

IN THE DISTRICT COURT OF THE CHEROKEE NATION

CHEROKEE NATION EDUCATION
CORPORATION, d/b/a, CHEROKEE
NATION FOUNDATION,

Plaintiff,

vs.

KIMBERLIE GILLILAND,

Defendant.

CIV-16-397

2017 NOV 27 AM 8:37

DEFENDANT KIMBERLIE GILLILAND'S ANSWER TO PETITION

COMES NOW Defendant Kimberlie Gilliland ("Ms. Gilliland") and for her Answer to the Petition, alleges and states:

1. Ms. Gilliland denies each and every allegation in the Petition except as hereinafter specifically admitted.

2. Ms. Gilliland admits the allegations in Paragraph 1.

3. Ms. Gilliland admits the allegations in Paragraph 2.

4. Ms. Gilliland admits the allegations in Paragraph 3.

5. Paragraph 4 of the Petition calls for a legal conclusion which no response is required, but to the extent the allegations are inconsistent with the Cherokee Nation Constitution and applicable statutes and case law, Ms. Gilliland denies the allegations.

6. Ms. Gilliland admits the allegations in Paragraph 5.

7. Ms. Gilliland admits the allegations in Paragraph 6.

8. Ms. Gilliland admits the allegations in Paragraph 7.

9. Ms. Gilliland admits the allegations in Paragraph 8.

10. Ms. Gilliland admits the allegations in Paragraph 9 that as Executive Director she had the responsibility of managing the Plaintiff's, Cherokee Nation Education Corporation ("CNEC"), business and carrying out the duties prescribed to her by the Board of Directors and the President but denies the remaining allegations in Paragraph 9.

11. Ms. Gilliland admits the allegations in Paragraph 10 that the CNEC bylaws granted her authority to sign checks that did not exceed \$5,000.00, but denies the remaining allegations in Paragraph 10.

12. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, Ms. Gilliland denies the allegations in Paragraph 11.

13. Ms. Gilliland denies the allegations in Paragraph 12.

14. Ms. Gilliland is without sufficient information to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies those allegations.

15. No response is necessary to Paragraph 14 of the Petition. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 13.

16. Ms. Gilliland admits the allegations in Paragraph 15.

17. Ms. Gilliland admits the allegations in Paragraph 16.

18. Ms. Gilliland admits the allegations in Paragraph 17.

19. Ms. Gilliland denies the allegations in Paragraph 18.

20. Ms. Gilliland admits the allegations in Paragraph 19 that she hired Paychex in her capacity as Executive Director to process payroll for CNEC and that in September 2011 Paychex began withholding federal, state, and social security taxes for herself and Heather Sourjohn, but denies the remaining allegations in Paragraph 19.

21. Ms. Gilliland admits the allegation in Paragraph 20 that her salary increased in September 2011 but denies the remaining allegations in Paragraph 20.

22. Ms. Gilliland admits the allegation in Paragraph 21 that Heather Sourjohn's salary increased in September 2011 but denies the remaining allegations in Paragraph 21.

23. Ms. Gilliland admits the allegation in Paragraph 22 that her salary increased in 2012 but denies the remaining allegations in Paragraph 22.

24. Ms. Gilliland admits the allegation in Paragraph 23 that Heather Sourjohn's salary increased in 2012 but denies the remaining allegations in Paragraph 23.

25. Ms. Gilliland admits the allegation in Paragraph 24 that she entered into a Severance Agreement with CNEC on January 28, 2013 for \$74,500.00 but denies the remaining allegations in Paragraph 24.

26. Ms. Gilliland admits the allegation in Paragraph 25 that her salary increased in January 2013 but denies the remaining allegations in Paragraph 25.

27. Ms. Gilliland admits the allegation in Paragraph 26 that Heather Sourjohn's salary increased in January 2013 but denies the remaining allegations in Paragraph 26.

28. Ms. Gilliland admits the allegation in Paragraph 27 that she and Heather Sourjohn's salaries increased in January 2013 but denies the remaining allegations in Paragraph 27.

29. Ms. Gilliland admits the allegation in Paragraph 28 that she received a salary from February 2013 to June 2013 but denies the remaining allegations in Paragraph 28.

30. Ms. Gilliland admits the allegation in Paragraph 29 that Heather Sourjohn received a salary from February 2013 to June 2013 but denies the remaining allegations in Paragraph 29.

31. Ms. Gilliland denies the allegations in Paragraph 30.

32. Ms. Gilliland denies the allegations in Paragraph 31.

33. Ms. Gilliland denies the allegations in Paragraph 32.

34. Ms. Gilliland denies the allegations in Paragraph 33.

35. No response is necessary to Paragraph 34. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 35.

36. Ms. Gilliland admits the allegations in Paragraph 35.

37. Ms. Gilliland admits the allegation in Paragraph 36 that CNEC paid for her to attend North Park University but denies the remaining allegations in Paragraph 36.

