

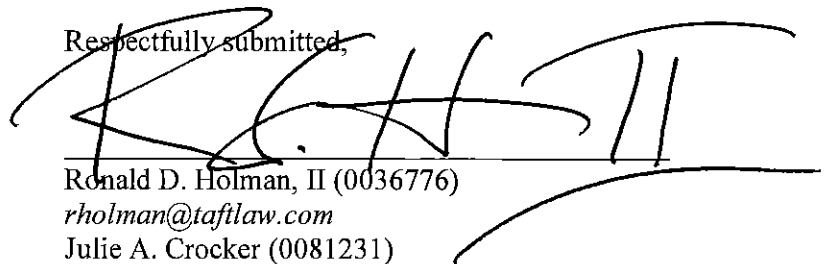
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LORAIN COUNTY
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COURT OF COMMON PLEAS
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**IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

GIBSON BROS., INC., et al.,)	CASE NO. 17CV193761
)	
Plaintiffs,	)	JUDGE JOHN R. MIRALDI
)	
v.	)	DEFENDANTS' MOTION, IN THE
	)	ALTERNATIVE TO JUDGMENT
OBERLIN COLLEGE, et al.,	)	NOTWITHSTANDING THE
	)	VERDICT, FOR A NEW TRIAL OR
Defendants.	)	<u>REMITTITUR</u>

Under Rule 59 of the Ohio Rules of Civil Procedure, Defendants Oberlin College and Dr. Meredith Raimondo hereby move—in the alternative to their concurrently filed motion for judgment notwithstanding the verdict—for a new trial or remittitur. A brief in support of this motion is attached hereto and incorporated herein by reference.

Respectfully submitted,



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CERTIFICATE OF SERVICE

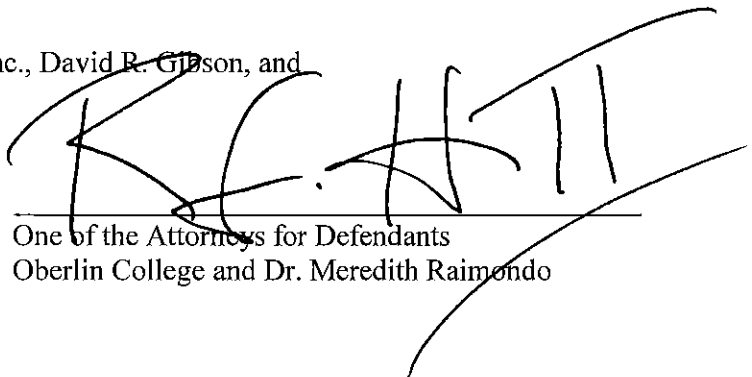
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) **DEFENDANTS' BRIEF IN SUPPORT**
) **OF THEIR MOTION, IN THE**
) **ALTERNATIVE TO JUDGMENT**
) **NOTWITHSTANDING THE**
) **VERDICT, FOR A NEW TRIAL OR**
) **REMITTITUR**

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INTRODUCTION AND BACKGROUND

Defendants' companion motion for judgment notwithstanding the verdict and brief in support explains why they are entitled to judgment as a matter of law. If that relief is not granted in whole or in part, however, the Court should order a new trial on all issues not resolved in Defendants' favor as a matter of law. A new trial is warranted here to address a litany of errors that allowed some issues to be tried twice (or out of order), sent the libel claims to jurors under the wrong standards, allowed jurors to hear only half the evidence proffered on Defendants' fault (and the irrelevant half at that), and placed before jurors an array of claimed injuries and damages not relevant to any claim they were to decide, all of which resulted in wildly excessive verdicts influenced by passion and prejudice:

- Irregularities in the proceedings forced jurors to consider (and reconsider) issues at the punitive damages phase of trial (including constitutional malice and allocation of compensatory damages) that were or should have been finally resolved at the liability phase of trial;
- Erroneous libel jury instructions that asked jurors to resolve the claim on a basis, "aiding and abetting" liability, not recognized under Ohio law;
- Erroneously excluded evidence about the incident that sparked the protests and differing experiences with Plaintiffs left the jury with only one side of the story and inadequate evidence to evaluate Defendants' alleged fault;
- At the same time, the admission of irrelevant and highly inflammatory evidence of post-protest texts and e-mails, on the other hand, encouraged jurors to find fault on legally insufficient grounds;
- Beyond this, Defendants were prejudiced by improper evidence on several categories of damages that were unrecoverable (illusory lost business chances and rental income) and/or not at issue (speculative harms from an unrelated May 2017 fall one Plaintiff experienced, and irrelevant property damage not at issue);
- Additionally, the proceedings showed Defendants could not (and did not) receive a fair trial in Lorain County, confirming the motion to transfer venue to Cuyahoga County should have been granted; and

- The grossly excessive damages awards were given under the influence of passion and prejudice.

At the very least, the excessive verdicts—which are unprecedented in Ohio—should be subjected to a remittitur, including the proper application of the damages caps under R.C. 2315.18(B)(2) and R.C. 2315.21(D)(2)(a) and further reduction of excessive economic and non-economic awards to amounts supported by the evidence of record.

**DEFENDANTS ARE ENTITLED TO A NEW TRIAL IF NOT GRANTED
JUDGMENT NOTWITHSTANDING THE VERDICT IN THEIR FAVOR**

Rule 59(A) of the Ohio Rules of Civil Procedure lists grounds for a new trial, including:

- (1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;
- (2) Misconduct of the jury or prevailing party;
- (3) Accident or surprise which ordinary prudence could not have guarded against;
- (4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

* * *

- (6) The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case;
- (7) The judgment is contrary to law; and

* * *

- (9) Error of law occurring at the trial and brought to the attention of the trial court by the party making the application.

In addition to the above grounds, a new trial may also be granted in the sound discretion of the court for good cause shown. Civ.R. 59(A). The errors discussed above and detailed below warrant a new trial for one or more of these reasons when examined in isolation and viewed in the aggregate.

I. Errors in the jury interrogatories warrant a new trial.

Start with the errors in the jury interrogatories. The Court improperly had jurors consider constitutional actual malice twice in violation of Defendants' right to trial by jury, giving Plaintiffs an impermissible second-bite-at-the-apple on punitive damages for libel after jurors had found Defendants did not act with the fault necessary to allow a punitive damages award. The Court also improperly allowed jurors to allocate compensatory damages while awarding punitive damages, even though an Ohio statute requires strict separation between the compensatory and punitive damages phases of trial. Since these errors affect both phases of trial, a new trial of both phases is necessary to address them.

A. Permitting the jury to revisit the issue of constitutional actual malice during the punitive damages phase of trial was an error of law and irregularity that necessitates a new trial.

Allowing the jury to consider—for a second time—whether Defendants acted with constitutional actual malice (i.e., the malice as to truth or falsity that must be proven for punitive damages to be allowable under the First Amendment in defamation claims involving a matter of public concern) is legal error and an irregularity in the proceedings that requires a new trial.¹ Defendants objected to this Court's error immediately during trial. (Trial Tr., June 11, 2019, at 9:16-12:25.²)

No punitive damages could be awarded for libel because the jury found at the liability phase of trial that Defendants **did not act** with constitutional actual malice in publishing the Protest

¹ To add to the confusion, the Court also included, over Defendants' objection, an instruction on common law (ill will, hatred, spite, etc.) actual malice in connection with the libel claim at this phase, hopelessly muddling the appropriate evidentiary threshold necessary to impose punitive damages in a libel action that pertains to a matter of public concern. (*Compare* Jury Instructions for the Punitive Damages Phase at 5 (defining common law actual malice) *with id.* at 6 (defining constitutional actual malice); Trial Tr., June 13, 2019, at 16:20-18:16.) All June 13, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 1.

² All June 11, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 2.

Flyer and the Student Senate Resolution. *See* Defendants' Brief in Support of Motion for Judgment Notwithstanding the Verdict ("JNOV Brief") Section V.A. The right to trial by jury forbids that finding from being revisited. *See* Ohio Constitution, Article I, Section 5. It "includes the right to have **a single issue decided one time** by a single jury." (Emphasis added) *Greenhaw v. Lubbock Cty. Beverage Assn.*, 721 F.2d 1019, 1025 (5th Cir. 1983), *overruled on other grounds by Internatl. Woodworkers of Am.*, *AFL-CIO v. Champion Internatl. Corp.*, 790 F.2d 1174 (5th Cir. 1986); *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 135 (Cupp, J., concurring) (federal decisions interpreting the Seventh Amendment are "strongly persuasive" on the scope of the right to trial by jury). The Court's decision to still allow Plaintiffs' libel claims to proceed to the punitive damages phase of trial is thus legal error and also an irregularity in the proceedings. (Trial Tr., June 11, 2019, at 9:16-10:4.)

Since the jury was constitutionally forbidden from revisiting its prior finding of no constitutional malice, the jury's findings at the punitive damages phase on the libel claims are a nullity and Defendants are entitled to JNOV on Plaintiffs' punitive damages award for libel. *See* JNOV Brief Section V.A. At a minimum, however, this violation of Defendants' constitutional rights under the First Amendment and, Article I, Section 5 of the Ohio Constitution entitles Defendants to a new trial under Civ.R. 59(A)(1), (7), (9), or for good cause.

B. Juror allocation of compensatory damages per claim after the punitive damages phase of trial is a legal error and irregularity that necessitates a new trial.

The Court erred by overruling Defendants' objections and declining to use Defendants' proposed verdict forms (i.e., jury interrogatories), which asked the jury to allocate damages per claim at the conclusion of the liability phase. (*See* Defs.' Proposed Amended Jury Interrogatories,

filed June 5, 2019; Trial Tr., June 6, 2019, at 42:15-24.³) Instead, the Court used verdict forms that did not require the jury to designate how much of Plaintiffs' compensatory damages were allocated to each of their claims—e.g., how much of Allyn W. Gibson's \$3 million of compensatory damages was allocated to each of his libel and IIED claims.

In an attempt to cure this error, the Court improperly instructed the jury after the punitive phase of trial to allocate their commingled compensatory damages award per claim. The Court provided this instruction **four days after** the jury returned its verdict at the liability phase of trial and **after** the jury heard **several days** of evidence during the punitive damages hearing.

This instruction conflicts with R.C. 2315.21(B), which “creates, defines, and regulates a substantive, enforceable right to separate stages of trial” for compensatory and punitive damages. *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552, syllabus. The bifurcation provision *requires* a trial court “to bifurcate a tort action to allow **presentation of the claims for compensatory and punitive damages in separate stages.**” *Id.* at ¶ 13 (emphasis added). The reason for this mandatory bifurcation is “to ensure evidence of misconduct is not inappropriately considered by the jury in its assessment of liability and its award of compensatory damages,” particularly awards of noneconomic damages. *Id.* at ¶ 32; *see also id.* at ¶ 31.

Here, in violation of this mandatory bifurcation, the Court allowed the jury to consider—and permitted Plaintiffs' counsel to argue—how much of the compensatory damages should be allocated for noneconomic damages **after** evidence of misconduct had been introduced. Indeed, Attorney Plakas—in his closing argument during the punitive damages phase—recommended to the jury exactly how it should retrospectively allocate compensatory damages for noneconomic loss:

³ All June 6, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 3.

And if we can pull up slide P. . . . With regard to the verdict amount of \$5.8 million for David Gibson and if you are asked for that specification, which we believe that you will be, we would suggest that 4800 – 4,800,000 for libel and one million be for the intentional infliction of emotional distress. Slide two for [Allyn W. Gibson], the verdict is \$3 million. You will be asked for further specification. And as to the libel claim, we would recommend \$2 million for the libel specification and one million for the intentional infliction of emotional distress. As to Gibson's Bakery, the verdict amount, and that's slide three, is \$2,274,500. And we would suggest that be split evenly between those two. That's \$1,137,250 in that regard.

(Trial Tr., June 13, 2019, at 34:7-35:1.)

Attorney Plakas could not have made this recommendation to the jury during the liability phase of trial, as he did not have the \$11,074,500 compensatory damages figure upon which he could base his recommendation. Not surprisingly, the jury allocated their compensatory damages award **exactly** as Attorney Plakas recommended—i.e., days **after** deliberating during the liability phase and **after** hearing all of the punitive damages evidence against Defendants.

The Court's error resulted in the jury being unduly influenced by Attorney Plakas' suggestions on allocation of the compensatory damages award, with the benefit of evidence it should not have heard before it decided allocation. For example, during the liability phase of trial, the jury may have allocated a much higher amount—say, \$4 million—to Plaintiffs' IIED claims. Plaintiffs' IIED claims were subject to the noneconomic damages cap under R.C. 2315.18(B)(2). Aware of this, Attorney Plakas was able to manipulate this error by intentionally suggesting a small (yet large enough to be credible) figure for Plaintiffs' IIED claims, which would only be affected minimally by the cap under R.C. 2315.18(B)(2). If the jury had been properly instructed at the liability phase, this error would not have occurred and the jury would have allocated damages according to their independent evaluation of the evidence (as required by law) and without the taint of the punitive damages evidence submitted at the second phase of trial.

This after-the-fact allocation of the jury's compensatory damages warrants a new trial. Given that Plaintiffs David Gibson and Allyn W. Gibson cannot recover punitive damages for both their libel and IIED claims, *see* JNOV Brief Section VI, Attorney Plakas' suggestion that the jury allocate a much higher amount of compensatory damages for the libel claims helped assure those two Plaintiffs of a higher punitive award than they may have otherwise received. Further, the suggestion of much higher compensatory damages for the libel claims apparently led the jury to improperly second-guess its holding during the liability phase and hold that Defendants committed libel with constitutional actual malice. *See* JNOV Brief Section V.A. There is no remedy to this error other than granting Defendants' motion for a new trial under Civ.R. 59(A)(1), (7), (9), or for good cause.

II. Errors of law in the jury instructions warrant a new trial.

Turn next to the errors in the jury instructions. These errors required jurors to determine liability for a non-existent claim ("aiding and abetting" libel) under incorrect publication and fault standards, while allowing jurors to consider constitutionally protected conduct as evidence of liability. These errors also allowed one Plaintiff to seek economic damages that were unavailable for their intentional infliction of emotional distress claims. Because the jury verdict addressed the wrong issues under the wrong standards, a new trial is required.

A. Critical errors in the libel instructions misled the jury and prejudiced Defendants.

This Court committed at least four legal errors in its libel instructions that led jurors astray: (i) the Court failed to give, over objection (Trial Tr. June 6, 2019, at 23:13-24:15), a libel instruction that addressed the legal principles that apply to one who delivers defamatory material

published by a third person;⁴ (ii) it compounded this error by giving, over objection (*id.* at 25:7-17, 44:12-45:9), an incorrect and overbroad publication instruction that extended liability to anyone who “aids and abets” publication; (iii) this Court then refused, over objection (*id.* at 26:6-14),⁵ to focus the negligence inquiry on the truth or falsity of the statements at issue; and, last but not least, (iv) the Court failed to inform the jury that all oral and verbal statements were constitutionally protected opinion, thus allowing jurors to consider constitutionally protected conduct in their assessment of (improper) “aiding and abetting” liability. Whether viewed singularly or together, these errors misled jurors and prejudiced Defendants.

1. The Court erred by failing to instruct on controlling principles of liability for transmission of defamation published by third persons.

The first critical error is this Court’s failure to give a libel instruction that correctly states the law on the liability of a deliverer of defamatory statements published by a third person. (*See* Defendants’ Proposed Jury Instruction No. 9 to Defendants’ Proposed Second Amended Jury Instructions, filed June 5, 2019, citing 3 Restatement of the Law 2d, Torts, Section 581 (1977).) As discussed in Defendants’ JNOV Brief, a mere deliverer is not liable without proof that the deliverer knew or had reason to know of the defamatory material when she delivered it. *See* JNOV Brief Section II.B.2; 3 Restatement, Section 581(1). Defendants’ JNOV Brief establishes that Plaintiffs offered no evidence that Dean Raimondo knew or had reason to know of defamatory material in the Protest Flyer when she delivered it. JNOV Brief Section II.B.2. Plaintiffs’ libel claims with respect to the Protest Flyer thus never should have gone to the jury. At the very least, however, jurors should have been informed of the proper legal principles that apply to deliverer

⁴ *See* Defendants’ Proposed Jury Instruction No. 9 to Defendants’ Proposed Second Amended Jury Instructions, filed June 5, 2019.

⁵ The negligence instruction Defendants requested appears in Proposed Jury Instruction No. 13 of Defendants’ Proposed Second Amended Jury Instructions, filed June 5, 2019.

liability. The Court's failure to inform jurors of these principles left the jury without critical guidance on the only conceivable basis on which a libel claim relating to statements made in the Protest Flyer could have gone to the jury. The lack of any guidance on delivery liability principles, standing alone, warrants a new trial.

2. The Court erred by issuing an incorrect and overbroad "aiding and abetting" instruction.

The second error then made matters worse by suggesting an improper basis—"aiding and abetting"—for equating Defendants with a primary publisher of defamatory material, thus conflating the narrow principles of common-law delivery liability with inapplicable criminal law concepts. This error not only assured that the jury would consider Defendants' alleged liability for delivery of the Protest Flyer under an incorrect legal standard, it also told jurors that they could find Defendants published both the Protest Flyer and the Student Senate Resolution by engaging in conduct that is constitutionally protected, legally insufficient to create liability, or both.

The publication instruction this Court gave told jurors that any act that encouraged, assisted, facilitated, and promoted publication makes the actor liable as well as the publisher:

PUBLISHED.

"Published" means the alleged statement was read and understood by a person other than the plaintiffs. If only the plaintiffs read it, the statement was not published. Publishing includes any act by which the libelous matter is communicated to a third party.

In order to impose liability for the publication of a libelous statement, the publication must have been made by the defendant, either directly or through the agency of some other person authorized to act for the defendant.

Additionally, one who requests, procures, or aids and abets another to publish libelous statements is liable as well as the publisher. To aid and abet means to encourage, assist, or facilitate the act or to promote its accomplishment.

(Emphasis added) (Jury Instructions at p. 10.) Defendants repeatedly objected to the bolded and underscored language at trial, (*see* Trial Tr., June 6, 2019, at 16:2-7; 24:6-15; 25:7-17; 45:4-8),

and the Ohio Jury Instructions contain no reference to “aiding and abetting” the “publication” of defamatory material. *See* 1 O.J.I. 431.01, § 8.

The first problem with this instruction is that the *criminal* law “aiding and abetting” principles it borrowed⁶ do not apply in *civil* cases. Indeed, **“Ohio does not recognize a cause of action for aiding and abetting a tortious act. A person is liable only if he engages in behavior that is unlawful and not simply because he aided or abetted wrongful conduct.”** (Emphasis added) *Wells Fargo v. Smith*, 12th Dist. Brown No. CA2012-04-006, 2013-Ohio-855, ¶ 36. The Ohio Supreme Court confirmed this in *DeVries Dairy, LLC v. White Eagle Coop. Assn., Inc.*, 132 Ohio St.3d 516, 2012-Ohio-3828, noting that the Court had “never recognized a claim” for aiding and abetting a tortious act. *Id.* at ¶ 2. Any dicta in appellate decisions issued before *DeVries* suggesting that aiding and abetting principles might apply in civil litigation is thus incorrect and cannot support the criminal law “aiding and abetting” instruction given here.⁷

The second problem with this instruction is that it conflicts with the narrow liability that applies to actors who are at most deliverers of defamatory material under the Restatement. Again, deliverers are not liable without proof that the deliverer knew or had reason to know of the defamatory material when she delivered it. *See* 3 Restatement of Law 2d, Torts, Section 581(1) (1977) (explaining that “one who only delivers or transmits defamatory matter published by a third person is subject to liability if, but only if, he knows or has reason to know of its defamatory

⁶ Unable to find a definition of “aiding and abetting” within civil law, Plaintiffs’ counsel Owen Rarric urged the Court to adopt a definition based on **criminal** definitions of “abet” and “aid and abet” from Black’s Law Dictionary. (Trial Tr., June 6, 2019, at 42:4-14.) More specifically, Mr. Rarric proposed the following definition of aiding and abetting to the Court: “to encourage, assist or facilitate the wrongful acts or to promote its accomplishment.” (*Id.* at 42:6-8.) Other than the word “wrongful,” the Court adopted Mr. Rarric’s proposed definition verbatim. The Court’s instruction permitted the jury to find Defendants liable for a claim that Plaintiffs did not plead and that Ohio law does not recognize.

⁷ *See, e.g., Cooke v. United Dairy Farmers, Inc.*, 10th Dist. Franklin No. 02AP-781, 2003-Ohio-3118, ¶ 25; *Scott v. Hull*, 22 Ohio App.2d 141, 144 (3d Dist.1970).

character”). By borrowing inapplicable criminal law concepts, jurors were incorrectly told that they could find liability for “facilitat[ing]” or “promot[ing]” publication of the Protest Flyer or Student Senate Resolution, which could (among other things) include merely delivering those documents. So jurors could have (and likely did) find Defendants liable for delivery of the Protest Flyer without finding that Defendants, at a minimum, had reason to know of its defamatory character, as the common law requires.

A third problem with this instruction is that liability for “encouraging,” “facilitating,” or “promoting” publication means the jury could include conduct that is constitutionally protected, legally insufficient to give rise to liability, or both. Here, jurors could have—and apparently did—find Defendants liable for either: (1) having college administrators present at the protests to help ensure the safety of students and the community in conjunction with law enforcement; or (2) as to the Student Senate Resolution, allowing **students** to use their Oberlin.edu email accounts to distribute the Resolution. (Trial Tr., May 29, 2019, at 108:11-19⁸; Defs.’ Trial Exhibit A-3.⁹) Yet the protests themselves and all statements made at the protests were constitutionally protected, as this Court held in its summary judgment opinion. (4/22/19 Judgment Entry at 21.) And merely making facilities or equipment (such as email) available is not proof of publication. 3 Restatement of Law 2d, Torts, Section 581, Comment b; Keeton, Dobbs, Keeton & Owen, *Prosser and Keeton on the Law of Torts*, Section 113, 804 (5th Ed. 1984); *Lunney v. Prodigy Servs. Co.*, 94 N.Y.2d 242, 723 N.E.2d 539, 542 (1999) (holding that internet service provider is “not a publisher of the e-mail transmitted through its system by a third party”); 47 U.S.C. 230(c)(1) (specifying that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information consent provider.”). The improper “aiding and

⁸ All May 29, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 4.

⁹ Defendants’ Trial Exhibit A-3 is attached hereto as Exhibit 5.

abetting” instruction thus allowed jurors to find liability based on lawful and constitutionally protected conduct.

For all of these reasons, the improper “aiding and abetting” instruction warrants a new trial under Civ.R. 59(A)(1), (2), (7), (9), or for good cause.

3. The Court erred by omitting critical language from the negligence instruction.

The third critical instructional error on the libel claim was this Court’s failure to give a negligence instruction that required jurors to assess reasonable care **only** as it related to the truth or falsity of the allegedly libelous statements. (*See* Trial Tr., June 6, 2019, at 61:24-62:2.)

Even if Plaintiffs were not public figures or limited-purpose public figures (*but see* Defs.’ JNOV Brief Section II.C.1), and even if Defendants could be deemed publishers of the defamatory material (*but see id.* Section II.B), this Court at a minimum had to tell jurors that Defendants could only be found liable if they failed to use ordinary care **in ascertaining the truth or falsity of the alleged libelous statements**. (*See* Defendants’ Proposed Jury Instruction No. 13 to Defendants’ Proposed Second Amended Jury Instructions, filed June 5, 2019; *see also* Trial Tr., June 6, 2019, at 26:7-13.) After all, care with respect to truth or falsity is the negligence standard for defamation adopted by the Ohio Supreme Court and required by the First Amendment. *See Lansdowne v. Beacon Journal Pub. Co.*, 32 Ohio St.3d 176, 180 (1987) (holding that “the plaintiff must prove by clear and convincing evidence that the defendant failed to act reasonably in attempting to discover the truth or falsity of or defamatory character of the publication”); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). It also is the standard this Court applied in its summary judgment ruling. (*See* 4/22/19 Judgment Entry at 20, citing *Lansdowne, supra*.)

Yet this Court did not instruct jurors that Plaintiffs had to prove a failure to act reasonably in attempting to discover truth or falsity. This Court instead told jurors only that Plaintiffs had to

prove that “the defendant acted with negligence,” (Trial Tr., June 6, 2019, at 60:15), which it then defined as a failure to use “reasonable care to avoid causing injury to others or their property,” (*id.* at 62:1-2). This generic negligence instruction omitted the critical language on fault from *Lansdowne* and misled jurors by conveying that Defendants could be found liable **even if** they did not act unreasonably in attempting to discover the truth or falsity of the allegedly libelous statements.

That error in describing the constitutional standard for fault in a defamation action violates the First Amendment and Ohio law, prejudiced Defendants by suggesting that they could be found liable for conduct falling short of the constitutional standard, and requires a new trial.

4. The Court erred by failing to inform jurors that the protests themselves were constitutionally protected speech.

Last but not least, the Court erred by giving a libel instruction that failed to inform the jury that all oral statements and chants occurring at the protests were constitutionally protected speech. (*See* Trial Tr., June 6, 2019, at 26:15-19, 63:18-64:16.)

Particularly in light of the flawed “aiding and abetting” instruction discussed above, the Court should have informed the jury that all oral statements at the protests were constitutionally protected. This Court gave just such an instruction at the beginning of the case. (*See* Trial Tr., May 9, 2019, at 78:11-19.¹⁰) By failing to reiterate this point in its closing instructions—after telling jurors that Defendants could be found liable for “encouraging,” “assisting,” “facilitating,” or “promoting” publication of the Protest Flyer and the Student Senate Resolution—this Court assured that jurors would impermissibly consider constitutionally protected conduct to determine liability. This error, too, requires a new trial.

¹⁰ All May 9, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 6.

This Court's libel instructions, in sum, required jurors to determine liability for a non-existent claim ("aiding and abetting" libel) under incorrect publication (no guidance on deliverer liability) and fault (no requirement to determine care in ascertaining truth or falsity) standards, while allowing jurors to consider constitutionally protected conduct as evidence of liability. Even if none of these errors standing alone required a new trial (and each do), collectively, they require a new trial under Civ.R. 59(A)(1), (2), (7), (9), or for good cause.

B. The Court's "economic loss" instruction on the IIED claim was improper.

The Court also erred in instructing the jury that it could award damages for "economic loss" in connection with Plaintiff David Gibson's and Allyn W. Gibson's IIED claims because Plaintiffs only sought noneconomic damages for their IIED claims. The jury instructions used by the Court defined "economic loss" as any of these types of "financial harm":

(A) all wages, salaries, or other compensation lost as a result of the plaintiff's injury;

(B) all expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations incurred as a result of the plaintiff's injury;

(C) all expenditures incurred by the plaintiff or by another person on behalf of the plaintiff to repair or replace the plaintiff's property that was injured or destroyed; and

(D) any other expenditure incurred as a result of the plaintiff's injury other than attorney's fees incurred by plaintiff.

(Jury Instructions at 15.)

As seen here, the Court's instruction for "economic loss" included any financial harm as a result of, among other things, lost wages and expenses for medical care or property damage incurred. Plaintiffs, however, sought only noneconomic damages for their IIED claim. *See* Plaintiffs' Bench Brief: Calculation of Compensatory & Punitive Damages Under Ohio's Damages Caps, at 5 n.3 ("Plaintiffs did not seek *any* economic compensatory damages for the IIED claims.")

(emphasis in original) (filed June 14, 2019). Nor did Plaintiffs bring a personal injury claim or seek to recover for property damage. *See infra* Section III.D. Even so, over Defendants’ objections and Defendants’ proposed jury instructions—which limited damages for the IIED claim to “noneconomic loss”—the Court instructed the jury that it could award damages for “economic loss” in connection with Plaintiffs’ IIED claims. (*See* Jury Instructions at 16; Trial Tr., June 6, 2019, at 33:24-34:12; Proposed Jury Instruction No. 18 to Defendants’ Proposed Second Amended Jury Instructions, filed June 5, 2019.) As a result, the Court permitted the jury to award damages for “economic loss”—a category of damages that Plaintiffs did not seek.

The Court’s error is apparent from the jury’s award of \$1.8 million in compensatory damages to David Gibson for “future economic loss.” (*See* Jury Interrogatories for Compensatory Damages for David R. Gibson.¹¹) Given that the jury did not allocate damages for economic loss per claim, there is no way to know if the jury awarded damages for economic loss to David Gibson for his IIED claim.¹² The only remedy to this error is a new trial under Civ.R. 59(A)(1), (7), (9), or for good cause.

III. Errors in the admission and exclusion of evidence require a new trial.

Beyond these structural and instructional errors, jurors were denied the opportunity to hear evidence about the assault and racism allegations that was important to evaluating the falsity of what Oberlin students wrote and Defendants’ alleged fault in failing to suppress those statements. The harm caused by this exclusion of relevant evidence was then compounded by the admission of irrelevant and highly inflammatory evidence of post-protest texts and emails, which encouraged

¹¹ The jury did not award any compensatory damages to Allyn W. Gibson for economic loss.

¹² Defendants’ proposed jury interrogatories for Plaintiffs’ IIED claims asked the jury to identify the amount of compensatory damages for “noneconomic loss” that Plaintiffs David Gibson and Allyn W. Gibson allegedly sustained. (*See* Interrogatory Nos. 7, 8, 9, and 10 to Defendants’ Proposed Amended Jury Interrogatories, filed June 5, 2019.)

jurors to find fault on legally insufficient grounds and tainted the trial. Without the correct context to evaluate Defendants' alleged fault, jurors were then allowed to hear evidence of various categories of claimed damages that were either speculative, not at issue in the case, or both. Taken separately or together, these errors unduly prejudiced Defendants and require a new trial.

A. The Court improperly precluded Defendants from presenting critical context evidence.

Context evidence is crucial in defamation cases, particularly in those (like this one) that involve matters of public concern. It gives jurors information needed to determine whether the plaintiffs have met their burden to prove the speech at issue is false and whether Defendants acted maliciously or unreasonably in attempting to discover its truth or falsity. *See Lansdowne, supra*; *see also Natl. Medic Serv. Corp. v. E.W. Scripps Co.*, 61 Ohio App.3d 752, 755 (1st Dist. 1989) (plaintiff must prove falsity as part of *prima facie* defamation case); 3 Restatement of the Law 2d, Torts, Section 613, Comment j (1977) (constitutional fault standards required by First Amendment make "it necessary for the plaintiff to allege and prove the falsity of the communication" and "place[] the burden of proving falsity on the plaintiff"). This case illustrates the point.

This Court told jurors to determine the falsity of statements about an alleged assault by non-party Allyn D. Gibson, as well as statements alleging that Plaintiffs are racist. Because these statements in the context of a boycott are constitutionally protected opinion, they were not capable of being proven true or false and Defendants are entitled to judgment in their favor. *See JNOV Brief Section II.A.1*. But **even if** they were capable of being proven true or false, and **even if** Plaintiffs could pursue a libel claim for statements by Oberlin students accusing a non-party of assault (they cannot), the Court erred in precluding evidence of: (i) Allyn D. Gibson's conduct during the November 9, 2016 shoplifting incident; and (ii) the reasons for the protests that were sparked by Allyn D. Gibson's conduct during the November 9, 2016 shoplifting incident, the

police department's response, and the reports of a pattern of Bakery employees' discriminatory treatment of people of color.

1. **The Court should have permitted Defendants to introduce evidence of the November 9, 2016 incident and certain materials from Allyn D. Gibson's Facebook account to provide context for the protests, which was relevant to whether statements made by Oberlin students were false and whether Defendants acted with fault.**

Defendants intended to present evidence of Allyn D. Gibson's conduct during the November 9, 2016 shoplifting incident. Prior to trial, Plaintiffs filed a motion in *limine* to preclude Defendants from introducing evidence that conflicts with the convictions of the three students who pleaded guilty as part of a plea deal. (See Pls.' Motion in *Limine* (filed April 23, 2019).) The Court initially ruled that Defendants could not introduce evidence that questions why the students pleaded guilty or made certain statements at their plea hearing. (Hearing Tr., April 30, 2019, at 48:6-10.¹³)

The Court, however, changed its position on this issue during trial and improperly prohibited Defendants from introducing any evidence related to the events of November 9, 2016, even though Plaintiffs had to show that the accusation of assault was false and Defendants acted with fault regarding its truth or falsity. This sweeping exclusion erroneously kept relevant evidence from the jury and severely prejudiced Defendants. For instance, during Defendants' direct examination, former College President Marvin Krislov attempted to explain his encounter on November 10, 2016 with "one of the students that was involved in the shoplifting" incident:

After the event, the event was on the second floor and I came down and I was sort of walking around saying hello to people, and one of the students that I recognized, whose name I called Elijah, was there. And I saw him and he looked very beaten up and he was very – he was very quiet and he was speaking very slowly. I gathered – someone perhaps told me that he –

¹³ All April 30, 2019 Hearing Transcript excerpts cited herein are attached hereto as Exhibit 7.

(Trial Tr., May 29, 2019, at 103:10-17.) President Krislov was cut off by Plaintiffs' objection, to which defense counsel explained to the Court that President Krislov was "just going to mention briefly that [the student] was involved in an incident involving young Allyn Gibson that took place inside and outside of Gibson's Bakery." (*Id.* at 105:3-8.) Not only did this testimony not conflict with the convictions of the three students, but it was relevant to the truth or falsity of the Oberlin students' assault allegation. As such, President Krislov's testimony should have been permitted.

Similarly, during cross-examination of Plaintiffs' witness Connie Rehm, defense counsel questioned Ms. Rehm about what she witnessed during the November 9, 2016 shoplifting incident. Ms. Rehm's testimony was as follows:

Q: You were also present, were you not, Ms. Rehm, the evening of November 9th, 2016, during what everyone has been referring to as the shoplifting incident?

A: Yes.

Q: And do you recall during that incident that young Allyn was present?

A: Yes.

Q: And that's David Gibson's son, correct?

A: Yes.

Q: Did you witness the – Mr. Aladin, the suspected shoplifter, did he try to run out of the back of the store?

A: From what it looked like, yes, he was running towards the back of the store.

(Trial Tr., May 16, 2019, at 114:24-115:15.¹⁴) Again, Plaintiffs' counsel objected, (*id.* at 115:16-116:2), and the Court sustained the objection over defense counsel's explanation that the testimony would not contest the criminal conviction but merely describe what occurred on the night of the alleged assault, (*id.* at 116:3-9: "Your Honor . . . **I am not at all contesting what the criminal convictions were. All I am going to ask this witness is in very general terms what she witnessed inside.**").

¹⁴ All May 16, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 8.

Finally, during Defendants' closing arguments, defense counsel stated the following to explain why the protests occurred so suddenly:

Let me tell you what their friends haven't told you, nor did Mr. Plakas deal with or talk about. Something happened on November 9th, the evening of November 9th that the college and Dean Raimondo had absolutely nothing to do with. Something happened across the street from Gibson's in Tappan Square that ignited an enormous student reaction. Maybe it was the altercation between Allyn Gibson, Jr., someone you have not met –

(Trial Tr., June 5, 2019, at 49:5-13.¹⁵) Though defense counsel's explanation in no way conflicted with the three students' criminal convictions, Plaintiffs quickly objected, arguing that "[t]here's been motions, there's been objections this whole trial." (*Id.* at 49:14-23.) Once again, the Court precluded defense counsel from further discussing the details of the incident in its closing argument. The Court's doing so was in error.

In addition, the Court erred by precluding the introduction of certain materials from Allyn D. Gibson's Facebook account. (*See* May 8, 2019 Entry and Ruling on All Motions in Limine.) In these Facebook materials, Allyn D. Gibson—whose conduct toward black customers on November 9, 2016 sparked the ensuing protests—demonstrates racial animus against black people, his disdain for Oberlin students, and his awareness of prior accusations of racial profiling against Gibson's Bakery. (*See* Hearing Tr., April 30, 2019, at 15:14-18:2; Exhibit 3 to Defendants' Motions for Summary Judgment, filed March 1, 2019.)¹⁶

In each instance, the Court erred in precluding defense witnesses' testimony, precluding the introduction of certain materials from Allyn D. Gibson's Facebook account, and in precluding defense counsel from explaining what "ignited" the students' protest (or even mentioning anything

¹⁵ All June 5, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 9.

¹⁶ Many of these documents remain under seal despite Defendants' repeated objections that Plaintiffs improperly classified these materials as "confidential" under the parties' Stipulated Protective Order. *See* Defendants' Combined Reply Brief in Support of Motions for Summary Judgment, at 2, 10-12 and Exhibit G to affidavit of Cary M. Snyder attached thereto (filed March 22, 2019).

about the November 9, 2016 shoplifting incident). In no way could this evidence conflict with the undisputed fact that the three students pleaded guilty to crimes nine months later. Defendants simply intended to provide the jury with critical context for the protests.

Finally, even though Defendants were not permitted to do so, Plaintiffs were given free rein to discuss the November 9, 2016 shoplifting incident from their perspective. For instance, during Plaintiffs' direct examination, Oberlin Police Sgt. Victor Ortiz testified extensively about what he observed when arriving on the scene of the November 9, 2016 incident. (Trial Tr., May 10, 2019, at 147:5-148:18.¹⁷) Thus, because Plaintiffs opened the door by raising the details of the incident through their witnesses, Defendants should have been permitted to introduce evidence regarding the events that gave rise to the protests.

