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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.,

Plaintiffs,

v.

OBERLIN COLLEGE, et al.,

Defendants.

) CASE NO. 17CV193761

) JUDGE JOHN R. MIRALDI

) DEFENDANTS' MOTION FOR

) JUDGMENT NOTWITHSTANDING

) THE VERDICT

Under Rule 50 of the Ohio Rules of Civil Procedure, Defendants Oberlin College and Dr. Meredith Raimondo hereby move this Court for judgment notwithstanding the verdict. A brief in support of this motion is attached hereto and incorporated herein by reference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

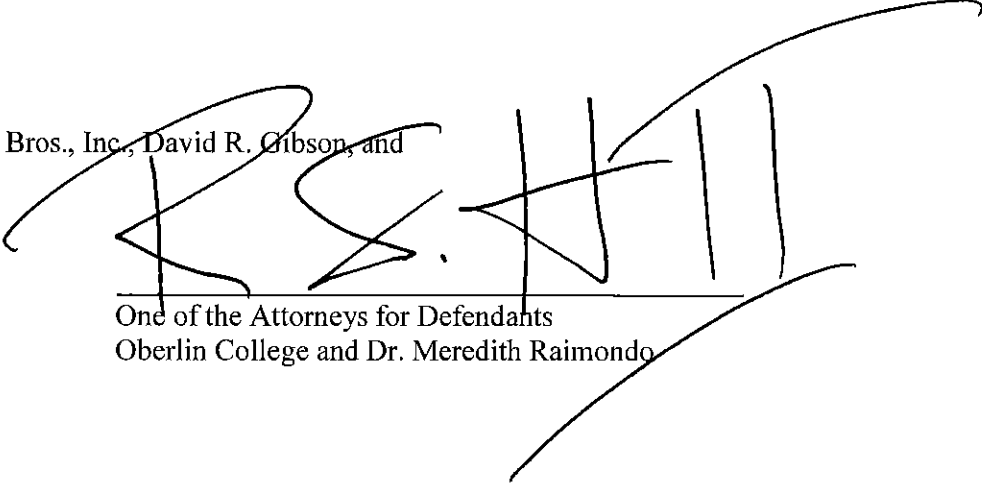
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) **DEFENDANTS' BRIEF IN SUPPORT**
) **OF MOTION FOR JUDGMENT**
) **NOTWITHSTANDING THE**
) **VERDICT**

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INTRODUCTION AND BACKGROUND

Forty-four million, two hundred ninety-eight thousand dollars. That is the price that a jury decided Defendants Oberlin College (“Oberlin College” or the “College”) and Dr. Meredith Raimondo (“Dean Raimondo,” and collectively with the College, “Defendants”), must pay for statements that Oberlin College students—not Defendants—made during peaceful, lawful, and constitutionally protected protests on issues of public concern. The protests were in response to the eyewitness reports of extra-judicial use of physical force by a Gibson’s Bakery employee, the police department’s response at the scene, and customer reports of a pattern of discriminatory treatment of black people by Gibson’s Bakery employees.

The staggering verdict includes economic damages that are 116 times the business value Gibson’s Bakery—a small business in a small town—had before the protests (even though it is still in business today). Despite not asserting a physical injury claim nor presenting medical testimony, Plaintiff Allyn W. Gibson was awarded noneconomic damages of \$3 million, which is 12 times the amount recoverable by law. Similarly, Plaintiff David Gibson, who also did not assert a physical injury claim nor present medical testimony, was awarded noneconomic damages of \$4 million, which is over 11 times the amount recoverable by law. This massive verdict on claims of libel, tortious interference with business relationships, and intentional infliction of emotional distress (“TIED”)—which included an independently staggering \$33,223,500 punitive damages award—was the product of a litany of errors that even a proper application of damages caps, which has not yet occurred, cannot cure:

First, protests often include impassioned, unpopular, and even provocative speech—speech that may offend members of the surrounding community. To ensure robust protection of such speech, constitutional law requires courts—not juries—to determine whether statements

made at a protest involving issues of public concern are protected. This Court properly determined that chants and oral statements expressing subjective viewpoints on an issue of public importance constituted constitutionally protected opinion speech. Those same protections shield the very same statements set forth in the Protest Flyer and the Student Senate Resolution prepared by Oberlin College students as an integral part of the protests. This protected speech cannot, as a matter of law, support the first essential element of a libel claim: a false statement of fact. Defendants are therefore entitled to judgment as a matter of law on Plaintiffs' libel claims. Moreover, even if the viewpoints in the Protest Flyer and the Student Senate Resolution are not protected, Plaintiffs presented insufficient evidence at trial to establish other critical elements of their libel claims.