38. Ms. Gilliland denies the allegations in Paragraph 37.

39. Ms. Gilliland denies the allegations in Paragraph 38.

40. Ms. Gilliland denies the allegations in Paragraph 39.

41. No response is necessary to Paragraph 40. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 40.

42. Ms. Gilliland admits the allegations in Paragraph 41.

43. Ms. Gilliland admits the allegations in Paragraph 42 that in July 2009 she was advised in writing by the office of the Cherokee Nation Attorney General that CNEC's Executive Director was deemed an officer under the Cherokee Nation Sunshine Act and therefore CNEC should not enter into a contractual relationship with businesses to which she had a pecuniary interest, but denies that the advice from the Attorney General was correct or based on a proper interpretation of the applicable statute.

44. Ms. Gilliland admits the allegations in Paragraph 43.

45. Ms. Gilliland admits the allegation in Paragraph 44 that CNEC paid Cherokee Media in June 2013 as compensation for work performed for CNEC but denies the remaining allegations in Paragraph 44.

46. Ms. Gilliland denies the allegations in Paragraph 45.

47. Ms. Gilliland denies the allegations in Paragraph 46.

48. No response is necessary to Paragraph of 47. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 47.

49. Ms. Gilliland denies the allegations in Paragraph 48.

50. Ms. Gilliland denies the allegations in Paragraph 49.

51. Ms. Gilliland denies the allegations in Paragraph 50.

52. Ms. Gilliland denies the allegations in Paragraph 51.

53. Ms. Gilliland denies the allegations in Paragraph 52.

54. Ms. Gilliland denies the allegations in Paragraph 53.

55. No response is necessary to Paragraph 54. To the extent a response is necessary,

Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 54.

56. Ms. Gilliland denies the allegations in Paragraph 55.

57. Ms. Gilliland denies the allegations in Paragraph 56.

58. Ms. Gilliland denies the allegations in Paragraph 57.

59. Ms. Gilliland denies the allegations in Paragraph 58.

60. Ms. Gilliland denies the allegations in Paragraph 59.

61. No response is necessary to Paragraph 60. To the extent a response is necessary,

Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 60.

62. Ms. Gilliland denies the allegations in Paragraph 61.

63. Ms. Gilliland denies the allegations in Paragraph 62.

64. Ms. Gilliland denies the allegations in Paragraph 63.

65. Ms. Gilliland denies the allegations in Paragraph 64.

66. Ms. Gilliland denies the allegations in Paragraph 65.

67. No response is necessary to Paragraph 66. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 66.

68. Ms. Gilliland denies the allegations in Paragraph 67.

69. Ms. Gilliland denies the allegations in Paragraph 68.

70. Ms. Gilliland denies the allegations in Paragraph 69.

71. Ms. Gilliland denies the allegations in Paragraph 70.

72. Ms. Gilliland denies the allegations in Paragraph 71.

73. No response is necessary to Paragraph 72. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 72.

74. Ms. Gilliland denies the allegations in Paragraph 73.

75. Ms. Gilliland denies the allegations in Paragraph 74.

76. Ms. Gilliland denies the allegations in Paragraph 75.

77. Ms. Gilliland denies the allegations in Paragraph 76.

78. No response is necessary to Paragraph 77. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 76.

79. Ms. Gilliland denies the allegations in Paragraph 78.

80. Ms. Gilliland denies the allegations in Paragraph 79.

81. Ms. Gilliland denies the allegations in Paragraph 80.

82. Ms. Gilliland denies the allegations in Paragraph 81.

83. No response is necessary to Paragraph 82. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 81.

84. Ms. Gilliland admits the allegation in Paragraph 83 that she took a trip to Texas on behalf of CNEC but denies the remaining allegations in Paragraph 83

85. Ms. Gilliland denies the allegations in Paragraph 84.

86. Ms. Gilliland denies the allegations in Paragraph 85.

87. Ms. Gilliland denies the allegations in Paragraph 86.

88. No response is necessary to Paragraph 87. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 86.

89. Ms. Gilliland admits the allegation in Paragraph 88 that she took a trip to California on behalf of CNEC but denies the remaining allegations in Paragraph 88.

90. Ms. Gilliland denies the allegations in Paragraph 89.

91. Ms. Gilliland denies the allegations in Paragraph 90.

92. Ms. Gilliland denies the allegations in Paragraph 91.

93. No response is necessary to Paragraph 92. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 91.

94. Ms. Gilliland admits the allegation in Paragraph 93 that she took a trip to Portland, Oregon on behalf of CNEC but denies the remaining allegations in Paragraph 93.