Accordingly, because the Court erred by excluding this evidence and that error prejudiced Defendants, a new trial is required under Civ.R. 59(A)(1), (2), (3), (6), (7), (9), or for good cause.

2. The Court should have permitted Defendants to introduce the testimony of Marvin Krislov and Chris Jenkins regarding race-related experiences in Gibson's Bakery.

While in the Court's chambers during trial, Plaintiffs' counsel objected to any witness for the defense who would testify about race-related experiences inside the Bakery. Defendants expected former College President Marvin Krislov and College Associate Dean Chris Jenkins, among others, to testify about race-related experiences inside the Bakery. That evidence was relevant to Plaintiffs' burden to prove that the accusation of racism was false and that Defendants acted maliciously or unreasonably in attempting to discover its truth or falsity. As a result, it should have been admitted.

Plaintiffs' argued, though, that during discovery, Defendants did not identify any witness

¹⁷ All May 10, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 10.

who would testify specifically about Defendants' affirmative defense of truth. (*See, e.g.*, Trial Tr., May 30, 2019, at 79:21-81:7¹⁸; Trial Tr., May 29, 2019, at 115:1-118:3.) There are two flaws with that argument. First, it was **Plaintiffs'** burden to show not only falsity, but also that Defendants acted with fault as to truth or falsity. *E.g., Lansdowne, supra; see also Natl. Medic Serv. Corp.*, 61 Ohio App.3d at 755; 3 Restatement of Law 2d, Torts, Section 613, Comment j. Second, Plaintiffs never propounded **any** discovery request that asked Defendants to identify individuals with knowledge of the affirmative defense of truth.

Plaintiffs did ask Defendants to identify individuals who possessed "knowledge or information relating to the facts, claims, and defenses involved in this action[.]" (*See* Defendant Meredith Raimondo's Objections, Answers and Responses to Plaintiffs' First Set of Requests for Admissions, Requests for Production, and Interrogatories, at Interrogatory No. 4.¹⁹) In responses served **11 months before trial**, Defendants identified President Krislov, among other individuals, as having potential knowledge about the arrest of three students on November 9, 2016. (*Id.*) Defendants also identified Mr. Jenkins, along with numerous others, as having attended the protests outside Gibson's Bakery. (*Id.* at Interrogatory No. 10.) Defendants' discovery responses thus put Plaintiffs on notice of people with knowledge of the protests and reasons for why they occurred. Plaintiffs also conducted discovery on the truth or falsity of the racism allegations through numerous depositions, including of President Krislov. Plaintiffs decided not to depose Mr. Jenkins.

Even if the Court believes that Defendants did not provide Plaintiffs with an adequate opportunity to discover whether the accusations by Oberlin students that they were racist were true, however, President Krislov and Mr. Jenkins—and others—still should have been able to

¹⁸ All May 30, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 11.

¹⁹ A copy of Dean Raimondo's interrogatory responses are attached hereto as Exhibit 12.

testify about race-related experiences in the Bakery. Defendants offered this testimony to demonstrate Defendants' state of mind in balancing the competing narratives regarding Plaintiffs that had been presented to them. Nonetheless, and based on Plaintiffs' objection, the Court precluded these witnesses from testifying about the subject of discriminatory treatment by Bakery employees, explaining to defense counsel that "my gut is telling me you are trying to backdoor the truth." (*See* Trial Tr., May 28, 2019, at 7:17-8:7.²⁰) Defendants were thus forced to proffer this testimony on the record. (*Id.* at 9:14-10:5; Trial Tr., May 29, 2019, at 117:5-9; Trial Tr., June 3, 2019, at 41:20-42:2, 78:13-20.²¹)

In particular, President Krislov would have testified to why the College intentionally made an effort to stay neutral in the conflict between the students and Plaintiffs. At one point, President Krislov testified that "what we had heard was very different differing views from a number of people in a very short period of time. People were coming out of the woodwork to --," at which point, Plaintiffs objected on the basis that this was the type of testimony that "we talked about in chambers." (Trial Tr., May 29, 2019, at 115:1-116:7.) The Court sustained Plaintiffs' objection. (*Id.* at 116:12-117:23.) But President Krislov was simply explaining why the College took certain neutral measures in the conflict between the students and Plaintiffs.

Similarly, Mr. Jenkins would have testified about his personal race-related experiences inside the Bakery and why he took certain actions around the time of the protests had he not been cut off when attempting to do so. During direct examination, Mr. Jenkins testified to the following in explaining a statement he made to one of his colleagues: "Well, I would say I personally have had moments in the store where -- I felt uncomfortable." (Trial Tr., May 30, 2019, at 80:5-16.) At

²⁰ All May 28, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 13.

²¹ All June 3, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 14.

that point, Plaintiffs objected, (*id.* at 80:17-81:7), and the Court sustained the objection, (*id.* at 82:15-19), preventing Mr. Jenkins from explaining his own conduct.

Further, during Mr. Jenkins' cross-examination, Plaintiffs' counsel questioned him about an email he sent to an Oberlin College student, in which Mr. Jenkins stated "[k]udos on finding time and mental energy to be involved in the protest at Gibson's, too." (*Id.* at 92:23-25.) Shortly thereafter, on redirect examination, defense counsel asked Mr. Jenkins to explain why he wrote that email. (*Id.* at 93:14-16.) Mr. Jenkins began explaining that his "understanding was that students were extremely stressed by what they perceived to have happened." (*Id.* at 93:17-19.) At that point, Plaintiffs objected on the same grounds as before. (*Id.* at 93:20-23.) The Court sustained Plaintiffs' objection. (*Id.* at 93:24.) At the very least, by asking Mr. Jenkins about his "kudos" email, Plaintiffs opened the door to an explanation for that email.

In sum, the Court improperly precluded Defendants from offering testimony relevant to Plaintiffs' burden to prove falsity and whether Defendants acted maliciously or unreasonably in attempting to discover truth or falsity. Even though Plaintiffs did not serve a written discovery request that asked for the identity of individuals with knowledge of the truth of the Oberlin students' statements, Defendants put Plaintiffs on notice that President Krislov and Mr. Jenkins—and many others—had knowledge of the protests and reasons for why they occurred. Moreover, these witnesses were simply trying to explain why the College decided to take certain approaches, such as staying neutral. As such, this testimony was not hearsay, nor was it offered to prove an affirmative defense of truth.²² The Court's error in precluding this testimony prejudiced Defendants, warranting a new trial under Civ.R. 59(A)(1), (2), (3), (6), (7), (9), or for good cause.

²² Defendants reserve the right to challenge Plaintiffs' erroneous position that Defendants' witnesses could only testify about specific subjects identified in discovery responses.

3. The Court should have permitted Defendants to introduce the testimony of Oberlin College President Carmen Ambar regarding her personal experiences with student protests at other colleges and universities.

The Court also erred by prohibiting Oberlin College President Carmen Ambar from testifying about her personal experiences managing student protests at other colleges and universities. On May 1, 2019, the Court held a pre-trial hearing on (1) Plaintiffs' motion in *limine* to exclude Defendants' expert witness, Peter Lake, and (2) Defendants' motion to exclude Plaintiffs' expert witness, John McGrath. During the hearing, the parties stipulated that neither party would call these witnesses. (Hearing Tr., May 1, 2019, at 64:22-65:12.²³) At that point, however, Plaintiffs' counsel, Lee Plakas, requested that Professor Lake's testimony regarding the **standard of care** of a college during a protest not be introduced through former College President Marvin Krislov or current College President Ambar. (*Id.* at 65:15-22.) The Court ruled that, should President Krislov or President Ambar offer their opinion regarding a College's standard of care during a protest, Plaintiffs could rebut such testimony through John McGrath and Defendants could rebut McGrath's testimony through Peter Lake. (*Id.* at 71:14-17, 72:13-15; *see also* May 8, 2019 Entry and Ruling on Defendants' Motion to Exclude Plaintiffs' Expert Witnesses.) Importantly, the Court **did not** preclude President Ambar from testifying about her personal experiences managing student protests.

Yet weeks later, during a sidebar just moments before President Ambar began to testify, the Court precluded her from testifying about her numerous personal experiences with student protests. (Trial Tr., May 31, 2019, at 146:2-7.²⁴) The Court ruled as such even after Defendants' counsel, Rich Panza, explained unequivocally that President Ambar would not offer her opinion

²³ All May 1, 2019 Hearing Transcript excerpts cited herein are attached hereto as Exhibit 15.

²⁴ All May 31, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 16.

about a college's standard of care in monitoring a student protest, but rather, would only testify about the facts of her personal experiences with protests at other academic institutions:

[A]t Princeton, Rutgers and Cedar Crest College, she has been involved in 30 to 50 protests. And I'm going to ask her about her experience in dealing with those protests. **It's a fact. It's not an opinion. I'm not going to ask for her opinion about anything.** I'm going to ask how she dealt with them, whether there was commonality in the way she dealt with them. That's the only place I'm going. But it's going to be based on her dealing with 30 to 50 protests in the last 21 years of her occupation and higher education.

(Emphasis added) (*Id.* at 144:2-12.)

The Court's preclusion of President Ambar's testimony regarding her personal experiences with student protests prohibited the jury from considering any commonality between the numerous protests President Ambar experienced and Defendants' actions during the protests on November 10-11, 2016. The Court's error was particularly prejudicial to Defendants given the Court's legally incorrect and overbroad "publication" instruction to the jury that permitted jurors to attach liability to **any act** that could be construed as "encourag[ing]" or "promot[ing]" publication of the Protest Flyer or Student Senate Resolution. *See supra* Section II.A.2. If President Ambar had testified regarding her personal experiences at other protests, jurors would have been able to evaluate whether Defendants' actions paralleled those of administrators, faculty, and/or staff during student protests at other colleges and therefore conclude that Defendants should not be liable for defamation or IIED. Accordingly, a new trial is required under Civ.R. 59(A)(1), (2), (3), (6), (7), (9), or for good cause.

B. The Court improperly permitted emails and texts that were irrelevant and unfairly prejudicial to Defendants.

Outside of the allegedly libelous documents themselves—the Protest Flyer and the Student Senate Resolution—Plaintiffs' case relied upon irrelevant and unfairly prejudicial internal emails and text messages between College employees, which shed no light whatsoever on the College's

or Dean Raimondo's state of mind at the time of the alleged libelous publications. *See e.g., Varanese v. Gall*, 35 Ohio St.3d 78, 80, 518 N.E.2d 1177 (1988) ("[A]ctual malice is to be measured as of the time of publication."). Nor could emails and text messages sent by others establish that Dean Raimondo acted with the required degree of fault when delivering the Protest Flyer to Jason Hawk. *Reed v. Northwestern Pub. Co.*, 530 N.E.2d 474, 484 (Ill. 1988) (plaintiff cannot establish fault by corporate defendant "by pooling all of the information arguably within the knowledge of various employees and imputing all of that knowledge to the corporate defendant").

For example, Plaintiffs routinely cited and published to the jury the following emails and text messages:

- An email exchange between Tita Reed and College Vice President for Communications, Ben Jones dated November 23, 2016 (after the protests ended). (Trial Tr., May 14, 2019, at 24:2-25:14.²⁵)
- An email from Tita Reed—the College President's Special Assistant for Community and Government Relations—to College President Marvin Krislov dated December 2, 2016 (after the protests ended). (Trial Tr., June 5, 2019, at 16:22-17:7.)
- A text message exchange between Dean Raimondo and College employee Toni Myers on August 11, 2017 (almost a year after the protests). (*Id.* at 17:25-19:12.)
- A text message exchange between Dean Raimondo and Ben Jones on September 8, 2017 (again, nearly one year after the protests). (Trial Tr., May 14, 2019, at 45:14-46:18.)

Through each of these examples—and others²⁶—Plaintiffs introduced and published to the jury irrelevant and unfairly prejudicial private emails and text messages between College employees who clearly were not speaking in their representative capacities.²⁷

²⁵ All May 14, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 17.

²⁶ Similar to the above select examples, the following is a list of Plaintiffs' admitted exhibits that consist of irrelevant and unfairly prejudicial internal emails and text messages between College employees: Plaintiffs' Exhibit Nos. 63, 86, 100, 101, 125, 129, 135, 140, and 248, all of which are attached hereto as Exhibit 18.

²⁷ Importantly, Plaintiffs did not even become aware of the existence of these emails until discovery—after the litigation was filed.

Emails and text messages of this sort that post-date the timeframe in this lawsuit—i.e., November 9, 2016 (the date of the incident) through January 23, 2017 (the date that the College resumed its business with Gibson’s Bakery)—have no relevance to any element of Plaintiffs’ claims for libel, tortious interference, or IIED. As a result, the Court should have excluded these emails and text messages under Evid.R. 401 and 402. But even if the emails and text messages had some probative value to some element of Plaintiffs’ claims (they did not), they should have been excluded under Evid.R. 403(A) because the danger of unfair prejudice to Defendants substantially outweighed any such probative value. Indeed, the excessive damages award that bears no rational relationship to Plaintiffs’ alleged harm likely was encouraged, at least in part, by this irrelevant and unfairly prejudicial evidence. The Court’s error in failing to exclude this evidence prejudiced Defendants, requiring a new trial under Civ.R. 59(A)(9) or for good cause.

C. The improper admission of Frank Monaco’s speculative testimony regarding lost business opportunities and lost rental income requires a new trial.

Plaintiffs sought a total of \$3 million in lost business opportunities and lost rental income based upon the purported valuation of their economic damages expert, Frank Monaco (“Mr. Monaco”). The court erred by admitting Mr. Monaco’s speculative testimony regarding these economic damages, which exceeded the damages that Mr. Monaco applied to Gibson’s Bakery, the subject of the November 2016 protests. (Trial Tr., May 21, 2019, at 44:2-10.²⁸)

1. Mr. Monaco speculated as to lost business opportunities and cash flow based on imaginary buildings that Plaintiff David Gibson took no steps to have rezoned.

Plaintiffs sought \$2.1 million in lost business opportunities.²⁹ Plaintiffs’ damages theory was premised upon: (1) David Gibson owning certain land at 549 West College Street in the city

²⁸ All May 21, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 19.

²⁹ According to Mr. Monaco, the \$2.1 million valuation of lost business opportunities was divided into (1) \$1.2 million in lost rental opportunities, and (2) \$831,000 in lost present-value cash flow thereon.

of Oberlin since 2003 (the “Site”), and (2) his interest in constructing two additional multi-family rental properties at 549 West College Street, which was somehow frustrated by the constitutionally protected and lawful November 2016 protests. Further, the lost business opportunity was not proximately connected to the Protest Flyer or Student Senate Resolution, which called for an economic boycott of the Bakery only. But Plaintiffs presented insufficient evidence in support of these imaginary buildings and the alleged damages arising therefrom. Thus, Defendants were unfairly prejudiced when the jury heard and considered this evidence.

David Gibson owned the Site since 2003, but did nothing to bring his interest to fruition. Plaintiffs did not dispute that the city of Oberlin’s zoning code prohibits multi-family properties on the Site. (Trial Tr., May 21, 2019, at 108:21-24, 114:14-16.) Yet, Plaintiffs failed to introduce any evidence that David Gibson applied for rezoning of the Site, or for a variance.³⁰ Just as problematic, Plaintiffs presented no evidence that David Gibson had any actual plans to build these imaginary properties on the Site.

“In general, compensatory damages must be shown with certainty, and **damages that are merely speculative will not give rise to recovery.**” (Emphasis added) *RAE Assocs., Inc. v. Nexus Comm., Inc.*, 2015-Ohio-2166, 36 N.E.3d 757, ¶ 23 (10th Dist.). Further, in assessing damages attached to land, there must be competent, credible evidence that the zoning might be changed in the reasonably foreseeable future. In other words, “[w]hen the end to be accomplished is beyond the control of the witness, **he cannot be allowed to state what he ‘hoped’ to be able to persuade a legislative body to do.**” (Emphasis added) *Bd. of Educ. of Wilmington City School Dist. v. Graham*, 15 Ohio App.2d 196, 201-202, 239 N.E.2d 752 (1st Dist. 1968). *See also, e.g., Clark Cnty. Bd. of Commissioners v. Seminole Avenue Realty*, 179 Ohio App.3d 37, 2008-Ohio-5465,

³⁰ Given that David Gibson served on the Oberlin Planning Commission for decades, there is no doubt that he is well aware of the required procedures to have the Site rezoned.

900 N.E.2d 672, ¶ 22 (2d Dist.) (rejecting owner’s damages claim based on alleged intent to construct building, which was prohibited by existing zoning restrictions: “At no point prior to the commencement of the appropriation proceedings, however, was an application filed to have the subject property rezoned . . . **Speculation, based on supposed future profits from a hypothetical business, cannot be the basis upon which the damage to the residue can be properly and reliably calculated.**”). Mr. Monaco even admitted during trial that his opinion was based purely on speculation: whether the lost business opportunities plan “can move forward or not move forward is **entirely dependent** on what a governmental body determines as to whether or not this property will be rezoned.” (Emphasis added) (Trial Tr., May 21, 2019, at 114:19-23.)

Plaintiffs did not attempt to satisfy the condition precedent to their damages—the rezoning of their land. Plaintiffs’ \$2.1 million “lost business opportunities” theory was thus based purely on unsupported speculation. To no avail, Defendants raised this issue timely and appropriately to the Court at (1) the Motions in *Limine* and Daubert Motions hearing, (2) the directed verdict hearing, and (3) the renewed directed verdict hearing.

2. Mr. Monaco improperly speculated as to lost rental income based on non-existent rental property vacancies.

Plaintiffs sought \$927,000 in lost rental income based on speculative, phantom vacancies in two apartment buildings that David Gibson owns in the city of Oberlin.³¹ Mr. Monaco based his calculation on the number of vacancies, which included non-paying tenants, in each of the two buildings from June 2017 through 2018. (Trial Tr., May 21, 2019, at 65:2-8.) Mr. Monaco then assumed that *all* units in these two buildings would be fully rented—with fully paying tenants—for the next 30 years. (*Id.*, at 43:6-10.) Non-paying tenants accounted for a substantial amount of

³¹ One building, located at 189 West College Street, has seven units, while the other building, located at 589 West College Street, has twelve units. (Trial Tr., May 21, 45:14-23, 46:23-25.)

these alleged damages. (*Id.* at 49:13-20, 72:1-11.) For example, if one tenant did not pay his rent for one month in 2018 at a rate of \$950, Mr. Monaco assumed that the same unit would either be vacant, or not have a paying tenant, for one month in each of the *next 30 years*, equating to \$30,000 in damages for that unit alone. (*Id.* at 68:11-15.) In the case of Plaintiff Allyn W. Gibson—who lived in a unit in one of the apartment buildings—Mr. Monaco’s calculation assessed damages of nearly \$250,000 for the apartment furnished with Allyn W. Gibson’s belongings even though he no longer lives there. (*Id.* at 125:1-8.)

The Court permitted this testimony despite Plaintiffs failure to introduce *any* evidence that a reduction in vacancies, including a tenant’s inability to afford to pay rent, had *any* connection whatsoever to the Protest Flyer or the Student Senate Resolution, both of which called for an economic boycott of the Bakery only, not the apartment buildings. Further, Mr. Monaco testified that in assessing damages for Plaintiffs’ vacancies, he did not consider another reason for these vacancies and simply assumed that Defendants were responsible for them, even where a vacancy consisted of a tenant’s non-payment of rent. (*See id.*, at 49:7-12.) By failing to exclude this testimony, over Defendants’ objections,³² the Court improperly permitted the jury to place the cost on Defendants for *each and every vacancy* at these two rental properties that *may* occur over the next 30 years.

The evidence improperly tainted the jury’s consideration of David Gibson’s claim for economic loss, requiring a new trial under Civ.R. 59(A)(1), (7), (9), or for good cause.

³² Defendants filed two pre-trial motions that sought to exclude Mr. Monaco’s testimony. *See* Defendants’ Motion in Limine to Exclude Evidence of Plaintiffs’ Alleged Lost Rental Income and Lost Business Opportunities, filed April 23, 2019; Defendants’ Motion to Exclude Plaintiffs’ Expert Witness Regarding Plaintiffs’ Alleged Economic Damages Related to Lost Rental Income, filed April 24, 2019.

D. Errors of law allowing evidence of unpled and unrecoverable damages warrant a new trial.

- 1. The Court should have excluded evidence of Allyn W. Gibson's May 2017 fall and injury because he did not assert a claim for that injury, and because any such claim would have been too remote and speculative.**

Plaintiff Allyn W. Gibson did not assert a physical injury claim in this case. The Court even denied Plaintiffs' motion during trial to amend their complaint to add a physical injury component of damages due to Allyn W. Gibson's fall and injury at his apartment in May 2017. (Trial Tr., May 28, 2019, at 3:5-11.) Yet, the Court still improperly permitted Plaintiffs to present evidence regarding Allyn W. Gibson's fall and injury at his home six months after the protests, even though that evidence was irrelevant to any pending claim and Plaintiffs were unable to establish that Defendants were the proximate cause of the fall.³³ This error prejudiced Defendants and warrants a new trial under Civ.R. 59(A)(1), (7), (9), or for good cause.

Allyn W. Gibson's testimony confirmed that any claim seeking to tie his fall and injury to Defendants would have been too remote and speculative to permit recovery. *See Moton v. Carroll*, 10th Dist. Franklin No. 01AP-772, 2002 WL 206196, at *3 (Feb. 12, 2002) ("Compensatory damages must be shown with certainty, and damages that are merely speculative will not give rise to recovery.") An unknown individual banged on Allyn W. Gibson's apartment window late one night in May 2017, after which he opened his front door and subsequently slipped, fell, and injured himself. (Trial Tr., May 16, 2019, at 29:20-33:17.) Of course, as Defendants pointed out in their motion in *limine*, no individual has ever been identified as a suspect—let alone charged and

³³ The Court erred in denying Defendants' motion in *limine*, which was filed April 23, 2019 and which sought to exclude evidence of and testimony related to Allyn W. Gibson's fall and subsequent injury. *See* May 8, 2019 Entry and Ruling on All Motions in *Limine*.

arrested. (Defs.' Motion in Limine at 2, filed April 23, 2019; *see also* Trial Tr., May 16, 2019, at 40:16-22; Trial Tr., May 30, 2019, at 26:1-5.)

Despite this temporally removed and entirely speculative connection between Defendants and Allyn W. Gibson's fall and injury—and despite the Court denying Plaintiffs' request to attach a physical injury component of damages to their complaint—the Court improperly permitted Allyn W. Gibson and his daughter-in-law, Lorna Gibson, to testify at length to his fall and injury during direct examination. (Trial Tr., May 16, 2019, at 29:20-35:20; Trial Tr., May 15, 2019, at 132:1-136:21.³⁴) For instance, Allyn W. Gibson, while wearing a neck brace, testified about the effect that his fall and injury had on his life, including that he suffered immense pain as a result of multiple broken vertebrae from the fall, (Trial Tr., May 16, 2019, at 33:7-17), and that people were scared to come near him for fear of “catch[ing] something,” (*id.* at 34:21-35:3).

Defendants were unfairly prejudiced as a result. The testimony evoked sympathy for Allyn W. Gibson's pain and suffering and confused and misled the jury into believing that Defendants could be liable for the fall and injury. The Court should not have allowed Plaintiffs to present this irrelevant evidence, and at a minimum, it should have been excluded because the danger of unfair prejudice substantially outweighed any minimal probative value it might otherwise have under Evid.R. 403(A). The error in admitting this testimony requires a new trial.

2. Evidence of unpled and unrecoverable property damage should have been excluded at trial.

Over Defendants' objections, Plaintiffs were also allowed to present evidence that unidentified individuals damaged the cars of Gibson's Bakery employees and David Gibson's home in the spring of 2017. Much of this evidence should have been excluded under Evid.R. 401 and 402 as irrelevant to any pending claim because evidence of damage to an **employee's** property

³⁴ All May 15, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 20.

is not evidence of harm to an **employer**. All of this evidence also was irrelevant because it was too remote and speculative, and because Plaintiffs did not seek recovery for property damage.

First, Plaintiffs called Gibson's Bakery employee, Shane Cheney, who testified on direct examination that his car tires were punctured at a nearby parking lot. (Trial Tr., May 15, 2019, at 105:25-106:11.) On cross-examination, however, Mr. Cheney stated that he did not know who punctured his tires. (*Id.* at 107:21-23.)

Plaintiffs also called David Gibson, who testified on direct examination that all of this supposed property damage—for which there is still no identified suspect—occurred several months after the November 2016 protests:

The puncturing of the tires and the slashing of the tires, the keying of the cars, happened April, May. My house, there was – the back door was kicked in. That happened May 9th, I believe it was. Yes, May 9th. And then dad, when they went to his place banging on his doors and windows, he went out to react to it and fell in his doorway, that happened on the following day.

(Trial Tr., May 21, 2019, at 215:3-9.) On cross-examination, however, David Gibson acknowledged that no suspect has ever been identified in connection with such property damage. (Trial Tr., May 23, 2019, at 62:18-21.³⁵)

Just like the evidence of Allyn W. Gibson's fall and injury, this speculative evidence of property damage—for which Plaintiffs did not seek damages—was improperly presented to the jury. No suspect has ever been identified in connection with this apparent property damage. Other than the baseless allegation that the College created a "hostile environment," there could be no causal relationship between Defendants' allegedly defamatory conduct in November 2016 and property damage several months later caused by unknown suspects.

³⁵ All May 23, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 21.

The Court should have excluded this evidence under Evid.R. 401 and 402, or at the very least under Evid.R. 403(A) because the danger of unfair prejudice substantially outweighed whatever minimal probative value the evidence might have possessed. The Court's error requires a new trial under Civ.R. 59(A)(1), (7), (9), or for good cause.

IV. The Court's denial of Defendants' Motion to Transfer Venue created an irregularity in the proceedings that warrants a new trial.

On March 1, 2018, Defendants filed a Motion to Transfer Venue, which demonstrated that the sensationalized and pervasive media frenzy surrounding this lawsuit would necessarily poison any Lorain County jury pool, preventing Defendants from receiving a fair and impartial trial in this venue and requiring a transfer to Cuyahoga County.³⁶ Plaintiffs and their counsel sought out and willingly fanned the flames of this extensive media coverage. The Court denied Defendants' Motion to Transfer Venue on April 18, 2018, the same day that the Court also denied Defendants' motion to compel, among other things, the extent and nature of Plaintiffs' counsel's communications with the news media.³⁷

Now, after a year has passed and a contentious and lengthy trial concluded, Defendants submit that the trial and its result confirms jurors had been tainted by the extensive and one-sided media coverage. Extensive media coverage demonized Defendants and inflamed the public by making this lawsuit a hot-button political issue. Indeed, the local newspaper in Elyria, the *Chronicle-Telegram*, reported daily and at length about the lawsuit and trial proceedings. *The (Lorain) Morning Journal*, another daily newspaper of general circulation within Lorain County, also had a staff reporter cover the trial.

³⁶ Defendants hereby incorporate by reference their Motion to Transfer Venue.

³⁷ See April 18, 2018 Entry and Order on Defendants' Motion to Transfer Venue; April 18, 2018 Entry and Order on Defendants' Motion to Compel Production of Documents in Response to Subpoena *Duces Tecum* Issued to Plaintiffs' Counsel.

The prejudicial and extensive pre-trial (and during trial) coverage made it virtually certain Defendants would be denied a fair trial, and the massive verdict that followed confirmed Defendants were denied their due process right to an impartial jury free from outside influences. *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 553 (1976).

The Court did instruct the jury daily to stay away from the news. But with the extensive local coverage, “staying away” would be impossible for any person over the span of this almost two-month trial, especially in today’s online-based world. Accordingly, the Court erred in denying Defendants’ Motion to Transfer Venue, which now requires a new trial under Civ.R. 59(A)(1), (9), or for good cause.

V. A new trial is required because the excessive damages were the apparent result of passion or prejudice.

When a party is awarded “[e]xcessive or inadequate damages, appearing to have been given under the influence of passion or prejudice,” a trial court may grant a new trial under Civ.R. 59(A)(4). *Id.* While the size of the verdict standing alone may not be sufficient to show passion or prejudice, passion or prejudice exists when the record contains items “that wrongfully inflamed the sensibilities of the jury.” *Buehler v. Falor*, 9th Dist. Summit, No. 20673, 2002 WL 121204, at *3 (Jan. 30, 2002) (quotation omitted). Here, as discussed *supra*, the trial record abounds with evidence that improperly appealed to the passions, emotions, and sympathies of the jury, including:

- Emails and text messages to, from, or among Oberlin College employees that (i) were irrelevant to Plaintiffs’ claims and/or (ii) post-date the publication of the Protest Flyer, the publication of the Student Senate Resolution, and the resumption of the College’s business with Gibson’s Bakery, *see supra* Section III.B;
- Frank Monaco’s speculative testimony regarding Plaintiff David Gibson’s purported lost business opportunities and lost rental income, *see supra* Sections III.C.1-C.2;
- Testimony related to Plaintiff Allyn W. Gibson’s May 2017 fall and injury, and his consequent pain and suffering, even though he did not plead a personal injury claim, *see supra* Section III.D.1; and

- Testimony related to unpled and unrecoverable property damage suffered by the Bakery's employees and David Gibson, *see supra* Section III.D.2.

Further, Defendants were unfairly prejudiced by not being permitted to try to offset the inflamed sensibilities of the jury by presenting critical contextual evidence in regard to the November 9, 2016 shoplifting incident, the testimony of former President Marvin Krislov and Chris Jenkins concerning race-related experiences inside Gibson's Bakery, certain materials from the Facebook account of Allyn D. Gibson, and President Carmen Ambar's experience with student protests, *see supra* Sections III.A.1-3.

In addition, Attorney Plakas' statements during trial and closing arguments separately and wrongfully inflamed the sensibilities of the jury. The following are Attorney Plakas' multiple appeals to the passions, emotions, and sympathies of the jury:

- Several times throughout trial and his closing argument, Attorney Plakas referred to this litigation as one between "David and Goliath," or one brought against the "800-pound gorilla." For instance, during his closing argument, Attorney Plakas stated "[o]bviously in this community, Oberlin College is the 800-pound gorilla. They're the Goliath." (Trial Tr., June 5, 2019, at 42:1-3.)
- During his closing argument, Attorney Plakas mentioned a text message from an employee of the College, in which a staff member stated that she hoped to "rain fire and brimstone on that store." Attorney Plakas then referenced the King James Bible, in an attempt to inform the jury of the magnitude of that statement. (*Id.* at 18:14-19:3.) These biblical appeals were certain to inflame the passions of any religious juror.
- Near the end of his closing argument, Attorney Plakas mentioned fear that Allyn W. Gibson, who is in his 90s, would "die labeled as a racist." (*Id.* at 94:10-12.) David Gibson testified over tears to the same fear. (Trial Tr., May 21, 2019, at 169:17-21, "*I said to him – I said to him, my father had looked in my eyes – sorry – and he explained that 'at my age, I'm going to die and they're going to claim I'm a racist.' Pardon me. I'm sorry.*"). A jury pressed with Allyn W. Gibson's death in this manner would feel more impassioned or sympathetic, especially when the elderly man's son testified on the subject while struggling to hold back tears.
- During his closing argument, Attorney Plakas stated: "you have to be able to go to the Gibsons and look them in the eye and tell Grandpa, Gibson's Bakery will survive. We're going to help you make it survive. And tell David Gibson that. And to tell 12-

year-old-grandson, Cashlyn Gibson, ‘You are up next.’ Be proud of what you do.” (Trial Tr., June 5, 2019, at 96:9-15.) Importantly, though not possibly captured on the record but observed by those packed in the courtroom, Attorney Plakas conjured tears of his own when making these final statements in an attempt to yank forcefully at the hearts, emotions, and sympathies of the jurors.

Not only is there no basis for counsel’s remarks, but it appears that the jury’s exorbitant \$11,074,500 compensatory damages award (which includes \$7 million in non-economic damages) was an attempt to “rain fire and brimstone,” which is wholly improper. *See, e.g., State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 426 (2003) (large noneconomic awards “likely [are] based on a component which [is] duplicated in the punitive award”); *Moody v. Ford Motor Co.*, 506 F. Supp.2d 823, 838 (N.D. Okla. 2007) (noting a “substantial likelihood that the award of compensatory damages contained a punitive element, especially in light of the size of the non-economic damages award”). These improper attempts to pull at the sensibilities of the jury—especially when heard last during closing arguments and combined with the other evidence cited above—necessitate a new trial under Civ.R. 59(A)(4) or for good cause.

**AS AN ALTERNATIVE TO A NEW TRIAL,
DEFENDANTS ARE ENTITLED TO A REMITTITUR**

I. Remittitur is required because the verdicts were manifestly excessive and unjust.

In the event that the Court disagrees that the jury’s verdict was influenced by passion or prejudice so that a new trial must be ordered, *see supra* Section V, then a remittitur is appropriate. Even though none of Plaintiffs’ claims involved any physical injury, loss of freedom, or death, the jury awarded \$11,074,500 in compensatory damages and \$33,223,500 in punitive damages, for a total award of \$44,298,000. This award is manifestly excessive under the common law and R.C. 2315.19.

The General Assembly established a statutory duty on the part of trial courts to review noneconomic damage awards challenged as excessive or based on improper considerations.

R.C. 2315.19. The Court must consider (1) whether the evidence presented or the attorneys' arguments resulted in (a) "inflam[ing] the passion or prejudice of the trier of fact"; (b) "the improper consideration of the wealth of the defendant"; or (c) "the improper consideration of the misconduct of the defendant so as to punish the defendant improperly or in circumvention of the limitation on punitive or exemplary damages," R.C. 2315.19(A)(1)(a-c), and (2) whether the verdict "is in excess of verdicts involving comparable injuries to similarly situated plaintiffs," R.C. 2315.19(A)(2). And if the verdict does appear excessive, the court must evaluate whether "there were any extraordinary circumstances in the record to account for an award of compensatory damages for noneconomic loss in excess of what was granted by courts to similarly situated plaintiffs, with consideration given to the type of injury, the severity of the injury, and the plaintiff's age at the time of the injury." R.C. 2315.19(A)(3).

Beyond this statutory duty, Ohio "courts have the inherent authority to order remittiturs to reduce jury awards when they deem the amount to be excessive based on the facts found by the jury." *Arbino*, 2007-Ohio-6948, at ¶ 38. A damages award need not be influenced by passion or prejudice to be excessive. *Miller v. Lindsay-Green, Inc.*, 10th Dist. No. 04AP-848, 2005-Ohio-6366, ¶ 77. Rather, the Court may order remittitur whenever damages are excessive in light of the evidence presented at trial. *Id.* If a verdict is excessive, "but not appearing to have been influenced by passion or prejudice, the court may, with the assent of plaintiff, reduce the verdict by remittitur **to any amount warranted by the evidence.**" *Burke v. Athens*, 123 Ohio App.3d 98, 101, 703 N.E.2d 804 (9th Dist. 1997) (emphasis in original).

Four requirements must be met before a court may order a common law remittitur: (1) unliquidated damages are assessed by a jury; (2) the verdict is not influenced by passion or prejudice; (3) the damages award is excessive; and (4) the plaintiff agrees to the reduction in

damages. *Wightman v. Consolidated Rail Corp.*, 86 Ohio St.3d 431, 444, 715 N.E.2d 546 (1999). Here, there is no dispute that the damages are unliquidated and a comparison of the jury verdicts here with verdicts in other defamation cases leaves no doubt that the verdict is excessive under the common law and R.C. 2315.19.

Plaintiffs' counsel have trumpeted the jury's verdict as the largest ever awarded in a defamation case in Ohio.³⁸ A review of available Ohio jury verdicts on LexisNexis and Westlaw involving defamation claims shows why this verdict is excessive and needs to be remitted. Such a review returned eleven other instances in which a jury returned damages in excess of \$1 million, **none** of which remotely approached the jury's award of \$44,298,000, or the Court's capped \$25,049,000 amount.³⁹ See June 27, 2019 Judgment Entry. For example, in *Sutton v. Douglas*, Summit Cty. C.P., No. CV-2006-08-4953, 2009 Jury Verdicts LEXIS 425793, a jury in August 2009 awarded a man \$1.2 million in damages for defamation after his ex-wife accused him of sexually abusing their daughter and then distributed flyers to the plaintiff's neighbors which identified him as a child rapist. In *Dardinger v. Dardinger*, Hamilton Cty. C.P., No. A-2013-08441, 2016 WL 7985841, a jury awarded the plaintiff a total of \$1,954,200 in damages, inclusive of \$1.85 million in punitive damages, in claims that her adopted father, a physician, secretly installed a video-spy camera throughout their house, videotaped her in various stages of undress,

³⁸ See Tzangas Plakas Mannos Ltd., News Release, *TPM Leads Gibson's Bakery to Largest Defamation Verdict in Ohio History*, available at <https://www.lawlion.com/recent-cases/tpm-leads-gibsons-bakery-to-largest-defamation-verdict-in-ohio-history/>. Before this case, the largest defamation verdict in Ohio was believed to be awarded by a Franklin County jury in March 1980. See *Guccione v. Hustler Magazine, Inc.*, 10th Dist. Franklin, No. 80AP-375, 1981 WL 3516 (Oct. 8, 1981). In *Guccione*, the jury returned a verdict of \$3.3 million in compensatory damages and \$37 million in punitive damages. *Id.* Every court to review that verdict agreed it was excessive. The trial court addressed the excessiveness with a substantial remittitur, *id.* at *4-5, and the court of appeals ultimately ordered a new trial on the basis that the "grossly excessive verdict was influenced by passion and prejudice." 1981 WL 3516, at *20

³⁹ Defendants' counsel reviewed all Ohio jury verdicts available in LexisNexis and Westlaw that involved a claim for defamation, libel, or slander, and in which the total award—not necessarily specific to these claims—exceeded \$1 million.

and then, after his criminal conviction, accused her in online forums of fabricating the allegations.

