

IN THE OHIO COURT OF CLAIMS

2013 APR -2 PM 3:21

WILLIAM RUSSELL

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2013-00138

Judge Patrick M. McGrath
Magistrate Holly T. Shaver

ANSWER

ORIGINAL

For its answer to the Complaint, filed March 4, 2013, Defendant the Cleveland State University states as follows:

JURISDICTION & VENUE

1. Defendant admits Plaintiff brings this action for *alleged* age and disability discrimination (under R.C. 4112.02) and for *alleged* retaliation (under R.C. 4112.02(I)). Defendant denies all remaining allegations in Paragraph 1 of Plaintiff's Complaint.

2. Defendant admits Plaintiff brings this action for *alleged* violations of the FMLA (under 29 U.S.C. 2611 *et seq.*) and for *alleged* age discrimination (under 29 U.S.C. 621 *et seq.*) Further answering, Defendant lacks sufficient knowledge or information to form a belief as the truth of whether Plaintiff will amend his Complaint to assert claims of disability discrimination (under 42 U.S.C. 12101 *et seq.*), and therefore denies the same. Defendant denies all remaining allegations in Paragraph 2 of Plaintiff's Complaint.

3. Defendant denies the allegations in Paragraph 3 of Plaintiff's Complaint.

4. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 4 of Plaintiff's Complaint, and therefore denies the same.

ON COMPUTER

5. Paragraph 5 is admitted insofar as it alleges that Cleveland State University is a state university located in Cuyahoga County, Ohio. Defendant denies all remaining allegations in Paragraph 5 of Plaintiff's Complaint.

6. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6 of Plaintiff's Complaint, and therefore denies the same.

PARTIES

7. Defendant admits Plaintiff was employed by Cleveland State University. Defendant denies all remaining allegations in Paragraph 7 of Plaintiff's Complaint.

8. The allegations in Paragraph 8 of Plaintiff's Complaint are pure statements of law, and do not require a response.

9. The allegations in Paragraph 9 of Plaintiff's Complaint are pure statements of law, and do not require a response.

FIRST CAUSE OF ACTION

(Age Discrimination in Violation of O.R.C. 4112 and ADEA)

10. Defendant incorporates its answers to Paragraphs 1 through 9 of Plaintiff's Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 10 of Plaintiff's Complaint.

11. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 11 of Plaintiff's Complaint, and therefore denies the same.

12. Defendant denies the allegations in Paragraph 12 of Plaintiff's Complaint.

13. Defendant denies the allegations in Paragraph 13 of Plaintiff's Complaint.

14. Defendant denies the allegations in Paragraph 14 of Plaintiff's Complaint.

15. Defendant denies the allegations in Paragraph 15 of Plaintiff's Complaint.
16. Defendant denies the allegations in Paragraph 16 of Plaintiff's Complaint.
17. Defendant denies the allegations in Paragraph 17 of Plaintiff's Complaint.
18. Defendant denies the allegations in Paragraph 18 of Plaintiff's Complaint.
19. Defendant denies the allegations in Paragraph 19 of Plaintiff's Complaint.
20. Defendant denies the allegations in Paragraph 20 of Plaintiff's Complaint.
21. Defendant denies the allegations in Paragraph 21 of Plaintiff's Complaint.

SECOND CAUSE OF ACTION
(Disability Discrimination in Violation of O.R.C. 4112)

22. Defendant incorporates its answers to Paragraphs 1 through 21 of Plaintiff's Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 22 of Plaintiff's Complaint.

23. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 23 of Plaintiff's Complaint, and therefore denies the same.

24. Defendant denies the allegations in Paragraph 24 of Plaintiff's Complaint.
25. Defendant denies the allegations in Paragraph 25 of Plaintiff's Complaint.
26. Defendant denies the allegations in Paragraph 26 of Plaintiff's Complaint.
27. Defendant denies the allegations in Paragraph 27 of Plaintiff's Complaint.
28. Defendant denies the allegations in Paragraph 28 of Plaintiff's Complaint.
29. Defendant denies the allegations in Paragraph 29 of Plaintiff's Complaint.
30. Defendant denies the allegations in Paragraph 30 of Plaintiff's Complaint.
31. Defendant denies the allegations in Paragraph 31 of Plaintiff's Complaint.

