

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

AMANDA CROWE,)	CASE NO. CV-2020-05-1605
)	
Plaintiff,)	JUDGE KELLY McLAUGHLIN
)	
vs.)	<u>ANSWER AND AFFIRMATIVE</u>
)	<u>DEFENSES OF DEFENDANTS TO</u>
THE AKRON ART MUSEUM, <i>et al.</i> ,)	<u>PLAINTIFF'S COMPLAINT</u>
)	
Defendants.)	<u>JURY DEMAND ENDORSED HEREON</u>
)	

For their Answer to the Complaint of Plaintiff Amanda Crowe ("Plaintiff"), Defendants The Akron Art Museum ("the Museum") and Mark T. Masuoka ("Masuoka," and together with the Museum, "Defendants") state the following:

FIRST COUNT
(LIBEL, SLANDER AND DEFAMATION)

1. Defendants admit that Plaintiff was, and is, an employee of the Museum and that Plaintiff and many other employees of the Museum were laid off in March 2020 due to the impact of the COVID-19 pandemic. Defendants deny for lack of knowledge the remaining allegations contained in Paragraph 1 of the Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of the Complaint.
3. Defendants admit the allegations contained in Paragraph 3 of the Complaint and state that Masuoka resigned from employment with the Museum effective May 18, 2020.
4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.
5. Defendants admit that Masuoka arrived at the June 1, 2019 family event at the Museum after the event commenced, that the event was conducted outdoors, that Masuoka spoke with Plaintiff at the event and that the event lacked adequate staff and security for the number of

individuals in attendance. Defendants deny the remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of the Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint.

9. Defendants deny for lack of the knowledge that Plaintiff was contacted by sponsors and attendees of the June 1, 2019 family event. Defendants deny the remaining allegations contained in Paragraph 9 of the Complaint.

10. Defendants deny for lack of knowledge the allegations contained in Paragraph 10 of the Complaint.

11. Defendants deny for lack of knowledge the allegations contained in Paragraph 11 of the Complaint.

12. Defendants admit that on or about June 23, 2019, a letter was transmitted via e-mail to the Board of Directors, that the letter was signed "27 concerned Akron Art Museum employees", and that the letter contained allegations of hostile work environment, sex and race discrimination, and staff shortages. Defendants deny the remaining allegations contained in Paragraph 12 of the Complaint.

13. Defendants admit that the law firm of Kastner, Westman & Wilkins, LLC was engaged by the Museum to investigate the allegations set forth in the June 23, 2019 e-mail, and that the Museum notified employee of the retention of Kastner, Westman & Wilkins, LLC and that attorneys John W. McKenzie and Tom Green would conduct the investigation. Defendants deny the remaining allegations contained in Paragraph 13 of the Complaint.

14. Defendants admit the allegations contained in Paragraph 14 of the Complaint and state that the assurances that there would be no retaliatory actions by the Museum against employees for the June 23, 2019 e-mail or participation in the interviews by attorneys John W. McKenzie and Tom Green were made to all employees.

15. Defendants admit that Plaintiff participated in two lengthy in person interviews, provided documentation and recordings related to matters described in the June 23, 2019 e-mail and answered questions asked of her. Defendants deny for lack of information the remaining allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit that on or about August 15, 2019 John W. McKenzie and Tom Green made an oral report to employees of the Museum of their findings. Defendants deny the remaining allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants admit that Masuoka was the Executive Director of the Museum, that the Executive Director is an agent and representative of the Museum, and that when acting as the Executive Director and consistent with the authority of the Executive Director, Masuoka acted and spoke on behalf of the Museum. Defendants deny the remaining allegations contained in Paragraph 18 of the Complaint.

19. Defendants admit that to date the Museum has not disavowed Masuoka's authority in regard to statements made by Masuoka while Executive Director. Defendants deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

SECOND COUNT
(UNLAWFUL WORKPLACE RETALIATION AND FRAUD)

21. Defendants incorporate their responses in Paragraphs 1 through 20 of their Answer as if fully rewritten herein.

22. Defendants admit during her employment with the Museum, Plaintiff has made allegations of workplace violations including allegations of racial slurs, sex harassment, bullying, improper use of funds, improper use of grant monies, misuse of resources and other infractions and deviations from policies of the Museum. Defendants deny the remaining allegations contained in Paragraph 2 of the Second Count of the Complaint.