Other than this case, the largest Ohio jury verdict involving a defamation claim that Defendants' counsel could locate was \$5 million—**less than 20 percent of the Court's improperly capped award here**—which a Summit County jury awarded in March 1998. *See Boutsicaris v. Akron General Med. Ctr.*, Summit Cty. C.P., No. CV94092952, 1000 WL 184325 (awarding a total of \$5 million in compensatory damages—\$1.5 million for defamation and \$3.5 million for intentional inference with business relations—and \$0 in punitive damages). The parties in *Boutsicaris* settled while an appeal was pending. The amounts of the other jury verdicts that exceeded \$1 million in defamation cases likewise pale in comparison to the damages awarded here:

- *Wayt v. DHSC, L.L.C.*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, ¶¶ 1, 2, 16 (awarding \$800,000 in non-economic compensatory damages and \$750,000 in punitive damages in February 2015, but the Supreme Court of Ohio, pursuant to R.C. 2315.18(B)(2), ordered that the non-economic damages be reduced to \$250,000);
- *Guinn v. Mount Carmel Health Systems*, No. 2:09CV00226 (S.D. Ohio) (awarding a total of \$3.7 million in compensatory damages in October 2013 for all claims at issue, including \$350,000 each for claims of defamation and tortious interference with business relationship—and \$0 in punitive damages);⁴⁰
- *Am. Chem. Soc. v. Leadscope, Inc.*, Franklin Cty. C.P., No. 02CV007653 (awarding \$13.75 million in compensatory damages and \$1,250,000 in punitive damages in March 2008 on defendants' defamation counterclaim; **verdict overturned by the Supreme Court of Ohio**, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶ 92);
- *Au v. Yulin*, No. 2:01-CV-00596, 2005 OH Trial Rptr. LEXIS 1635 (S.D. Ohio) (awarding \$750,000 in compensatory damages and \$250,000 in punitive damages in October 2005 for defamation);
- *Laughman v. Selmeier*, Hamilton Cty. C.P., No. A-0208401, 2004 Jury Verdicts LEXIS 52165 (awarding \$375,000 in compensatory damages and \$750,000 in punitive damages in February 2004 for defamation);

⁴⁰ The executed jury verdict form in *Guinn*, which also involved claims of race discrimination and conspiracy, is attached hereto as Exhibit 22.

- *Isquick v. Dale Adams Entss., Inc.*, 9th Dist. Summit No. 20839, 2002-Ohio-3988, ¶¶ 1, 6 (affirming March 2001 jury award of \$2.9 million in compensatory damages—\$2.5 million for defamation and \$400,000 for tortious interference with business relationships—and \$0 in punitive damages);
- *Jones v. V.V. Rajadhyaksha*, Summit Cty. C.P., No. CV95020503, 1996 Jury Verdicts LEXIS 66177 (awarding a total of \$600,000 in compensatory damages and \$400,000 in punitive damages in October 1996 for libel and slander); and
- *Kerns v. Toledo Plastic Surgeons*, Lucas Cty. C.P., No. CI95-1994, 1996 Jury Verdicts LEXIS 64997 (awarding a total of \$2.86 million in compensatory and punitive damages in October 1996 for claims that included IIED, breach of contract, sexual harassment, assault/battery, and slander).

This Court does not need to look beyond the above verdicts to recognize that the jury's award of \$44,298,000 in this matter, or the Court's capped \$25,049,000 amount, was manifestly excessive and must be remitted under the common law and R.C. 2315.19.

The need for remittitur here is all the more apparent because Gibson's Bakery had a value of \$35,000 as of December 31, 2015, before the November 2016 protests and publication by Oberlin students of the Protest Flyer and Student Senate Resolution. (Trial Tr., May 30, 2019, at 111:7-13.) In addition, the business had seen its annual revenue decrease by about 16% from 2014 through 2016, a decline that Mr. Monaco agreed Oberlin College did not cause. (Trial Tr., May 20, 2019, at 89:9-91:12, 92:3-21⁴¹; Defs.' Trial Exhibit C-32.⁴²) Further, Gibson's Bakery in 2016 was on pace to have its lowest annual revenue since 2010, even before the November 2016 protests. (Trial Tr., May 20, 2019, at 91:13-18.) In the seven years prior to the protests—from 2010 through 2016—Gibson's Bakery averaged a net annual income loss of \$3,697. (*Id.*, at 95:11-96:6; Defs.' Trial Exhibit D-32.⁴³) The jury's \$4,074,500 in economic damages alone is more than 116 times the value Gibson's Bakery had before the protests.

⁴¹ All May 20, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 23.

⁴² Defendants' Trial Exhibit C-32 is attached hereto as Exhibit 24.

⁴³ Defendants' Trial Exhibit D-32 is attached hereto as Exhibit 25.

Further, less than one percent of the jury's verdict of \$44,298,000 consisted of damages of past economic loss. The lone exception is the \$420,000 that the jury awarded Plaintiff Gibson Bros., Inc., for past economic loss.⁴⁴ The remaining damages consisted of speculative future economic loss, *see supra* Section III.C.1-C.2, non-economic loss, and punitive damages, all of which are unrecoverable, excessive, or both. Even after the Court improperly applied the statutory damages cap and awarded Plaintiffs \$25,049,000 in compensatory and punitive damages—excluding attorneys' fees and costs, *see* June 27, 2019 Judgment Entry—more than 98 percent of this capped award still consisted of damages other than those for past economic losses, further supporting remittitur.

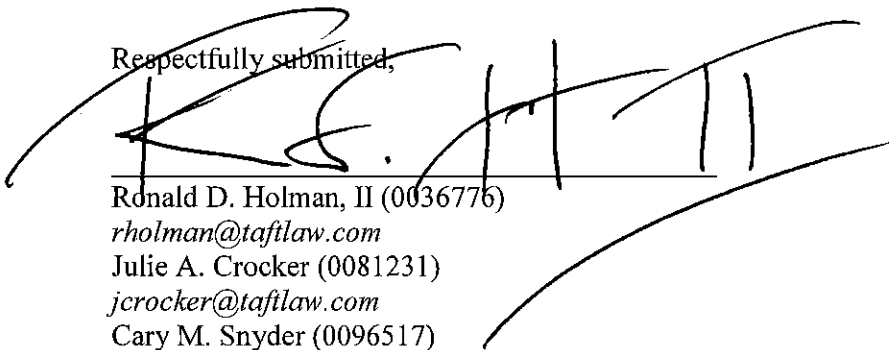
At the very least, the Court should properly apply the statutory damages caps pursuant to Ohio Revised Code Chapter 2315. These caps require compensatory damages to be capped per plaintiff, rather than per claim, *see* R.C. 2315.18(B)(2), and for punitive damages to be capped at two times the amount of the **capped** compensatory damages award, *see* R.C. 2315.21(D)(2). *See also* Defendants' Motion to Cap Compensatory and Punitive Damages, filed June 21, 2019; Defendants' Motion for Reconsideration of Judgment Entry, filed July 8, 2019.

CONCLUSION

Any one of the numerous errors and irregularities identified above independently entitle Defendants to a new trial in the event the Court does not grant Defendants judgment notwithstanding the verdict. Alternatively, the Court should remit the manifestly excessive verdict to an amount supported by the evidence.

⁴⁴ Defendants do not agree that Plaintiff Gibson Bros., Inc., was harmed in any way by Defendants' actions, let alone that it suffered past economic losses in the amount of \$420,000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

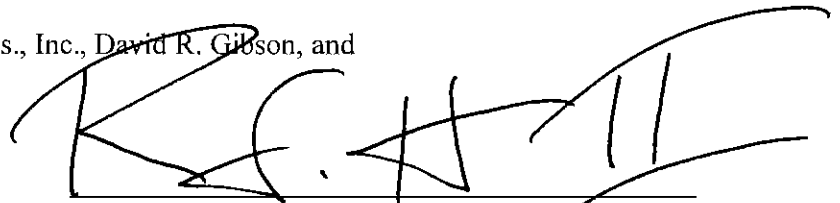
I certify that a copy of the foregoing was served this 14th day of August 2019, via e-mail,
pursuant to Civ.R. 5(B)(2)(f) of the Ohio Rules of Civil Procedure, upon the following:

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**DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION,
IN THE ALTERNATIVE TO JUDGMENT NOTWITHSTANDING THE VERDICT,
FOR A NEW TRIAL OR REMITTITUR**
Gibson Bros., Inc., et al. v. Oberlin College, et al., No. 17CV193761

Filed on August 14, 2019

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1	Excerpts from the June 13, 2019 Trial Transcript
2	Excerpts from the June 11, 2019 Trial Transcript
3	Excerpts from the June 6, 2019 Trial Transcript
4	Excerpts from the May 29, 2019 Trial Transcript
5	Defendants' Trial Exhibit A-3
6	Excerpts from the May 9, 2019 Trial Transcript
7	Excerpts from the April 30, 2019 Hearing Transcript
8	Excerpts from the May 16, 2019 Trial Transcript
9	Excerpts from the June 5, 2019 Trial Transcript
10	Excerpts from May 10, 2019 Trial Transcripts
11	Excerpts from the May 30, 2019 Trial Transcript
12	Defendant Meredith Raimondo's Objections, Answers and Responses to Plaintiffs' First Set of Requests for Admissions, Requests for Production, and Interrogatories
13	Excerpts from the May 28, 2019 Trial Transcript
14	Excerpts from the June 3, 2019 Trial Transcript
15	Excerpts from the May 1, 2019 Hearing Transcript
16	Excerpts from the May 31, 2019 Trial Transcript
17	Excerpts from the May 14, 2019 Trial Transcript
18	Plaintiffs' Trial Exhibits 63, 86, 100, 101, 125, 129, 135, 140, and 248
19	Excerpts from the May 21, 2019 Trial Transcript
20	Excerpts from the May 15, 2019 Trial Transcript
21	Excerpts from the May 23, 2019 Trial Transcript
22	The executed jury verdict form submitted in <i>Guinn v. Mount Carmel Health Systems</i> , No. 2:09CV00226 (S.D. Ohio)
23	Excerpts from the May 20, 2019 Trial Transcript
24	Defendants' Trial Exhibit C-32
25	Defendants' Trial Exhibit D-32

EXHIBIT 1

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.)

NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XXIV

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON THURSDAY, JUNE 13, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 based on the evidence yesterday: the nature of the
2 conduct; the financial condition of the defendant;
3 amount of money necessary to deter future similar
4 conduct; prior or similar acts of the defendant; the
5 amount of actual or compensatory damages.

6 The reviewing court standard that is currently
7 in the instructions does not help the jury to determine,
8 what do I do to reach the amount of the award? Instead,
9 the Ninth District court tells them -- we would submit,
10 Your Honor, that if the Ninth Circuit factors are not
11 inserted in place of the current factors, that they
12 should be added to it because they are an accurate
13 statement of the law and will be helpful to the jury.

14 THE COURT: We will take a look at that.
15 Anything else from the plaintiffs? Anything else from
16 the plaintiffs with the respect to the jury
17 instructions?

18 MR. MCHUGH: Not on the instructions, Your
19 Honor.

20 THE COURT: Anything from the defense on the
21 jury instructions?

22 MR. PANZA: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. PANZA: Thank you. I'm going to enter the
25 objection in regards to the inclusion of actual

1 constitutional malice in the instructions. It is the
2 defendants' position that that issue has already been
3 decided by the jury in the compensatory phase of the
4 trial.

5 THE COURT: Now, I don't mean to cut you off,
6 Attorney Panza.

7 MR. PANZA: Yes, sir.

8 THE COURT: So I understand that objection.

9 MR. PANZA: Yes, sir.

10 THE COURT: And it's been noted on the record.
11 The issue here now is, with respect to it going to the
12 jury, are you okay with the definition? It's the
13 definition you used in opening statement.

14 MR. PANZA: No, no, no. I don't have a problem
15 with the definition. I have a problem including the
16 definition as well as the common law definition, because
17 I think the actual malice definition is the only
18 definition that should go to the jury.

19 THE COURT: On the punitive damage question with
20 respect to defamation?

21 MR. PANZA: Yes, sir.

22 THE COURT: Yeah. I did have a question about
23 that, and I went over it with counsel. Because the
24 plaintiff's version has not only the constitutional
25 actual malice definition, it has -- it required finding

1 of both.

2 MR. PANZA: I know.

3 THE COURT: That and common law.

4 MR. PANZA: I know.

5 THE COURT: So they have actually doubled their
6 burden, perhaps, with respect to this because -- I'm
7 trying to look at the harm in giving them both
8 definitions.

9 MR. PANZA: It's not doubling their burden.
10 It's doubling the jury's burden. It is incredibly
11 confusing. Obviously, as you know, we don't believe
12 there should be any instruction in regards to the libel
13 claim. I'm getting past that. I'm getting past that.

14 THE COURT: I'm not sure.

15 MR. PANZA: Okay, I understand. But having them
16 both there, Your Honor, it's just incredibly confusing.

17 THE COURT: Let's talk about it.

18 MR. MCHUGH: So I mean, I think if defendants
19 are willing to consent and stipulate that they, should
20 the jury award damages on the libel claim for the
21 punitive damages based solely on the constitutional
22 malice standards, they cannot and will appeal based on
23 us not finding common law malice, we're fine.

24 MR. PANZA: Oh, sure.

25 MR. MCHUGH: But we're going off the language --

1 to detract attention. It's good this is the last day,
2 right?

3 At any rate, you are going to be presented with
4 interrogatories in this case. We're going to suggest to
5 you how these interrogatories should be. The judge is
6 going to ask you for some more specification.

7 And if we can pull up slide P.

8 And with regard to David Gibson, the judge is
9 going to ask you for further specification,
10 clarification -- is this board blocking you?

11 With regard to the verdict amount of
12 \$5.8 million for David Gibson and if you are asked for
13 that specification, which we believe that you will be,
14 we would suggest that 4800 -- 4,800,000 for libel and
15 one million be for the intentional infliction of
16 emotional distress.

17 Slide two for Grandpa, the verdict is
18 \$3 million. You will be asked for further
19 specification. And as to the libel claim, we would
20 recommend \$2 million for the libel specification and one
21 million for the intentional infliction of emotional
22 distress.

23 As to Gibson's Bakery, the verdict amount, and
24 that's slide three, is \$2,274,500. And we would suggest
25 that be split evenly between those two. That's

1 \$1,137,250 in that regard.

2 So what are their defenses? We've explained to
3 you the purpose of punitive damages. We've explained
4 that that's, although they're called punitive and surely
5 a portion of it is punishment, it's smart money. The
6 greater emphasis, in my mind, and the greater value is
7 the deterrence and discouragement of not only this
8 continuing to happen to the Gibsons, but just as
9 importantly to make sure that the example is made so
10 that others are deterred or discouraged from doing that.

11 Now, we have heard in opening yesterday from
12 Attorney Zidar that they get it. They accept your
13 verdict, she said. They're changing. Interestingly
14 enough, the only changes we've heard were changes that
15 affect the students, not the administration that is and
16 has been and will be running the school going forward.
17 They apologize for the students, but they don't
18 apologize for themselves.

19 This case is -- the students have already
20 apologized. The students have already done the right
21 thing. They stood up in court and accepted their
22 responsibility. So when Oberlin College attorneys get
23 up and apologize to you in an effort to tell you, "Don't
24 award any punitive damages because we get it, we
25 understand," where is the apology from the college?

C E R T I F I C A T E

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on June 13, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
13th day of June, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 2

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XXII

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON TUESDAY, JUNE 11, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 damages hearing.

2 For instance, if they argue that the
3 compensatory verdict is sufficient to punish them for
4 their conduct, we believe that opens the door. If they
5 argue that the compensatory verdict is sufficient to
6 deter conduct, we believe it opens the door. If they
7 talk about their role in the community, being a good
8 neighbor to the community, we believe it opens the door.

9 If they say anything, like they learned from
10 this, they get it, they got the message, once again, we
11 believe it opens the door, because the letter to
12 thousands of people, including alumni and faculty,
13 clearly says otherwise; that they do not get it, they
14 did not get the message. They believe this jury got it
15 dead wrong. So we believe it is certainly relevant.

16 THE COURT: All right. The Court will permit
17 the punitive damages phase to relate to all three claims
18 with respect to the jury interrogatory under the claim
19 for defamation, where the jury did not find actual
20 malice. That malice was defined specifically as the
21 malice associated with the publication necessary for a
22 defamation claim, basically knowledge of falsity or a
23 reckless disregard. That standard is different than the
24 common law actual malice that is required for punitive
25 damages. And this Court finds that the finding by the

1 jury with respect to that interrogatory does not
2 preclude the plaintiffs from moving forward with the
3 punitive damage phase as applied to the defamation
4 claim.

5 The Court will also note that it granted the
6 defendants' motion to bifurcate the trial. And
7 plaintiffs, I assume you have additional evidence that
8 was not permitted in the compensatory phase that you
9 will be presenting in the punitive damages phase on that
10 issue of common law actual malice; is that correct?

11 MR. PLAKAS: Yes, Your Honor.

12 THE COURT: All right. The defense also filed a
13 brief, bench brief -- I'll give you a chance to
14 object -- with respect to no mention of attorney fees
15 during the punitive phase of the trial.

16 Plaintiffs, were you intending to talk about
17 attorney fees during the punitive phase? Yes or no?

18 MR. MCHUGH: Yes, Your Honor.

19 THE COURT: Okay. Hang on a second. Defense,
20 with respect to my ruling on permitting the punitive
21 damages phase to relate to all three claims, any
22 objection?

23 MR. HOLMAN: Absolutely, Your Honor. Yes, Your
24 Honor.

25 THE COURT: You can have your brief speak for

1 it. You filed your bench brief; that will be part of
2 the record. If you want to add anything to it, you can
3 do that now.

4 MS. ZIDAR: Your Honor, I'm sorry. Is this
5 pertaining to the mention of attorney's fees?

6 THE COURT: No.

7 MS. ZIDAR: The punitive damages as to the libel
8 claim?

9 THE COURT: Right. Because the jury
10 interrogatory, they found no actual malice with respect
11 to the constitutional actual malice with the defamation.

12 MS. ZIDAR: Yes, Your Honor.

13 As this Court clearly found in its motion for
14 summary judgment ruling, that this case addresses the
15 matter of public concerns. The implications of that
16 finding are significant. And they are -- include that
17 even in cases involving defamation per se, which is what
18 this case addresses, there are no presumed or punitive
19 damages unless plaintiffs prove actual malice,
20 constitutional malice. If plaintiffs only prove
21 negligence, then plaintiffs must establish actual
22 damages.

23 In this case, the plaintiffs did not object to
24 the submission of the instructions or interrogatories
25 seeking findings as to actual malice. And they didn't

1 because they knew, had the jury found actual malice,
2 they would be entitled to presumed damages. They would
3 not have to prove one dollar of actual damages to be
4 entitled to a compensatory damage award.

5 The jury had to determine the existence of
6 actual malice in the compensatory damages stage.
7 Regardless, at this stage the jury cannot, as a matter
8 of law, because of its finding on actual malice,
9 consider punitive damages on the libel claim. This is
10 well-settled law in the United States Supreme Court, and
11 it's well-settled in the Ninth District based on at
12 least three cases: Gosden versus Louis, Burch versus
13 Community Workers of American, and Gilbert versus WNIR.

14 The finding that there is no actual malice by
15 the jury in the compensative damages phase of the trial
16 precludes, as a matter of law, the jury considering
17 punitive damages in the second stage, in the punitive
18 damages stage. The finding of actual malice,
19 constitutional actual malice in the compensatory damages
20 stage is actually a higher standard than what common
21 law, ill will, hatred and conscious disregard is in the
22 punitive damages stage.

23 Filing a motion to bifurcate by no way -- by no
24 means waives the instructions that the Court gave to the
25 jury with the findings of constitutional malice.

C E R T I F I C A T E

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on June 11, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
11th day of June, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 3

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)
) PLAINTIFFS,

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)
) DEFENDANTS.

* * *

VOLUME XX

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON THURSDAY, JUNE 6, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 abetting?

2 MR. MANDEL: Yes, Your Honor, we would object.

3 As Mr. McHugh just mentioned, this is from their
4 proposed language would be from the criminal law OJI
5 section, I believe under the law of conspiracy, which is
6 not from a publication of a defamation -- of the
7 defamation OJI.

8 MR. MCHUGH: It's from the law of complicity,
9 Your Honor.

10 MR. MANDEL: Complicity.

11 MR. MCHUGH: Complicity.

12 THE COURT: Law of complicity. Are you aware of
13 any other legal definition in existence for aiding and
14 abetting?

15 MR. MANDEL: The one that's here. The one that
16 is quoted correct currently in the proposed
17 instructions.

18 THE COURT: Well --

19 MR. MCHUGH: It's undefined in the instructions,
20 Your Honor. The words aiding and abetting.

21 THE COURT: So is procures. So is request.

22 MR. MCHUGH: Correct. I think the plaintiffs
23 would submit that request and procure are words that are
24 used in the ordinary English. Aid and abet may not be.

25 THE COURT: Yeah. Good point.

1 MR. MCHUGH: Do you need the section?

2 THE COURT: No. We're going to get Black's law
3 dictionary. Anything else? I've got that. I'm taking
4 that under advisement.

5 MR. MCHUGH: So page 11, and this is under the
6 defamation damages section -- or libel damages section.
7 We go down to -- regarding David and Allyn W. Gibson,
8 there's three sections of damages and then we jump down
9 to Gibson's Bakery, we only loss of business income.
10 The plaintiffs agree that law -- or mental anguish, pain
11 and suffering would not be recoverable by the business.
12 The business and the plaintiffs do submit that the
13 injury to reputation is recoverable by the business and
14 should be included in the defamation -- libel damages
15 section.

16 THE COURT: Isn't that the loss of
17 income? Didn't we have this discussion? That's how a
18 business suffers.

19 MR. MCHUGH: Right, Your Honor. I think the
20 business, plaintiffs will continue to submit that the
21 business can still suffer damages through loss of
22 reputation even though the quantification of that was
23 excluded through the majority -- the majority of the
24 report, the plaintiffs still thinks they could suffer
25 loss of reputation.

1 MR. MATTHEW NAKON: I can take this one, Your
2 Honor. Your Honor, you remember you read into the
3 record from a case out of the state of Washington.

4 THE COURT: Right.

5 MR. MATTHEW NAKON: And you made the expressed
6 statement that businesses cannot be affected with
7 non-economic damages.

8 THE COURT: All right. I note your objection.
9 I'm not going to include that.

10 MR. MCHUGH: Thank you, Your Honor.

11 MR. ONEST: Your Honor, the next one is on the
12 agency under the tortious -- intentional interference.

13 THE COURT: Right.

14 MR. ONEST: On page 12, under the -- we would
15 submit, under the agent definition. So prior to that,
16 if you find an additional instruction pursuant to the
17 Cincinnati Golf Management, Inc. versus Testa case, the
18 Ohio Supreme Court case at cite 132 Ohio St.3d 299, we
19 believe that an additional instruction should include,
20 However, when dealing with a business relationship
21 involving the purchase of goods, before you can find
22 that the agent has the power to bind the principal, you
23 must find that, one, the purchases from the third party
24 were not made solely -- were not made solely, excuse me,
25 were not made solely by the alleged agent; two, the

1 straight from OJI. Number two, there's a specific
2 section here called an intentional act of an employee.
3 It gives the definition of what respondeat superior is,
4 if there's an intentional act. And then I think the
5 exact language, "On the other hand, an employer may be
6 liable from malicious injuries or damages caused by an
7 employee acting within the course and scope of
8 employment and in furtherance of the employer's
9 interest." It's right in there.

10 THE COURT: Defense objection is noted.

11 MS. CROCKER: Next objection?

12 THE COURT: Yes, we noted that. The next one.

13 MS. CROCKER: The next objection from the
14 defense is with respect to the instruction on
15 defamation. Defendants object to this instruction and
16 submitted their instructions on libel and damages for
17 libel set forth in their proposed instructions 9 and 13
18 of the second amended proposed instruction should be
19 given.

20 Defendants also would submit that an instruction
21 on incremental harm, similar to the one in
22 instruction 14 of their second amended proposed
23 instruction, should be provided.

24 With respect to the elements under "proof of
25 claim," in element one, defendants argue that the first

1 element stating "the statements in the flyer and senate
2 resolution were made," should also end with "were made
3 by defendants." So that the fullest element of that
4 number one should read, "The statements in the flyer and
5 student senate resolution were made by defendants."

6 THE COURT: If that was required, how could
7 someone be libel for aiding and abetting?

8 MS. CROCKER: We don't believe they can be, Your
9 Honor.

10 THE COURT: Oh.

11 MS. CROCKER: We think that it's a fundamental
12 aspect of defamation, that the statements have to be
13 made by defendants. There is --

14 THE COURT: Yeah, I understand the objection.
15 We talked about it. Okay.

16 MS. CROCKER: Going on to the "published"
17 definition in that same section. The first sentence
18 regarding published states, "Published means the alleged
19 statement," and then goes on. There's a second sentence
20 stating, "Publishing includes any act by which the
21 libelous matter is communicated to a third party."

22 We believe that that second sentence, begins
23 "Publishing includes any act," should be removed. It is
24 not the standard OJI instruction, and we do not believe
25 there's support for its inclusion in the instructions.

1 MR. MCHUGH: Your Honor, plaintiffs will respond
2 that language came straight from head cases from the
3 Ohio Supreme Court that found publishing includes any
4 act by which libelous matter is communicated to a third
5 party.

6 THE COURT: Objection is noted.

7 MS. CROCKER: Moving down in the same section,
8 Your Honor, to the sentence that we talked about other
9 earlier that begins, "Additionally, one who requests,
10 procures, or aids or abets," we object to the inclusion
11 of that instruction. We object to the inclusion of this
12 instruction in part because it is from the case Cooke
13 versus United Dairy Farmers. The cite is 2003 Ohio
14 3118. We do not believe this is an accurate statement
15 of law and publication. We do not believe the Cooke
16 decision is controlling, and it is not contained within
17 OJI.

18 MR. MCHUGH: Plaintiffs would submit this case
19 was cited in their response to a motion for summary
20 judgment. Also cited by the cases -- good law on what
21 qualifies for publication in the defamation, Your Honor.

22 THE COURT: Thank you. Objection is noted.

23 MS. CROCKER: The next objection, Your Honor,
24 regarding reasonable care. The defendants object to the
25 instruction as included --

1 THE COURT: Hold on. Where are you?

2 MS. CROCKER: I'm sorry. It's just right after
3 the sentence, "Additionally, one who requests,
4 procures," there's a section --

5 THE COURT: I'm sorry. Right there.

6 MS. CROCKER: I'm sorry, Your Honor.
7 Negligence, and then there's a section on reasonable
8 care, stating, "Reasonable care is the care that a
9 reasonably careful person would use under the same or
10 similar circumstances." We object to the inclusion of
11 that definition and believe that the definition provided
12 in the defendants' proposed instruction number 13 should
13 be given to the jury.

14 THE COURT: Noted.

15 MS. CROCKER: As we further indicated regarding
16 prior findings, we believe that the full instruction
17 that was provided to the jury on May 9th, 2019, on pages
18 77 to 78 of the transcript should be given to the jury.

19 THE COURT: Noted.

20 MS. CROCKER: We also believe that with respect
21 to that next section beginning "Furthermore," I have
22 also found that there should be a statement added to the
23 end of that paragraph stating that "even though these
24 statements have found to be defamatory per se,
25 plaintiffs are still required to prove each of the

1 removing it when it was raised during that meeting.

2 THE COURT: All right. The objection is noted.

3 MS. CROCKER: Your Honor, the next objections
4 that defendants state for the record is in Section 4 of
5 the instructions, "Calculating damages for Gibson
6 Brothers Inc.'s intentional interference with business
7 relationship claim" and David Gibson and Allyn W.
8 Gibson's intentional infliction of emotional distress
9 claim.

10 Again, this goes to damages, Your Honor. We
11 believe that the jury should be instructed that when
12 considering damages for Gibson Brothers, Inc. on its
13 claim for tortious interference with business
14 relationship, the jury may only consider awarding
15 damages for economic loss. In this case, damages for
16 economic loss are limited to lost profits or lost
17 business value from the business relationship with Bon
18 Appétit.

19 This instruction would be consistent with the
20 Court's holding on May 7th, 2019, which is in the trial
21 transcript at pages 47 to 48, and it is similar to the
22 instruction proposed by defendants in their second
23 amended instruction.

24 We also believe that the Court should be
25 instructed with respect to David Gibson and Allyn

1 Gibson's intentional infliction of emotional distress
2 claim in a manner that is similar to the defendants'
3 proposed instruction 19 of their proposed second
4 proposed amended instruction, which make clear that
5 their damages for intentional infliction for emotional
6 distress are limited to -- section -- it's proposed
7 instruction 18. I apologize. I misspoke. That
8 explains that damages for intentional infliction of
9 emotional distress are limited to noneconomic loss,
10 which means losses other -- which means losses that
11 result from, but are not limited to, pain and suffering,
12 loss of society, consortium, et cetera.

13 THE COURT: What was your proposed instruction
14 on that? What number?

15 MS. CROCKER: Well, for the tortious
16 interference claim or IIED claim?

17 MR. ONEST: Your Honor, plaintiffs would just
18 raise an objection. That objection brought multiple
19 parts, multiple things.

20 THE COURT: I know. I'm trying to piece it
21 together. I can read it back. For Gibson Brothers,
22 Inc. on the intentional interference with business
23 relationships, that when considering damages for the
24 company, it should only be lost profits or business
25 value.

1 be a part of anything. That's just your agreement.

2 MR. MCHUGH: No, that's a stipulation that we
3 reached.

4 MR. RARRIC: Just briefly. I have looked at the
5 Black's law dictionary. There's definitions for abet
6 and also aid and abet. When you combine those two, what
7 I come up with is to encourage, assist or facilitate the
8 wrongful acts or to promote it's accomplishment.

9 THE COURT: Did you say that is straight from
10 Black's.

11 MR. RARRIC: That is a combination of the
12 definition of abet in Black's and also aid and abet.
13 Instead of "wrongful act," it says "a crime." I'm
14 substituting wrongful act.

15 THE COURT: I see. All right. As to the
16 interrogatories.

17 MS. CROCKER: Yes, Your Honor. Defendants filed
18 their proposed jury interrogatories. That version is
19 what we believe should go to the jury. The biggest
20 objection that we have regarding the jury
21 interrogatories that the Court is giving is that they
22 are broken down by the elements of each claim, and we
23 believe that there should be questions as they relate to
24 each element for the claim.

25 MR. HOLMAN: Your Honor, to add to that, we

1 THE COURT: I don't disagree with that. Why it
2 don't we -- is that wrong?

3 MS. CROCKER: Could we go off the record?

4 THE COURT: Yeah, I guess so. We're off the
5 record.

6 ***

7 (A recess was had.)

8 ***

9 THE COURT: Let me go on the record and direct
10 your attention to three things the Court did. Just
11 noting this so you are not surprised when it happens.

12 On page 10, "Published," third paragraph, the
13 Court added the second sentence, "To aid and abet means
14 to encourage, assist, or facilitate the act or to
15 promote its accomplishment."

16 Page 11, just above libel damage, I added the
17 sentence, "Even though these statements have been found
18 libelous per se, the plaintiffs must still prove all of
19 the elements of their libel claim."

20 Page 15, I broke up the damages. It now says
21 "Calculating damages for Gibson Brothers, Inc.'s
22 Intentional Interference with Business Relationships"
23 and it only has economic loss there.

24 Page 16 is calculated for David and Allyn
25 Gibson's intentional infliction claim, and it has the

1 OJI damages that include economic loss that had been
2 previously defined in the non-economic damage elements.

3 All right.

4 MS. CROCKER: Your Honor, we can just officially
5 object to the addition regarding aiding and abetting,
6 and as well as, we still have the same objection
7 regarding the damages. That's all on the record. Thank
8 you.

9 THE COURT: Okay. Bring them up.

10 ***

11 (Within the presence and hearing of the jury.)

12 ***

13 THE COURT: Good morning.

14 THE JURORS: Good morning.

15 THE COURT: You will have these instructions
16 with you in the jury room.

17 Members of the jury, you have heard the evidence
18 and the arguments of counsel. Is now the duty of the
19 court to instruct you on the law that applies to this
20 case. The court and the jury have separate functions.
21 You decide the disputed facts, and I give the
22 instructions of law. It is your sworn duty to accept
23 these instructions and to apply the law as I give it to
24 you. You are not permitted to change the law nor to
25 apply your own idea of what you think the law should be.

1 (A) you must find by the greater weight of the
2 evidence that:

3 (1) the statements in the flyer or senate
4 resolution were made; and

5 (2) the statements in the flyer or the senate,
6 student senate resolution concerned or were about the
7 plaintiff; and

8 (3) the statements in the flyer or the student
9 senate resolution were false; and.

10 (4) the statements in the flyer or the student
11 senate resolution were published to a third party other
12 than the plaintiff; and

13 (B) you must also find by clear and convincing
14 evidence that, in publishing the statement, the
15 defendant acted with negligence or actual malice.

16 Note that the plaintiffs must prove the first
17 four elements by the greater weight of the evidence,
18 while plaintiffs must prove the defendants' negligence
19 or actual malice by clear and convincing evidence.
20 These different burdens of proof have been previously
21 defined for you.

22 That being, "clear and convincing evidence" and
23 preponderance of the evidence.

24 FALSE. A statement is false when it is not
25 substantially true. It is substantially true when the

1 gist or substance of the statement is true, or is
2 justified by the facts, taking the statement as a whole.
3 A defendant's words must be given their natural and
4 ordinary meaning, taking into consideration the
5 circumstances in which the statement was made. You must
6 ignore any minor ways in which the statement is false.

7 PUBLISHED.

8 "Published" means that the alleged statement was
9 read and understood by a person other than the
10 plaintiffs. If only the plaintiffs read it, the
11 statement was not published. Publishing includes any
12 act by which the libelous matter is communicated to a
13 third party.

14 In order to impose liability for the publication
15 of a libelous statement, the publication must have been
16 made by the defendant, either directly or through the
17 agency of some other person authorized to act for the
18 defendant.

19 Additionally, one who requests, procures, or
20 aids and abets another to publish libelous statements is
21 libel as well as the publisher. To aid and abet means
22 to encourage, assist, or facilitate the act or to
23 promote its accomplishment.

24 NEGLIGENCE. Negligence is a failure to use
25 reasonable care. Every person is required to use

1 reasonable care to avoid causing injury to others or
2 their property.

3 Reasonable care is the care that a reasonably
4 careful person would use under the same or similar
5 circumstances.

6 ACTUAL MALICE. "Actual malice" occurs when a
7 defendant makes a false statement either with knowledge
8 that it is false or with reckless disregard of whether
9 it is false or not.

10 "Reckless disregard" means that a defendant
11 acted while actually aware of the probable falsity of
12 the statement, or the defendant entertained serious
13 doubts as to the truth of the statement. The
14 defendant's failure to investigate may be considered
15 evidence that the defendant acted with reckless
16 disregard to the statement's truth or falsity, but only
17 if you find from the facts and circumstances that the
18 defendants had serious doubts about the truth of the
19 statement.

20 Defendants have asserted the affirmative defense
21 of truth. Proof of truth of the matter charged as
22 libelous is a complete defense. If you find that the
23 defendant proved by a preponderance of the evidence that
24 the allegedly libelous matter is substantially true,
25 then you must find in favor of the defendants.

1 Conclusion as to defamation

2 If you find that all -- if you find that
3 plaintiffs failed to prove that any defendant libeled
4 them, then your verdict must be for the defendants.

5 If you find that a plaintiff was libeled by a
6 defendant, then your verdict must be for that plaintiff.

7 Let me go back and reread this.

8 Conclusion

9 If you find that all plaintiffs, all plaintiffs,
10 failed to prove that any defendant libeled them, then
11 your verdict must be for all the defendants.

12 If you find that a plaintiff was libeled by a
13 defendant, then your verdict must be for that plaintiff.
14 You must then decide the amount of damages caused by the
15 conduct of the defendant, and you will answer jury
16 interrogatories awarding specific monetary damages to
17 that plaintiff.

18 PRIOR FINDINGS. The court has made certain
19 findings as a matter of law related to the flyer and the
20 student senate resolution. First, the court has found
21 that the statements contained in the flyer and the
22 student senate resolution that accuse plaintiffs of
23 committing an assault, if false, are libelous per se,
24 meaning they are of such a nature that it is presumed
25 they tend to degrade or disgrace plaintiffs, or hold

1 plaintiffs up to public hatred, contempt, or scorn.

2 Furthermore, the court has also found that the
3 statement contained within the flyer that "This is a
4 racist establishment with a long account of racial
5 profiling and discrimination" and the statement
6 contained within the student senate resolution that
7 "Gibson's has a history of racial profiling and
8 discriminatory treatment of students and residents
9 alike," if false, are libelous per se, meaning they are
10 of such a nature that it is presumed they tend to
11 degrade or disgrace plaintiffs, or hold plaintiffs up to
12 public hatred, contempt, or scorn because they tend to
13 injure plaintiffs in their trade or profession.