Second, the jury found that Dean Raimondo, but not Oberlin College, tortiously interfered with Plaintiff Gibson Bros., Inc.'s purported business relationship with the College's dining services agent Bon Appetit Management Company ("Bon Appetit"). Yet, Plaintiffs presented no evidence to support such a claim. In fact, settled law requires an entry of judgment for Dean Raimondo because any business relationship that existed was, in actuality, between the College (not its agent, Bon Appetit) and Gibson's Bakery, meaning Dean Raimondo—as the College's employee with responsibility for supervising student dining services—could not interfere with the College's own business relationship. Separately, any such interference was justified.

Third, the IIED verdict for Plaintiffs David Gibson and Allyn W. Gibson and against Oberlin College, but not Dean Raimondo, is based on the alleged libel, meaning Plaintiffs' IIED claims must fall with their libel claims. The IIED claims also fail for the independent reason that, during trial, Plaintiffs presented insufficient evidence in support of these claims.

Fourth, even if Plaintiffs met their burden of proof on their libel claims, the jury's finding of no constitutional malice during the liability phase of the trial prohibits the award of punitive

damages. And since Plaintiffs presented no evidence of Defendants' alleged IIED separate from the alleged libel, the punitive damage awards in their entirety also fail as a matter of law.

Accordingly, for all of the reasons expressed in this motion, Defendants are entitled to judgment notwithstanding the verdict on each of Plaintiffs' claims and on Plaintiffs' punitive damages verdict.¹

I. Legal standard.

A party can move for judgment notwithstanding the verdict ("JNOV") at any time within twenty-eight days of entry of judgment and service of the Civ.R. 58(B) notice. *See* Civ.R. 50(B)(1). The JNOV standard is the same as the directed verdict standard. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 25. Both assess the legal sufficiency of the evidence to determine if the plaintiff established "every element of each claim." *Id.* Defendants are entitled to JNOV because, as discussed below, Plaintiffs failed to establish the elements of their claims, which is their burden as a matter of law.

II. Defendants are entitled to JNOV on Plaintiffs' libel claims.

Defendants are entitled to JNOV on Plaintiffs' libel claims for the following reasons: (i) the challenged statements made by Oberlin students—not Defendants—in the Protest Flyer and the Student Senate Resolution were not false statements of fact, but rather, protected opinions that cannot be proven false; (ii) Plaintiffs lacked standing to bring their libel claims based on the assault statement at issue; (iii) Defendants did not publish the Student Senate Resolution and did not deliver the Protest Flyer with reason to know that the Flyer contained defamatory material; and (iv) Defendants did not publish any of the challenged statements with the required degree of fault.

A cause of action for libel, or written defamation, has five elements:

- (1) a false statement of fact was made;

¹ Defendants are simultaneously filing and submitting an alternative motion for new trial or remittitur.

- (2) the statement was defamatory;
- (3) the statement was published by the defendant;
- (4) the plaintiff suffered injury as a proximate result of the publication by the defendant; and
- (5) the defendant acted with the requisite degree of fault in publishing the statement.

Grubb & Assocs. LPA v. Brown, 2018-Ohio-3526, 119 N.E.3d 836, ¶ 9 (9th Dist.).

Any consideration of whether Plaintiffs can establish a defamation claim must occur against the backdrop of the constitutional protections afforded by the First Amendment to the United States Constitution and Article I, Section 11 of the Ohio Constitution. Among other things, they instruct:

- A defamation claim cannot be based on opinions or other statements that cannot be proven false, *see Vail v. The Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 282, 649 N.E.2d 182 (1995); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990);
- A State may not impose liability for defamation without fault, *see New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974); *Lansdowne v. Beacon Journal Pub. Co.*, 32 Ohio St.3d 176, 178-179, 512 N.E.2d 979 (1987); and
- Fault is assessed at the time of publication, *see New York Times Co.*, 376 U.S. at 286; *Varanese v. Gall*, 35 Ohio St.3d 78, 80, 518 N.E.2d 1177 (1988).

These and other protections give speakers the breathing space needed to express unpopular opinions—e.g., through expressive conduct like flag burning,² cross burning,³ or carrying homophobic and anti-government signs at a funeral of a military veteran killed in active duty⁴—in the uninhibited “marketplace of ideas” fostered by the First Amendment. That breathing room is **especially critical** for student speech, like the speech at issue here. The Supreme Court of the

² *See Texas v. Johnson*, 491 U.S. 397, 405-06 (1989) (burning an American flag during a protest was expressive conduct within protection of the First Amendment).

