

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

JENELLE ALVERSON,	)	CASE NO. CV-2020-06-1676
	)	
Plaintiff,	)	JUDGE SUSAN BAKER ROSS
	)	
vs.	)	<b><u>ANSWER AND AFFIRMATIVE</u></b>
	)	<b><u>DEFENSES OF DEFENDANTS TO</u></b>
THE AKRON ART MUSEUM, <i>et al.</i> ,	)	<b><u>PLAINTIFF'S COMPLAINT</u></b>
	)	
Defendants.	)	<b><u>JURY DEMAND ENDORSED HEREON</u></b>
	)	

For their Answer to the Complaint of Plaintiff Jenelle Alverson (“Plaintiff”), Defendants The Akron Art Museum (“the Museum”) and Mark T. Masuoka (“Masuoka,” and together with the Museum, “Defendants”) state the following:

**INTRODUCTION**

1. Defendants deny for lack of knowledge the 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.
4. Defendants deny the allegations contained in Paragraph 4 of the Complaint because it states a legal conclusion for which no response is required by law.
5. 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 5 of the Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of the Complaint because it states a legal conclusion for which no response is required by law.

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

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint because it states a legal conclusion for which no response is required by law.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint because it states a legal conclusion for which no response is required by law.

10. Defendants deny the allegations contained in Paragraph 10 of the Complaint because it states a legal conclusion for which no response is required by law.

#### **FACTUAL ALLEGATIONS**

11. Defendants incorporate their responses in Paragraphs 1 through 10 of their Answer as if fully rewritten herein.

12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants admit that Plaintiff Alverson was hired by the Museum on July 10, 2013 as a security guard. Defendants deny the remaining allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny for lack of knowledge the allegations contained in Paragraph 16 of the Complaint.

17. Defendants admit that Michael Murphy was Plaintiff Alverson's supervisor from October 2013 to December 2015. Defendants deny the remaining the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

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

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants admit that Plaintiff expressed concerns to Dawn Burse and Sherry Streb about several conversations between Plaintiff and Michael Murphy. Defendants deny the remaining the allegations contained in Paragraph 23 of the Complaint.

24. Defendants admit that Plaintiff informed Sherry Streb and Dawn Burse that a comment made by Michael Murphy to Plaintiff made Plaintiff feel extremely uncomfortable. Defendants deny the remaining the allegations contained in Paragraph 24 of the Complaint.

25. Defendants admit that Sherry Streb and Dawn Burse told Plaintiff that her complaints would be investigated. Defendants deny the remaining the allegations contained in Paragraph 25 of the Complaint.

26. Defendants admit the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants admit Plaintiff Alverson took on the additional role of Exhibition Technician during the summer of 2014, while maintaining her part-time security position. Defendants deny the remaining allegations contained in Paragraph 28 of the Complaint.

29. In response to Paragraph 29 of Plaintiff's Complaint, Defendants admit that Chris Ross supervised Plaintiff from approximately 2017 until August 2, 2019. Defendants deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny for lack of knowledge the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny for lack of knowledge the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants admit that Plaintiff told Joe Walton about a letter she wrote in approximately 2016. Defendants deny the remainder of the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. 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 49 of the Complaint.

50. Defendants admit that some of Plaintiff’s complaints were recounted in the June 23, 2019 letter. Defendants deny the remaining allegations contained in Paragraph 50 of the Complaint.

51. 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 employees 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 51 of the Complaint.

52. Defendants admit the allegations contained in Paragraph 52 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.

53. Defendants admit the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny for lack of knowledge the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

**FIRST CAUSE OF ACTION**  
**(Gender Discrimination)**

59. Defendants incorporate their responses in Paragraphs 1 through 58 of their Answer as if fully rewritten herein.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

**SECOND CAUSE OF ACTION**  
**(Hostile Work Environment)**

64. Defendants incorporate their responses in Paragraphs 1 through 63 of their Answer as if fully rewritten herein.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

**THIRD CAUSE OF ACTION**  
**(Retaliation)**

69. Defendants incorporate their responses in Paragraphs 1 through 68 of their Answer as if fully rewritten herein.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of the Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

**FOURTH CAUSE OF ACTION**  
**(Constructive Discharge)**

74. Defendants incorporate their responses in Paragraphs 1 through 73 of their Answer as if fully rewritten herein.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

76. Defendants deny the allegations contained in Paragraph 76 of the Complaint.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in the unnumbered paragraph following Paragraph 79 of the Complaint, and further deny that Plaintiff is entitled to any relief requested.

81. 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. 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.

4. Plaintiff has failed to exhaust her administrative remedies.

5. Plaintiff's claims fail because Plaintiff was employed as an at-will employee.

6. Plaintiff's claims are barred by the doctrine of after-acquired evidence.

7. Plaintiff's Complaint has failed to join indispensable and/or necessary parties needed for just adjudication.

8. Plaintiff's claims are barred by res judicata.

9. Plaintiff's claims are barred by collateral estoppel.

10. Plaintiff's claims are barred due to Plaintiff's unreasonable failure to take advantage of preventative or corrective opportunities provided by Defendants.

11. Plaintiff's claims fail because Defendants took reasonable care to prevent or properly correct any allegedly harassing or hostile behavior.

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

13. 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.

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

15. Plaintiff's retaliation claim fails because Plaintiff did not engage in any protected activity under the law.

16. Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff has failed to mitigate her damages. Plaintiff's damages, if any, must be reduced by the income she has received, or should have received, in mitigation.

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

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

19. 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.

20. 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.

21. 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).

22. 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 it such other relief as the Court deems just and proper.

Respectfully submitted,

OF COUNSEL:

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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 26<sup>th</sup> 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:

Claire I. Wade-Kilts, Esq.  
SOBEL, WADE & MAPLEY, LLC  
55 Erievue Plaza, Suite 370  
Cleveland, Ohio 44114  
Email: Wade@swmlawfirm.com

/s/ Ann E. Knuth

*One of the Attorneys for Defendants*

*The Akron Art Museum and Mark T. Masuoka*