14 Even though these statements have been found to
15 be libelous per se, plaintiffs must still prove all of
16 the elements of their libel claim.

17 Libel Damages

18 If you find that any plaintiff proved by clear
19 and convincing evidence that one or more defendants
20 libeled them with actual malice, it is assumed that
21 plaintiffs' reputation was injured, and you may award
22 the plaintiffs an amount of money you decide is
23 reasonable and fair for the plaintiffs' injuries
24 directly caused by the defendants' libel.

25 If you find that any plaintiff proved by clear

C E R T I F I C A T E

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on June 6, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
7th day of June, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 4

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.)

NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XIV

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON WEDNESDAY, MAY 29, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 part of campus, I suppose?

2 **A. The land is owned by Oberlin College, yes. Yes.**

3 **Q.** When you were at the hotel for that event, was
4 there anything else unusual that you saw or observed
5 that night?

6 **A. Well, some people did come up to me and talk to**
7 **me about the events that had occurred at Gibsons's.**

8 **Q.** Did you happen to run into one of the students
9 that was involved in the shoplifting?

10 **A. Yes. After the event, the event was on the**
11 **second floor and I came down and I was sort of walking**
12 **around saying hello to people, and one of the students**
13 **that I recognized, whose name I called Elijah, was**
14 **there. And I saw him and he looked very beaten up and**
15 **he was very -- he was very quiet and he was speaking**
16 **very slowly. I gathered -- someone perhaps had told me**
17 **that he --**

18 MR. PLAKAS: Objection, Your Honor. Hearsay.

19 **A. I learned that he had been --**

20 THE COURT: Hold on. There's an objection, sir.

21 THE WITNESS: Sorry.

22 THE COURT: Objection. Basis?

23 MR. PLAKAS: May we approach, Your Honor?

24 THE COURT: Sure.

25 ***

1 the matter asserted therein is hearsay. So what is he
2 going to say that Elijah told him?

3 MR. HOLMAN: He's just going to mention briefly
4 he was involved in an incident involving young Allyn
5 Gibson that took place inside and outside of Gibson's
6 Bakery.

7 MR. PLAKAS: That's the whole purpose of our
8 motion in limine and the discussions in chambers. He's
9 giving -- he's recounting through Elijah's words what
10 this gentleman did not see happen or does not know
11 anything about.

12 MR. HOLMAN: And it's not offered for the truth
13 of the matter asserted.

14 MR. PLAKAS: Of course it is.

15 THE COURT: If he -- if his answer's only going
16 to be that he told me that he was involved in an
17 incident, I'll permit that.

18 MR. HOLMAN: Okay.

19 THE COURT: That's been in front of this jury
20 for two weeks.

21 MR. PLAKAS: Yeah, but this witness won't stop
22 there. We know that.

23 MR. HOLMAN: He will stop.

24 MR. PLAKAS: Let's be alert to it.

25 THE COURT: I'm alert to it.

1 THE WITNESS: Okay.

2 Q. Did you see any other students who were involved
3 in the incident at the hotel?

4 A. I did see two of the other students, two other
5 students, one was with a family member, and I had the
6 same essential conversation with them.

7 Q. Okay. Thank you. Is it your understanding that
8 the protests occurred on Thursday and Friday,
9 November 10th and 11th, 2016?

10 A. Yes.

11 Q. Do you have an understanding as to whether
12 Meredith Raimondo, Dean Raimondo was actually present at
13 the protests?

14 A. My understanding was that Dean Raimondo was
15 there to help, as the book provided for her to be
16 present at off-campus demonstrations, and she was there
17 to ensure the safety and the help of the students, and
18 also to try to be, I don't know, a calming presence
19 because it was a very volatile situation.

20 THE COURT: I think this would be a good place
21 to stop for lunch.

22 MR. HOLMAN: Sure, that sounds great.

23 THE COURT: It's noon. Take our lunch break.
24 Remember my admonition not to speak with anyone about
25 the case during your break. Come back maybe five after

1 Q. If you look at the second paragraph, there's no
2 need to blow it up, there's a statement that says
3 something like we will commit every resource to try to
4 figure out what's happening here. What did you and Dean
5 Raimondo mean by that phrase?

6 A. Well, what we had heard was very different
7 differing views from a number of people in a very short
8 period of time. People were coming out of the woodwork
9 to --

10 MR. PLAKAS: Objection, Your Honor. Hearsay.

11 THE COURT: I'm not sure at this point.

12 MR. HOLMAN: Can I respond, Your Honor?

13 MR. PLAKAS: Can we do a sidebar, Your Honor?

14 THE COURT: Okay.

15 ***

16 (A sidebar discussion was had as follows.)

17 ***

18 THE COURT: People were coming out of the
19 woodwork to --

20 MR. HOLMAN: To talk to him. He's not -- I
21 don't think he's going to say what they said. He's
22 going to say they were collecting information and
23 gathering information. There's been no statement made.
24 It's not hearsay. He hasn't even made a statement yet.

25 THE COURT: But this is a --

1 MR. HOLMAN: Right.

2 MR. PLAKAS: If you look at the sentence before,
3 he already says, "People are coming to him with
4 differing views."

5 THE COURT: He did.

6 MR. PLAKAS: That's exactly what we talked about
7 in chambers.

8 MR. HOLMAN: And I think that's fine.

9 MR. PLAKAS: It's not fine because there's only
10 one interpretation of different views that he's going to
11 be talking about.

12 THE COURT: As long as he doesn't get into
13 that -- the differing views goes to not relitigating
14 what happened --

15 MR. HOLMAN: Right.

16 THE COURT: -- at the bakery.

17 MR. HOLMAN: Right.

18 THE COURT: And that's what -- correct, Attorney
19 Plakas, that's your concern, that --

20 MR. PLAKAS: Yes.

21 THE COURT: -- you are hearing differing views
22 about --

23 MR. PLAKAS: Not only what happened at the
24 bakery, but different views about any history of racial
25 profiling, because he's already talking about the

1 Student Senate Resolution has identified that. Now he's
2 saying they have said this and now we've got different
3 views and --

4 THE COURT: Okay.

5 MR. HOLMAN: Sure. And again, for the record, I
6 would make this proffer. That if allowed, President
7 Krislov would talk about what those different views are
8 and how they informed the decisions that were made or
9 were not made in connection with all these events.

10 MR. PLAKAS: That's of course the basis of our
11 objection that we talked about.

12 THE COURT: Yeah, we did.

13 MR. HOLMAN: But pursuant to this Court's
14 wishes, I will try to stay clear of specific comments
15 that were told to him.

16 THE COURT: This is what we agreed on yesterday..

17 MR. HOLMAN: Yes.

18 THE COURT: The college did not take a position
19 on racial profiling, and after gathering information
20 from the community, that was still our position.

21 MR. HOLMAN: Uh-huh, okay. Thank you, Your
22 Honor.

23 THE COURT: That's the framework.

24 MR. PLAKAS: Yeah, as long as he --

25 THE COURT: Lee, what can I do? I mean --

1 MR. PLAKAS: Just be on our guard.

2 THE COURT: All right.

3 MR. PLAKAS: We're on our guard.

4 ***

5 (The sidebar discussion ended.)

6 ***

7 BY MR. HOLMAN:

8 Q. So, President Krislov, I don't want to get into
9 what specifically you were told, but were you talking to
10 students at around this time?

11 A. I talked to many, many students, yes.

12 Q. Were you talking to other administrators and
13 senior members of your cabinet?

14 A. Yes.

15 Q. Were you talking to faculty members?

16 A. Yes.

17 Q. And were you engaged in conversations with
18 members of the community?

19 A. Yes.

20 Q. So would you agree with me that you and others
21 were trying to assess the situation by collecting
22 information from a wide breadth of sources?

23 A. Yes.

24 Q. Okay. Thank you. That phrase about committing
25 every resource, was that directed at all to the

C E R T I F I C A T E

The State of Ohio,)
) SS:
County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 29, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
30th day of May, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 5

From: kdunbar@oberlin.edu
Sent: Thursday, November 10, 2016 11:15 PM
To: Marvin Krislov; Meredith Raimondo
Subject: Fwd:
Attachments: Senate Resolution 11.10.2016.pdf; Untitled attachment 00468.htm

FYI, Senate passed this resolution tonight.

Best,

Kam

--

Kameron R. Dunbar
Oberlin College | Politics

kdunbar@oberlin.edu | [313.585.5350](tel:313.585.5350)

Sent from a mobile device. Please excuse brevity and errors.

Begin forwarded message:

From: Oberlin Student Senate <senate@oberlin.edu>
Date: November 10, 2016 at 11:11:49 PM EST
To: studentlist <studentlist@oberlin.edu>
Reply-To: Oberlin Student Senate <senate@oberlin.edu>

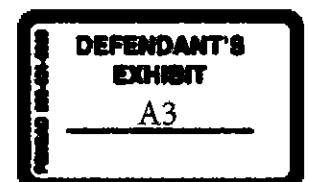
Hello Students,

In light of the events that occurred today, Senate would like to address the student body regarding our stance moving forward. Students engaged in a peaceful protest outside of Gibson's Bakery and Market in response to an act of violence towards Black students. This is part of an effort working towards making significant change as part of an important national justice movement. These protests will not stop today, nor will this movement. Affirming that Black lives matter in American society is a battle we stand for, and will contend for. We want to respect the people who live in this community of all identities, but severely maintain that the base for social justice movements and civil rights starts with students, and we will continue to fight with you.

Please read the attached resolution.

In Solidarity,
Your Senators

--



Student Senate meets every Sunday at 7pm in Wilder 215. All students are welcomed and encouraged to attend plenary sessions. If you have questions, pose them at the plenary sessions, or contact Senate by email.

Senators host regular group office hours from 9pm-10pm Monday-Thursday in Azariah's. Individual Senators also offer their own office hours at different times throughout the week.

Looking for a particular Senator? Check out the Senate directory [here](#).

If you are interested in applying for a seat on a committee, please email senate@oberlin.edu.

Join us on [Facebook](#)

Senate's Web Site: <http://www.oberlin.edu/senate>

November 10, 2016

Dear Oberlin Community,

It is with great regret that we write to you expressing deep abhorrence towards violence against students. Oberlin is no stranger to acts of hatred, bigotry, and anti-Black violence. As stewards of justice, we are called to acknowledge, repudiate, and actively reject violence in all forms, especially as it affects our own.

Yesterday evening, reports of an incident involving employees of Gibson's Food Market and Bakery and current Oberlin College students began to circulate. After further review today, consisting of conversations with students involved, statements from witnesses, and a thorough reading of the police report, we find it important to share a few key facts.

A Black student was chased and assaulted at Gibson's after being accused of stealing. Several other students, attempting to prevent the assaulted student from sustaining further injury, were arrested and held by the Oberlin Police Department. In the midst of all of this, Gibson's employees were never detained and were given preferential treatment by police officers.

Gibson's has a history of racial profiling and discriminatory treatment of students and residents alike. Charged as representatives of the Associated Students of Oberlin College, we have passed the following resolution:

WHEREAS, Oberlin College Students regularly engage and support the commerce of the City of Oberlin; and

WHEREAS, Oberlin College Students stand boldly against racialized violence in the United States, abroad, and in our own community; and

WHEREAS, Gibson's Food Market and Bakery has made their utter lack of respect for community members of color strikingly visible; therefore be it

RESOLVED that the Students of Oberlin College immediately cease all support, financial and otherwise, of Gibson's Food Market and Bakery; and be it further

RESOLVED that the students of Oberlin College call on President Marvin Krislow, Dean of Students Meredith Rumonde, all other administrators and the general faculty to condemn by written promulgation the treatment of students of color by Gibson's Food Market and Bakery; and be it further

RESOLVED that the students of Oberlin College further work toward creating a community in which all students are respected, not met with hate due to the color of their skin.

§

EXHIBIT 6

1 STATE OF OHIO,)
2) SS:
COUNTY OF LORAIN.)

3 IN THE COURT OF COMMON PLEAS

4 GIBSON BROS., INC., ET AL.,)

5 PLAINTIFFS,)

6 VS.) NO. 17CV193761

7 OBERLIN COLLEGE, ET AL.,)

8 DEFENDANTS.)

9 * * *

10 **VOLUME II**

11 A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
12 ABOVE-ENTITLED MATTER ON THURSDAY, MAY 9, 2019, BEFORE
13 THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
14 Court.

15 * * *

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1 statements.

2 In addition to presumed damages, the law of
3 defamation also recognizes a category of damages called
4 special damages. Special damages are those direct
5 financial losses resulting from the plaintiffs' harmed
6 reputation. The Court also instructs you that for the
7 purposes of the law of defamation, plaintiffs Gibson's
8 Bakery is a private figure. As a result, the plaintiff
9 is required to prove that the defendants were negligent
10 with regards to the elements of their defamation claim.

11 Finally, as to any verbal or oral statements,
12 chants or words that were made at the protests on
13 November 10th and 11th of 2016, and that were directed
14 at the plaintiffs, Gibsons or their employees, the Court
15 has determined that those oral or verbal statements are
16 constitutionally protected opinion, and therefore cannot
17 form the basis of a legal claim.

18 And you will get this instruction in writing at
19 the end of the case.

20 For the plaintiff.

21 MR. PLAKAS: Thank you, Your Honor.

22 Good afternoon, Ladies and Gentlemen.

23 THE JURORS: Good afternoon.

24 MR. PLAKAS: No one in this country is allowed
25 to steal without consequences. Victims who stand up to

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 9, 2016.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
11th day of May, 2019.

Allen Mc Coy

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 7

1 STATE OF OHIO,)
2) SS:
COUNTY OF LORAIN.)

3 IN THE COURT OF COMMON PLEAS

4 GIBSON BROS., INC., ET AL.,)

5 PLAINTIFFS,)

6 VS.) NO. 17CV193761

7 OBERLIN COLLEGE, ET AL.,)

8 DEFENDANTS.)

9 * * *

10 A COMPLETE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE
11 ABOVE-ENTITLED MATTER ON TUESDAY, APRIL 30, 2019, BEFORE
12 THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
13 COURT.

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1 But we're not dealing with that here. This is Allyn D.
2 Gibson. He's not an owner of the business. His father
3 and his grandfather are parties. We're dealing with
4 their reputations in a business that's been around for
5 over a hundred years, Your Honor. We believe that it's
6 still impermissible character evidence.

7 THE COURT: Thank you. For the defense.

8 MR. MANDEL: Your Honor, Josh Mandel on behalf
9 of the defense here.

10 Before I specifically address the plaintiffs'
11 specific arguments, I'd like to make brief
12 counterpoints.

13 THE COURT: Sure.

14 MR. MANDEL: First, like you mentioned, Ohio law
15 is clear. When plaintiffs bring a defamation claim,
16 they placed a reputation directly at issue. Here, Allyn
17 D. Gibson's Facebook content provides insight into the
18 reputation of the plaintiffs here, specifically the
19 bakery.

20 Allyn is the face of the bakery. He is an
21 employee of the bakery. He admits on Facebook that he
22 is the, quote, the security of the bakery, and thus is
23 enforcer of the bakery's violent chase-and-detain
24 policy. He is also the heir apparent of the bakery, the
25 successor of the bakery.

1 So plaintiffs have alleged that in 130 years of
2 the existence of the bakery that the bakery has enjoyed
3 a stellar reputation, and that in over three days in
4 November 2016, plaintiffs' stellar reputation was
5 completely ruined, and they are now claiming that this
6 amounts to millions and millions of dollars of
7 reputational harm.

8 Allyn's Facebook tells a different story,
9 though, about the plaintiffs', specifically the
10 bakery's, reputation. For example -- I'd like to read a
11 couple of his statements on Facebook.

12 In April 2012, which is almost five years before
13 the incident, Allyn says the following on Facebook,
14 "Right now there is a huge thing about my store being
15 racist because we caught two black college students a
16 day before spring break."

17 Another example from 2012, Allyn says the
18 following on Facebook, "Getting sued for assault because
19 some piece of blank was preaching his black rights in my
20 store."

21 And another example from 2012, Allyn says the
22 following on Facebook, I have had to deal -- "I have had
23 a lot to deal with because the college has a bunch of
24 protesting against our store right now."

25 And, finally, one last example, Allyn said the

1 following on Facebook, "Where has the Oberlin community
2 been when people are calling me or my family racist?"

3 In each of these examples, and there are many
4 more, Allyn speaks about the store. "His store" is
5 being called racist. "His store" is being sued. "His
6 store" is being protested. So his Facebook is directly
7 relevant to the reputation of "his store," a plaintiff,
8 the bakery. And that reputation is relevant to prior to
9 November 2016, and directly counters the theory of
10 damages that plaintiffs are going to present about
11 reputational harm. So the jury must be presented with
12 this evidence of the bakery's reputation.

13 But separate and apart from reputation and from
14 damages, the Court has held in their summary judgment
15 ruling that the flyer and the Student Center Resolution,
16 specifically, were actionable because they contain
17 statements of fact, specifically the phrase "long
18 account of."

19 Allyn D. Gibson's Facebook is evidence of that
20 "long account of." I just gave a few examples dating
21 back to 2012, which provides an account. The Court
22 defined "account" as involving a, quote, description of
23 facts, conditions or events.

24 He also said, in April 2016, and this is
25 important, quote, not my fault because most -- not my

1 fault that most black people around my area suck, end
2 quote.

3 So -- and the last point I'd like to make is
4 plaintiffs have produced roughly 320,000 documents from
5 Allyn's Facebook. This is about a third of their
6 production. They have not cited to or explained the
7 content of any specific document, but they paint all of
8 the documents with one brush, and they say that they all
9 should be excluded because they're impermissible
10 character evidence, impermissible hearsay.

11 They will have a chance at trial to review the
12 specific documents that we intend to introduce as
13 evidence, and the Court will then have a chance to
14 review their challenge, analyze the character
15 rules, analyze the rules of hearsay, and determine
16 whether or not those specific documents should be
17 excluded under the rules of evidence.

18 But specifically to plaintiffs' arguments,
19 they've mentioned that the subpoena duces tecum is
20 limited in scope to only the incident and the
21 demonstration. But this is not -- this is a
22 disingenuous argument here.

23 So plaintiffs were served -- as background,
24 plaintiffs were served with a subpoena duces tecum in
25 December 2017. The subpoena defines the term "document"

1 framework of -- I'm not going to retry the criminal
2 case. We're not going to do that.

3 MR. MANDEL: We understand that. We're not
4 intending to do that.

5 THE COURT: So, I mean, I'll reserve ruling on
6 that. I'm not sure where this is going, but I made it
7 clear that, you know, any questions of, you know, why
8 did plead to that or what did you really mean at the
9 sentencing hearing or during the plea agreement, I'm not
10 going to let you go there.

11 MR. MANDEL: We don't plan on asking those
12 questions.

13 MR. PLAKAS: Your Honor, would you like me to
14 read the two sentences?

15 THE COURT: Why don't you direct me to the
16 page, if you would. Is this on your --

17 MR. PLAKAS: I'm not sure that we actually
18 quoted that. If the Court permits, I'll just read it
19 for the record.

20 THE COURT: Sure.

21 MR. PLAKAS: Mr. Aladin stated in opening
22 Court, "I cannot substantiate the claim that this
23 conflict was derivative of racial prejudice in the
24 Gibsons' family. Given that the detainment was within
25 his shopkeeper's rights, I must admit my remorse for the

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on April 30, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
5th day of May, 2019.

Arthur M. Borg

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 8

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STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

 IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

 PLAINTIFFS,)

 VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

 DEFENDANTS.)

* * *

VOLUME VII

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON THURSDAY, MAY 16, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 Q. How about the amount of people coming into the
2 store, has that changed?

3 A. Oh, yes, they're afraid to come near it. Some
4 are and whatnot. There's been a lot of threats since
5 and whatnot. Some students want to, want to keep coming
6 anyway. They asked if they could, could leave by the
7 back door because they were watching. Face -- they
8 didn't want to be seen.

9 Q. How has that changed at the bakery, less people
10 coming in, less interaction?

11 A. We had to cut the production way back.

12 Q. How has that made you feel?

13 A. Gosh, it's a real shame, because we were
14 producing products they liked, and also the environment,
15 it was convenient to every -- it was just right for
16 them, actually. And I didn't know the names of each
17 one, but they knew my name. Of course, it's over the
18 door, up on the third floor part of the brick. Why, it
19 had Gibson Brothers.

20 Q. I'm going to move forward after the protests
21 several months to May, May 2017. Were you living by
22 yourself at your apartment at that time?

23 A. Yes. My wife had passed away.

24 Q. And I want to ask you a little bit, if it's
25 okay, about your fall, your injury, okay?

1 A. Okay.

2 Q. Can you tell us about that night before your
3 fall?

4 A. Well, this particular day, I made the
5 deliveries, I had started at 6:30. And it was several
6 hours later I was finished making deliveries, whether it
7 was the hospital or the college, the kitchens or dining
8 rooms. They had some pretty extensive dining rooms,
9 held a lot of people.

10 After I got that, got in there and so forth, and
11 I said to myself, well, I'm -- I hope to get a nap this
12 afternoon, but it didn't happen. It just wasn't
13 available and so forth. At 10:00, I finally got out of
14 there, and I was going to close the store that night and
15 so forth, and I got someone to cover it for me and so
16 forth.

17 But then I went home at 10:00 went by my
18 La-Z-Boy and I said I better -- the TV. I better leave
19 that. I better get in bed or I won't get there. Then I
20 said, I'll just stop and watch it. Turned the TV on,
21 sat down in the La-Z-Boy and I never saw the TV come in
22 focus. I was out. I was asleep. And so I woke up at
23 about one o'clock.

24 Q. What woke you up?

25 A. There was some pounding on the front window

1 right by my where I was sitting in my La-Z-Boy. And you
2 know, they went over and pounded on the glass on the
3 window of the --

4 Q. Was it a light tap?

5 A. No. No. It was pretty pronounced, plenty of
6 noise with it. I finally said, "Just a moment. I'll be
7 there." I yelled out loud. And it stopped and so
8 forth. So it took me a few --

9 Q. How did you know what time it was?

10 A. I looked at my watch right then to see because I
11 didn't know what time it was either. And oh, my gosh,
12 1:00. Who could that be and so forth? So I will be
13 there in a minute.

14 So I got down and got around, and I opened the
15 front door and there was nobody there. There was a car
16 parked in the parking lot of the -- for the apartment
17 building that my son and I had taken over one of the
18 apartments there. And I started to make my way towards
19 the car, you know, and I didn't even step down into
20 the -- off the curb to the parking lot. And it was, you
21 know, the car was parked idly.

22 Q. Were there people in the car?

23 A. There were people in the car, two people in the
24 car in the front seat.

25 Q. Did you go all the way up to the car?

1 A. No, I didn't go -- I didn't into the parking
2 lot.

3 Q. Why not?

4 A. Well, I tell you, I got my first shock and I
5 started thinking a little bit. What are they doing here
6 at one o'clock at night? And I didn't recognize the
7 car. I took a look at the license plate. And at that
8 time my memory was a lot better than it is now. And I
9 said, I better go back inside and call the police and
10 let them check it out.

11 Q. Did you head towards the -- back to the house,
12 to the apartment?

13 A. Yeah, I started. I tripped and fell there in
14 the doorway of the house and landed on the hard concrete
15 floor that had carpet on the top of it, but that wasn't
16 enough to -- knocked a lot of things out of me.

17 Q. Did you fall hard?

18 A. Yeah, I fell pretty hard. I broke --

19 Q. Were you kind of in the doorway?

20 A. Yes.

21 Q. Was someone in the parking lot right outside the
22 doorway, where they would have been able to see you, you
23 think?

24 A. If they were looking through their rearview
25 mirror, they could have seen me.

1 Q. Was that car with the people in it still there
2 in the parking lot while you were laying on the floor
3 inside the doorway?

4 A. It was there for about ten minutes.

5 Q. Okay. Did they come help?

6 A. No. They didn't come anywhere near it.

7 Q. Were you in pain? Were you in pain, Mr. Gibson?

8 A. Yeah, a lot of pain.

9 Q. A lot of pain?

10 A. A lot of pain. And I broke three vertebrae.
11 The fourth one is attached to the bone, the brain, you
12 know, the skull there. Knocked me back, as I said,
13 pretty hard. And trying to reach that, the pain was so
14 much I couldn't reach my cell phone. I had the cell
15 phone on me just like I have right now. And I couldn't
16 reach it; the pain. Finally I got to it about 20
17 minutes later.

18 Q. Twenty minutes you are lying there trying to
19 reach your cell phone?

20 A. Yeah.

21 Q. Who did you call?

22 A. The first one I called was my son -- almost my
23 namesake, you might say. He is Allyn D. Gibson.

24 Q. Your grandson?

25 A. Huh?

1 Q. Your grandson?

2 A. My grandson, yeah. And he in turn called my son
3 and his mom. And all three of them were there in a
4 matter of minutes.

5 Q. I see -- we see you are wearing a neck brace.

6 A. Yeah, I'm -- yeah, I have to do that for fear
7 of, if I fall, that I don't do far more damage than what
8 I did the first time.

9 Q. Mr. Gibson, in all your 90 years, almost 91
10 years on this earth, prior to that night, had anyone
11 ever come up, pounding on your windows and door at 1:00
12 a.m. in the morning?

13 A. No.

14 Q. Can you think of any reason why people would be
15 pounding on your door at 1:00 a.m., and your windows at
16 1:00 a.m. in May of 2017?

17 A. No. Only maybe harassment and didn't agree with
18 some of the things that were going on. There was a lot
19 of statements being made. They didn't -- they weren't
20 always complimentary.

21 Q. Mr. Gibson, can you tell us, since your fall,
22 since your injury, how has that affected what you can do
23 on a day-to-day basis?

24 A. Mostly every way. Made it pretty restrictive
25 of, of course, what I could do. Some people were scared

1 to come near me, like I was something dare they come
2 near and catch or something. Not that necessarily, but
3 they didn't want to be associated with me.

4 Other people would stop and sit down and eat
5 lunch out there on the sidewalk. I would sit, weather
6 permit. And we had a long winter it seemed like. But
7 on the warmer days I would have lunch out there. And
8 some people would come by, a lot of people would say
9 "hi" to me that I knew -- well, maybe I knew them, maybe
10 I didn't. But there were people that I got to know who
11 they were, and they were customers of mine.

12 Q. With the injuries, can you still go in and work
13 at the store and do the deliveries and work with the
14 candy and the cash register any longer?

15 A. No. I would check -- I would check a few things
16 out that I probably knew more because I was -- had kind
17 of adopted a few of the jobs that I could take care of
18 each day. Everybody was busy and so forth. And I would
19 check out like a couple of refrigeration units and
20 whatnot.

21 Q. Mr. Gibson, with all the difficulties over the
22 last two-and-a-half years, and you've observed the
23 business continuing on, are you proud of your son,
24 Dave?

25 A. Oh, absolutely.

1 fell; that you were stepping back, trying to grab the
2 handle with your right hand, missed it, and then that's
3 when you fell?

4 A. That's when I fell, yeah. I fell and I couldn't
5 move.

6 Q. Okay.

7 A. I never had a fall like that.

8 Q. And I understand that. I am very sorry about
9 that experience. When you -- when you were outside --
10 when you opened the door and you saw the car, you said
11 during your deposition you thought there were two people
12 in the car; is that right?

13 A. Yes.

14 Q. And you didn't recognize them, correct?

15 A. No, I couldn't see enough to recognize anybody.

16 Q. And as you sit here today, do you know who those
17 two people are?

18 A. No, I still don't know who those people are.

19 Q. And do you know if the police arrested who was
20 in that car or who might have been responsible for
21 knocking on your door that night?

22 A. I don't believe they have ever found them.

23 Q. And you didn't recognize the car that was in the
24 parking lot, did you?

25 A. No, I didn't.

1 so we could get things done in the back, and then the
2 other person goes home. There's nothing else really to
3 do there.

4 MS. AYOUB: No further questions at this time,
5 Your Honor.

6 THE COURT: Any cross-examination?

7 MS. ZIDAR: Yes, Your Honor.

8 CROSS-EXAMINATION OF CONSTANCE REHM

9 BY MS. ZIDAR:

10 Q. Good afternoon, Ms. Rehm. My name is Michelle
11 Zidar; I'm one of the attorneys for the college and
12 Dr. Raimondo. Is it Rehm? Am I pronouncing it --

13 A. Rehm.

14 Q. You just testified that you felt unsafe during
15 the protests, correct?

16 A. Yes.

17 Q. Was it the presence of the protesters that made
18 you feel unsafe?

19 A. It was them being there, saying what they were
20 saying to us, their actions.

21 Q. Thank you.

22 A. What they were doing to us made me feel not safe
23 there.

24 Q. You were also present, were you not, Ms. Rehm,
25 the evening of November 9th, 2016, during what everyone

1 has been referring to as the shoplifting incident?

2 A. Yes.

3 Q. And do you recall during that incident that
4 young Allyn was present?

5 A. Yes.

6 Q. And that's David Gibson's son, correct?

7 A. Yes.

8 Q. And did you witness the suspected shoplifter
9 attempt to get away from young Allyn?

10 A. Can you rephrase it, as --

11 Q. Did you witness the -- Mr. Aladin, the suspected
12 shoplifter, did he try to run out of the back of the
13 store?

14 A. From what it looked like, yes, he was running
15 towards the back of the store.

16 MR. PLAKAS: Your Honor, could we approach?

17 THE COURT: Sure.

18 ***

19 (A sidebar discussion was had as follows.)

20 ***

21 MR. PLAKAS: So this is again related to our
22 motion in limine. What happened in the store and the
23 incident is no longer relevant to any of the remaining
24 issues in the case. At opening statement, defense got
25 up and confirmed that this case is over, he pled, got

1 what he deserved, et cetera, et cetera. So where can
2 this go other than to confuse that point?

3 MS. ZIDAR: Your Honor, this is a basic
4 background information concerning what caused the
5 protest. The jury has heard for two weeks the
6 plaintiffs put their case on. I am not at all
7 contesting what the criminal convictions were. All I am
8 going to ask this witness is in very general terms what
9 she witnessed inside.

10 THE COURT: What's the purpose of that evidence,
11 related to what count of -- what element of what
12 claim?

13 MS. ZIDAR: The purpose of my questioning is
14 simply to have her testify to her witnessing Mr. Aladin
15 leave the store and that protests occurred the next day.

16 THE COURT: I understand. Now I understand what
17 you want her to say. My question is, what claim is that
18 relevant to?

19 MS. ZIDAR: Your Honor, that night -- that night
20 both the student that was in the store that witnessed
21 the event and other Oberlin students, that night before
22 the college's involvement in this at all, came in and
23 called them racists. Goes directly to their reputation
24 as to what caused that.

25 THE COURT: Now you are talking about two

The State of Ohio,)
) SS:
County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 16, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
17th day of May, 2019.

Patience M. Boff

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 9

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XIX

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON WEDNESDAY, JUNE 5, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 that afternoon, she says, "Had the Gibsons been willing
2 to support a resolution outside of the legal system --"
3 that's her e-mail, it's Exhibit 135.

4 So we see now internally that they are
5 interested in a resolution outside the legal system.
6 That's special treatment for them and their students.
7 So all their denials that they wanted -- that they
8 didn't really want special treatment, you can throw
9 those away, because, internally, now we get to see what
10 they're doing and what they're thinking.

11 And as we go to slide ten, that same afternoon,
12 when the rest of the team is realizing that apparently
13 Dave Gibson isn't going to play ball according to their
14 rules and their rules are special treatment, what do
15 they say? Well, the vice president of communications,
16 what does he say? He says, "F 'em, they have made their
17 bed now." They have made their bed now by just wanting
18 to treat everyone equally and fairly and follow the law.

19 But in Oberlin's mind, you are going to play
20 ball with them, F 'em, F-you. What does special
21 assistant to the president Reed say? "Hundred percent."

22 So as we go then -- of course no letter is ever
23 sent. And we go then to 11, and Tita Reed says, "Well,
24 can we draft a legal agreement?" And this is a couple
25 weeks later, actually a week and a half. So can we

1 draft a legal agreement clearly stating, clearly stating
2 that once charges are dropped, the orders will
3 resume? So they want a resolution outside the legal
4 system, they want special treatment, and they're going
5 to hold that over the Gibsons head and say you're not --
6 we're not going to continue your business until you play
7 ball with us; play ball in an improper and illegal way.

8 As we continue then, 12, this is that evening.
9 And I flip back to the 23rd when they learned that Dave
10 Gibson wasn't going to play ball. Then we see the
11 beginnings of their intention to boycott Gibson's, to
12 give all the business to somebody else. They wanted to
13 work it out in a restorative way. That's their way of
14 saying "on their terms." "But they've made their bed
15 now."

16 If we go to 13, we've seen this before. Just
17 the attitude that's important. Tita Reed says, "I'm
18 baffled by their combined audacity and arrogance to
19 presume the position of victim." Well, they are the
20 victim. The law says they are the victim, but
21 apparently that isn't able to be understood by Oberlin
22 College. So this attitude, is that just a blip on the
23 radar screen, or is that something that is pervasive and
24 continues?

25 And if we go to slide 14, even months later, as

1 the criminal justice system continues, and when interim
2 Assistant Dean Toni Myers is reporting to Vice President
3 Raimondo from the courtroom and when she discovers that
4 the students are actually being adult about it and
5 accepting their fate -- and remember in opening
6 argument, the attorney for Oberlin College said, "They
7 got exactly what they deserved." They're telling you
8 that, but internally we're able to see that they're not
9 happy with getting what they deserved. They're happy
10 only if they get something special, above and beyond
11 what the rest of us can expect, because what does
12 Assistant Dean Myers say? "This is the most egregious
13 process. Allyn is here and they will make a statement.
14 After a year I hope we rain fire and brimstone on that
15 store."

16 Now, we don't use that term very often. It's in
17 the Bible, of course. And I wanted to check myself,
18 because I knew from this past association, this is
19 pretty strong stuff, whether you are religious or not
20 religious, and my understanding and interpretation is --
21 was confirmed when I checked public sources. What does
22 fire and brimstone mean? The torments suffered by
23 sinners in hell. Brimstone means a burning rock such as
24 burning sulfur. The term fire and brimstone comes from
25 the Bible. In the King James translation, fire and

1 brimstone is mentioned several times. And if you go to
2 16, it's used to meet the threat of hell or damnation,
3 punishment that lasts forever.

4 So I think Tita -- I think Toni Myers was using
5 it in that sense, punishment that lasts forever, because
6 you will remember her e-mail, and it's part of that
7 exchange, and you will see it in the exhibit, she says,
8 "After a year we're going to rain fire and brimstone"
9 because they wanted first to be able to use that year to
10 expunge the records of the three students. And after
11 the three students' records were expunged a year later,
12 they're going to rain fire and brimstone.

13 So this isn't something that's going to go away.
14 And this supports why David Gibson has always said this
15 isn't going to go away by itself. We have to have some
16 letter from the college clearing the air and bringing us
17 back to where we were from at the beginning.

18 So are we taking this out of context? Do other
19 people deal with -- that deal with Oberlin College not
20 encounter that same sort of attitude? And the answer is
21 no, it's not unusual.

22 Lieutenant McCloskey, their witness, what did he
23 say? They called him on the stand and what was his
24 testimony at 17? He was asked, "at times have you found
25 that Oberlin College's administration has even been

1 opinion leader in the community. Obviously in this
2 community, Oberlin College is the 800-pound gorilla.
3 They're the Goliath.

4 When the Goliath basically puts you down, people
5 either feel that they have to follow the Goliath or
6 they're afraid to buck the Goliath. The effects of the
7 Goliath and the students and the unchecked are almost a
8 mob mentality.

9 You see in 258, a recent newspaper article that
10 Deb Owens talked about says the social implications --
11 this is from the Oberlin College newspaper. "The social
12 implications of being seen at Gibson's are much worse
13 than any freshman faux pas I can imagine." So every new
14 class that comes in, they are told it would be a faux
15 pas, would be an embarrassment for you to be seen at the
16 Gibson's. That's why it's going to take 30 years.

17 The decline in revenue, they're going to say,
18 hey, this was a declining. But the declining revenue
19 was, in 83, only 16 percent in the six years from 2010
20 to 2016, but it fell off the cliff after that, after the
21 demonstrations in November of 2016, 36 percent,
22 47 percent. We know in 84 that the decline is still not
23 bottomed-out.

24 We heard about the discount rates -- and you
25 know, if I ever have to hear about another discount rate

1 certainly know that their friends think the world of
2 them. We know that because most of them have testified
3 during the course of this trial. But that's what
4 friends are for.

5 Let me tell you what their friends haven't told
6 you, nor did Mr. Plakas deal with or talk about.
7 Something happened on November 9th, the evening of
8 November 9th that the college and Dean Raimondo had
9 absolutely nothing to do with. Something happened
10 across the street from Gibson's in Tappan Square that
11 ignited an enormous student reaction. Maybe it was the
12 altercation between Allyn Gibson, Jr., someone you have
13 not met --

14 MR. PLAKAS: Objection, Your Honor.

15 MR. PANZA: -- and three students.

16 THE COURT: Do you want to approach?

17 ***

18 (A sidebar discussion was had as follows.)