THIRD CAUSE OF ACTION
(Retaliation in Violation of O.R.C. 4112 and ADEA)

32. Defendant incorporates its answers to Paragraphs 1 through 31 of Plaintiff's Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 32 of Plaintiff's Complaint.

33. Defendant denies the allegations in Paragraph 33 of Plaintiff's Complaint.

34. Defendant denies the allegations in Paragraph 34 of Plaintiff's Complaint.

35. Defendant denies the allegations in Paragraph 35 of Plaintiff's Complaint.

36. Defendant denies the allegations in Paragraph 36 of Plaintiff's Complaint.

37. Defendant denies the allegations in Paragraph 37 of Plaintiff's Complaint.

FOURTH CAUSE OF ACTION
(FMLA Interference and Retaliation)

38. Defendant incorporates its answers to Paragraphs 1 through 37 of Plaintiff's Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 38 of Plaintiff's Complaint.

39. Defendant denies the allegations in Paragraph 39 of Plaintiff's Complaint.

40. The allegations in Paragraph 40 of Plaintiff's Complaint are pure statements of law, and do not require a response. Nevertheless, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40 of Plaintiff's Complaint, and therefore denies the same.

41. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 41 of Plaintiff's Complaint, and therefore denies the same.

42. Defendant denies the allegations in Paragraph 42 of Plaintiff's Complaint.

43. Defendant denies the allegations in Paragraph 43 of Plaintiff's Complaint.
44. Defendant denies the allegations in Paragraph 44 of Plaintiff's Complaint.
45. Defendant denies the allegations in Paragraph 45 of Plaintiff's Complaint.
46. Defendant denies the allegations in Paragraph 46 of Plaintiff's Complaint.
47. Defendant denies the allegations in Paragraph 47 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction to consider Plaintiff's claims.
2. The Complaint fails to state a claim upon which relief can be granted.
3. The Complaint is barred by the statute of limitations.
4. Defendant is immune from liability.
5. Defendant enjoys a privilege that precludes liability.
6. Defendant acted in good faith and in compliance with the law.
7. Defendant acted throughout with legitimate, non-discriminatory reasons and/or would have taken the same action regardless of any alleged improper motivation.
8. Defendants' actions were based on sound business judgments.
9. Plaintiff failed to exhaust his administrative remedies.
10. Some of Plaintiff's claims are barred and should be dismissed to the extent Plaintiff is equitably estopped from asserting those claims, has waived those claims, or has acted with bad faith and "unclean hands."
11. Defendant's actions were taken in good faith for legitimate, non-discriminatory, and non-retaliatory business reasons.
12. Some of Plaintiff's claims are barred by the 11th Amendment to The United States Constitution.

13. Some of Plaintiff's claims are barred by the applicable statute of limitations.

14. Some or all of Plaintiff's punitive damage claims are barred by R.C. 3345.40.

15. Some of Plaintiff's claims for non-economic damages - including emotional distress, attorneys' fees, and any other non-"out-of-pocket" damages - are capped by R.C. 3345.40.

16. Some of Plaintiff's damage claims are subject to set-off for any collateral source benefits, pursuant to R.C. 3345.40.

17. Plaintiff failed to mitigate his damages, if any.

18. Plaintiff is not entitled to the damages or relief sought in the Complaint.

19. Every allegation contained in the Complaint that is not specifically admitted, denied or denied for lack of knowledge is denied.

20. Defendant reserves the right amend its answer to add to additional defenses.

WHEREFORE, Defendant asks that the Complaint be dismissed at Plaintiff's cost and that judgment be entered in Defendant's favor.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

On April 2nd, 2013, we mailed a copy of this document via regular U.S. Mail to:

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