95. Ms. Gilliland denies the allegations in Paragraph 94.

96. Ms. Gilliland denies the allegations in Paragraph 95.

97. Ms. Gilliland denies the allegations in Paragraph 96.

98. No response is necessary to Paragraph 97. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 96.

99. Ms. Gilliland admits the allegation in Paragraph 98 that she took a trip to Dallas, Texas on behalf of CNEC but denies the remaining allegations in Paragraph 98.

100. Ms. Gilliland denies the allegations in Paragraph 99.

101. Ms. Gilliland denies the allegations in Paragraph 100.

102. Ms. Gilliland denies the allegations in Paragraph 101.

103. No response is necessary to Paragraph 102. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 101.

104. Ms. Gilliland admits the allegation in Paragraph 103 that airline tickets to Phoenix, Arizona were purchased on behalf of CNEC but she denies the remaining allegations in Paragraph 103.

105. Ms. Gilliland admits the allegation in Paragraph 104 that she changed the travel date of the airline tickets but denies the remaining allegations in Paragraph 104.

106. Ms. Gilliland denies the allegations in Paragraph 105.

107. Ms. Gilliland denies the allegations in Paragraph 106.

108. Ms. Gilliland denies the allegations in Paragraph 107.

109. No response is necessary to Paragraph 108. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 107.

110. Ms. Gilliland admits the allegation in Paragraph 109 that CNEC's computers, supplies, and employees were used to prepare literature for Cara Cowan Watt's workshop in connection with Cara Cowan Watt's partnership with CNEC but denies the remaining allegations in Paragraph 110.

111. Ms. Gilliland denies the allegations in Paragraph 110.

112. The CNEC bylaws speak for themselves. Ms. Gilliland denies any allegations in Paragraph 111 that she violated the CNEC bylaws.

113. Ms. Gilliland denies the allegations in Paragraph 112.

114. Ms. Gilliland denies the allegations in Paragraph 113.

115. Ms. Gilliland denies the allegations in Paragraph 114.

116. Ms. Gilliland denies the allegations in Paragraph 115.

117. No response is necessary to Paragraph 116. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 115.

118. Ms. Gilliland admits the allegation in Paragraph 117 that she moved the Hewlett-Packard Designjet Z3200PS 44 Photo Printer and software disks to a different department within the Cherokee Nation but denies the remaining allegations in Paragraph 117.

119. Ms. Gilliland denies that allegations in Paragraph 118.

120. Ms. Gilliland denies the allegations in Paragraph 119.

121. Ms. Gilliland denies the allegations in Paragraph 120.

122. No response is necessary to Paragraph 121. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 120.

123. Ms. Gilliland admits the allegation in Paragraph 122 that Lisa Smith Reed was given a severance package but she denies the remaining allegations in Paragraph 122.

124. Ms. Gilliland denies the allegations in Paragraph 123.

125. Ms. Gilliland denies the allegations in Paragraph 124.

126. Ms. Gilliland denies the allegations in Paragraph 125.

127. No response is necessary to Paragraph 126. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 125.

128. Ms. Gilliland admits the allegation in Paragraph 127 that she purchased computer equipment from the Apple Store but denies the remaining allegations in Paragraph 127.

129. Ms. Gilliland admits the allegations in Paragraph 128.

130. Ms. Gilliland admits the allegations in Paragraph 129 that she invoiced herself for the computer equipment purchases but denies the remaining allegations in Paragraph 129.