19 ***

20 MR. PLAKAS: Your Honor, I believe based upon
21 the rulings and the discussion, we're beyond that
22 discussion. I wasn't permitted to get into it. There's
23 been motions, there's been objections this whole trial.
24 Now all of a sudden there's an altercation. I would
25 like an instruction that, you know, this is subject to a

1 know that the thing that your family has fought for and
2 worked for all your life and for generations is at the
3 risk of being taken away; and that you've come and
4 begged the power to say, "help," and as Ferdinand
5 Protzman said, no, we're not going to, we've never
6 considered it. So the worry and the fright and the
7 apprehension that you know you won't be able to pass
8 this along, and you will be the generation that failed.

9 Grandpa Gibson, slide 104.

10 The jury can say, after all his decades of life,
11 and doing everything right here, his fear and his fear
12 has been that he could die labeled as a racist. And he
13 knows that the college doesn't care, and doesn't care
14 about him or his business. So -- and God willing, he
15 will still continue to live, but will live with that
16 fear. So that's why the amounts are for past economic
17 and future economic loss. On 105, that's the --

18 MR. PANZA: Your Honor, they're past their time.

19 THE COURT: He's got a couple more minutes.

20 We've been here a month. I can give him a couple more
21 minutes.

22 MR. PANZA: Okay, Your Honor.

23 THE COURT: Thank you. Wrap it up, though.

24 MR. PLAKAS: Thank you. So with the next slide
25 is Gibson's Bakery, which you've seen, and that's the

1 would like to think that I would be able to encounter
2 anyone from Oberlin College and say, I listened to what
3 you did, I read what you wrote behind the scenes when
4 you didn't think anyone would ever see those e-mails, I
5 evaluated your choices, I saw the damage you caused, and
6 Oberlin College, it's not acceptable; you have to change
7 because what you are doing does not help your students,
8 that doesn't help us, and it hurts the entire community.

9 And then you have to be able to go to the
10 Gibsons and look them in the eye and tell Grandpa,
11 Gibson's Bakery will survive. We're going to help you
12 make it survive. And tell David Gibson that. And to
13 tell 12-year-old-grandson, Cashlyn Gibson, "You are up
14 next."

15 Be proud of what you do. Whatever you do, be
16 proud of what you do. Thank you.

17 THE COURT: Thank you. Ladies and Gentlemen,
18 that concludes the arguments. At this point we're going
19 to take a break. I ask you to come back at 2:00. We do
20 have some issues to cover with the jury instructions and
21 interrogatories.

22 Remember my admonition during the break not to
23 speak with anyone about what you have heard. Turn the
24 notepads over as well on your seats. We will see you
25 back here at 2:00.

C E R T I F I C A T E

The State of Ohio,)
) SS:
County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on June 5, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
5th day of June, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 10

1 STATE OF OHIO,)
2) SS:
3 COUNTY OF LORAIN.)

4 IN THE COURT OF COMMON PLEAS

5 GIBSON BROS., INC., ET AL.,)

6 PLAINTIFFS,)

7 VS.) NO. 17CV193761

8 OBERLIN COLLEGE, ET AL.,)

9 DEFENDANTS.)

10 * * *

11 **VOLUME III**

12 A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
13 ABOVE-ENTITLED MATTER ON FRIDAY, MAY 10, 2019, BEFORE
14 THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
15 Court.

16 * * *

1 Q. So you were a sergeant with the Oberlin Police
2 Department during the incidents of November 2016, which
3 resulted in demonstrations in front of Gibson's?

4 A. I was.

5 Q. Can you tell us how you first became acquainted
6 with the incident that preceded the demonstrations;
7 specifically, were you on shift the late afternoon of
8 November 9th, 2016?

9 A. I was.

10 Q. And did you have occasion to come upon a
11 situation where a shoplifter had been detained and there
12 was a scuffle outside of Gibson's?

13 A. Yes.

14 Q. And we're not going to go into great detail
15 because everyone knows the result of that. But briefly
16 tell us what you saw and what led to the arrests.

17 A. When the officers were dispatched, I was at the
18 police department doing paperwork, and so I responded
19 from the police department. I drove north on South Main
20 Street and then turned west onto West College
21 Street. As I'm making the turn, I see kind of in the
22 distance, in front of Gibson's but across the street,
23 would technically be like Tappan Square, I see a couple
24 ladies just throwing punches. And I described them as
25 haymakers. They were throwing punches and kicking, and

1 as I got closer, I saw a black male on top of a young
2 Allyn Gibson, Mr. Dave Gibson's son. So that was kind
3 of the first thing I saw when I got there.

4 Q. When you say that the ladies were "throwing
5 haymakers," were they throwing haymakers upon Allyn
6 Gibson who was on the ground?

7 A. Allyn Gibson.

8 Q. Was Allyn Gibson on his back on the ground?

9 A. He was.

10 Q. And was the black male on top of him on his
11 back?

12 A. He was.

13 Q. And were the two black females, as they were
14 throwing haymakers, were they over the top of Allyn
15 Gibson also?

16 A. They were. They were kind of just standing over
17 top of him, crouched down. They would stand up and kick
18 and then crouch down and throw punches.

19 Q. And the jury has heard, then the three students
20 of Oberlin were arrested and taken to the police
21 department. Were you there at the police department for
22 their booking?

23 A. I was.

24 Q. And during the process of booking, did any
25 representatives of Oberlin College appear?

The State of Ohio,)
County of Lorain.) SS:

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 10, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
11th day of May, 2019.

Patience M. Conroy

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 11

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XVI

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON THURSDAY, MAY 30, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 Q. And we've heard the story that someone knocked
2 on his door and his windows on some evening, late
3 evening, I guess, May 2017. Are you aware of anyone
4 ever being arrested in connection with that?

5 A. No, I'm not.

6 Q. Since the protests, you've talked to -- strike
7 that.

8 Since the protests, have you had any contact
9 with David Gibson?

10 A. Yes.

11 Q. On approximately how many occasions between the
12 protests and today have you talked to or run into
13 Mr. Gibson? And I should be clear, David Gibson here.

14 A. Maybe a half a dozen times.

15 Q. On any of those occasions, has Mr. Gibson ever
16 suggested to you that Oberlin College and Dean Raimondo
17 over there were responsible for someone knocking on his
18 father's door in May 2017?

19 A. I remember him briefly mentioning the incident,
20 but there was no more detailed conversation. He didn't
21 directly mention anything.

22 Q. Did he ever suggest that somehow Dean Raimondo
23 and Oberlin College created a hostile environment that
24 led someone to knock on his dad's door?

25 A. No, not regarding that incident.

1 **campus and off campus.**

2 Q. And in your position, do you sort of have an
3 open-door policy where students will just drop by, tell
4 you what's going on in their lives, express any concerns
5 they might have?

6 A. **Yeah. Those of us working in student affairs in**
7 **the Conservatory have not only an open-door policy, my**
8 **door is literally open, so, yeah.**

9 Q. So we've heard testimony about a group of
10 students coming into your office, the dean's office, and
11 asking for copies of a flyer to be made. Are you
12 familiar with the fact that a group of students came
13 into the Conservatory around the time of the protests to
14 have copies of the flyer made?

15 A. **Yes.**

16 Q. Did you make copies of the flyer?

17 A. **No.**

18 Q. Are you aware of anyone in your office making
19 copies of the flyer?

20 A. **No.**

21 Q. We've heard from your colleague, Greta, about
22 two weeks ago and then again this morning, and Greta
23 explained that there was a question in the office about
24 whether you in fact made copies. She said something
25 about your interaction with her, where you told her that

1 you personally didn't have a problem making copies of a
2 flyer.

3 Did you say something like that to Greta?

4 **A. Yes.**

5 Q. And why did you say something like that to her?

6 **A. Well, as I mentioned, as I would say, students**
7 **certainly had at times reported to me --**

8 MR. MCHUGH: Objection, Your Honor. We're going
9 to the same area that we were just talking about.

10 Q. If you could just share why you made that
11 statement to her without you telling specifically what
12 others have said to you.

13 **A. Well, I would say I personally have had moments**
14 **in the store where --**

15 MR. MCHUGH: Objection, Your Honor.

16 **A. -- I felt uncomfortable.**

17 MR. MCHUGH: Objection, Your Honor. Could we
18 approach?

19 THE COURT: Sure.

20 ***

21 (A sidebar discussion was had as follows.)

22 ***

23 MR. MCHUGH: And again, this is the same
24 issue -- again, this is the same issue that we discussed
25 in chambers about discovery requests and responses. We

1 specifically asked them to identify any individuals who
2 had knowledge of any affirmative defenses, and they
3 alleged truth as an affirmative defense. They did not
4 disclose him. Chris Jenkins was only disclosed as a
5 fact witness as somebody who attended the protest. I
6 have the discovery responses right here if you would
7 like to look at them.

8 THE COURT: So, Attorney Crocker, he said, at
9 the end of that, "I personally had experiences where I
10 felt uncomfortable," and I think he was going to talk
11 about --

12 MS. CROCKER: Yes, Your Honor. And again, the
13 question is whether he made copies of the flyer and
14 specifically his statement to Greta Williams that we
15 just asked Greta Williams about. I'm asking him why he
16 said that he personally didn't have a problem making
17 copies of the flyer. It does not go to the truth
18 defense because we're not -- we're not --

19 THE COURT: But his statement was -- his
20 explanation includes that I personally felt
21 uncomfortable in that store, therefore I wanted to
22 support the students? I'm not going to permit that. He
23 can say, "I wanted to support the students and that's
24 why I made the copies."

25 MS. CROCKER: He's not saying he wanted to

1 support the students. We're getting to -- he didn't
2 make copies of the flyer.

3 THE COURT: I'm sorry.

4 MS. CROCKER: The reason why he made that
5 statement to Greta, I think helps explain the background
6 in the question that has been raised as to whether in
7 fact he did make copies.

8 THE COURT: But his experience of feeling
9 uncomfortable in the store?

10 MS. CROCKER: It explains why he said, "I
11 personally don't have a problem making copies." We are
12 not proving that the Gibsons are in fact racist. It's
13 explaining why he made that statement.

14 MR. MCHUGH: Your Honor, I mean, again --

15 THE COURT: So here's -- here's my concern. The
16 prejudicial value of that, given the fact this witness
17 hadn't been disclosed as one who is going to speak on
18 that outweighs any probative value. So I'm going to
19 sustain the objection.

20 MS. CROCKER: Thank you, Your Honor.

21 ***

22 (The sidebar discussion ended.)

23 ***

24 BY MS. CROCKER:

25 Q. So, Chris, around the time of the protests when

1 MR. MCHUGH: Beth, could we go to
2 Exhibit 476? If we could zoom in at the top, please,
3 just the to-and-from section.

4 Q. This is an e-mail from you to a Mr. -- and I'm
5 sorry if I mispronounce the name incorrectly --
6 Mr. Andre Cardine, am I saying that right?

7 A. Yes.

8 Q. It was sent on November 20th, 2016, right?

9 A. Yes.

10 Q. He was a student at the time of the protest, the
11 time of when this e-mail was drafted, correct?

12 A. Yes.

13 MR. MCHUGH: And Beth, if we could pop out just
14 the first paragraph.

15 Q. You say, "Dear Andre, haven't seen you in a
16 while. I hope you are doing and surviving after the
17 apocalyptic event a few weeks ago. It is extremely
18 challenging for all POCs, so I imagine that everyone has
19 been stressed, even in ways they may not be aware of."
20 The "apocalypse event," were you talking about the
21 presidential election?

22 A. Yes.

23 Q. And then in the next sentence you say, "Kudos on
24 finding time and mental energy to be involved in the
25 protest at Gibson's, too." You said that, correct?

1 **A. Yes.**

2 Q. And "kudos" means praising or complimenting
3 someone for their actions, doesn't it?

4 **A. I wouldn't characterize it that way.**

5 MR. MCHUGH: No further questions, Your Honor.

6 THE COURT: Any redirect?

7 MS. CROCKER: Very brief, Your Honor.

8 REDIRECT EXAMINATION OF CHRIS JENKINS

9 BY MS. CROCKER:

10 Q. If we can put up Exhibit 476 that you were just
11 asked about, Chris. Can you see that whole document in
12 front of you?

13 **A. Yes.**

14 Q. Okay. So Chris, can you explain why you wrote,
15 "Kudos on finding time and mental energy to be involved
16 in the protest at Gibson's"?

17 **A. My understanding was that students were**
18 **extremely stressed by what they perceived to have**
19 **happened.**

20 MR. MCHUGH: Objection, Your Honor.

21 THE COURT: So --

22 MR. MCHUGH: The same thing we already
23 discussed.

24 THE COURT: I understand. I'm sustaining it.

25 **A. I would say that my understanding was that**

1 currently exist and losses Mr. Monaco opines flow from
2 that lost opportunity.

3 **A. With in regard to that piece of loss, it's my**
4 **opinion that that number is, number one, it's**
5 **speculative; and further, again, there are errors and**
6 **that that number is significantly inflated.**

7 **Q. And then finally, the market value of Gibson's**
8 **Bakery as of December 31st, 2015, the last complete**
9 **calendar year before the protests?**

10 **A. Correct. And that -- based on my analysis of**
11 **the value of business, that Gibson Brothers, Inc. was**
12 **worth \$35,000 on December 31st, 2015, which is the last**
13 **year-end prior to the protests occurring.**

14 **Q. Now, before we get into the media reports, we**
15 **need to tell the jury what you've reviewed to reach the**
16 **conclusions reached in each of your reports. For**
17 **purposes of priority, because you relied on a lot of**
18 **documents, I'm going to hand you what is Defendants'**
19 **Exhibit Z-32.**

20 Can you take a brief look at that and tell the
21 jury what Exhibit Z-32 is?

22 **A. So this looks like a summary of the documents**
23 **that are referenced in the appendices of my reports as**
24 **far as documents relied upon, as well as copies of my**
25 **report and other recalculations that were prepared.**

C E R T I F I C A T E

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 30, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
31st day of May, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 12

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

GIBSON BROS., INC., et al.,	)	CASE NO. 17CV193761
)	
Plaintiffs,	)	JUDGE JOHN R. MIRALDI
)	
v.)	
	)	DEFENDANT MEREDITH
OBERLIN COLLEGE, et al.,	)	RAIMONDO'S OBJECTIONS,
	)	ANSWERS AND RESPONSES TO
Defendants.	)	PLAINTIFFS' FIRST SET OF
	)	REQUESTS FOR ADMISSIONS,
	)	REQUESTS FOR PRODUCTION,
	)	<u>AND INTERROGATORIES</u>
)	

Defendant Meredith Raimondo ("Dr. Raimondo") hereby objects, answers and responds to Plaintiffs' First Set of Requests for Admissions, Requests for Production, and Interrogatories (collectively, the "Discovery Request(s)") directed to her by Plaintiffs Gibson Bros., Inc. ("Gibson's Bakery"), David R. Gibson, and Allyn W. Gibson (together, the "Plaintiffs").

GENERAL OBJECTIONS

1. Dr. Raimondo responds to these Discovery Requests subject to and without intending to waive, and expressly preserving: (a) any objections to the competency, relevancy, materiality, privilege and admissibility of any of the responses, and (b) the right to object to other discovery requests involved or relating to the subject matter of the Discovery Requests responded to herein. All such objections and the grounds therefore are hereby reserved.

2. Dr. Raimondo objects to each Discovery Request to the extent it seeks the identity or production of any documents or information restricted from dissemination pursuant to court order, statute, or regulation including but not limited to the federal

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, or that seeks sensitive and identifiable health or personal information of subjects, without the entry of an appropriate Protective Order. Further, Dr. Raimondo's production of any documents or things or identification of information in response to any Discovery Request is not intended to waive, and does not constitute any waiver of, any objection to the admissibility, authenticity, competency, or relevance of the materials produced or information identified.

3. These responses are made solely for the purpose of and in relation to this action. Each answer is given subject to all appropriate objections which would require the exclusion at trial of any statement contained or document provided herein. All such objections and the grounds therefore are hereby reserved.

4. Dr. Raimondo objects generally to these Discovery Requests to the extent they seek information protected from discovery as attorney work product or by the attorney-client privilege or work product doctrine, information gathered or prepared in anticipation of litigation, or information which is otherwise immune or protected from discovery.

5. Dr. Raimondo objects to the document requests to the extent they are overly broad and unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, or seek to impose an obligation to identify or search for documents or provide information beyond the requirements of the Ohio Rules of Civil Procedure, which require only a reasonable search.

6. Dr. Raimondo objects generally to these Discovery Requests to the extent they refer to words or phrases that are undefined and/or subject to multiple

interpretations and inferences, including but not limited to the following words and phrases: "attended," "provided," "distributed," and "organizing."

7. Dr. Raimondo reserves the right to amend or supplement her responses to these Discovery Requests and to assert additional objections as warranted

8. Dr. Raimondo rejects any attempt to restrict the admissibility of evidence at trial based on answers given to these requests at this time.

9. Except for the facts expressly admitted herein, no admission of any nature whatsoever is to be implied or inferred. The fact that any Discovery Requests herein may have been answered should not be taken as an admission or a concession of the existence of any facts set forth or assumed by such Discovery Requests, or that such answer constitutes evidence of any fact thus set forth or assumed.

10. Dr. Raimondo has not yet completed her investigation of the facts relating to this action and has not yet completed her preparation for trial. Accordingly, these responses are necessarily limited in nature, and reflect only that information known to Dr. Raimondo at this time.

11. Dr. Raimondo objects to these Discovery Requests to the extent they attempt or purport to impose burdens beyond those required by the Ohio Rules of Civil Procedure, the Local Rules of the Lorain County Court of Common Pleas, any other applicable rule or law, or any order or orders governing this litigation.

12. Dr. Raimondo objects to these Discovery Requests to the extent they purport to require her to produce documents that are in the public domain or otherwise available to Plaintiffs as easily from other sources as from herself.

13. Dr. Raimondo objects to these Discovery Requests to the extent they purport to state facts, assumptions, or characterizations which are disputed.

14. Dr. Raimondo objects to these Discovery Requests to the extent they purport to seek information from Dr. Raimondo that is not in Dr. Raimondo's possession, custody, or control, or which purport to require a response by Dr. Raimondo on behalf of other individuals.

15. Dr. Raimondo objects to these Discovery Requests to the extent that they seek information more appropriately obtained through other methods of discovery.

16. Dr. Raimondo objects to these Discovery Requests to the extent that they purport to impose an obligation on her to respond to Discovery Requests on behalf of an entity or individual other than herself.

OBJECTIONS TO INSTRUCTIONS

17. Dr. Raimondo objects to Plaintiffs' instructions to the extent that they are vague, ambiguous, or inconsistent with normal usage.

18. Dr. Raimondo objects to Plaintiffs' instructions to the extent they purport to impose duties in addition to or inconsistent with the Ohio Rules of Civil Procedure, the Local Rules of the Lorain County Court of Common Pleas, any other applicable rule or law, or any order or orders governing this litigation.

19. Dr. Raimondo objects to Plaintiffs' instructions to the extent they purport to impose on Dr. Raimondo an obligation to respond on behalf of any individual or entity other than Dr. Raimondo.

20. All of the foregoing General Objections and Objections to Instructions are incorporated as to each of these Discovery Requests, as though fully set forth in Dr.

Raimondo' separate responses thereto. Whenever in these responses Dr. Raimondo employs the phrase "subject to and without waiving all objections," Dr. Raimondo is responding to the particular Discovery Request as it may be narrowed by her general and specific objections and without waiver of any objection. Dr. Raimondo reserves the right to supplement her objections, answers and responses to these Discovery Requests.

**COMBINATION REQUEST FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQ. FOR ADM. NO. 1: Admit that one or more Oberlin College employees made one or more copies of the Flyer on or about November 9 or November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 1 based upon her knowledge.

INTERROGATORY NO. 2: If your response to the preceding admission was other than an unqualified admission, identify all facts, witnesses and documents which support your response.

ANSWER: Objection. This Interrogatory seeks information which is subject to the attorney-client privilege and/or work-product doctrine. Further objecting, Dr. Raimondo states discovery is ongoing and the "facts, witnesses and documents" that support her response to Request for Admission No. 1 are still being discovered. Subject to and without waiving all objections, Dr. Raimondo states that she denies the allegations in Request for Admission No. 1 because, based upon her knowledge, no employees of Oberlin College made copies of "the Flyer."

REQ. FOR PROD. NO. 1: Produce all documents and communications which support or are otherwise associated with your response of the immediately preceding interrogatory.

RESPONSE: Objection. This Request seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege and/or work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo has not identified any responsive documents.

REQ. FOR ADM. NO. 2: Admit that one or more Oberlin College employees caused the Flyer to be copied or reproduced on or about November 9 or November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 2 based on her knowledge.

REQ. FOR PROD. NO. 2: Produce all documents and communications which support or are otherwise associated with your response of the immediately preceding request for admission.

RESPONSE: Objection. This Request seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege and/or work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo states that she has not identified any responsive documents.

REQ. FOR ADM. NO. 3: Admit that one or more Oberlin College employees distributed the Flyer to one or more individuals on or about November 9 or November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 3 based on her knowledge.

REQ. FOR PROD. NO. 3: Produce all documents and communications which support or are otherwise associated with your response of the immediately preceding request for admission.

RESPONSE: Objection. This Request seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege and/or work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo states that she has not identified any responsive documents.

REQ. FOR ADM. NO. 4: Admit that Defendant copied the Flyer on or about November 9 or November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 4.

REQ. FOR PROD. NO. 4: Produce all documents and communications which support or are otherwise associated with your response of the immediately preceding request.

RESPONSE: Objection. This Request seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege and/or work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo states that she has not identified any responsive documents.

REQ. FOR ADM. NO. 5: Admit that Defendant caused to be copied, directed the copying of, or assisted in the copying of the Flyer on or after November 9, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 5.

REQ. FOR PROD. NO. 5: Produce all documents and communications which support or are otherwise associated with your response of the immediately preceding request.

RESPONSE: Objection. This Request seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege and/or work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo states that she has not identified any responsive documents.

REQ. FOR ADM. NO. 6: Admit that, on November 9, 2016, Defendant was aware of the creation of the Flyer.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 6.

REQ. FOR PROD. NO. 6: Produce all documents and communications which support or are otherwise associated with your response of the immediately preceding request.

RESPONSE: Objection. This Request seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege and/or work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo states that she has not identified any responsive documents.

REQ. FOR ADM. NO. 7: Admit that, on November 9, 2016, Defendant was involved in the creation of the Flyer.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 7.

REQ. FOR ADM. NO. 8: Admit that, on November 9, 2016, Defendant was aware that the Flyer was being copied and reproduced.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 8.

REQ. FOR ADM. NO. 9: Admit that, on November 9, 2016, Defendant was involved in the copying and reproduction of the Flyer.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 9.

REQ. FOR ADM. NO. 10: Admit that, on November 9, 2016, Defendant distributed the Flyer to one or more individuals.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 10.

REQ. FOR ADM. NO. 11: Admit that, on November 10, 2016, Defendant distributed the Flyer to one or more individuals.

ANSWER: Dr. Raimondo denies Request for Admission No. 11, as specifically stated. Further answering, Dr. Raimondo admits only that on November 10, 2016, she handed one copy of the Flyer to an individual now known to be Jason Hawk, an editor/reporter of *The Oberlin News-Tribune*, in response to his question about the purpose of the student protest. Further answering, Dr. Raimondo advised Mr. Hawk that a student had given her the Flyer explaining the protest and that Mr. Hawk could have the copy of the Flyer if he wanted. Dr. Raimondo made it clear to Mr. Hawk that she was not speaking for the students.

REQ. FOR ADM. NO. 12: Admit that on November 11, 2016, Defendant distributed the Flyer to one or more individuals.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request No 12.

REQ. FOR ADM. NO. 13: Admit that Defendant has distributed the Flyer to one or more individuals between November 10, 2016 and January 1, 2018.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 13, as specifically stated. Further answering, Dr. Raimondo admits only that on November 10, 2016, she handed one copy of the Flyer to an individual now known to be Jason Hawk, an editor/reporter of *The Oberlin News-Tribune*, in response to his question about the purpose of the student protest. Further answering, Dr. Raimondo advised Mr. Hawk that a student had given her the Flyer explaining the protest and that Mr. Hawk could have the copy of the Flyer if he wanted. Dr. Raimondo made it clear to Mr. Hawk that she was not speaking for the students.

REQ. FOR ADM. NO. 14: Admit that Defendant attended the November 9, 2016 demonstration located in front of Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 14.

REQ. FOR ADM. NO. 15: Admit that Defendant attended the November 10, 2016 demonstration located in front of Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 15 as specifically stated, and avers that she was present for at least a portion of the demonstration on November 10, 2016, in her professional capacity at Oberlin College for the purposes of monitoring student conduct, assessing student health and safety, and ensuring student compliance with any requests from local law enforcement.

REQ. FOR ADM. NO. 16: Admit that Defendant attended a November 11, 2016 demonstration located in front of Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 16 as specifically stated, and avers that she was present for at least a portion of the demonstration on November 11, 2016, in her professional capacity at Oberlin College for the purposes of monitoring student conduct, assessing student health and safety, and ensuring student compliance with any requests from local law enforcement.

REQ. FOR ADM. NO. 17: Admit that Defendant carried a backpack while she attended the November 9, 2016 demonstration located in front of Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 17.

REQ. FOR ADM. NO. 18: Admit that Defendant carried a backpack while she attended the November 10, 2016 demonstration located in front of Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 18 as specifically stated, and avers that she was present and carrying a backpack for at least a portion of the demonstration on November 10, 2016, in her professional capacity at Oberlin College for the purposes of monitoring student conduct, assessing student health and welfare, and ensuring student compliance with any requests from local law enforcement.

REQ. FOR ADM. NO. 19: Admit that Defendant carried a backpack while she attended the November 11, 2016 demonstration located in front of Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 19 as specifically stated, and avers that she was present and carrying a backpack for at least a portion of the demonstration on November 11, 2016, in her professional capacity at Oberlin College for the purposes of

monitoring student conduct, assessing student health and welfare, and ensuring student compliance with any requests from local law enforcement.

REQ. FOR ADM. NO. 20: Admit that Julio Reyes was an employee of Oberlin College on November 9, and November 10, 2016.

ANSWER: Dr. Raimondo admits that, to the best of her knowledge, Mr. Reyes was an employee of Oberlin College on November 9 and November 10, 2016.

REQ. FOR ADM. NO. 21: Admit that Julio Reyes copied, caused to be copied, directed the copying of, or assisted in copying of the Flyer on or about November 9 and November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 21 on the basis that she has no knowledge that Mr. Reyes copied, caused to be copied, directed the copying of, or assisted in copying of the Flyer on or about November 9 and November 10, 2016.

REQ. FOR ADM. NO. 22: Admit that Julio Reyes distributed one or more copies of the Flyer to individuals on or about November 9 or November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 22 on the basis that she has no knowledge that Mr. Reyes distributed one or more copies of the Flyer on or about November 9 and November 10, 2016.

REQ. FOR ADM. NO. 23: Admit that Martin Hundley was an employee of Oberlin College on November 9 and November 10, 2016.

ANSWER: Dr. Raimondo admits that, to the best of her knowledge, Mr. Hundley was an employee of Oberlin College on November 9 and November 10, 2016.

REQ. FOR ADM. NO. 24: Admit that Martin Hundley copied, caused to be copied, directed the copying of, or assisted in copying of the Flyer on or about November 9 and November 10, 2016.

ANSWER: Dr. Raimondo denies Request for Admission No. 24 on the basis that she has no knowledge that Mr. Hundley copied, caused to be copied, directed the copying of, or assisted in copying of the Flyer on or about November 9 and November 10, 2016.

REQ. FOR ADM. NO. 25: Admit that Defendant was the faculty or administration advisor to the Oberlin College Student Senate in November of 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 25 as specifically stated, and admits only that she served as the staff advisor to the Oberlin College Student Senate in November 2016, as it has been recent practice for the Dean of Students to serve in this capacity.

REQ. FOR ADM. NO. 26: Admit that Martin Hundley distributed one or more copies of the Flyer to individuals on or about November 9 or November 10, 2016.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 26 on the basis that she has no knowledge that Mr. Hundley distributed one or more copies of the Flyer on or about November 9 or November 10, 2016.

REQ. FOR ADM. NO. 27: Admit that one or more Oberlin College Board of Trustee members paid for the travel of Jonathan Aladin to meet with his criminal defense attorney at any point between November 9, 2016 and the present date.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 27 as specifically stated.

REQ. FOR ADM. NO. 28: Admit that Exhibit 2, which is a news article from the Oberlin Review, contains a true and accurate restatement of Marvin Krislov and Defendant's written response to the Oberlin College Student Senate's November 10, 2016 resolution relating to Gibson's Bakery.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo admits Request for Admission No. 28.

REQ. FOR ADM. NO. 29: Admit that Defendant assisted in the drafting and preparation of the Oberlin College Student Senate's November 10, 2016 resolution relating to Gibson's Bakery, which is referenced and discussed within Exhibit 2.

ANSWER: Objection. Subject to and without waiving all objections, Dr. Raimondo denies Request for Admission No. 29.

ADDITIONAL INTERROGATORIES

INTERROGATORY NO. 3: Identify all persons answering or assisting in the answering of these Interrogatories.

ANSWER: Objection. This Interrogatory potentially seeks information subject to attorney-client privilege and the work product doctrine, to the extent that counsel was involved in investigating, assisting in responding, and responding to these Interrogatories. Subject to and without waiving all objections, Dr. Raimondo received the assistance of counsel in responding to these Interrogatories.

INTERROGATORY NO. 4: Identify each and every individual who possesses knowledge or information relating to the facts, claims, and defenses involved in this action; and with respect to each person identified, indicate the general area of the knowledge or information possessed by each such person.

ANSWER: Objection. This interrogatory seeks information subject to the attorney-client privilege and work-product doctrine, and is therefore not discoverable. Further, Dr. Raimondo objects to this Interrogatory since it requires a legal analysis of the "claims" and "defenses" in this suit for which Dr. Raimondo is not qualified to offer. Subject to and without waiving all objections, Dr. Raimondo states to the best of her knowledge that the following individuals may have knowledge regarding one or more of the subjects identified in Interrogatory No. 4: David Gibson, Allyn D. Gibson, Allyn W. Gibson, and herself, along with the following individuals:

Potential knowledge about the arrest:

Bill Barlow
Adrian Bautista
Marj Burton
Chris Canavan
Frank Carlson
Debra Chermonte
Tim Elgren
Mike Frandsen
Brenda Grier-Miller
Sandhya Iyer
Ben Jones
Andrea Kalyn
Marvin Krislov
Juan Lopez
Jane Mathison
A.G. Miller
Jan Miyake
Toni Myers
Rachelle Peck
Ferd Protzman
Tita Reed
Scott Wargo
Natalie Winkelfoos

Potential knowledge about support provided to arrested students and their families:

David Dorsey
Brenda Grier-Miller
Barb Kirby
Barb Lucky

Toni Myers

Potential knowledge that the protests occurred and support for some students involved:

Kourtney Arcaba
Bill Barlow
Clif Barnes
Adrian Bautista
Debra Chermonte
David Dorsey
Tim Elgren
Mike Frandsen
Brenda Grier-Miller
Michele Gross
Dana Hamdan
David Hill
Meeko Israel
Kim Jackson-Davidson
Andrea Kalyn
Joy Karega
Shozo Kawaguchi
John Klancar
Cooper Labinger
Ben Lee
Jane Mathison
Atiya McGhee
A.G. Miller
Toni Myers
Rebecca Mosley
Rachelle Peck
Ann Phung
Candice Raynor
Tita Reed
Julio Reyes
Kristen Reynolds
Andy Sadouskas
Amy Salim
Scott Wargo
Natalie Winkelfoos
Wayne Wood

INTERROGATORY NO. 5: Please identify each and every trial exhibit which Defendant will attempt to introduce at trial, and pursuant to Plaintiffs' Request for Production of Documents, please attach copies thereof to Defendant's responses.

ANSWER: Objection. This Interrogatory is premature in that it seeks information which is subject to the attorney-client privilege and work-product doctrine, and is therefore not discoverable. Further, Dr. Raimondo objects to this Interrogatory as premature because Defendant has not determined which exhibits she will introduce at trial. The answer to this Interrogatory will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

INTERROGATORY NO. 6: Identify each individual Defendant intends to call as an expert witness at the trial of this matter.

ANSWER: Objection. Dr. Raimondo incorporates her objections to Interrogatory No. 5 herein. However, without waiving the foregoing objections, no determination has been made concerning the identity of any expert witness who will appear on behalf of Dr. Raimondo at the trial of this matter. The answer to this Interrogatory will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

INTERROGATORY NO. 7: For each expert identified in response to the preceding Interrogatory, state the subject matter on which each such individual is expected to testify and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER: Objection. Dr. Raimondo incorporates her Objections and Answers to Interrogatory Nos. 5 and 6 herein.

INTERROGATORY NO. 8: Identify all Oberlin College employees who were involved in the creation, copying, and/or distribution of the Flyer.

ANSWER: Objection. This Interrogatory is redundant and has been answered multiple times. Further, this Interrogatory purports to state facts, assumptions, or characterizations which are disputed. Subject to and without waiving all objections,

Dr. Raimondo states that she has no knowledge that any Oberlin College employee was involved in the creation, copying, and/or distribution of "the Flyer."

INTERROGATORY NO. 9: Identify all persons who were involved, in any manner, in organizing the demonstrations which occurred between November 9, 2016 and November 11, 2016 in front of Gibson's Bakery.

ANSWER: Objection. This Interrogatory is redundant and has been answered multiple times. Further objecting, this Interrogatory presumes purported facts which have not been established and further which are disputed. Subject to and without waiving all objections, Dr. Raimondo lacks personal knowledge to identify any persons involved, in any manner, in organizing the referenced demonstrations.

INTERROGATORY NO. 10: Identify all persons who attended the demonstrations, which occurred between November 9, 2016 and November 11, 2016, located in front of Gibson's Bakery.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and not relevant as it is impossible to identify "all persons" who were in the vicinity of Gibson's Bakery between November 9 and November 11, 2016 and further impossible to know each person's purpose for being there, much less the amount of time that each person was present at said demonstrations. Further objecting, Dr. Raimondo states that she is not aware of any demonstrations taking place in front of Gibson's Bakery on November 9, 2016, and so this Interrogatory presumes facts which have not been established and further which are, in fact, disputed. Subject to and without waiving all objections, Dr. Raimondo states that the following individuals were present for a portion of time near the vicinity of Gibson's Bakery on November 10 and/or November 11, 2016:

Deja Alexander
Meiraff Belechew
Cal Biruk
Brian Cabral
Alison Cameron
Frank Carlson
Dani Clark
Juan Contreras

Liz Cooper
Kameron Dunbar
Raymond Feurstein
Katherine Ford
Meredith Gadsby
Linda Gates
Brenda Grier-Miller
David Hill
Erika Hoffman
Martin Hundley
Meeko Israel
Kim Jackson Davidson
Chris Jenkins
Joy Karega
Josh Koeller
Ben Lee
Michael McCloskey
Atiya McGhee
Thobeka Mnisi
Rebecca Mosley
Toni Myers
Victor Ortiz
Rachelle Peck
Jeremy Poe
Tita Reed
Julio Reyes
Kristen Reynolds
Perry Rubin
Simone Smith
Niya Smith-Wilson
Khalid Taylor
Scott Wargo
Linton Ward

INTERROGATORY NO. 11: Identify all items, including documents, which were contained within the backup [sic] that Defendant carried while she attended the demonstrations, which occurred between November 9, 2016 and November 11, 2016, located in front of Gibson's Bakery.

ANSWER: Objection. This Interrogatory presumes purported facts which have not been established and further which are disputed. In addition, this Interrogatory contains a reference to the term "attended," which has multiple meanings and inferences. In addition, this Interrogatory contains a typo made by counsel: "backup." Subject to and without waiving all objections, Dr. Raimondo states that she does not recall the "items" in her backpack during the period of times when she was present at the demonstrations, but affirmatively states that there were no Flyers in her backpack between November 9, 2016 and November 11, 2016.

INTERROGATORY NO. 12: Identify all persons who were involved, in any manner, in the preparation, review, printing, copying, reproduction, or distribution of the Flyer.

ANSWER: Objection. This Interrogatory is redundant and has been answered multiple times. Subject to and without waiving all objections, Dr. Raimondo has no knowledge of any persons who were involved in the preparation, review, printing, copying, reproduction, or distribution of the Flyer.

INTERROGATORY NO. 13: Identify all persons to whom Defendant provided the Flyer and the date on which Defendant provided the Flyer to the persons.

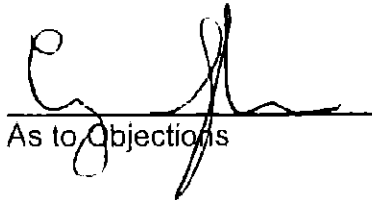
ANSWER: Objection. This Interrogatory presumes facts which have not been established and further which are, in fact, disputed. Subject to and without waiving all objections, Dr. Raimondo states that on November 10, 2016, she handed one copy of the Flyer to an individual now known to be Jason Hawk, an editor/reporter of *The Oberlin News-Tribune*, in response to his question about the purpose of the student protest. Further answering, Dr. Raimondo advised Mr. Hawk that a student had given her the Flyer explaining the protest and that Mr. Hawk could have the copy of the Flyer if he wanted. Dr. Raimondo made it clear to Mr. Hawk that she was not speaking for the students.

INTERROGATORY NO. 14: Identify every person Defendant intends to call as a witness at trial or at any hearing in this matter and please provide a summary of all testimony of each witness identified.