³ *See Virginia v. Black*, 538 U.S. 343, 362-63 (2003) (cross burning may be banned only upon proof of an intent to intimidate).

⁴ *See Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (protesting in a public place on a matter of public concern is entitled to “special protection” under the First Amendment).

United States has recognized that colleges play a central role in the marketplace of ideas: the “college classroom with its surrounding environs,” the Court has instructed, “is peculiarly ‘the marketplace of ideas.’” *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981). As discussed below, Defendants cannot be held liable for the unpopular opinions expressed by Oberlin students.

A. The Protest Flyer and the Student Senate Resolution contain no false statements of fact directed at Plaintiffs.

Plaintiffs’ libel claims fail because longstanding legal precedent dictates that the allegations of racism in the Protest Flyer and the Student Senate Resolution, which occurred during a protest urging a boycott, are constitutionally protected opinions that cannot be proven false. Plaintiffs cannot avoid this result by pointing to allegations of assault in either student publication because those allegations were not “of and concerning” them and Plaintiffs lacked standing to assert a libel claim for statements directed at others.

1. Statements that are part of a protest urging a boycott, including allegations of racism, are constitutionally protected opinions that cannot be proven false.

Student allegations of racism occurring during protests urging a boycott and asking others to join are constitutionally protected opinions that cannot be proven false and thus cannot serve as the basis for a defamation claim under the Ohio or United States Constitutions. *See Vail*, 72 Ohio St.3d at 282; *Wampler v. Higgins*, 93 Ohio St.3d 111, 112 (2001); *Milkovich*, 497 U.S. at 19 (holding that “a statement on matters of public concern must be **provable** as false before there can be liability under state defamation law”).

Whether a statement is protected opinion turns on four factors: (1) the specific language used; (2) whether the statement is verifiable; (3) the general context of the statement; and (4) the broader context in which the statement appeared. *Vail*, 72 Ohio St.3d at 282. If an analysis of those factors shows that a statement is an opinion, then the statement is protected under the Ohio

Constitution. This Court suggested otherwise in its summary judgment opinion, but that suggestion misreads Ohio law. (See April 22, 2019 Entry and Ruling on Defendants' Motions for Summary Judgment ("4/22/19 Judgment Entry") at 8.) The Supreme Court of Ohio in *Vail* squarely held that the Ohio Constitution "provides a separate and independent guarantee of protection for opinion." 72 Ohio St.3d at 281. This is a legal issue for a court, not a factual issue for a jury. *Scott v. News-Herald*, 25 Ohio St.3d 243, 250 (1986).

As discussed, the trial of the libel claims was limited to two student publications: (1) the Protest Flyer and (2) the Student Senate Resolution. Despite acknowledging at the summary judgment stage that the students' verbal allegations of racism during the November 10-11, 2016 protests were constitutionally protected opinion, (4/22/19 Judgment Entry at 21), this Court held that putting those same racism allegations in writing made them factual, (*id.* at 12, 17). That was error. Whether communicated in writing or orally, the students' allegations of racism during a protest as part of an attempt to rally others to boycott Gibson's Bakery were protected opinion.

To begin, this Court's line between the students' chants and the accompanying Protest Flyer and contemporaneous Student Senate Resolution is fatally flawed. Courts in Ohio and elsewhere have recognized that protest literature, including calls for a boycott, will be understood by a reasonable reader as opinionated persuasive advocacy, not objective factual reporting. *E.g.*, *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, ¶¶ 20-23 (letter calling for boycott of city and alleging that a police officer killed an unarmed man with a marine-style chokehold would be understood by the reasonable reader as expressing the author's opinion, not impartial factual reporting); *compare Arrington v. Palmer*, 971 P.2d 669, 673 (Colo. Ct. App. 1998) (political flyer is "the type of critical commentary typically filled with political innuendo and should not be taken at face value or viewed as a statement of fact"). Indeed, protest speech—