131. Ms. Gilliland denies the allegations in Paragraph 130.

132. Ms. Gilliland denies the allegations in Paragraph 131.

133. Ms. Gilliland denies the allegations in Paragraph 132.

134. Ms. Gilliland denies the allegations in Paragraph 133.

135. No response is necessary to Paragraph 134. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 134.

136. Ms. Gilliland denies the allegations in Paragraph 135.

137. Ms. Gilliland denies the allegations in Paragraph 136.

138. Ms. Gilliland denies the allegations in Paragraph 137.

139. Ms. Gilliland denies the allegation in Paragraph 138.

140. No response is necessary to Paragraph 139. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 139.

141. Ms. Gilliland denies the allegations in Paragraph 140.

142. Ms. Gilliland denies the allegations in Paragraph 141.

143. Ms. Gilliland denies the allegations in Paragraph 142.

144. Ms. Gilliland denies the allegations in Paragraph 143.

145. Ms. Gilliland denies the allegations in Paragraph 144.

146. Ms. Gilliland denies the allegations in Paragraph 145.

147. Ms. Gilliland denies the allegations in Paragraph 146.

148. Ms. Gilliland denies the allegations in Paragraph 147.

149. Ms. Gilliland denies the allegations in Paragraph 148.

150. Ms. Gilliland denies the allegations in Paragraph 149.

151. Ms. Gilliland denies the allegations in Paragraph 150.

152. Ms. Gilliland denies the allegations in Paragraph 151.

153. Ms. Gilliland denies the allegations in Paragraph 152.

154. Ms. Gilliland denies the allegations in Paragraph 153.

155. Ms. Gilliland denies the allegations in Paragraph 154.

156. Ms. Gilliland denies the allegations in Paragraph 155.

157. Ms. Gilliland denies the allegations in Paragraph 156.

158. No response is necessary to Paragraph 157. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 156.

159. Ms. Gilliland admits the allegations in Paragraph 158.

160. Ms. Gilliland admits the allegation in Paragraph 159 that she entered into a Severance Agreement with CNEC but denies the remaining allegations in Paragraph 159.

161. Ms. Gilliland denies the allegations in Paragraph 160.

162. Paragraph 161 contains legal conclusions for which no response is required. To the extent a response is required, Ms. Gilliland denies the allegations.

163. Ms. Gilliland admits the allegations in Paragraph 162.

164. Ms. Gilliland admits the allegations in Paragraph 163.

165. Ms. Gilliland admits the allegation in Paragraph 164 that the Metasoft Foundation Search (“Metasoft”) database included an online user access to search for funding sources but denies the remaining allegations in Paragraph 164.

166. Ms. Gilliland admits the allegations in Paragraph 165.

167. Ms. Gilliland admits the allegation in Paragraph 166 that she accessed Metasoft through CNEC’s account after her employment ended but denies the remaining allegations in Paragraph 166.

168. Ms. Gilliland denies the allegations in Paragraph 167.

169. Ms. Gilliland denies the allegations in Paragraph 168.

170. Ms. Gilliland denies the allegations in Paragraph 169.

171. No response is necessary to Paragraph 170. To the extent a response is necessary, Ms. Gilliland incorporates by reference the preceding Paragraphs 1 through 170.

172. Ms. Gilliland denies the allegations in Paragraph 171.

173. Ms. Gilliland denies the allegations in Paragraph 172.

174. Ms. Gilliland denies the assertions in the Paragraph titled “WHEREFORE” and denies that she owes CNEC any damages or attorneys’ fees.

AFFIRMATIVE DEFENSES

175. CNEC fails to state a claim upon which relief can be granted.

176. The Court lacks subject matter jurisdiction over CNEC’s claims against Ms. Gilliland.

177. The Court lacks territorial jurisdiction over CNEC’s claims against Ms. Gilliland.

178. CNEC’s claims are barred in whole or in part by the applicable statute of limitations.

179. CNEC’s claims are barred in whole or in part by the doctrine of waiver and/or estoppel.

RESERVATION OF RIGHTS

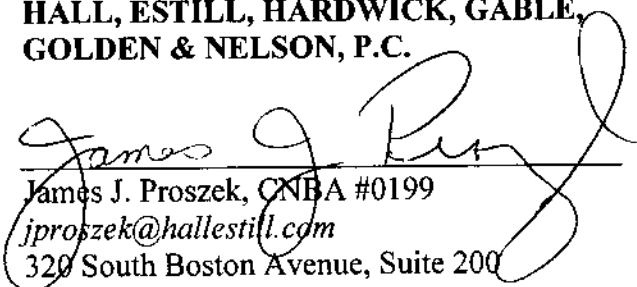
Further investigation and discovery in this case may reveal the existence of additional affirmative defenses. Ms. Gilliland reserves the right to add additional defenses as discovery goes forward, including, but not limited to, the remaining defenses encompassed within Rule 8(c), Federal Rules of Civil Procedure, pursuant to Rule 102 of the Cherokee Nation District Court Rules.

WHEREFORE, having fully answered, Ms. Gilliland respectfully requests that CNEC take nothing by way of its Petition against Ms. Gilliland and that this Court enter judgment in her

favor against CNEC awarding Ms. Gilliland all costs of this action, all attorneys' fees incurred in defending this action, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**



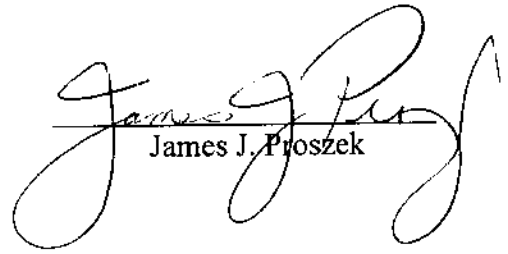
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**ATTORNEY FOR DEFENDANT
KIMBERLIE GILLILAND**

Certificate of Service

I hereby certify that on the 17 day of Nov. 2017, true and correct copies of the above and foregoing instrument were mail, postage prepaid, to:

Ralph Keen
Keen Law Office, P.C.
205 W. Division
Stilwell, OK 74960



James J. Proszek