ANSWER: Objection. This Interrogatory is premature in that it seeks information which is subject to the attorney-client privilege and work-product doctrine, and is therefore not discoverable. Further objecting, this Interrogatory is vague, ambiguous, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Further, Dr. Raimondo objects to this Interrogatory because no determination has been made concerning the identity of any witness who will appear on behalf of Dr. Raimondo at the trial of this matter. The answer to this Interrogatory will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

INTERROGATORY NO. 15: Identify all incidents of racial profiling and racial discrimination that you allege Plaintiffs and/or Gibson's Bakery have ever committed.

ANSWER: Dr. Raimondo states that she never made the allegations identified in this Interrogatory and therefore has no information responsive to Interrogatory No. 15.


As to Objections

ADDITIONAL REQUESTS FOR PRODUCTION OF DOCUMENTS

REQ. FOR PROD. NO. 7: Produce all documents, videos, posters, model or other exhibits Defendant intends to introduce at trial.

RESPONSE: Objection. No determination has been made as of the current time concerning the documents and exhibits which Dr. Raimondo will use at the time of trial. Further objecting, this Request is vague, ambiguous, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. The response to this Request will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

REQ. FOR PROD. NO. 8: Produce the C.V. or resume of all expert witnesses Defendant intends to call at trial to testify, including all materials said experts have published.

RESPONSE: Objection. No determination has been made as of the current time concerning the identity of experts which Dr. Raimondo may use at the time of trial. Further objecting, this Request is vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad, unduly burdensome, and not relevant in that it seeks "all materials" any such expert has published, without any limitation whatsoever. The response to this Request will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

REQ. FOR PROD. NO. 9: Produce any and all written reports generated by any expert retained by Defendant to testify in this case.

RESPONSE: Objection. No determination has been made as of the current time concerning the identity of experts which Dr. Raimondo may use at the time of trial. Further objecting, this Request is vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad, unduly burdensome, and not relevant in that it seeks "any and all written reports" generated by any such expert, without any limitation whatsoever. The response to this Request will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

REQ. FOR PROD. NO. 10: Produce any and all documents and tangible things that were relied upon, consulted, or referred to by any expert retained to testify on Defendant's behalf in this case.

RESPONSE: Objection. No determination has made as of the current time concerning the identity of experts which Dr. Raimondo may use at the time of trial. Further objecting, this Request is vague, ambiguous, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. The response to this Request will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

REQ. FOR PROD. NO. 11: Produce any and all documents provided by Defendant or Defendant's agents to any experts retained to testify on Defendant's behalf in this case.

RESPONSE: Objection. This Request seeks information protected from disclosure by the work-product doctrine. Further objecting, this Request is vague, ambiguous, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection, Dr. Raimondo states that no determination has been made as of the current time concerning the identity of experts which Dr. Raimondo may use at the time of trial. The response to this Request will be supplemented as discovery continues in accordance with the Court's scheduling order, Local Rules of the Court, and the Ohio Rules of Civil Procedure.

REQ. FOR PROD. NO. 12: Produce all documents that Defendant had on her person during the time she attended any demonstration in front of Gibson's Bakery from November 9, 2016 to the present.

RESPONSE: This Request presumes facts which have not been established and further which are, in fact, disputed. Subject to and without waiving all objections, Dr. Raimondo states that on November 10, 2016, she handed one copy of the Flyer to an individual now known to be Jason Hawk, an editor/reporter of *The Oberlin News-Tribune*, in response to his question about the purpose of the student protest. Further answering, Dr. Raimondo advised Mr. Hawk that a student had given her the Flyer explaining the protest and that Mr. Hawk could have the copy of the Flyer if he wanted. Dr. Raimondo made it clear to Mr. Hawk that she was not speaking for the students. Finally, Dr. Raimondo does not possess the Flyer that she handed to Mr. Hawk under the circumstances described above.

REQ. FOR PROD. NO. 13: Produce all documents that Defendant gave to any person during the time she attended any demonstration in front of Gibson's Bakery from November 9, 2016 to the present.

RESPONSE: Objection. This Request presumes facts which have not been established and further which are, in fact, disputed. Subject to and without waiving all objections, Dr. Raimondo states that, except for the interaction described in response to Request for Production No. 12, she did not give any document to any person during the period of times when she was present at the demonstrations on November 10 and November 11, 2016. Further answering, Dr. Raimondo states that she does not possess documents responsive to this Request.

REQ. FOR PROD. NO. 14: Produce all documents and communications relating to the distribution of the Flyer by Oberlin College employees, including the Defendant.

RESPONSE: Objection. This Request assumes facts which have not been established and further which are in dispute. Further objecting, this Request is vague and ambiguous as stated. Further objecting, this Request contains a reference to an undefined term, "distribution." Subject to and without waiving all objections, Dr. Raimondo states that she does not possess documents responsive to this Request.

REQ. FOR PROD. NO. 15: Produce all documents and communications relating to the copying of the Flyer by Oberlin College employees, including the Defendant.

RESPONSE: Objection. This Request assumes facts which have not been established and further which are in dispute. Further objecting, this Request is vague and ambiguous as stated. Further objecting, this Request contains a reference to the undefined term "copying." Subject to and without waiving all objections, Dr. Raimondo states that she does not possess documents responsive to this Request.

REQ. FOR PROD. NO. 16: Produce all documents and communications relating to the Flyer which were created by Oberlin College employees, including the Defendant.

RESPONSE: Objection. This Request assumes facts which have not been established and further which are in dispute. Further objecting, this Request is vague and ambiguous as stated. Further objecting, this Request contains a reference to the undefined term "created." Subject to and without waiving all objections, Dr. Raimondo states that she does not possess documents responsive to this Request.

REQ. FOR PROD. NO. 17: Produce all documents and communications relating to copying of the Flyer performed by or at the direction of, or with the assistance of Oberlin College employees, including the Defendant.

RESPONSE: Objection. This Request assumes facts which have not been established and further which are in dispute. Further objecting, this Request is vague and ambiguous as stated. Further objecting, this Request contains a reference to several undefined terms, namely, "copying," "performed," "direction" and "assistance." Subject to and without waiving all objections, Dr. Raimondo states that she does not possess documents responsive to this Request.

REQ. FOR PROD. NO. 18: Produce all communications between Julio Reyes, Martin Hundley, Tita Reed, Meredith Raimondo, and/or Benjamin (Ben) Lee from November 1, 2016 through the present relating to Gibson's Bakery, the Flyer, the Crime, and/or the demonstration or demonstrations in front of Gibson's Bakery on November 9, 2016 or later.

RESPONSE: Objection. Dr. Raimondo objects to this Request to the extent it seeks the production of privileged documents, including but not limited to documents protected by the attorney-client privilege or work product doctrine. Subject to and without waiving all objections, Dr. Raimondo states she will produce all relevant, non-privileged documents, to the extent they exist, at a time and place mutually agreeable to the parties and after a protective order has been entered into.

REQ. FOR PROD. NO. 19: Produce all communications between Defendant and Jonathan Aladin since November 9, 2016 relating to the following topics:

- (a) The Plaintiffs;
- (b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;
- (c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;
- (d) The Flyer;
- (e) The parking lot located behind Gibson's Bakery;
- (f) The Crime;
- (g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;
- (h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;
- (i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Objection. This Request is not relevant to the subject matter of this litigation, nor is it reasonably calculated to lead to the discovery of admissible evidence. Dr. Raimondo further objects to this Request to the extent it seeks information subject to FERPA. Subject to and without waiving all objections, Dr. Raimondo states she will produce relevant, non-privileged, responsive documents, to the extent they exist, at a time and place mutually agreeable to the parties and after a protective order has been entered into.

REQ. FOR PROD. NO. 20: Produce all communications between Defendant and Cecelia Whettston since November 9, 2016 relating to the following topics:

- (a) The Plaintiffs;
- (b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;
- (c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;
- (d) The Flyer;
- (e) The parking lot located behind Gibson's Bakery;
- (f) The Crime;
- (g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;
- (h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;
- (i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Objection. This Request is not relevant to the subject matter of this litigation, nor is it reasonably calculated to lead to the discovery of admissible evidence. Dr. Raimondo further objects to this Request to the extent it seeks information subject to FERPA. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 21: Produce all communications between Defendant and Endia J. Lawrence since November 9, 2016 relating to the following topics:

- (a) The Plaintiffs;
- (b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;
- (c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;

- (d) The Flyer;
- (e) The parking lot located behind Gibson's Bakery;
- (f) The Crime;
- (g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;
- (h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;
- (i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Objection. This Request is not relevant to the subject matter of this litigation, nor is it reasonably calculated to lead to the discovery of admissible evidence. Dr. Raimondo further objects to this Request to the extent it seeks information subject to FERPA. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 22: Produce all documents and communications, which include but are not limited to emails, texts, letters and voicemails, relating to the following topics:

- (a) The Plaintiffs;
- (b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;
- (c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;
- (d) The Flyer;
- (e) The parking lot located behind Gibson's Bakery;
- (f) The Crime;
- (g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;

(h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;

(i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Objection. Dr. Raimondo objects to the Request to the extent it seeks information subject to the attorney-client privilege and/or the work-product doctrine. Dr. Raimondo further objects to this Request to the extent it seeks information subject to FERPA. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 23: Produce all communications, which include but are not limited to emails, texts, letters and voicemails, between Defendant and of [sic] Bon Appétit Management Company relating to the following topics:

(a) The Plaintiffs;

(b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;

(c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;

(d) The Flyer;

(e) The parking lot located behind Gibson's Bakery;

(f) The Crime;

(g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;

(h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;

(i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Objection. This Request seeks confidential and proprietary information. Subject to and without waiving all objections, relevant, responsive, non-

privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 24: Produce all communications, which include but are not limited to emails, texts, letters and voicemails, between Defendant and James Leo Walsh relating to the following topics:

- (a) The Plaintiffs;
- (b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;
- (c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;
- (d) The Flyer;
- (e) The parking lot located behind Gibson's Bakery;
- (f) The Crime;
- (g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;
- (h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;
- (i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 25: Produce all campus-wide or "blast emails" sent to Oberlin College staff, faculty, and/or students relating to the following topics:

- (a) The Plaintiffs;

(b) Gibson's Bakery, including any business relationship between the bakery and Oberlin College;

(c) Any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later;

(d) The Flyer;

(e) The parking lot located behind Gibson's Bakery;

(f) The Crime;

(g) The criminal defense, including payment of legal fees, of Jonathan Aladin relating to the Crime;

(h) The criminal defense, including payment of legal fees, of Cecelia Whettston relating to the Crime;

(i) The criminal defense, including payment of legal fees, of Endia J. Lawrence relating to the Crime.

RESPONSE: Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 26: Produce all communications, which include but are not limited to emails, texts, and voicemails, that were sent to Defendant or that Defendant sent to any person during any and all protests and/or demonstrations in front of or in the vicinity of Gibson's Bakery on November 9, 2016 or later.

RESPONSE: Objection. This Request presumes facts which have not been established and further which are, in fact, disputed. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 27: In Exhibit 2, attached hereto, Marvin Krislov and Defendant, as detailed below, state that an investigation is being performed relating to Gibson's Bakery:

Krislov, Raimondo Respond to Student Senate Resolution

oberlinreview.org/11768/opinions/krislov-raimondo-respond-to-gibsons-incident/

11/11/2018

Student Senate passed a resolution ceasing all support for Gibson's Bakery, financial and otherwise, after three Black College students were arrested following an altercation with employee Alyn Gibson Wednesday evening that many allege is a case of racial profiling. President Marvin Krislov and Dean of Students and Vice President Meredith Raimondo issued a response Friday afternoon in an email to students, the text of which can be found below.

Dear Students,

This has been a difficult few days for our community, not simply because of the events at Gibson's Bakery, but because of the fears and concerns that many are feeling in response to the outcome of the presidential election. We write foremost to acknowledge the pain and sadness that many of you are experiencing. We want you to know that the administration, faculty, and staff are here to support you as we work through this moment together.

Regarding the incident at Gibson's, we are deeply troubled because we have heard from students that there is more to the story than what has been generally reported. We will commit every resource to determining the full and true narrative, including exploring whether this is a pattern and not an isolated incident. We are dedicated to a campus and community that treats all faculty, staff and students fairly and without discrimination. We expect that our community businesses and friends share the same values and commitments.

Produce all documents and communications relating to said investigation, including but not limited to any and all documents and communications that identify all individuals who were interviewed and/or inquired of during said investigation, all communications provided to Oberlin College employees or agents or provided by Oberlin College employees or agents to any person as part of said investigation, all documents and communications relating to the responses received by individuals interviewed or inquired of during said investigation, all documents and communications relating to the timeframe of said investigation, and all documents and communications relating any and all findings and conclusions resulting from said investigation.

RESPONSE: Objection. This Request assumes facts that have not been established. Further objecting, this Request is vague and ambiguous. Dr. Raimondo further objects to this Request to the extent it seeks information subject to the attorney-client privilege or the work-product doctrine. Subject to and without waiving all objections, Dr. Raimondo states that responsive, relevant, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 28: Produce all documents and communications prepared by Oberlin College and/or Defendant describing the findings and conclusions of the investigation discussed in Request for Production No. 24.

RESPONSE: Objection. Request No. 24 does not refer to any "investigation." The Objections and Response to Request No. 24 are incorporated herein.

REQ. FOR PROD. NO. 29: Produce all documents and communications provided to Oberlin College students, faculty, staff, and/or the Oberlin community describing the findings and conclusions of the investigation discussed in Request for Production No. 24.

RESPONSE: Objection. Request No. 24 does not refer to any "investigation." The Objections and Response to Request No. 24 are incorporated herein.

REQ. FOR PROD. NO. 30: Produce all documents and communications between Oberlin College and Bon Appétit Management Company relating to Gibson's Bakery between November 2015 and the present.

RESPONSE: Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 31: Produce all documents relating to any review, evaluation, criticism, or a complaint by Oberlin College of Gibson's Bakery between November 1, 2007 and the present date.

RESPONSE: Objection. This Request is overly broad, unduly burdensome, and not relevant, including as to the 11-year time frame, and not reasonably calculated to lead to the discovery of admissible evidence. Dr. Raimondo further objects to this Request to the extent it seeks documents subject to the attorney-

client privilege or the work-product doctrine. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 32: Produce all documents relating to any review, evaluation, criticism, or a complaint by Bon Appétit Management Company relating to Gibson's Bakery from November 1, 2007 through the present.

RESPONSE: Objection. This Request is overly broad, unduly burdensome and not relevant, including as to the 11-year time period, and not reasonably calculated to lead to the discovery of admissible evidence. Dr. Raimondo further objects to this Request to the extent it seeks documents subject to the attorney-client privilege or the work-product doctrine. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 33: Produce all documents and communications relating to any and all incidents of racial profiling and racial discrimination that you allege Plaintiffs and/or Gibson's Bakery have ever committed.

RESPONSE: Objection. This Request assumes facts which have not been established, and further which are, in fact, disputed. Further responding, this Request is vague and ambiguous, particularly in regard to referencing several undefined terms, namely, "incidents," "racial profiling" and "racial discrimination." Further objecting, this Request is overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving all objections, Dr. Raimondo states that she does not possess documents responsive to this Request because she never made the allegations purportedly attributed to her in this Request.

REQ. FOR PROD. NO. 34: Produce all documents and communications relating to any and all complaints of racial profiling and/or racial discrimination that any person has made to Oberlin College in the last 100 years.

RESPONSE: Objection. This Request subjects Dr. Raimondo to annoyance, oppression and undue burden and is fundamentally improper for a multitude of reasons. Request for Production No. 34 seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it seeks documents over the course of a century: "the last 100 years." Further objecting, this Request is vague and ambiguous, particularly in regard to referencing several undefined terms, namely, "racial profiling" and "racial discrimination." Dr. Raimondo further objects to the Request to the extent it seeks documents subject to the attorney-client privilege or the work-product doctrine.

REQ. FOR PROD. NO. 35: Produce all communications between Defendant and Plaintiffs relating to the demonstrations, which took place between November 9, 2016 and November 11, 2016 located in front of Gibson's Bakery and/or the Flyer and/or the Crime.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not relevant. Further objecting, this Request is vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, this Interrogatory purports to state facts, assumptions, or characterizations that are disputed. Objecting further, this Request contains the undefined terms "communication" and "in front of." Subject to and without waiving all objections, Dr. Raimondo states that there are no responsive documents.

REQ. FOR PROD. NO. 36: Produce all communications between Defendant and any third-parties (excludes Plaintiffs and Defendant's legal counsel in this litigation) relating to the November 9, 2016 demonstration located in front of Gibson's Bakery and/or the Flyer and/or the Crime.

RESPONSE: Objection. This request is overly broad, unduly burdensome, compound, and not relevant, particularly given that it assumes facts not in evidence and which are, in fact, disputed, including that any demonstration occurred in front of Gibson's Bakery on November 9, 2016. Further objecting, this Request is

vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence.

REQ. FOR PROD. NO. 37: Produce all Oberlin College student policies and codes of conduct, including without limitation any manuals or references which discuss and/or govern the student policies and codes of conduct.

RESPONSE: Objection. This Request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it is not limited in any meaningful way, including as to time. In addition, this Request is vague and ambiguous, particularly in regard to the undefined terms "policies," "codes of conduct," "manuals" and "references."

REQ. FOR PROD. NO. 38: Produce all Oberlin College faculty policies and codes of conduct, including without limitation any manuals or references which discuss and/or govern the faculty policies and codes of conduct.

RESPONSE: Objection. This Request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it is not limited in any meaningful way, including as to time. In addition, this Request is vague and ambiguous, particularly in regard to the undefined terms "policies," "codes of conduct," "manuals" and "references."

REQ. FOR PROD. NO. 39: Produce all Oberlin College administrative staff policies and codes of conduct, including without limitation any manuals or references which discuss and/or govern the administrative staff policies and codes of conduct.

RESPONSE: Objection. This Request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it is not limited in any meaningful way, including as to time. In addition, this Request is vague and ambiguous,

particularly in regard to the undefined terms "policies," "codes of conduct," "manuals" and "references."

REQ. FOR PROD. NO. 40: Produce all Oberlin College Campus Security staff policies and codes of conduct, including without limitation any manuals or references which discuss and/or govern the administrative staff policies and codes of conduct.

RESPONSE: Objection. This Request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it is not limited in any meaningful way, including as to time. In addition, this Request is vague and ambiguous, particularly in regard to the undefined terms "policies," "codes of conduct," "manuals" and "references."

REQ. FOR PROD. NO. 41: Produce all Oberlin College Office of Dean policies and codes of conduct, including without limitation any manuals or references which discuss and/or govern the administrative staff policies and codes of conduct.

RESPONSE: Objection. This Request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it is not limited in any meaningful way, including as to time. In addition, this Request is vague and ambiguous, particularly in regard to the undefined terms "policies," "codes of conduct," "manuals" and "references."

REQ. FOR PROD. NO. 42: Produce all training manuals and training materials relating to the training of Oberlin College faculty and administrative staff.

RESPONSE: Objection. This Request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Request is overly broad and unduly burdensome in that it is not limited in any meaningful way, including as to time. In addition, this Request is vague and ambiguous, particularly in regard to the undefined terms "training manuals" and "training materials."

REQ. FOR PROD. NO. 43: Produce any statements obtained from third-parties relating to the allegations in the Plaintiffs' Complaint.

RESPONSE: Objection. This Request is vague and ambiguous, namely as to the undefined term "statements." Further objecting, this Request seeks information that may be subject to the attorney-client privilege or work-product doctrine. Further responding, this Request is overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of the admissible evidence. Subject to and without waiving all objections, relevant, responsive, non-privilege documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 44: Produce all non-privileged communications between the Defendant and any third party (excluding the parties in this case) relating to this case.

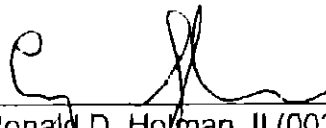
RESPONSE: Objection. This Request is overly broad, unduly burdensome, and not relevant in that it is not limited in meaningful way, and not reasonably calculated to lead to discovery of the admissible evidence. Further objecting, this Request is vague and ambiguous in reference to the undefined term "relating to this case."

REQ. FOR PROD. NO. 45: Produce all documents recording communications of any nature, including but not limited to meetings, letters, email, faxes, and telephone conversations, between Plaintiffs and Defendant, concerning any of the Parties, or otherwise related to this case.

RESPONSE: Objection. This Request is overly broad, unduly burdensome, and not relevant in that it is not limited in any meaningful way, and not reasonably calculated to lead to discovery of the admissible evidence. In addition, this Request seeks documents that are already in the custody and control of Plaintiffs, two individuals and a small business, who are in a better position than Defendant to identify any such responsive documents. Further objecting, the Request is vague and ambiguous, particularly as to the terms "documents recording communications" and "otherwise related to this case." Still further, Dr. Raimondo objects to the Request because it seeks documents already in the possession of Plaintiffs. Subject to and without waiving all objections, relevant, responsive, non-privileged documents, to the extent they exist, will be produced at a time and place mutually agreeable to the parties and after the entry of a protective order.

REQ. FOR PROD. NO. 46: Produce all documents and communications you relied upon or referred to in responding to these discovery requests.

RESPONSE: Objection. This Request is vague, ambiguous, overly broad, and unduly burdensome in that, given the overly expansive nature of many of Plaintiffs' Requests, it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, Dr. Raimondo asserts the attorney-client privilege and work-product doctrine.



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Counsel for Defendants Oberlin College and
Dr. Meredith Raimondo

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing was served this 15th day of June, 2018, via email, pursuant to Civ.R. 5(B)(2)(f) of the Ohio Rules of Civil Procedure, upon the following:

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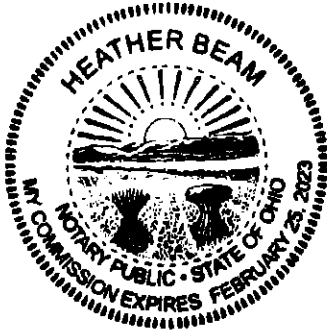
VERIFICATION

STATE OF OHIO)
) SS:
COUNTY OF LORAIN _____)

I, Dr. Meredith Raimondo, being first duly cautioned and sworn, verify that the foregoing answers to Plaintiffs' First Set of Interrogatories directed to me are true and correct to the best of my knowledge.

Dr. Meredith Raimondo
Dr. Meredith Raimondo

Subscribed to and sworn to before me this 17th day of August, 2018.



Heather Beam
Notary Public, Lorain County
Heather Beam

EXHIBIT 13

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XIII

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON TUESDAY, MAY 28, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 Proceedings - Tuesday, May 28, 2019

2 ***

3 (Out of the presence and hearing of the jury.)

4 ***

5 THE COURT: We had set a few minutes apart this
6 morning before we bring the jury in to handle the
7 plaintiffs' motion to amend their complaint to conform
8 to the evidence. And I believe we did hear arguments on
9 that issue. The Court is going to deny plaintiffs'
10 motion to amend their complaint at this time. So that
11 will probably render moot any DV issue on that.

12 Anything we need to put on the record before the
13 defense presents their case?

14 MR. PANZA: Your Honor, I think a brief was
15 filed at 12:30 or midnight, last night or early this
16 morning, that needs to be addressed. Am I correct?

17 MR. PLAKAS: Yes.

18 THE COURT: The plaintiffs' bench brief?

19 MR. MCHUGH: Yes, Your Honor.

20 MR. PANZA: Yes, Your Honor.

21 MR. MCHUGH: Thank you, Your Honor. This issue
22 is fairly straightforward. Part of plaintiffs' libel
23 claim is that the allegations against plaintiffs in the
24 flyer, the Student Senate Resolution, that the
25 plaintiffs have a long account of racial discrimination

1 MR. RARRIC: Your Honor, can I raise one quick
2 issue that shouldn't be a problem?

3 THE COURT: Yeah.

4 MR. RARRIC: There is an individual in the
5 courtroom that I believe is on the defendants' witness
6 list, Adrian Bautista. I spoke with Mr. Holman this
7 morning. They confirmed -- I just want to put on the
8 record that they confirmed that Mr. Bautista will not be
9 called by the defense. Is that correct?

10 MR. HOLMAN: That is correct, Your Honor.

11 THE COURT: Okay.

12 ***

13 (A recess was had.)

14 ***

15 (A sidebar discussion was had as follows.)

16 ***

17 THE COURT: So here's where I am on this. I
18 just -- I just don't know how I can parse it, but here's
19 what I will permit the defense to say. We, the college,
20 did not take a position on racial profiling; and after
21 we gathered information in the community, that was still
22 our position and that's why we did what we did. That's
23 the best I could come up with. Okay? I mean, that's
24 consistent with your discovery.

25 MS. CROCKER: Yes, Your Honor.

1 THE COURT: Okay. I know, Ron, it's going to
2 play out and we will just have to handle it. I just
3 cannot -- my gut is telling me you are trying to
4 backdoor the truth and that's what my gut is telling me.
5 I cannot -- and I'm concerned about that. I don't care
6 what limiting instruction I give, I'm just not going
7 to --

8 MS. CROCKER: Understood. Your Honor, there is
9 a proposition in a case law, City of Akron versus
10 Butler. The case cite is 2004 WL 2244095 that notes
11 when a statement is being offered to show what the
12 effect on the listener was and why they took certain
13 actions, it's not considered hearsay.

14 THE COURT: I'm familiar with that. It comes up
15 all the time in criminal cases with why police did what
16 they did.

17 MS. CROCKER: Yes.

18 THE COURT: There's usually a limiting
19 instruction. Again -- so, but in this case, if Krislov
20 didn't think there was some truth to it, then his
21 conduct wouldn't be affected by it.

22 MS. CROCKER: Not necessarily, Your Honor. He
23 didn't -- he didn't take a position as to whether the
24 statements saying they were racist were true or they
25 weren't racist were true. He didn't take a position as

1 to credibility or truth on any of those statements.

2 MR. PLAKAS: We've already argued this, Your
3 Honor.

4 MR. HOLMAN: We appreciate --

5 THE COURT: That's what I get paid for, guys.
6 I'm just going to have to stick with what I told you and
7 see how this plays out.

8 MS. CROCKER: Just to be clear, we can get into
9 that the college did not take a position on racial
10 profiling; and after we gathered information in the
11 community, the college still did not take a position on
12 racial profiling?

13 THE COURT: Yeah.

14 MR. HOLMAN: And to be clear, we would proffer
15 that we did speak to numerous members of the community,
16 and some felt that the Gibson family and the bakery were
17 racist and some felt that they were not racist, and that
18 that fact-gathering, that assessment from the community
19 informed the decision that Oberlin College made to play
20 things down the middle and not to take a side either for
21 the students or against the students.

22 And we would also state for the record that --
23 so that's our proffer from what the witnesses would say.
24 And our further contentions that this is not hearsay,
25 because we're not presenting these matters for the truth

1 that is asserted, and we believe that it's extremely
2 prejudicial that the defendants cannot go into more
3 details about the information, fact-gathering that was
4 done and which again influenced their decision not to
5 take a side in this dispute.

6 THE COURT: Just so the record is clear, when
7 you say "witnesses," the defense was not planning on
8 calling any of the witnesses that had personal knowledge
9 that either the Gibsons were racist or weren't racist.
10 You were going to introduce this evidence through other
11 witnesses, specifically staff from Oberlin College,
12 correct?

13 MS. CROCKER: Correct, Your Honor.

14 MR. HOLMAN: That is correct. Mr. Krislov and
15 others were going to testify that they canvassed the
16 community, that they heard varying comments from people
17 in the community, some who felt that the Gibsons were
18 great people and others that felt they were racist in
19 how they conducted their store.

20 THE COURT: You identified those people. You
21 have some of the names of those people --

22 MR. HOLMAN: Yes.

23 THE COURT: -- who thought that the Gibsons were
24 racist. Right?

25 MR. HOLMAN: That is --

C E R T I F I C A T E

The State of Ohio,)
) SS:
 County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the
 Court of Common Pleas, Lorain County, Ohio, duly
 appointed therein, do hereby certify that this is a
 correct transcript of the proceedings in this case on
 May 28, 2019.

I further certify that this is a complete
 transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
 29th day of May, 2019.

Cathlene M. Camp, RPR
 Official Court Reporter
 Lorain County, Ohio
 225 Court Street, 7th Floor
 Elyria, OH 44035
 (440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 14

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XVII

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON MONDAY, JUNE 3, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 list of your exhibits that you are going to move to
2 admit?

3 MS. CROCKER: Yes, Your Honor, we do.

4 THE COURT: Rather than read it into the record,
5 do you have it marked?

6 MS. CROCKER: We just have to make a -- withdraw
7 the ones --

8 THE COURT: Sure.

9 MS. CROCKER: And then we can provide it to the
10 to the Court.

11 THE COURT: That would be great. That would be
12 the easiest way to get it in.

13 MS. CROCKER: How would you like us to note the
14 ones you are making ruling on regarding Mr. Saari?

15 THE COURT: Right. So I'm reserving ruling
16 on -- what I would do for right now, just take them off
17 of your list. Put an "R" next to it just so they don't
18 mistakenly go back. But I'm reserving ruling on -- come
19 on. G-32, H-32 and Y-32; A, B, C and D-33 on each.
20 Right?

21 MR. MATTHEW NAKON: Correct. There are a few
22 more, Judge.

23 THE COURT: D-32, D, as in dog, and A-32 and
24 C-32.

25 MR. MATTHEW NAKON: Correct. And three more.

1 R-29, the actual reports, Judge.

2 THE COURT: Okay.

3 MR. MATTHEW NAKON: R-29.

4 THE COURT: E-29 and O --

5 MR. MATTHEW NAKON: No.

6 THE COURT: T.

7 MR. MATTHEW NAKON: Actually a different number.

8 T-31, I believe. Plaintiffs scarfed up the numbers,
9 Judge. We had to go with letters.

10 MR. RARRIC: It is T-31.

11 THE COURT: We're off the record.

12 ***

13 (Discussion had off the record.)

14 ***

15 THE COURT: My only issue here at this point --
16 well, is there anything else from the defense regarding
17 resting? Anything else they want to put in
18 evidence? That's everything, right? Once you put
19 together your list minus my rulings.

20 MS. CROCKER: We would proffer, Your Honor, the
21 testimony of Marvin Krislov, Meredith Raimondo and Chris
22 Jenkins as to their personal experiences and what other
23 people told them about their experiences and Gibson's
24 Bakery. Chris Jenkins specifically would have testified
25 about how he was treated at Gibson's Bakery and how he

1 felt that he was discriminated against, but for the
2 Court's sustaining plaintiffs' objection to that.

3 THE COURT: Just for clarity. I believe the
4 basis for that was that none of these people were
5 disclosed in discovery as testifying about that issue?

6 MR. MCHUGH: Yes, Your Honor. So as we
7 discussed during other sidebar, we specifically asked
8 the defendants to identify witnesses related to their
9 affirmative defense of the truth with the affirmative
10 defense. Chris Jenkins was only listed as a witness
11 that personally attended the protests.

12 THE COURT: Thank you. So the proffer is on the
13 record then.

14 MS. CROCKER: Thank you, Your Honor.

15 THE COURT: Anything else from the defense?

16 MS. CROCKER: I guess we would note for the
17 record concern regarding the plaintiffs' list of
18 admitted exhibits, since we're talking about exhibits.
19 Their list that went back to the Court has Plaintiffs'
20 Exhibits 469 A, B, and C as an admitted exhibit, but
21 those were actually exhibits proffered by plaintiffs. I
22 believe those are three video clips. We didn't want
23 there to be any confusion in the record as to those
24 clips about being admitted or possibly going back to the
25 jurors.

1 MS. AYOUB: Right.

2 THE COURT: I'm going to admit 375 over
3 objection.

4 476 now.

5 MR. MCHUGH: You might not have that, Your
6 Honor.

7 THE COURT: Yeah, my book's done.

8 MS. CROCKER: I don't think we have it either.

9 MR. MCHUGH: Your Honor, this is a document sent
10 from Chris Jenkins to a student giving him kudos for
11 participating in the protests. It was offered during
12 Chris Jenkins's cross-examination.

13 MS. CROCKER: Yes, Your Honor defendants object
14 to this one, we were specifically not permitted to allow
15 Mr. Jenkins to explain what he meant by this statement.
16 That was one of the basis for our proffer regarding his
17 testimony, because we were prohibited from allowing him
18 to explain what he meant by the statement, "Kudos on
19 finding time and mental energy to be involved in
20 protest at Gibson's too."

21 MR. RARRIC: And, Your Honor, same argument that
22 we discussed previously about why Mr. Jenkins was not
23 permitted to testify to that.

24 MS. CROCKER: Again, it would be highly
25 prejudicial to permit an exhibit to go back to the jury

C E R T I F I C A T E

The State of Ohio,)
) SS:
 County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the
 Court of Common Pleas, Lorain County, Ohio, duly
 appointed therein, do hereby certify that this is a
 correct transcript of the proceedings in this case on
 June 3, 2019.

I further certify that this is a complete
 transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
 4th day of June, 2019.

Cathlene M. Camp, RPR
 Official Court Reporter
 Lorain County, Ohio
 225 Court Street, 7th Floor
 Elyria, OH 44035
 (440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 15

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STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

 IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

 PLAINTIFFS,)

 VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

 DEFENDANTS.)

* * *

A COMPLETE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON WEDNESDAY, MAY 1, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 is only a law professor and has never been in
2 administration, Your Honor, clearly is a
3 standard-of-care witness, and he's going to do it based
4 upon --

5 THE COURT: Assuming he testifies.

6 MR. PLAKAS: If he testifies, that would be --
7 that he's going to say that, statutorily, this is what a
8 college in Ohio should be doing. That's his testimony.
9 And you see his expert report. It's like a legal --
10 it's like a law review article. It's a legal brief.

11 THE COURT: Let's go off the record. I just
12 want you two counsel to approach.

13 ***

14 (Discussion had off the record.)

15 ***

16 (A recess was had.)

17 ***

18 (Attorney Matthew Nakon and Michael

19 Nakon entered the courtroom.)

20 ***

21 THE COURT: We're back on the record.

22 MS. ZIDAR: Rachelle Zidar on behalf of
23 defendants.

24 I believe the plaintiffs and defendants have
25 come to an agreement with respect to their respective

1 experts. On behalf of plaintiffs, Professor Lake --

2 THE COURT: I wish I had a confetti machine. I
3 would have set it off so that we could commemorate this
4 moment.

5 So the expert for the defense, Lake, and the
6 expert McGrath will -- I'll just say that the motions in
7 limine for -- defendants' motion in limine to exclude
8 witness McGrath is moot as the plaintiffs agree to not
9 call him as a witness, and plaintiffs' motion to exclude
10 professor Peter Lake is moot as the defense has agreed
11 not to call him as a witness. Correct?

12 MR. PLAKAS: That's correct, Your Honor. And
13 may I make one brief comment?

14 THE COURT: Sure.

15 MR. PLAKAS: I'm sure both counsel are -- took
16 to heart the Court's comments. I just want to make sure
17 that since both the current president and the past
18 president of Oberlin College are also attorneys, I want
19 to make sure that what Professor Lake would have said in
20 his expert report about all his legal analysis doesn't
21 come in through either the current or former president
22 in terms of legal analysis and standard of care.

23 MS. ZIDAR: Your Honor, the current and former
24 president will be giving their opinion and understanding
25 as to what the standards are applicable to them and

1 THE COURT: I'm leaning toward excluding any
2 standard-of-care testimony from Krislov or any Oberlin
3 College administrator who did not provide a report.
4 They could testify as to personal knowledge of their
5 policies and procedures regarding protests.

6 MR. PLAKAS: Yes. As long as that doesn't bleed
7 into "this is the way we do it because this is the
8 generally accepted way of doing it." If he says, "This
9 is the way we do it," then just because you do it some
10 way, that doesn't --

11 THE COURT: I understand the distinction.

12 MR. PLAKAS: He just can't -- no one can bleed
13 into that, because that becomes expert testimony.

14 THE COURT: All right. So we will wait to see
15 how it plays out in the defense of his case. And I'm
16 going to take your stipulation to mean you are reserving
17 the right to call McGrath on rebuttal.

18 MR. PLAKAS: Yes, Your Honor.

19 MS. ZIDAR: We would likewise reserve the right
20 to call our expert.

21 THE COURT: On what issue?

22 MS. ZIDAR: I'm sorry?

23 THE COURT: Because Lake is totally different,
24 right? Isn't he?

25 MS. ZIDAR: Well, he does actually rebut

1 McGrath's report. He was retained to review and rebut
2 McGrath's report.

3 THE COURT: So are you saying, now, that Lake is
4 a potential rebuttal witness to McGrath?

5 MS. ZIDAR: Yes, Your Honor.

6 THE COURT: We're just moving this deeper --
7 going deeper into the lineup so to speak, right?

8 MS. ZIDAR: That's how his report was presented,
9 was a review and opinion on McGrath.

10 THE COURT: I've read Professor Lake's
11 conclusion, and I think I've already stated to counsel
12 off the record my skepticism regarding both of these
13 experts. I will give you the right to reserve Lake as a
14 rebuttal to McGrath, but I'm likely not going to let
15 either party go there.

16 MR. PLAKAS: Thank you.

17 MS. ZIDAR: I understand.

18 THE COURT: So it's 11:45, folks.

19 MR. MATTHEW NAKON: Might as well take lunch.

20 THE COURT: I'll do what you want. If you have
21 experts here, if you are ready. Who do you want to
22 argue next?

23 MR. MATTHEW NAKON: Your Honor, Matt Nakon.

24 We're going to do Mr. Monaco next on the issue
25 of the speculation.

The State of Ohio,)
) SS:
County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 1, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
5th day of May, 2019.

