be pleasant and cordial with the faculty and student body. Defendant further admits that Dean Netland told Plaintiff that the position of head secretary at the English department required that she work during regular business hours.**

61. Netland told Plaintiff she had to just show up for work, no matter her condition, and act more pleasant, no matter how depressed she was.

**ANSWER: Defendant denies the allegations of paragraph 61.**

62. Plaintiff complained to Defendant's Human Resources official Deirdre Honner, in person, and explained all of these events, and asked that she help stop the harassment and treatment she was receiving.

**ANSWER: Admitted that Plaintiff met with Ms. Honner on January 23, 2004 at Plaintiff's request. It is further admitted that Plaintiff initially requested the meeting to discuss her work environment; however, when she met with Ms. Honner the meeting focused on whether Plaintiff would be able to work part-time during the summer because of her medical treatment. Defendant denies the remaining allegations of paragraph 62.**

63. Plaintiffs' psychiatrist urged her to take a medical leave of absence from work, as he saw that her depression symptoms were worsening with the workplace environment.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 63 and, therefore, denies the same.**

64. Plaintiff was afraid to ask for any more time off due to the very negative reaction she was receiving for taking even part time off work.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff was afraid to ask for more time off. Defendant denies the remaining allegations of paragraph 64.**

65. On June 3, 2004, Plaintiff received a very negative performance evaluation which cited her lack of a positive demeanor and attitude as reasons for dissatisfaction with her performance.

**ANSWER: Defendant denies the allegations of paragraph 65 to the extent Plaintiff incorrectly summarizes or mischaracterizes the performance evaluation. Defendant admits that Plaintiff received a performance evaluation on or about June 3, 2004. The performance evaluation is the best evidence as to its contents. Defendant denies the remaining allegations.**

66. Plaintiff was highly upset by this evaluation, and decided to leave her work the next day, being reasonably unable to bear the work environment any longer.

**ANSWER: Defendant is without knowledge or information sufficient to form a belief as to Plaintiff's personal feelings. Defendant admits that Plaintiff submitted her resignation on or around the first week of June, 2004. Defendant denies the remaining allegations and legal conclusions of paragraph 66.**

67. Plaintiff has worked from her home on a freelance basis since her departure from Defendant's employment.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 67 and, therefore, denies the same.**

68. Plaintiffs' depression and anxiety symptoms dramatically improved once she left the work environment with Defendant.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations of paragraph 68 and, therefore, denies the same.**

69. Defendant's real reason for continued negative workplace treatment of Plaintiff was her depression and anxiety diagnoses and her ongoing need for medical treatment, regarded by Defendant as a disability, or alternatively, her use of time off.

**ANSWER: Defendant denies the allegations of paragraph 69.**

70. Defendant supervisors perceived Plaintiff as being "disabled" due to her depression and mental health treatment.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 70.**

71. Defendant appeared to regard Plaintiff as unable to perform the functions of her position due to her depression and/or perceived disability, despite their agreement that her technical proficiency was excellent.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 71.**

72. Defendant also used Plaintiffs legitimate use of available sick leave, and her stated need to use it in the future as the reason to discriminate against her.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 72.**

**COUNT ONE**

**VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**  
**42 U.S.C. SEC. 12112(A) ET SEQ.**

73. Plaintiff hereby incorporates paragraphs 1-72 as if stated in full herein.

**ANSWER: Defendant hereby incorporates by reference its responses to paragraphs 1-72 as if fully stated herein.**

74. Plaintiff is a person with a disability, major depression and anxiety, chronic conditions which at times, substantially impairs her various major life activities, such as sleeping, eating, walking, talking, working, thinking and interacting normally with her family.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 74.**

75. Plaintiff has a long record, since 2002 of having depression and its attendant impairments, known to Defendants.

**ANSWER: Defendant admits that Plaintiff informed Defendant in or around the fall of 2002 that she was diagnosed with depression. Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff actually has depression and its attendant impairments and, therefore, denies the same.**

76. Plaintiff also has been regarded by Defendant's agents and employees as having chronic depression, a disability.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 76.**

77. Plaintiff was able to fulfill the essential duties of her position with Defendant with and without the reasonable accommodation of intermittent leave for treatment, with no undue hardship to Defendant associated with this accommodation.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 77.**

78. Defendant has unlawfully discriminated against Plaintiff by constructively discharging Plaintiff-making her work conditions unbearable solely because of her disability and or her perceived disability and need for ongoing treatment.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 78.**

79. Plaintiff has been damaged by the loss of her position, and has incurred substantial emotional distress.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations and legal conclusions in paragraph 79 and, therefore, denies the same.**

80. Plaintiff has lost her income and benefits, and continues to incur significant medical expenses related to her ongoing treatment.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations and legal conclusions in paragraph 80 and, therefore, denies the same.**

