

ORIGINAL

FILED  
COURT OF CLAIMS  
OF OHIO

IN THE OHIO COURT OF CLAIMS

STEVEN LISS

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2013-00139

2014 AUG 14 PM 3:10

Judge Patrick M. McGrath  
Magistrate Holly T. Shaver

ANSWER TO FIRST  
AMENDED COMPLAINT

For its answer to the First Amended Complaint, filed August 8, 2014, Defendant the Cleveland State University states as follows:

JURISDICTION & VENUE

1. In response to Paragraph 1 of the First Amended Complaint, Defendant admits Plaintiff brings this action for *alleged* age discrimination (under R.C. 4112.02(A)) and for *alleged* retaliation (under R.C. 4112.02(I)). Defendant denies all remaining allegations in Paragraph 1 of the First Amended Complaint.

2. In response to Paragraph 2 of the First Amended Complaint, 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.*) Defendant denies all remaining allegations in Paragraph 2 of the First Amended Complaint.

3. Defendant denies the allegations in Paragraph 3 of the First Amended Complaint.

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

5. Paragraph 5 of the First Amended Complaint 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 the First Amended Complaint.

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

7. Defendant denies the allegations in Paragraph 7 of the First Amended Complaint.

### PARTIES

8. In response to Paragraph 8 of the First Amended Complaint, Defendant admits Plaintiff was employed by Cleveland State University.

9-10. The allegations in Paragraphs 9 and 10 of the First Amended 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)

11. Defendant incorporates its answers to Paragraphs 1 through 10 of the First Amended Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 11 of the First Amended Complaint.

12. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12 of the First Amended Complaint, and therefore denies the same.

13-22. Defendant denies the allegations in Paragraphs 13 through 22 of the First Amended Complaint.

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

23. Defendant incorporates its answers to Paragraphs 1 through 22 of the First Amended Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 23 of the First Amended Complaint.

24-28. Defendant denies the allegations in Paragraphs 24 through 28 of the First Amended Complaint.

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

29. Defendant incorporates its answers to Paragraphs 1 through 28 of the First Amended Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 29 of the First Amended Complaint.

30. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 30 of the First Amended Complaint, and therefore denies the same.

31-35. Defendant denies the allegations in Paragraphs 31 through 35 of the First Amended Complaint.

**FOURTH CAUSE OF ACTION**  
**(Breach of Contract)**

36. Defendant incorporates its answers to Paragraphs 1 through 35 of the First Amended Complaint as if fully rewritten herein. Further answering, Defendant denies the allegations set forth in Paragraph 36 of the First Amended Complaint.

37. In response to Paragraph 37 of the First Amended Complaint, Defendant admits Plaintiff was employed by Cleveland State University. Defendant denies all remaining allegations in Paragraph 37 of the First Amended Complaint.

38. The allegations in Paragraph 38 of the First Amended Complaint are pure statements of law, and do not require a response.

39. In response to Paragraph 39 of the First Amended Complaint, Defendant admits that a document entitled *Professional Staff Personnel Policies* is attached as Exhibit A to the First Amended Complaint. Defendant denies all remaining allegations in Paragraph 39 of the First Amended Complaint.

40. In response to Paragraph 40 of the First Amended Complaint, Defendant admits that the document attached as Exhibit A to the First Amended Complaint is dated January 2010. Defendant denies all remaining allegations in Paragraph 40 of the First Amended Complaint.

41. In response to Paragraph 41 of the First Amended Complaint, Defendant admits that Plaintiff was laid-off due to the reorganization of the Department of Student Life. Defendant denies all remaining allegations in Paragraph 41 of the First Amended Complaint.

42-43. In response to Paragraphs 42 and 43 of the First Amended Complaint, the policies in question speak for themselves and any allegations that are inconsistent with those policies are denied. Defendant denies all remaining allegations in Paragraphs 42 and 43 of the First Amended Complaint.

44-48. Defendant denies the allegations in Paragraphs 44 through 48 of the First Amended Complaint.

#### AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction to consider Plaintiff's claims.
2. The First Amended Complaint fails to state a claim upon which relief can be granted.
3. The First Amended 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 11<sup>th</sup> Amendment to The United States Constitution.

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

14. 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.

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

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

17. Plaintiff is not entitled to the damages or relief sought in the First Amended Complaint.

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

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

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

Respectfully submitted,

**MICHAEL DE WINE**

*Ohio Attorney General*



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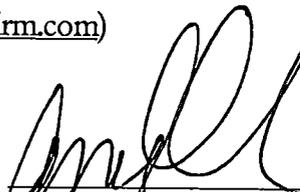
**COUNSEL FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

On August 14, 2014, we sent a copy of this document via electronic mail to Plaintiff's

Counsel:

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