Allen Mc Coy

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 16

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XVI

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON FRIDAY, MAY 31, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 of Oberlin.

2 MR. PANZA: Yes. She has, at Princeton, Rutgers
3 and Cedar Crest College, she has been involved in 30 to
4 50 protests. And I'm going to ask her about her
5 experience in dealing with those protests. It's a fact.
6 It's not an opinion. I'm not going to ask for her
7 opinion about anything. I'm going to ask how she dealt
8 with them, whether there was commonality in the way she
9 dealt with them. That's the only place I'm going. But
10 it's going to be based on her dealing with 30 to 50
11 protests in the last 21 years of her occupation and
12 higher education.

13 THE COURT: Attorney Plakas.

14 MR. PANZA: That's exactly what I'm going to do.

15 MR. PLAKAS: We had a robust discussion on this,
16 and I believe everyone had agreed at that time that any
17 testimony as to how to deal with these and standards of
18 care and other experiences, and all of that, was the
19 domain of expert witnesses. Our expert witness was
20 excluded. Their expert witnesses was excluded.

21 And then if you recall, after it was agreed that
22 both expert witnesses would be excluded, then I turned
23 around and said, well, wait a minute, I don't want Ambar
24 or something now appearing as an expert witness. And
25 everyone said, as I understood it, the understanding and

1 MR. PANZA: No, I know. I know.

2 THE COURT: So let stop right there. Let's stop
3 right there. So then -- so having this witness testify
4 about her experience at protests, you know, I think --
5 I'm going to rule that you stay away from that. She can
6 talk about policies and procedures. And I mean, she
7 came in after the fact with regard --

8 MR. PANZA: I'm not going to have her talk about
9 protests at Oberlin College. I'm going to have her talk
10 about protests at Princeton. It's okay. I understand
11 your ruling. You understand my objection.

12 THE COURT: Absolutely.

13 MR. PANZA: Of course. Of course.

14 THE COURT: So let's --

15 MR. PANZA: I won't go into that based upon your
16 ruling.

17 THE COURT: Thank you. Then we are talking
18 about policies and procedures.

19 MR. PANZA: I'm not going into the regulations
20 anymore.

21 THE COURT: That would be cumulative. There's
22 lots --

23 MR. PANZA: I know. She's going to testify
24 about the organizational structure of the company, the
25 trustees, the president, the deans. That isn't into

C E R T I F I C A T E

The State of Ohio,)
) SS:
County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the
Court of Common Pleas, Lorain County, Ohio, duly
appointed therein, do hereby certify that this is a
correct transcript of the proceedings in this case on
May 31, 2019.

I further certify that this is a complete
transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
1st day of June, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 17

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STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

 IN THE Court OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

 PLAINTIFFS,)

 VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

 DEFENDANTS.)

* * *

VOLUME V

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON TUESDAY, MAY 14, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
Court.

* * *

1 A. Yes.

2 Q. Okay. So Tita Reed, when President Krislov --
3 right in the middle, on November 23rd, 5:01 p.m. e-mail,
4 when the concern of the citizen who sends an e-mail to
5 President Krislov is relayed to Ben Jones and Tita Reed,
6 Tita Reed first writes, "I love how Gibson's supporters
7 accuse us of making rash assumptions, decisions, but are
8 totally blind to their own assumptions."

9 And then we see Ben Jones, if we scroll up, in
10 response at 5:52, which is within that same hour, he
11 writes, "Here is the text I just sent to Meredith." And
12 he continues, "We should just give all business to Leo
13 at IGA, better doughnuts anyway, and all these idiots
14 complaining about the college hurting a small local
15 business are conveniently leaving out their massive (
16 relative to the town) conglomerate and price gouging on
17 rents and parking and the predatory behavior towards
18 most other local businesses." And then he uses the
19 F-word and says "F 'em."

20 And then he ends up by saying, "I wanted this to
21 work out in a restorative way with shared responsibility
22 (although generous on our part) because it's what's best
23 for the town. But they have made their bed now."

24 And with this expletive, and he says he sends it
25 to you and he sends it to Tita, he's telling Tita what

1 the e-mail below is, what he sent to you. Clearly by
2 using the F-word, seems like that is personal rather
3 than business. And then what does your counterpart,
4 Tita Reed say? She responds and says, "100 percent."

5 So wouldn't you agree that when you have senior
6 administration officials that are charged with
7 professionally, fairly handling a situation, looking on
8 both sides of the issue, and if one of them, the vice
9 president of communications, is sending an e-mail and
10 expressing himself toward the Gibsons and their
11 supporters with an F-bomb, don't you think that
12 indicates some sort of personal ill will or malice or
13 hatred or inability to understand the truth or a
14 reckless disregard for the truth? Isn't --

15 MR. PANZA: Objection.

16 THE COURT: Basis?

17 MR. PANZA: Those particular elements --

18 THE COURT: Let's approach. I don't want
19 speaking objections in front of the jury.

20 MR. PANZA: I know, Your Honor.

21 ***

22 (A sidebar discussion was had as follows.)

23 ***

24 THE COURT: You know, for example, objection,
25 compound question is where I thought you were going.

1 confirmed that the contents were critical of the actions
2 at Oberlin College and your administrative team, right?

3 A. Among other things, yes.

4 Q. We'd also talked before about my suggestion to
5 you that you actually had the ability to influence or
6 control the students, right?

7 A. I did not have the ability to control students.

8 Q. I suggested that, didn't I?

9 A. Yes, sir.

10 Q. And if I could respectfully suggest, I would
11 suggest to you that you felt that you could control the
12 students as if they were on a leash, right?

13 A. I promise you, I did not.

14 Q. Okay. So with regard to the issues of you
15 reacting to the critical letter about how you were
16 handling the Gibson matter, and with regard to the issue
17 of whether you felt that you could control the students
18 to the point that you had them on a leash, let's go to
19 page -- to that same exhibit, Exhibit 211, second page,
20 which is Bates 1665, second entry down.

21 In response to the critical letter from
22 Professor Copeland, you write, "F-him. I'd say unleash
23 the students if I wasn't convinced this needs to be put
24 behind us." So as to the first point, when someone
25 writes a letter critical of your handling of the Gibson

1 matter, your personal and emotional response is to say
2 to this long-time emeritus professor, "F-him." And then
3 in the same line, as to the issue of your ability to
4 control the students, as if they were on a leash by you,
5 you'd say -- you said, "I'd say unleash the students if
6 I wasn't convinced this needs to be put behind us."

7 You issued that letter, that text message. And
8 then if we go to the first page of Exhibit 211, you have
9 from vice president of communications, member of your
10 team, Ben Jones, in response to you using the F-bomb and
11 suggesting you'd say "unleash the students," he says on
12 the first page, "Effing Roger Copeland."

13 Wouldn't you agree that these text messages show
14 that both you and vice president of communications Ben
15 Jones are allowing your personal feelings, your
16 potential personal ill will, to affect your professional
17 responsibilities? Isn't that a fair assessment, or do
18 you think it's perfectly normal to, when anyone is --

19 MR. PANZA: Compound question. Objection.

20 THE COURT: Basis?

21 MR. PANZA: He's asking compound questions.

22 MR. PLAKAS: Let me break it up. I'll withdraw.

23 THE COURT: Sustained. It's about three
24 questions in there.

25 MR. PANZA: Yes, at least. Thank you, Your

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 14, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
15th day of May, 2019.

John M. Caff

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My commission expires August 3, 2020

EXHIBIT 18

From: Meredith Raimondo <Meredith.Raimondo@oberlin.edu>
Sent: Friday, November 11, 2016 12:26 PM
To: Ben Jones; Tita Reed
Cc: Ferd Protzman; Jane Mathison; Marvin Krislov
Subject: Re: Fwd:

Sure- ok to send

On Fri, Nov 11, 2016 at 12:25 PM Tita Reed <treed@oberlin.edu> wrote:

Doesn't change a damned thing for me.

On Nov 11, 2016 11:48 AM, "Ben Jones" <bjones@oberlin.edu> wrote:

Hi all,

Please see below thread with Emily Crawford, who grew up here. Does this change anything? I would recommend that we drop the last paragraph that implies support for the protest, so we don't inadvertently further divide college and town. But the rest holds up okay, I think.

Thanks,
B.

Begin forwarded message:

From: Emily Crawford <ecrawfor@oberlin.edu>
Subject: Re:
Date: November 11, 2016 at 11:42:47 AM EST
To: Ben Jones <bjones@oberlin.edu>

i have talked to 15 townie friends who are poc and they are disgusted and embarrassed by the protest. in their view, the kid was breaking the law, period (even if he wasn't shoplifting, he was underage). to them this is not a race issue at all and they do not believe the gibsons are racist. they believe the students have picked the wrong target.

the opd, on the other hand, IS problematic. i don't think anyone in town would take issue with the students protesting them.

i find this misdirected rage very disturbing, and it's only going to widen the gap btw town and gown.

and sure you can share if you want.

On Friday, November 11, 2016, Ben Jones <bjones@oberlin.edu> wrote:

I agree that both sides of this behaved very badly. Gibson's hands are not clean in this, nor are those of the three students. But the bigger issue is that this is not an isolated incident but a pattern, and one that has been confirmed by a lot of people including the many high school kids who showed up yesterday to join the protest.

The police report is bullshit. It's so obviously biased towards Gibson. They didn't even try to hear the other side of the story.

What are you hearing in your recon?

Also, may I share whatever your response is with others?

On Nov 11, 2016, at 11:26 AM, Emily Crawford <ecrawfor@oberlin.edu> wrote:

> i've been doing recon and the students are on the wrong side of this protest. they acted without ascertaining the facts first. they didn't even consider consulting poc in the community who know the gibson family a lot better than they do. i talked to some of the protestors and they refuse to hear anything that doesn't fit their narrative. the townspeople are furious and i think the college needs to speak out. this is not good.

From: Meredith Raimondo <Meredith.Raimondo@oberlin.edu>
Sent: Saturday, November 12, 2016 6:31 PM
To: Tita Reed
Subject: Re: Gibsongate

EXHIBIT

86

I'm so sick of Kirk.

On Sat, Nov 12, 2016 at 6:27 PM, Tita Reed <treed@oberlin.edu> wrote:

I was going to say that!

On Nov 12, 2016 6:19 PM, "Meredith Raimondo" <Meredith.Raimondo@oberlin.edu> wrote:
Indeed we do.

<http://new.oberlin.edu/students/policies/campus-code-of-conduct>

On Sat, Nov 12, 2016 at 5:56 PM, Tita Reed <treed@oberlin.edu> wrote:

I'm sure we have a code of conduct for students. We enforce it no?

----- Forwarded message -----

From: "Kirk Ormand" <kormand@oberlin.edu>
Date: Nov 12, 2016 5:28 PM
Subject: Gibsongate
To: "Marvin Krislov" <Marvin.Krislov@oberlin.edu>, "Meredith Raimondo" <meredith.raimondo@oberlin.edu>, "Tita Reed" <Tita.Reed@oberlin.edu>
Cc:

Dear Marvin, Meredith, Tita,

These are difficult times.

I read the message below with interest, and, after some thought, with some concern. I was not at Gibsons during the events that spurred the recent protests, so I can only say that I do not know the truth of what happened. I have heard conflicting accounts, some from eyewitnesses. My concern, however, stems from the fact that our students have clearly presumed guilt on the part of Allyn Gibson, and your letter (below) seems to support — at least mildly — that presumption. Tita has been charged with initiating a dialogue with Mr. Gibson "that will ensure that our broader community can work and learn together in an environment of mutual respect free of discrimination."

While I understand the need to determine whether or not this incident is part of a larger pattern of potentially racist behavior, I believe that there is another pattern of behavior that also needs to be discussed. I have spoken with a number of downtown merchants who have informed me that they are suffering significantly this year because of shoplifting. They believe that much of this theft is being perpetrated by Oberlin College students. I should not have to say that such behavior is unacceptable, from any member of our community, but I will say so nonetheless. I would ask that Tita's dialogue extend

beyond a conversation with Mr. Gibson about race to a larger conversation with downtown merchants and with the Oberlin College Student Senate about the behavior of our own students. If we are going to insist that "our community businesses and friends share [our] values and commitments," then I believe that we should also hold our students accountable to the minimal community standard of not stealing from our community businesses.

Yours sincerely,

Kirk Ormand
Community Member

Begin forwarded message:

From: "Office of Communications, Oberlin College" <communications@oberlin.edu>
Subject: Message to students from President Marvin Krislov and Dean Meredith Raimondo
Date: November 12, 2016 at 1:10:56 PM EST
To: facultylist <facultylist@oberlin.edu>, stafflist <stafflist@oberlin.edu>
Reply-To: "Office of Communications, Oberlin College" <communications@oberlin.edu>

Dear Faculty and Staff,

We are writing to share an email that was sent to the student body yesterday afternoon regarding the recent events at Gibson's. The full text of the email is below.

Dear Students,

This has been a difficult few days for our community, not simply because of the events at Gibson's Bakery, but because of the fears and concerns that many are feeling in response to the outcome of the presidential election. We write foremost to acknowledge the pain and sadness that many of you are experiencing. We want you to know that the administration, faculty, and staff are here to support you as we work through this moment together.

Regarding the incident at Gibson's, we are deeply troubled because we have heard from students that there is more to the story than what has been generally reported. We will commit every resource to determining the full and true narrative, including exploring whether this is a pattern and not an isolated incident. We are dedicated to a campus and community that treats all faculty, staff and students fairly and without discrimination. We expect that our community businesses and friends share the same values and commitments.

Accordingly, we have taken the following steps: 1) Dean Meredith Raimondo and her team have worked to support students and families affected by these events, and will continue to do so. 2) Tita Reed, Special Assistant for Government and Community Relations, has reached out to Mr. Gibson to engage in dialogue that will ensure that our broader community can work and learn together in an environment of mutual respect free of discrimination. We

will continue to work on these matters in the coming days to make sure that our students, staff, and faculty can feel safe and secure throughout our town.

We are grateful for the determination of our students and for the leadership demonstrated by Student Senate. Thanks to all who have contacted us with suggestions and concerns.

Marvin Krislov
President

Meredith Raimondo
Vice President and Dean of Students

--

Meredith Raimondo (she/her/hers)
Vice President and Dean of Students
Special Assistant to the President for Equity, Diversity, and Inclusion
Associate Professor of Comparative American Studies
Wilder 105
Oberlin College
Oberlin, OH 44074
440-775-8462

--

Meredith Raimondo (she/her/hers)
Vice President and Dean of Students
Special Assistant to the President for Equity, Diversity, and Inclusion
Associate Professor of Comparative American Studies
Wilder 105
Oberlin College
Oberlin, OH 44074
440-775-8462

From: Tita Reed <treed@oberlin.edu>
Sent: Monday, November 14, 2016 5:54 PM
To: Marvin Krislov
Cc: Mike Frandsen; Meredith Raimondo
Subject: Re: College spending at Gibson's

I think that's a great bargaining chip.

On Nov 14, 2016 5:10 PM, "Marvin Krislov" <Marvin.Krislov@oberlin.edu> wrote:
Students are talking about urging college to cut off Obie dollars from Gibson's.

Marvin Krislov, President
Oberlin College
70 North Professor Street
Oberlin, Ohio 44074
(440) 775-8400

On Mon, Nov 14, 2016 at 3:08 PM, Mike Frandsen <mfrandsen@oberlin.edu> wrote:
We do. Someone involved in Commencement planning would know about the arrangement

On Mon, Nov 14, 2016 at 3:05 PM, Tita Reed <treed@oberlin.edu> wrote:

Don't we use Gibson bakery as the vendor for Illumination?

On Nov 14, 2016 2:42 PM, "Mike Frandsen" <mfrandsen@oberlin.edu> wrote:
FY14 \$5,258.36
FY15 \$4,454.40
FY16 \$3,694.97

Spending by individuals using Obie Dollars

FY14 \$60,919.91
FY15 \$46,721.03
FY16 \$54,058.17

What I cannot measure is how much spend at Gibson's was submitted on expense reports and paid to employees.

--

Mike Frandsen, Ph.D.
Vice President for Finance and Administration
mfrandsen@oberlin.edu
440-775-8460



OBERLIN

COLLEGE & CONSERVATORY

--

Mike Frandsen, Ph.D.
Vice President for Finance and Administration
mfrandsen@oberlin.edu
[440-775-8460](tel:440-775-8460)

OBERLIN

COLLEGE & CONSERVATORY

From: Tita Reed <treed@oberlin.edu>
Sent: Monday, November 14, 2016 2:44 PM
To: Mike Frandsen
Cc: Marvin Krislov
Subject: Re: College spending at Gibson's

Obie Dollars!! Another tool for leverage.

On Nov 14, 2016 2:42 PM, "Mike Frandsen" <mfrandsen@oberlin.edu> wrote:

FY14 \$5,258.36
FY15 \$4,454.40
FY16 \$3,694.97

Spending by individuals using Obie Dollars

FY14 \$60,919.91
FY15 \$46,721.03
FY16 \$54,058.17

What I cannot measure is how much spend at Gibson's was submitted on expense reports and paid to employees.

--

Mike Frandsen, Ph.D.
Vice President for Finance and Administration
mfrandsen@oberlin.edu
[440-775-8460](tel:440-775-8460)

OBERLIN
COLLEGE & CONSERVATORY

.

From: jan.miyake@gmail.com on behalf of Jan Miyake <jan.miyake@oberlin.edu>
Sent: Friday, November 18, 2016 9:10 AM
To: Meredith Raimondo
Cc: Brenda Grier-Miller
Subject: Re: checking in

terrific!

Jan Miyake (she/her/hers)
Posse 9 Mentor
Associate Professor of Music Theory
Treasurer, Society for Music Theory
440.775.8236 | Kohl 314

On Fri, Nov 18, 2016 at 9:05 AM, Meredith Raimondo <Meredith.Raimondo@oberlin.edu> wrote:
confirmed that the person we spoke about can coordinate coverage of the other retainers.

On Fri, Nov 18, 2016 at 9:03 AM, Jan Miyake <jan.miyake@oberlin.edu> wrote:
nice chatting with you this morning about this, meredith!
Jan

Jan Miyake (she/her/hers)
Posse 9 Mentor
Associate Professor of Music Theory
Treasurer, Society for Music Theory
[440.775.8236](tel:440.775.8236) | Kohl 314

On Fri, Nov 18, 2016 at 7:55 AM, Meredith Raimondo <Meredith.Raimondo@oberlin.edu> wrote:
Hi Brenda and Jan,

I'm all set with Elijah but I'm wondering if you can help with communication from Endia and Cecelia as I try to work on financial support. I need to know the attorney contact information and how much is needed, and to whom.

Thanks for all you are doing.

best,



Meredith

----- Forwarded message -----

From: **Meredith Raimondo** <Meredith.Raimondo@oberlin.edu>

Date: Thu, Nov 17, 2016 at 5:44 PM

Subject: checking in

To: Jonathan Aladin <jaladin@oberlin.edu>, Endia Lawrence <elawren2@oberlin.edu>, Cecelia Whettstone <Cecelia.Whettstone@obieapps.oberlin.edu>

Hi Elijah, Endia, and Cecelia,

I hope you are as well as you can be under the circumstances. I am looking for information to connect your attorneys to individuals who can help financially. Would you please send me your attorney's name, contact number, and what payment they need right now?

Thanks, and take care of yourselves.

best,
Meredith

--

Meredith Raimondo (she/her/hers)
Vice President and Dean of Students
Special Assistant to the President for Equity, Diversity, and Inclusion
Associate Professor of Comparative American Studies
Wilder 105
Oberlin College
Oberlin, OH 44074
[440-775-8462](tel:440-775-8462)

--

Meredith Raimondo (she/her/hers)
Vice President and Dean of Students
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--

Meredith Raimondo (she/her/hers)
Vice President and Dean of Students
Special Assistant to the President for Equity, Diversity, and Inclusion
Associate Professor of Comparative American Studies
Wilder 105
Oberlin College
Oberlin, OH 44074
440-775-8462

From: Wayne Wood <wwood@oberlin.edu>
Sent: Sunday, November 20, 2016 10:20 PM
To: Adrian Bautista; Meredith Raimondo
Subject: Fwd: Fri Eve==Wilder shift notes 11/18/16

Hi Adrian/Meredith,

Need your thoughts... Nancy noted a few issues from Fri eve (Nancy is a senior manager who oversees Wilder on Friday eves). I would normally handle these with Michele, but the second paragraph is particularly alarming:

Guest Comments: Another student tried to use someone else's ID to make purchases in the C-store tonight. This is the fifth time in a week that this has happened. Perhaps some type of communication should go out to students to let them know that they should be the only person using their card...(except in the case of a sick kit at Stevenson, of course).

And... I watched a student put a can of La Croix beverage into her bag while she was standing in front of the candy shelf. She looked up and saw me watching her. Usually, if I bring it up when they get to the register, they'll say something like, "oh, yeah, I forgot"...then they'll pay for it. When she went to the register, I asked if she had an additional item in her bag that she needed to pay for. She said "no". Since I didn't want protesters outside of Decafe this week like they were at Gibsons last week, I just let it go.

I'm concerned about the last paragraph re: shoplifting. If our managers are too fearful to confront what they've seen--for fear of inciting protests like Gibson's--we are in a tough spot.

My team definitely wants to take the "high road" with our guests ...while effectively managing the business for the college...

Thoughts?

-Wayne

--

Wayne Wood | General Manager | Oberlin College

Bon Appétit Management Company | *Food Service for a Sustainable Future®*

440-775-8118 | Oberlin.cafebonappetit.com | [Facebook](https://www.facebook.com/OberlinCafeBonAppetit)



From: Ben Jones <bjones@oberlin.edu>
Sent: Wednesday, November 23, 2016 3:58 PM
To: Tita Reed
Cc: Meredith Raimondo; Marvin Krislov
Subject: Re: Gibsons

I agree with you both - when we first drafted this, it made sense and I was optimistic, but recent developments have changed the game. As Meredith noted, the chance for a restorative outcome seems to have passed and this act of good faith on our part would now just be giving them everything while getting nothing in return. Bummed.

On Nov 23, 2016, at 3:13 PM, Tita Reed <treed@oberlin.edu> wrote:

If the deal that was struck is final then I have to agree with Meredith. Gibson is made whole and not required to give anything. the students will find that hard to accept .

On Nov 23, 2016 3:06 PM, "Meredith Raimondo" <Meredith.Raimondo@oberlin.edu> wrote:
Hi all,

I'm sorry that I am just now able to get to this. I also have very serious reservations about this strategy and would suggest that we not proceed in this fashion. My support for this approach - which I know I voiced strongly - was based on the assumption that some different outcome to the legal process might be possible. Given what we now know, I am not sure why we have to commit to supporting Gibsons institutionally or fixing this situation for them. Had the Gibsons been willing to support a resolution outside of the legal system, I would have supported the College moving forward in this way as part of as a restorative strategy. Since it appears the resolution will occur in the legal system, it seems to me they have chosen that form of resolution rather than this one. Further, I am concerned that this makes it look like the College has responsibility for what happened (it does not), and that we are rebuking the student protestors (not a position I am willing to take, personally). I am not sure why the College is obligated to provide concessions to Gibsons under the circumstances and would not be prepared to support resuming the CDS contract with no clear indication that anything has or will change with Gibsons (which I have yet to see any evidence of).

My inclination would be to say nothing publically, and to discuss privately whether or if we intend to resume business.

I hesitate saying even this much in email where tone so easily misunderstandings, and would ask if we could confer early next week to discuss the situation and finalize strategy. Thanks to Ben for the drafting work - please know I appreciate it.

best,
Meredith

On Wed, Nov 23, 2016 at 2:10 PM, Ben Jones <bjones@oberlin.edu> wrote:

My understanding is that shoplifting is the central issue for Gibson's and we're not likely to get them to agree to a joint statement without acknowledging it directly, but I'm not sure — Tita and Meredith, what do you think, having been on the front lines?

On Nov 23, 2016, at 1:56 PM, Marvin Krislov <Marvin.Krislov@oberlin.edu> wrote:

Worry that mention of shoplifting will trigger reactions...how about softening? What abt reference to tense times?

On Nov 23, 2016 1:43 PM, "Ben Jones" <bjones@oberlin.edu> wrote:

Works for me. Once Meredith weighs in I'll get you clean copy.

On Nov 23, 2016, at 10:23 AM, Tita Reed <treed@oberlin.edu> wrote:

I'm sure they will have edits too. if they don't want their proposals first, they can make that edit and we can generously accept it. any thoughts?

On Nov 23, 2016 10:01 AM, "Ben Jones" <bjones@oberlin.edu> wrote:

It all depends on how cooperative you think they'll be. I was sort of throwing them a bone by putting the college first, but happy to rearrange if they're willing.

On Nov 23, 2016, at 9:02 AM, Tita Reed <treed@oberlin.edu> wrote:

Any thoughts on switching things a bit to place Gibson's proposals first?

On Nov 23, 2016 8:57 AM, "Ben Jones" <bjones@oberlin.edu> wrote:

Begin forwarded message:

From: Scott Wargo <swargo@oberlin.edu>
Date: November 22, 2016 at 12:27:30 PM EST
To: Ben Jones <Ben.Jones@oberlin.edu>
Subject: Gibsons

attached

--

Meredith Raimondo (she/her/hers)
Vice President and Dean of Students
Special Assistant to the President for Equity, Diversity, and Inclusion
Associate Professor of Comparative American Studies
Wilder 105
Oberlin College
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From: Meredith Raimondo <Meredith.Raimondo@oberlin.edu>
Sent: Wednesday, November 23, 2016 3:06 PM
To: Ben Jones
Cc: Marvin Krislov; Tita Reed
Subject: Re: Gibsons

Hi all,

I'm sorry that I am just now able to get to this. I also have very serious reservations about this strategy and would suggest that we not proceed in this fashion. My support for this approach - which I know I voiced strongly - was based on the assumption that some different outcome to the legal process might be possible. Given what we now know, I am not sure why we have to commit to supporting Gibsons institutionally or fixing this situation for them. Had the Gibsons been willing to support a resolution outside of the legal system, I would have supported the College moving forward in this way as part of as a restorative strategy. Since it appears the resolution will occur in the legal system, it seems to me they have chosen that form of resolution rather than this one. Further, I am concerned that this makes it look like the College has responsibility for what happened (it does not), and that we are rebuking the student protestors (not a position I am willing to take, personally). I am not sure why the College is obligated to provide concessions to Gibsons under the circumstances and would not be prepared to support resuming the CDS contract with no clear indication that anything has or will change with Gibsons (which I have yet to see any evidence of).

My inclination would be to say nothing publically, and to discuss privately whether or if we intend to resume business.

I hesitate saying even this much in email where tone so easily misunderstandings, and would ask if we could confer early next week to discuss the situation and finalize strategy. Thanks to Ben for the drafting work - please know I appreciate it.

best,
Meredith

On Wed, Nov 23, 2016 at 2:10 PM, Ben Jones <bjones@oberlin.edu> wrote:

My understanding is that shoplifting is the central issue for Gibson's and we're not likely to get them to agree to a joint statement without acknowledging it directly, but I'm not sure — Tita and Meredith, what do you think, having been on the front lines?.

On Nov 23, 2016, at 1:56 PM, Marvin Krislov <Marvin.Krislov@oberlin.edu> wrote:

Worry that mention of shoplifting will trigger reactions...how about softening? What abt reference to tense times?

On Nov 23, 2016 1:43 PM, "Ben Jones" <bjones@oberlin.edu> wrote:



Works for me. Once Meredith weighs in I'll get you clean copy.

On Nov 23, 2016, at 10:23 AM, Tita Reed <treed@oberlin.edu> wrote:

I'm sure they will have edits too. if they don't want their proposals first, they can make that edit and we can generously accept it. any thoughts?

On Nov 23, 2016 10:01 AM, "Ben Jones" <bjones@oberlin.edu> wrote:

It all depends on how cooperative you think they'll be. I was sort of throwing them a bone by putting the college first, but happy to rearrange if they're willing.

On Nov 23, 2016, at 9:02 AM, Tita Reed <treed@oberlin.edu> wrote:

Any thoughts on switching things a bit to place Gibson's proposals first?

On Nov 23, 2016 8:57 AM, "Ben Jones" <bjones@oberlin.edu> wrote:

Begin forwarded message:

From: Scott Wargo <swargo@oberlin.edu>
Date: November 22, 2016 at 12:27:30 PM EST
To: Ben Jones <Ben.Jones@oberlin.edu>
Subject: Gibsons

attached

--

Meredith Raimondo (she/her/hers)
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From: +[REDACTED] Raimondo 11/15/2016 11/15/2016 07:13(UTC-5) I assume we want to hold today's order - please confirm? Incoming Meredith

To: +[REDACTED] Raimondo 11/15/2016 11/15/2016 07:48(UTC-5) Yes Outgoing Meredith

REDACTED

EXHIBIT

248

REDACTED				
To: +	REDACTED	Raimondo	12/14/2016	What are you thinking
	Meredith		20:33(UTC-5)	Outgoing
From: +	REDACTED	Raimondo	12/14/2016	Just emailed you the ruling from today re public records. Looks like Januzzi rejected diversion
	Meredith		20:41(UTC-5)	Incoming
To: +	REDACTED	Raimondo	12/14/2016	Fuck
	Meredith		20:42(UTC-5)	Outgoing
From: +	REDACTED	Raimondo	12/14/2016	The language is pretty bad - refers to Gibsons experiencing "economic sanctions "
	Meredith		20:43(UTC-5)	Incoming
From: +	REDACTED	Raimondo	12/14/2016	It will break my heart if that stupid bakery order is used to screw these kids
	Meredith		20:44(UTC-5)	Incoming

REDACTED

EXHIBIT 19

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME X

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON TUESDAY, MAY 21, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 **A.** **Yes.**

2 Q. All right. Next, you take that \$58,000 and you
3 take some portion of that 58,000 which is the 2018 data,
4 and you extrapolate that for the next 30 years, correct?

5 **A.** **Yes.**

6 Q. For that you conclude there is a \$927,000 of
7 lost rental income based solely on the vacancies and
8 non-paying tenants that were in the Gibson's properties
9 in the year 2018?

10 **A.** **Yes.**

11 Q. Next, you determine there are lost rental
12 opportunities, and you calculate a \$1,200,000 loss for
13 two buildings that you contend the Gibsons intended to
14 build but couldn't build because of this event, correct?

15 **A.** **Yes.**

16 Q. And then finally you conclude that there is
17 \$831,000 of present value lost cash rental flow on those
18 forgone opportunities, correct?

19 **A.** **Yes.**

20 Q. And the forgone rental opportunities are your
21 estimation of the rents that the Gibsons would have
22 received had those buildings been built, those tenants
23 paid rent at a rate of \$1200 a month, and the value of
24 that for the next 30 years, discounted appropriately,
25 would be \$831,000?

1 **A. Yes.**

2 Q. Okay. Rough numbers, we're talking about
3 \$3 million or so relative to the real estate owned by
4 Gibsons, by David Gibson, correct?

5 **A. Yes.**

6 Q. So the component that you've applied to real
7 estate is larger than the component you've even applied
8 to Gibson's Bakery, which was the subject of the
9 protests, correct?

10 **A. Yes.**

11 Q. If you would turn to your report on the section
12 specifically that deals with --

13 MR. MATTHEW NAKON: Theresa, would you put up
14 U-26, the section that deals specifically with lost
15 rental properties.

16 Q. What page are you on, sir?

17 **A. Page 7.**

18 MR. MATTHEW NAKON: Can you put up -- it's
19 probably page 9 on ours. Go back. Try 7. Go four
20 back. You went too far. There we go. And the lost
21 profits from property vacancy, right there, okay. You
22 see that.

23 Q. So if I understand correctly what you did here,
24 is that for the year 2017 and 2018, you looked at rent
25 rolls that were provided by David Gibson to you,

1 correct?

2 **A. Correct.**

3 Q. And if Mr. Gibson had indicated -- well, strike
4 that.

5 Your testimony is that you believe, in fact your
6 report states it, doesn't it, that prior to the
7 protests, Mr. Gibson's apartment buildings were full,
8 correct?

9 **A. 189 was always full, and there was a waiting**
10 **list for 189. And then that's the extra tenants there**
11 **would move down to 549.**

12 Q. Excuse me for a second, Mr. Monaco. My outline,
13 I believe, has gotten out of order.

14 So in this calculation, what I want to make sure
15 we are talking about is the same thing. You understand
16 that there is an apartment building at 189 West College
17 Street, right?

18 **A. Yes.**

19 Q. That's a building that Mr. Gibson built in 1996,
20 correct?

21 **A. Yes.**

22 Q. That building has seven units in it, correct?

23 **A. Yes.**

24 Q. That building is pretty much right in the center
25 of campus, right? I mean, you've been there, right?

1 **A.** **I have been there.**

2 **Q.** Pretty close to campus?

3 **A.** **Pretty close to campus, yes.**

4 **Q.** The 549 building is a building he bought in the
5 year 2003, correct?

6 **A.** **Yes.**

7 **Q.** That's a considerable distance from campus, is
8 it not?

9 **A.** **What's your definition of "considerable"?**

10 **Q.** Close to a mile.

11 **A.** **A mile, yes.**

12 **Q.** In fact, it's not on campus, right?

13 **A.** **No. It's a mile away.**

14 **Q.** And as far as you know, no students live
15 there?

16 **A.** **That's correct.**

17 **Q.** All right. And as far as you know, in -- in
18 fact, as far as 589, do you have any evidence to say any
19 students lived there in the last five years?

20 **A.** **589, I'm not aware.**

21 **Q.** I'm sorry, 549?

22 **A.** **549, no.**

23 **Q.** Okay. And 549 is an 11-unit apartment building,
24 correct?

25 **A.** **Twelve-unit.**

1 **A. Yes.**

2 Q. Why that impact occurs, you don't know?

3 **A. Why that impact occurred -- again, the chart**
4 **that I showed, the falling bakery sales, and it's going**
5 **to be up to the jury if it is because of the situations**
6 **that have occurred.**

7 Q. Right. My point is, you're not --

8 **A. They'll make that determination.**

9 Q. -- you are not here rendering an opinion that's
10 what caused people not to live there?

11 **A. No. From my report, I assumed that's what would**
12 **cause that.**

13 Q. We can agree -- and we're going to get to the
14 rent rolls in a minute, I promise you. We can agree
15 that a large number that you've associated with that
16 \$927,000, I believe is the figure for the lost rents
17 projected for 30 years, we can agree that a large number
18 of that are people who aren't paying their rent,
19 correct?

20 **A. Yes.**

21 Q. All right. So is it your position that the
22 protests have made people decide they no longer need to
23 pay their rent?

24 **A. No. What the protests did is took the quality**
25 **of tenants that were waiting in line for 189 that went**

1 **put up 26, page 7. And again, blow up the bottom.**

2 Q. All right. So let's go back to this for a
3 second. What you've calculated then is for 2017 and
4 2018. You've looked at, from June forward, from June of
5 '17 through all of 2018, how many vacancies and
6 non-paying tenants Mr. Gibson had in his apartment
7 buildings, correct?

8 **A. Correct.**

9 Q. And what you determined was that for the year
10 2017, there were 13 vacancies, correct?

11 **A. And I only had that for unit 189, that is**
12 **correct.**

13 Q. So to be clear about what we're talking about,
14 that doesn't mean 13 apartment buildings are -- 13
15 apartments are vacant?

16 **A. No, no.**

17 Q. What that means is, for instance, one unit would
18 have been -- could have been empty for a year, which
19 would have been twelve, if you counted each month as a
20 unit?

21 **A. Yes, sir.**

22 Q. You determined that in 2017, 13 units existed in
23 189; in 2018, 24 existed in 189, correct?

24 **A. Correct.**

25 **MR. MATTHEW NAKON: And that if you flip the**

1 189 West College, you charged \$950 for that vacancy, and
2 if they came from 549, you charged \$800 for that
3 vacancy, correct?

4 **A. Yes.**

5 Q. You then -- so let's start with, the vacancy
6 that would have existed in 549, we established in
7 totality of your report, Oberlin College would be
8 charged \$24,000 for that vacancy, correct? That's \$800
9 for the vacancy and then \$800 times 30 or \$24,000?

10 **A. Correct.**

11 Q. All right. And so if there is a single vacancy
12 in 189, the cost or -- yeah, 189. That vacancy would be
13 \$950 for that one month plus 950 times 30, almost
14 \$30,000 discounted, correct?

15 **A. Correct.**

16 Q. So the amounts you charge for a one-month
17 vacancy range from 24,000 to \$30,000 in your \$927,000
18 tabulation, correct?

19 **A. I think -- I think the math that you just said**
20 **is a little bit off, okay. So you are taking \$900 a**
21 **month times 30, right?**

22 Q. No, I'm taking -- not 900 a month, that one 900.

23 **A. Yeah.**

24 Q. That 950. So if there is one vacancy for one
25 month --

1 Q. This -- let's look to the right here. Unpaid,
2 unpaid, unpaid, unpaid, open -- open means a vacancy,
3 right?

4 A. Yes.

5 Q. Unpaid, unpaid, unpaid. Do you see that?
6 There's seven unpaids, correct?

7 A. Correct.

8 Q. And that -- using the translation, that seven
9 tenants who didn't pay their rent, you are charging the
10 college \$175,000 just on that page, correct?