81. Plaintiff has sought freelance work, but has been unable to secure comparable employment and income.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations in paragraph 81 and, therefore, denies the same.**

82. Plaintiff's position was filled after she was fired with a non-disabled person.

**ANSWER: Defendant admits that it hired someone to replace Plaintiff after she resigned. All the remaining allegations of paragraph 82 are denied.**

83. Plaintiff continues to suffer emotional distress, detriment to her relationship with her spouse, and has incurred loss of back pay and front pay and the value of benefits, including retirement.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations in paragraph 83 and, therefore, denies the same.**

**COUNT TWO**

**VIOLATION OF THE PERSONS WITH DISABILITIES CIVIL RIGHTS ACT**  
**MCLA 37.1101 ET SEQ.,**

84. Plaintiff hereby re-incorporates paragraphs 1-84 as if set forth in full herein.

**ANSWER: Defendant hereby incorporates by reference its responses to paragraphs 1-84 as if fully stated herein.**

85. Plaintiff has a disability, depression and anxiety, which has and does substantially limit major life activities.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the legal conclusions in paragraph 85 and, therefore, denies the same.**

86. Plaintiff also, or in the alternative, has a history of having depression and anxiety, a substantially limiting mental characteristic, which is also a substantially limiting characteristic.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the allegations and legal conclusions in paragraph 86 and, therefore, denies the same.**

87. Plaintiff also, or in the alternative, was regarded as having a disability by her employer, Defendant.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 87.**

88. Plaintiff was able to fulfill the essential duties of her job as administrative assistant to Defendant's English Department with accommodation, namely, intermittent leave for treatment.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 88.**

89. Defendant terminated the Plaintiff on the basis of her disability and need for accommodation.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 89.**

90. Plaintiff continues to suffer emotional distress, and has incurred loss of back pay and front pay and the value of benefits, including retirement.

**ANSWER: Defendant is without knowledge or information sufficient to respond to the legal conclusions in paragraph 90 and, therefore, denies the same.**

**COUNT THREE**

**LOSS OF CONSORTIUM**

91. Paragraphs 1-90 are hereby incorporated herein as if set forth in full.

**ANSWER: Plaintiff hereby re-incorporates paragraphs 1-90 as if set forth in full herein.**

92. Plaintiff Patrick O'Heron is the husband of Plaintiff and has been at all times relevant to this Complaint.

**ANSWER: Upon information and belief, admitted.**

93. PLAINTIFF SKIPPED OVER THIS NUMBER

94. PLAINTIFF SKIPPED OVER THIS NUMBER

95. As a result of Defendant's actions and omissions as outlined above, Plaintiffs have both suffered a loss of consortium, affection, companionship and other benefits of their marriage due to the emotional distress and anxiety inflicted upon Plaintiff as outlined above.

**ANSWER: Defendant denies the allegations and legal conclusions stated in paragraph 95.**

**AFFIRMATIVE DEFENSES**

1. Plaintiffs' claims, in whole or in part, fail to state a claim upon which relief can be granted as a matter of law.

2. Plaintiffs' claims, in whole or in part, are barred because Plaintiff cannot demonstrate that she has suffered an actionable adverse job action.

3. Plaintiffs' claims, in whole or in part, are barred because any alleged damages or injury were caused by Plaintiff's own actions or inactions.

4. The complained-of actions were all job-related and consistent with the reasonable requirements of the Defendant.

5. Defendant would have made the same complained-of employment decisions it made with respect to Plaintiff without regard to her alleged disability, or alleged perception of disability, or any other legally-protected status alleged in her complaint.

6. Defendant had legitimate, non-discriminatory reasons for any actions regarding Plaintiff.

7. The Plaintiffs' claims are barred in whole or in part to the extent that her alleged emotional distress injuries are not recoverable in Michigan.

8. Subject to a reasonable opportunity to conduct discovery, Plaintiff has failed to exhaust her administrative remedies.

9. Subject to a reasonable opportunity to conduct discovery, Plaintiff has failed to mitigate her damages, if any.

10. Subject to a reasonable opportunity to conduct discovery, Plaintiffs' remedies are limited by the doctrine of after-acquired evidence.

11. Plaintiffs' claims are barred by the applicable statute of limitations.

12. Defendant exercised reasonable care to prevent and correct promptly and adequately any claims of discrimination.

13. Any accommodation requested by the Plaintiff was not a reasonable accommodation and/or presented an undue hardship for Defendant.

The Defendant respectfully requests and reserves the right it might have to amend its Answer and Affirmative Defenses as the facts might develop during discovery.

WHEREFORE, Defendant, Calvin College, requests that Plaintiff's Complaint be dismissed in its entirety, and that it be awarded its costs, and all other just and proper relief.

Respectfully submitted,

BARNES & THORNBURG LLP  
Attorneys for Defendant

Dated: October 21, 2005

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