23. Defendants deny for lack of knowledge the allegations contained in Paragraph 3 of the Second Count of the Complaint.

24. Defendants admit that the Museum and attorneys from the law firm Kastner, Westman & Wilkins, LLC made assurances to Plaintiff that there would be no retaliatory actions by the Museum against her for participating and assisting in the investigation of the allegations raised in the June 23, 2019 letter or participation in interviews by attorneys John W. McKenzie and Tom Green. Defendants deny the remaining allegations contained in Paragraph 4 of the Second Count of the Complaint.

25. Defendants deny for lack of knowledge the allegations contained in Paragraph 5 of the Second Count of the Complaint.

26. Defendants deny the allegations contained in Paragraph 6 of the Second Count of the Complaint.

27. Defendants admit that in March 2020, Plaintiff was notified that her position was classified as laid off because the Museum did not have any available hours due to the governor's mandate to shelter in place. Defendants deny the remaining allegations contained in Paragraph 7 of the Second Count of the Complaint.

28. Defendants deny the allegations contained in Paragraph 8 of the Second Count of the Complaint.

29. Defendants deny the allegations contained in Paragraph 9 of the Second Count of the Complaint.

30. Defendants deny the allegations contained in Paragraph 10 of the Second Count of the Complaint.

31. Defendants deny the allegations contained in the unnumbered paragraph following Paragraph 10 of the Second Count of the Complaint, which begins “WHEREFORE” and further deny that Plaintiff is entitled to any relief requested.

32. Defendants deny each and every allegation not specifically admitted herein regardless of whether that allegation is contained in the unnumbered paragraphs, headings, or elsewhere.

AFFIRMATIVE DEFENSES

1. Plaintiffs’ Complaint, in whole or in part, fails to state a claim upon which relief may be granted against the Museum.

2. Plaintiff’s Complaint, in whole or in part, fails to state a claim upon which relief may be granted against Masuoka.

3. Any and all statements made by Masuoka were solely his opinions or the reiteration of a statement of another person.

4. Any and all statements made by the Museum and Masuoka were true.

5. Any and all statements made by the Museum and Masuoka were made pursuant to an absolute and/or qualified privilege.

6. Plaintiff's Complaint fails to plead with particularity the necessary elements of claims alleged in her Complaint, as required by the Ohio Rules of Civil Procedure.

7. Plaintiff was laid off from employment with the Museum for legitimate, non-discriminatory, and non-retaliatory reasons protected under the law.

8. Defendants state, without admitting that retaliatory behavior occurred, that they exercised reasonable care to prevent and promptly correct any retaliatory behavior, and Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to otherwise avoid harm.

9. Defendants acted in good faith and without intent to discriminate or retaliate against Plaintiff at all times.

10. Plaintiff's Complaint is barred, in whole or in part, by the applicable statute of limitations.

11. Plaintiff's Complaint is barred, in whole or in part, by the doctrines of waiver, unclean hands, laches, and estoppel.

12. Plaintiff's Complaint, to the extent that it seeks exemplary and punitive damages, violates Defendants' rights to procedure of due process under the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of Ohio, and, therefore, fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

13. Plaintiff's Complaint, to the extent that it seeks punitive damages, violates Defendants' rights to equal protection under the law and is unconstitutional under the United States Constitution and the Constitution of the State of Ohio.

14. If it is determined that Plaintiff is entitled to recover compensatory damages for noneconomic loss under Ohio Revised Code § 4112.01, *et seq.*, those damages should be capped at the greater of \$250,000, or an amount that is equal to three times Plaintiff's economic loss, as determined by the trier of fact, to a maximum of \$350,000, or a maximum of \$500,000 for each occurrence that is the basis of the tort action, pursuant to Ohio revised Code § 2315.18(B)(2). *See also* § 2315.18(E)(1).

15. Defendants reserve the right to raise additional affirmative defenses as they become known.

WHEREFORE, Defendants The Akron Art Museum and Mark T. Masuoka pray that the Complaint be dismissed with prejudice, that they be awarded the costs of suit and reasonable attorneys' fees, and that the Court grant them such other relief as the Court deems just and proper.

Respectfully submitted,

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Attorneys for Defendants

The Akron Art Museum and Mark T. Masuoka

JURY DEMAND

Defendants The Akron Art Museum and Mark T. Masuoka hereby request a trial by jury on all claims so triable.

/s/ Ann E. Knuth

One of the Attorneys for Defendants

The Akron Art Museum and Mark T. Masuoka

CERTIFICATE OF SERVICE

This is to certify that on this 13th day of August 2020, a true and correct copy of the foregoing *Answer and Affirmative Defenses of Defendants to Plaintiff's Complaint* was served via electronic mail upon on the following:

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