11 A. Correct.

12 Q. All right. Now, the one open unit, the
13 one -- let's strike that.

14 So these folks, it isn't that folks don't want
15 to live in their units, it's that people who are living
16 there can't pay?

17 A. Yes, it is. From a business standpoint,
18 Mr. Gibson's had to accept tenants that had lesser
19 ability to pay because of the waiting list in 189 is no
20 longer there and there is vacancies in 189.

21 Q. The point is, do you have any evidence to
22 suggest that people with money wouldn't want to live
23 with somebody who has a bad reputation, but people who
24 don't, who can't afford it do?

25 A. No. What I'm stating is the before-and-after

1 That's \$400,000 on this one building that you
2 are saying that, had it been built, he would have used
3 the cash flow from another building, after it was paid
4 off he would have gotten 400,000?

5 **A. I'm saying that net worth from the cash flow of**
6 **that building took an impact of \$400,000.**

7 Q. Right. I got it. I understand what you are
8 saying. "Mr. Gibson and his family's business plan to
9 add additional rental units will not be realized. Thus,
10 the total reduction over the next 30 years to his net
11 worth will be approximately \$1,200,000." Do you see
12 that?

13 **A. Yes.**

14 Q. All right. So now on these two buildings that
15 don't exist -- I want to make sure that I understand
16 what you are talking about in terms of \$1.2 million.
17 Mr. Monaco, your expectation is that David Gibson was
18 going to put two structures at this site we're talking
19 about, correct?

20 **A. Yes.**

21 Q. And you know, we're going to go into this in a
22 minute. You know that site is not currently zoned for
23 multi-family units, correct?

24 **A. Right.**

25 Q. And to do that, you believe it's going to cost

1 **A.** The reality is that property, as I said
2 **yesterday, property --**

3 Q. That's a "yes" or "no" question, Mr. Monaco.
4 Yes or no?

5 **A.** Probably doesn't -- I can't answer that question
6 **the way it was asked.**

7 Q. I think the jury understands.

8 **A.** I think they do, too.

9 Q. So let's take a look at what you didn't look at
10 before you concluded that this building, these buildings
11 would have been built. You did not -- you in fact know
12 that the properties got the wrong zoning, correct?

13 **A.** It needs to be rezoned, yes.

14 Q. You know the property has the wrong zoning as
15 you sit here today?

16 **A.** Yes.

17 Q. All right. And I understand that David is on,
18 or was on, the planning commission of the city of
19 Oberlin. But the reality is, whether this project can
20 move forward or not move forward is entirely dependent
21 upon what a governmental body determines as to whether
22 or not this property will be rezoned, correct?

23 **A.** Yes.

24 MR. MATTHEW NAKON: Theresa, could you put
25 up -- you know what, let's do this before we go here.

1 Q. Despite knowing that Allyn Gibson's apartment
2 was still fully furnished with his belongings and
3 Mr. Gibson intends to leave it that way and may continue
4 to use the apartment, you have charged Oberlin College
5 with almost a quarter-million dollars, directly
6 attributable just to Allyn Gibson's apartment for the
7 next 32 years?

8 **A. For that apartment of that unit, yes.**

9 Q. You charged historical and future lost rents for
10 549 West College to Oberlin College on the claim that
11 the units had been fully rented with paying tenants,
12 when Mr. Gibson's own rent rolls establish this building
13 has had a long history of tenants that do not pay their
14 rent?

15 **A. Again, it was based on the before-and-after**
16 **method.**

17 Q. I understand your position. You chose to use
18 the lowest possible discount rate, a risk-free rate of
19 2.79 percent over a period of 30 years on the real
20 estate, enhancing the calculation of lost rents in
21 plaintiffs' favor, true?

22 **A. I utilize the interest rates, yes, 2.79 percent.**

23 Q. You applied a 10-year treasury term to a 30-year
24 term of lost damages, correct?

25 **A. Again, the 30-year today is 2.81.**

1 Q. And at that meeting, did you try to explain to
2 them the ramifications, the effect that the flyer, the
3 student senate that the apparent support the college was
4 having on the reputation of both you and your father and
5 also the reputation and business of Gibson's Bakery?

6 A. Yes.

7 Q. And when you voiced your concerned in that
8 regard, how was it received by President Krislov and
9 Tita Reed?

10 A. Well, along with -- along with that, I expressed
11 my concern about the racism that was going on and that
12 us being accused of racism, and that bothered me
13 immensely. This entire process was bothering me because
14 of the racism claims against my father and myself and
15 our business.

16 I looked at the president at one point and I
17 told him, I said to him -- I said to him, my father had
18 looked in my eyes -- sorry -- and he explained that "at
19 my age, I'm going to die and they're going to claim I'm
20 a racist." Pardon me. I'm sorry. "And they're going
21 to claim I'm a racist." And I looked at him and I said,
22 "We're not going to let that happen." His response to
23 me was, the president was, "Well, I've been called a
24 racist." And my immediate thought was, I really don't
25 know President Krislov, I don't know anything of his

1 THE COURT: I'll overrule that. You can answer
2 the question.

3 A. The puncturing of the tires and the slashing of
4 the tires, the keying of the cars, happened April, May.
5 My house, there was -- the back door was kicked in.
6 That happened May 9th, I believe it was. Yes, May 9th.
7 And then dad, when they went to his place banging on his
8 doors and windows, he went out to react to it and fell
9 in his doorway, that happened on the following day.

10 Q. And with regard to your father --

11 A. Yes.

12 Q. -- following this incident, or we've all learned
13 of the fall, has there been a change in his lifestyle?

14 A. Well, absolutely. He no longer can live
15 independently. And he was very active. He was
16 delivering products, as you heard, early in the morning
17 and taking care of things. He was actually -- I heard
18 testimony about referring to the keeping of the ledgers
19 and the books, that some of those were not real legible.
20 I can't always take credit for that because he was doing
21 the books as well. I'm going to push that on him. He
22 didn't make it as clear.

23 He was able -- in other words, he was capable of
24 doing that as well. He was strong. But now he can't do
25 that. He's not able to track it as well mentally. He's

C E R T I F I C A T E

The State of Ohio,)
) SS:
County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 21, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
22nd day of May, 2019.

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 20

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STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

 IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

 PLAINTIFFS,)

 VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

 DEFENDANTS.)

* * *

VOLUME VI

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON WEDNESDAY, MAY 15, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 before and after the protests?

2 A. Yes.

3 Q. And what have you observed?

4 A. Before the protests, we were doing a lot of
5 production, working a lot of hours; and then after the
6 protests, the production had stopped. You know, foot
7 traffic and orders and things had all stopped. A lot
8 less production going on.

9 Q. Has the number of bakers that the bakery employs
10 dropped since the protests?

11 A. Yes.

12 Q. Have the quantities of daily made baked goods
13 changed?

14 A. Yes.

15 Q. How have they changed since then?

16 A. At least by 50 percent decrease.

17 Q. Decrease?

18 A. Yes.

19 Q. How about specialty orders, such as graduation
20 cakes, have they decreased?

21 A. Yes, those have decreased.

22 Q. And did all of that occur, based on your
23 observations, after the November 2016 protests?

24 A. Yes.

25 Q. Now, after the protests, did you, while working

1 at Gibson's Bakery, suffer any property damage?

2 A. Yes. I had a drill bit stuck in the side of my
3 tire.

4 Q. Where was your car parked at the time?

5 A. In the off-street parking lot behind the
6 buildings downtown.

7 Q. Is that in the vicinity of Gibson's Bakery?

8 A. Yes.

9 Q. And had similar events like that occurred to you
10 or to your vehicle prior to the protests?

11 A. No.

12 MR. ONEST: I have nothing further, Your Honor.

13 THE COURT: Any cross-examination?

14 MR. MANDEL: Yes, Your Honor.

15 CROSS-EXAMINATION OF SHANE CHENEY

16 BY MR. MANDEL:

17 Q. Good afternoon, Mr. Cheney. My name is Josh
18 Mandel; I represent the defendants Oberlin College and
19 Dr. Meredith Raimondo. I have a few questions for you.
20 You just mentioned something about foot traffic. You
21 would agree with me, you do not know why the bakery was
22 getting less foot traffic, correct?

23 A. Would I agree with you? I believe it's because
24 of the protests.

25 Q. You believe it's because of protests?

1 A. Yes.

2 Q. You remember taking a deposition related to this
3 case, correct?

4 A. Yes.

5 Q. I'd like to bring that -- here's a copy your
6 deposition. Here you go. Go to page 88, please.

7 A. I'm sorry, what page?

8 Q. Page 88. Beth, could you put up, page 88?
9 Could you go to line 16, please, of page 88?

10 A. Okay.

11 Q. And the question there says, "And what is your
12 understanding as to why you just don't get the foot
13 traffic anymore?" And your response is, "I don't know
14 why." Is that correct?

15 A. Yes, that is correct.

16 Q. Thank you. You also mentioned in response to
17 Mr. Onest question about property damage --

18 A. Yes.

19 Q. -- about the tire being punctured?

20 A. Yes.

21 Q. You are not aware of who punctured this tire,
22 correct?

23 A. Correct.

24 Q. You have no reason to believe that Meredith
25 Raimondo punctured your tire, correct?

1 Q. I want to take you back. You indicated that
2 your father -- let me be clear. Allyn W. Gibson is your
3 father-in-law, correct?

4 A. Yes.

5 Q. And you indicated that he resides with you. How
6 long has he resided with you?

7 A. He's been living with us since June of 2017.

8 Q. And why did he move in with you in June of
9 2017?

10 A. He could not live alone anymore after his
11 accident.

12 Q. Okay. And I want to take you to the time of
13 that accident. Do you recall when that occurred?

14 A. Yes. It was about the second week in May 2017.

15 Q. And can you tell the jury about what happened to
16 your understanding during that accident?

17 A. Yes. That early morning, it was between 1:30
18 and 2:00, I got a phone call, and it was my son saying
19 that Grandpa had called him, he had fallen, and it
20 sounded really bad. So I immediately just flew out and
21 jumped in my car and got to -- it's only a couple blocks
22 away, so I was there almost instantly.

23 When I got there, his apartment door was wide
24 open and all his lights were on. So the lights, you
25 know, were shining out onto the driveway, and he was

1 laying on the ground.

2 Q. And when you arrived at the location, was
3 anybody in the parking lot?

4 A. No.

5 Q. What did you do after you exited your car? I
6 assume -- did you park in the parking lot?

7 A. I pulled in very quickly and then just ran into
8 his apartment.

9 Q. Was your father-in-law conscious at the time?

10 A. Yes, he was.

11 Q. Was he saying anything?

12 A. Yes, that he had fallen, he was in a lot of
13 pain, and he couldn't get up.

14 Q. Did he say anything else?

15 A. By that point, David had come because, like I
16 said, I kind of jumped really fast and ran and then
17 David followed in his car, and then David started
18 talking to him too. And so we were talking and he said
19 that -- we asked him what had happened, and he said a
20 car -- he had gotten a lot of pounding on his windows
21 and his door. And he was sleeping in his La-Z-Boy,
22 which is right there by the window. So he got up and
23 opened the door to see who it was, and there was a car
24 running right there facing his apartment, and he got
25 scared and backed up and fell.

1 Q. And so I think you said at some point in time
2 your husband David came after you --

3 A. Yes.

4 Q. -- at the apartment?

5 A. Yes, he did.

6 Q. So what happened after your husband arrived?

7 A. Well, we -- I just started to assess him. I
8 started to check him out because he wanted to get up,
9 and I wouldn't let him get up.

10 MS. CROCKER: Objection, Your Honor.

11 THE COURT: Basis?

12 MS. CROCKER: We're getting into Mr. Gibson's
13 medical condition and her assessment of him, which has
14 been excluded.

15 THE COURT: Let's approach.

16 ***

17 (A sidebar discussion was had as follows.)

18 ***

19 THE COURT: So what she said was that "I started
20 to check him out because he wanted to get up, and I
21 wouldn't let him."

22 MS. CROCKER: And I imagine that the next part
23 of the question is going to be what she observed, what
24 she assessed, what his state was.

25 MR. ONEST: I don't want her -- I don't want her

1 to assess it. I'm not going --

2 THE COURT: No.

3 MR. ONEST: No medical.

4 THE COURT: But she can certainly testify what
5 she saw.

6 MR. ONEST: What she saw, what she observed.
7 I'm not going to ask her for any medical.

8 MS. CROCKER: Thank you.

9 ***

10 (The sidebar discussion ended.)

11 ***

12 BY MR. ONEST:

13 Q. Based on your observation, was your
14 father-in-law in pain?

15 A. Yes, he was.

16 Q. Could you observe, based upon his mannerisms,
17 where that pain was?

18 A. I thought maybe he had, you know, broken his hip
19 or something because he was just in a lot of pain. And
20 I just didn't want him to move, so I just made him lay
21 real still. We did decide to call 911 right away and
22 get the squad to come.

23 Q. And did he eventually go to the hospital?

24 A. Yes, he did.

25 Q. And ultimately, is it true that he, he broke his

1 neck?

2 A. Yes, he did.

3 Q. And have you personally been able to observe how
4 that has affected his daily life?

5 A. Yes, I have.

6 Q. Okay. And how has it affected -- tell the jury
7 how it's affected his daily life.

8 A. Well, prior to the accident, he was at the store
9 all the time. He did deliveries, he would open the
10 store in the morning, he would close the store at night.
11 He was very active at the bakery. And now he, he can't
12 be. He, he really can't do anything at the store
13 anymore.

14 Q. Prior to the fall, did he live independently?

15 A. Yes, he did.

16 Q. And is he currently living independently?

17 A. Not anymore. He won't be able to anymore.

18 Q. Now, in your -- based on your knowledge, had
19 anything ever happened like this prior to the protests
20 in November of 2016?

21 A. No.

22 Q. And so I want to take you to the protests in
23 November of 2016, and I want to start with Thursday,
24 that would be the 10th. Were you working at the bakery
25 at the time?

[illegible]

I, Cathlene M. Camp, Official Court Reporter in the Court of Common Pleas, Lorain County, Ohio, duly appointed therein, do hereby certify that this is a correct transcript of the proceedings in this case on May 15, 2019.

I further certify that this is a complete transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
16th day of May, 2019.

Patience M. Conroy

Cathlene M. Camp, RPR
Official Court Reporter
Lorain County, Ohio
225 Court Street, 7th Floor
Elyria, OH 44035
(440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 21

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME XI

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON THURSDAY, MAY 23, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 **A. Four, five, six months, yes.**

2 Q. And has anyone ever been arrested or charged in
3 connection with that vandalism?

4 **A. Not to my knowledge.**

5 Q. And we've heard, of course, testimony from you
6 and your father, Mr. Gibson, Sr., about the fall that
7 took place at his home. And I just want to clear the
8 air about the timing.

9 The knocks that he received on his door and the
10 windows, those occurred about six months after the
11 protests, correct?

12 **A. Those occurred the following day after my house**
13 **was -- what happened at my house, yes.**

14 Q. That would have been about six months --

15 **A. Six months.**

16 Q. -- after the protests?

17 **A. Yes.**

18 Q. Isn't it true that to this day, many months have
19 gone by, that to this day no one has been identified as
20 a suspect?

21 **A. That's correct.**

22 Q. Mr. Plakas the other day showed you a number of
23 e-mails and text messages involving a number of Oberlin
24 College officials, including Tita Reed and Ben Jones and
25 Toni Myers; do you recall that?

C E R T I F I C A T E

The State of Ohio,)
) SS:
 County of Lorain.)

I, Cathlene M. Camp, Official Court Reporter in the
 Court of Common Pleas, Lorain County, Ohio, duly
 appointed therein, do hereby certify that this is a
 correct transcript of the proceedings in this case on
 May 23, 2019.

I further certify that this is a complete
 transcript of the testimony.

IN WITNESS WHEREOF, I have subscribed my name this
 23rd day of May, 2019.

Cathlene M. Camp, RPR
 Official Court Reporter
 Lorain County, Ohio
 225 Court Street, 7th Floor
 Elyria, OH 44035
 (440) 329-5564

My Commission expires August 3, 2020

EXHIBIT 22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

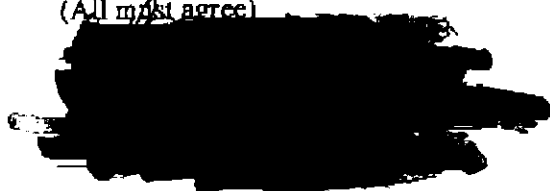
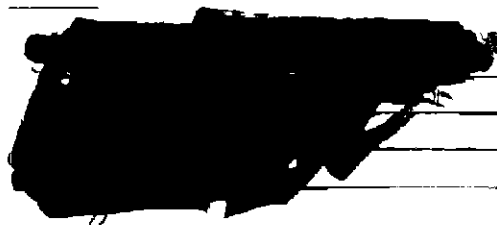
JURY VERDICT FORM FOR RACE DISCRIMINATION CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1981 race discrimination claim against Mount Carmel Health System?

Yes: ☒

No: ☐

(All must agree)

A large black rectangular redaction box covering the signature area of the first juror.A large black rectangular redaction box covering the signature area of the second juror.

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR RACE DISCRIMINATION CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1981 race discrimination claim against Dr. Michael R. Murnane?

Yes: ☒

No: ☐

(All must agree)

[REDACTED]

[REDACTED]

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR RACE DISCRIMINATION CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1981 race discrimination claim against Dr. Barney B. Beaver?

Yes: ☒
No: ☐

(All must agree) —

[REDACTED]

[REDACTED]

If you answered "Yes" on any one of the five Jury Verdict Forms for Race Discrimination, then go to the next page.

If you answered "No" on every one of the five Jury Verdict Forms for Race Discrimination, then do not go to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR RACE DISCRIMINATION CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1981 race discrimination claim against Dr. Thomas R. Alexis?

Yes: ☒

No: ☐

(All must agree)

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR RACE DISCRIMINATION CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1981 race discrimination claim against Dr. Medard R. Lutmerding?

Yes: _____
No: ☒

(All must agree)

[REDACTED]

[REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR DAMAGES ON RACE DISCRIMINATION CLAIM

1. If you found in favor of Dr. Guinn against at least one of the defendants, what damages, if any do you find Dr. Guinn is entitled to on his race discrimination claim?

\$ 1,500,000.00

State the amount, or, if you find that the plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00.

(All must agree)

[REDACTED]

[REDACTED]

2. Do you find by a preponderance of the evidence that the decision of any of the defendants to discriminate against Dr. Guinn was done maliciously or with reckless indifference to Dr. Guinn's federally protected rights?

Yes: ☒
No: ☐

(All must agree)

[REDACTED]

[REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR CONSPIRACY CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1985(3) conspiracy claim against Mount Carmel Health System?

Yes: _____

No: ☒ _____

(All must agree)

[REDACTED]

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR CONSPIRACY CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1985(3) conspiracy claim against Dr. Michael R. Murnane?

Yes: ☒

No: ☐

(All must agree)

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR CONSPIRACY CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1985(3) conspiracy claim against Dr. Barney B. Beaver?

Yes: ☒

No: ☐

(All must agree)

[REDACTED]

[REDACTED]

If you answered "Yes" on any one of the five Jury Verdict Forms for Conspiracy, then go to the next page.

If you answered "No" on every one of the five Jury Verdict Forms for Conspiracy, then do not go to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR CONSPIRACY CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1985(3) conspiracy claim against Dr. Thomas R. Alexis?

Yes: ☒
No: ☐

(All must agree)

[REDACTED]

[REDACTED]

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR CONSPIRACY CLAIM

Do you find in favor of Dr. Vincent L. Guinn on his 42 U.S.C. § 1985(3) conspiracy claim against Dr. Medard R. Lutmerding?

Yes: _____
No: ☒ _____

(All must agree)

[REDACTED]

[REDACTED]

Continue to the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR DAMAGES ON CONSPIRACY CLAIM

1. If you found in favor of Dr. Guinn, what damages, if any do you find Dr. Guinn is entitled to on his conspiracy claim?

\$ 1,500,000

State the amount, or, if you find that the plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00.

(All must agree)

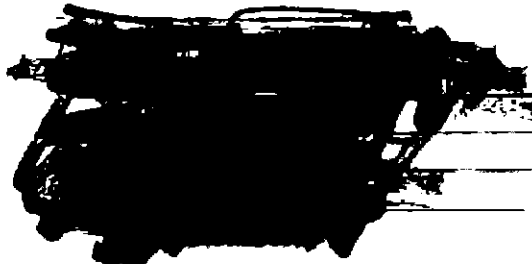
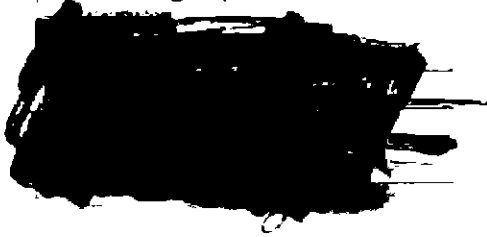


2. Do you find by a preponderance of the evidence that the decision of any of the defendants to engage in the conspiracy against Dr. Guinn was done maliciously or with reckless indifference to Dr. Guinn's federally protected rights?

Yes: ☒

No: ☐

(All must agree)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR DEFAMATION

1. Do you find in favor of Dr. Vincent L. Guinn on his defamation claim against Dr. Michael R. Murnane?

Yes: ☒

No: ☐

(All must agree)

[REDACTED]

[REDACTED]

If your answer to Question 1 is "Yes," then answer the next to questions.

If your answer to Question 1 is "No," do not answer the following questions.

2. If you find that Dr. Guinn proved by clear and convincing evidence that Dr. Murnane acted with actual malice, it is assumed that Dr. Guinn's reputation was injured, and you may award him an amount of money that you decide is reasonable and fair for his injuries directly caused by Dr. Murnane's defamatory statement or statements.

\$ _____

State the amount of damages you find Dr. Guinn is entitled to.

Yes: ☒

No: ☐

(All must agree)

[REDACTED]

[REDACTED]

If you assess damages in response to Question 2, do not proceed to Question 3 on the next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT L. GUINN, M.D.,

Plaintiff,

Case No. 2:09-cv-226

JUDGE EDMUND A. SARGUS, JR.

v.

MOUNT CARMEL HEALTH, et al.,

Defendants.

JURY VERDICT FORM FOR TORTIOUS INTERFERENCE WITH BUSINESS
RELATIONSHIPS

1. Do you find in favor of Dr. Vincent L. Guinn on his claim for tortious interference with business relationships against Dr. Michael R. Murnane?

Yes: ☒

No: ☐

(All must agree)

[REDACTED]

[REDACTED]

If your answer to Question 1 is "Yes," then answer the next to questions.

If your answer to Question 1 is "No," do not answer the following questions.

2. If you find in favor of Dr. Guinn, what damages, if any do you find he is entitled to?

\$ 350,000.00

State the amount, or, if you find that the plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00.

(All must agree)

[REDACTED]

[REDACTED]

Continue to the next page.

3. If you find that Dr. Guinn proved by clear and convincing evidence that Dr. Murnane acted only with negligence, the plaintiff must prove actual injury. You may award an amount of money that you decide by the greater weight of the evidence will fairly and adequately compensate Dr. Guinn for his actual injuries directly caused by the defamation.

\$ 350,000.00

State the amount of damages you find Dr. Guinn is entitled to.

(All must agree)



3. Do you find by clear and convincing evidence that Dr. Murnane acted maliciously or with wanton disregard of the rights of Dr. Guinn when he tortiously interfered with Dr. Guinn's business relationships?

Yes: ☒

No: ☐

(All must agree)

[REDACTED]

EXHIBIT 23

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

IN THE COURT OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,)

PLAINTIFFS,)

VS.) NO. 17CV193761

OBERLIN COLLEGE, ET AL.,)

DEFENDANTS.)

* * *

VOLUME IX

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON MONDAY, MAY 20, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 eight out of the first ten months of 2016, before the
2 protests, there was a decline in revenues over 2015?

3 **A. That is correct.**

4 Q. So from -- I believe in your direct exam, you
5 talked about a decline in revenues from 2010 to 2016?

6 **A. That is correct.**

7 Q. And I believe you gave a number of 16 percent?

8 **A. That is correct.**

9 Q. In fact, the decline in revenues wasn't from
10 2010 to 2016. It was from 2014 to 2016, and totaled
11 16.7 percent, correct?

12 **A. I'd have to go back and do that math. If you**
13 **are asking to look at '16 versus, did you say, 2014.**

14 Q. Tell me what the revenue number is for 2014.

15 **A. 898,989.**

16 Q. I'm sorry. 2013.

17 **A. 2013 was 994,533.**

18 Q. Just under a million bucks, correct?

19 **A. That's correct.**

20 Q. And 2016 down to 828,000, correct?

21 **A. That's correct.**

22 Q. That's roughly the 16 percent decline?

23 **A. But you are asking me to compare to '14. I**
24 **would say it's less than that.**

25 Q. My apologies. I misspoke. The end of 2013,

1 correct. From the end of 2013, which would have started
2 on January 1, 2014, to the end of 2016, in that
3 three-year period of time, the revenues declined by
4 almost 17 percent.

5 **A. If you would look at that, it would really be**
6 **four years: '13, '14, '15, '16.**

7 Q. '13 ends on December 31st --

8 **A. Yeah.**

9 Q. -- of 2013, correct?

10 **A. The '13 included twelve months.**

11 Q. Listen to my question.

12 **A. Okay.**

13 Q. The year 2013 ended on December 31st?

14 **A. Okay.**

15 Q. Correct?

16 **A. Correct.**

17 Q. The year 2016 ended on December 31st?

18 **A. Correct.**

19 Q. So January -- we're talking beginning in January
20 of 2014, January 2015, January 2016, correct?

21 **A. That's correct.**

22 Q. In that period of time, we have that kind of
23 decline, correct?

24 **A. I have not done that percentage decrease between**
25 **'13 to '16. I could do it now real quick if you like.**

1 Q. You're an accountant, right?

2 A. Yeah.

3 Q. If you --

4 A. You are asking me --

5 THE COURT: Hold on. You can't talk over each
6 other. It's impossible for the court reporter. One at
7 a time.

8 MR. MATTHEW NAKON: I'm sorry, Your Honor.

9 Q. You had almost a million dollars of revenue and
10 now you are at \$830,000 of revenue; that's \$170,000.
11 What does that tell you in terms of a percentage?

12 A. That's approximately 16 percent.

13 Q. Thank you. The fact is that even with the
14 protests occurring in November, the year 2016 was going
15 to be Gibson's Bakery worst -- Gibson's Bakery's worst
16 economic year in all of the years that you reviewed
17 between 2010 and 2016, correct?

18 A. Yes, that was the worst revenue.

19 Q. In 2016, November of 2016, the month of the
20 protests, that was actually the best November on record
21 for Gibson's since 2012, was it not?

22 A. Yes.

23 Q. And in fact, I think you referred to it during
24 your deposition as a protest bump where counter
25 protesters came out to support Gibson's Bakery,

1 correct?

2 **A. Yes.**

3 Q. Mr. Monaco, I'm going to hand you what has been
4 marked as Exhibit C-32.

5 Theresa, can you please put that up on the
6 screen? And can you kind of expand upon the right half
7 of the graph from 2013 to 2016? Can you do that? Thank
8 you.

9 So this decline that we're talking about was
10 prior to the protests. You see the protests dates up
11 here of November 10th and 11th, 2016? Do you see
12 that?

13 **A. Yes.**

14 Q. Okay. So the decline we are talking about in
15 Gibson's business occurred prior to the protests and
16 thus was not caused by Oberlin College, correct?

17 **A. Yes.**

18 Q. Thank you. Now, you would agree that a 16.7
19 percent decline in revenue is an indication of a
20 potential problem, correct?

21 **A. Yes.**

22 Q. It's not a good thing?

23 **A. Right, yes.**

24 Q. Let take a look at this instead of from a
25 revenue standpoint. Let's take a look at this from an

1 **A. Correct.**

2 Q. I'm going to hand you what has been marked as
3 Exhibit C-27. If you do the same thing, tell me what
4 the taxable income was for Gibson's Bakery on page 5 for
5 2015.

6 **A. \$2,471.**

7 Q. Thank you. And then finally Exhibit D-27. If
8 you would take a look on page 5 and tell me what the
9 taxable income was for Gibson's Bakery for 2016.

10 **A. The taxable income was a negative \$54,551.**

11 Q. Theresa, if you would put up Exhibit D-32,
12 please. Might not have it. Let's blow this one up a
13 little bit if we can.

14 This is a chart Mr. Rarric asked you about on
15 your direct examination, and we just talked through
16 these income issues. This, in fact, is the income
17 reported to the United States government on the tax
18 returns of Gibson's Bakery for the years 2010 through
19 2016, correct?

20 **A. Yes.**

21 Q. And during that period of time -- I'll give
22 you -- make it easier for you to read. If you can kind
23 of eyeball this and do some quick math, you will see
24 that during that seven-year period of time, they lost
25 about \$25,000 more than they had to gain, correct?

1 **A. Correct.**

2 Q. Do you have any reason to dispute that the
3 average annual net income for Gibson's Bakery for the
4 seven-year period of time before the protests was a
5 negative \$3,697?

6 **A. No.**

7 Q. I'm going to hand you what's been marked as
8 Exhibit E-27. This is for 2017. Now we're after the
9 protests, correct?

10 **A. Correct.**

11 Q. And if you can take a look on page 5 and tell me
12 what the taxable income was for Gibson's Bakery in the
13 year 2017.

14 **A. A loss of \$2,038.**

15 Q. I'm going to hand you what has been marked as
16 Exhibit F-27. And if you would again turn to page 5,
17 tell me what the taxable income was for Gibson's Bakery
18 for the year 2018.

19 **A. A loss of \$90,418.**

20 Q. Can we agree that income-wise things did not get
21 better for Gibson's Bakery in terms of income after the
22 protests?

23 **A. Yes.**

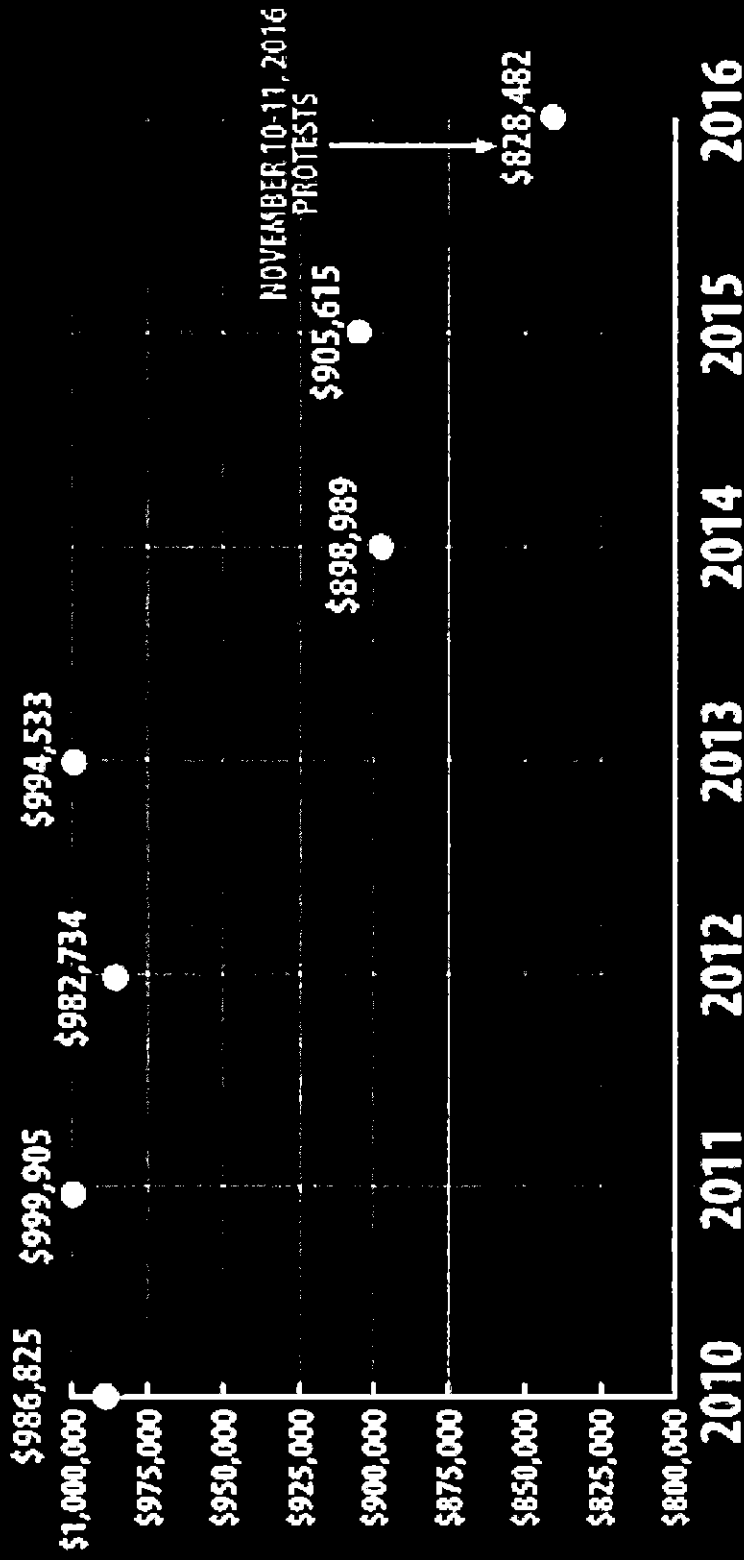
24 Q. Can we also agree that over the nine years for
25 which you have studied the finance of the bakery, both

EXHIBIT 24

OBERLIN

COLUMBIA

THE BAKERY'S DECLINING REVENUES



Excerpt Derived from the Report of Frank Menzies, Plaintiff's Expert

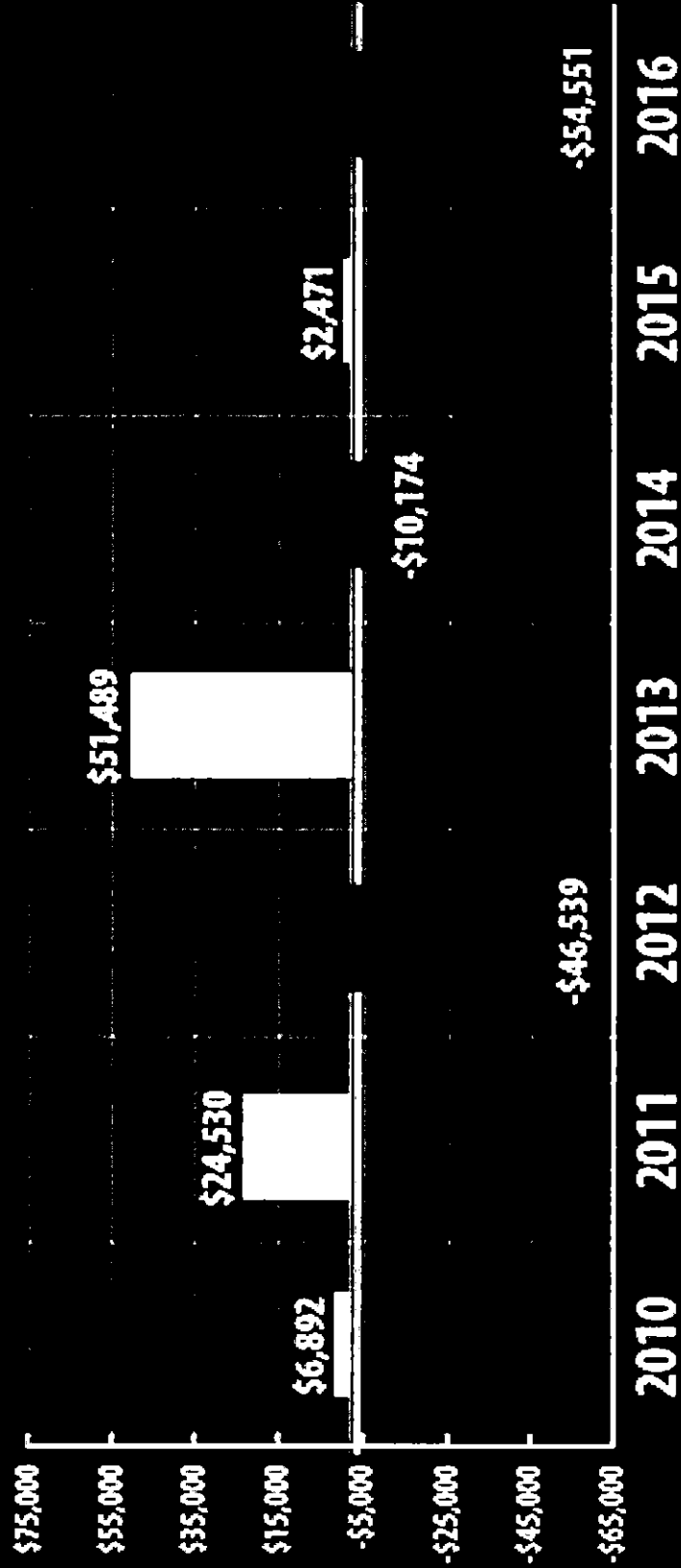
DEFENDANT'S
EXHIBIT
C32

EXHIBIT 25

OBERLIN

COLLEGE

AVERAGE NET INCOME LOSS -\$3,697



Revenues Derived from the Report of Frank Manasco, Plaintiff's Expert

DEFENDANT'S
EXHIBIT
D32