including chants, flyers, and signs—has always been a quintessential form of American political speech that has long been protected by the Supreme Court of the United States. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907-12 (holding that all elements of an NAACP-led boycott of white merchants—including picketing, speech, and calling on others to join the boycott—were constitutionally protected measures to bring about “equality and racial justice” under the First Amendment because “[t]he established elements of speech, assembly, association, and petition, though not identical, are inseparable.”). Thus, contrary to this Court’s summary judgment ruling, the broad context of the Protest Flyer’s efforts to “rally the reader to act,” (4/22/19 Judgment Entry at 12), are what make it **more** likely to be understood as protected opinion, not less. *See Jorg*, 2003-Ohio-3668 ¶ 23 (reader of a letter urging a boycott “would have determined that it was a persuasive piece of advocacy, and not a news article purporting to be objective reporting”). A protest flyer, in short, is a “type[] of writing” with a “social convention” signaling that its statements are expressions of opinion. *Scott*, 25 Ohio St.3d at 253, citing *Ollman v. Evans*, 750 F.2d 970, 979 (D.C. Cir. 1984).

Such a convention is confirmed by the context of the challenged statements within the Protest Flyer itself. *Scott*, 25 Ohio St.3d at 252-254. The Protest Flyer begins with an all-caps and bold-faced exhortation: “**DON’T BUY.**” (Pls.’ Trial Exhibit 263.⁵) After the allegedly libelous statements, the Protest Flyer continues: “Today we urge you to shop elsewhere in light of a particularly heinous event involving the owners of this establishment and local law enforcement.” *Id.* The “average reader viewing the allegedly defamatory words in the context of the entire [Protest Flyer] would have been hard-pressed to accept [the Oberlin College students’] statements as impartial reporting” as opposed to advocacy. *Jorg*, 2003-Ohio-3668, ¶ 21.

⁵ Plaintiffs’ Trial Exhibit 263 is attached hereto as Exhibit 1.

This Court suggested that the distinction between the protected oral chanting and the Protest Flyer is that the latter “contained implications of additional information or factual support for the statements.” (4/22/19 Judgment Entry at 21.) But that is incorrect factually and is an inconsequential legal distinction. The Protest Flyer **asked** those with additional information to come forward: telling the reader, “[i]f you have any additional information, video, or photo evidence of this event, please contact” a particular email address. (Pls.’ Trial Exhibit 263.) The context of the allegedly defamatory statements and this Court’s recognition that the oral chants were protected opinion thus compel a finding that the Protest Flyer also is protected opinion. The oral chants, after all, included the same statements alleged to be defamatory when appearing in the Protest Flyer. (*See, e.g.*, Trial Tr., May 21, 2019, at 142:23-25⁶ (Plaintiff David Gibson testifying that Oberlin College students chanted that Plaintiffs “had a long history of racism”); <https://www.facebook.com/ChronicleTelegram/videos/10155471981413242> (Chronicle-Telegram video on Facebook of a student, at the 3:20 mark, reading into the bullhorn the following: “yesterday, three students from the Africana community were assaulted and arrested as a result of a history of racial profiling and racial discrimination by Gibsons.”).)

The same is true of the Student Senate Resolution published by Oberlin students. That resolution also urged a boycott (asking students to “immediately cease all support, financial and otherwise, of Gibson’s Food Market and Bakery”) and, like the Protest Flyer, is protected opinion for this reason. *Jorg*, 2003-Ohio-3668, ¶¶ 20-23; *compare Maddox Defense, Inc. v. GeoData Sys. Mgmt., Inc.*, 8th Dist. No. 107559, 2019-Ohio-1778, ¶ 58 (explaining that “where potentially defamatory statements are published in a public debate, a heated labor dispute, or in another setting

⁶ Interestingly, David Gibson testified at trial that he had no cause to sue the protestors, despite their chants of the same language found to be defamatory in the Protest Flyer. (Trial Tr., May 21, 2019, at 154:23-155:6.) All May 21, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 2.

in which the audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may well assume the character of statements of opinion”), quoting *Gregory v. McDonnell Douglas Corp.*, 17 Cal.3d 596, 601 (1976).

Extending opinion protection to a student resolution on matters of public interest also comports with the protection afforded state and federal legislators to speak freely and express opinions on issues of public interest. See U.S. Constitution, Article I, Section 6, cl. 1 (federal speech-and-debate clause); Ohio Constitution, Article II, Section 12 (Ohio speech-and-debate clause); *Gravel v. United States*, 408 U.S. 606, 616-18 (1972); *Costanzo v. Gaul*, 62 Ohio St.2d 106, 109-110, 403 N.E.2d 979 (1980). Even outside the boycott context, a student resolution should be viewed through a similar lens. As noted by the Supreme Court of the United States, government interference with student speech at a public university risks “chilling . . . individual thought and expression,” *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 835 (1995), which is contrary to the essence of a college environment that is “peculiarly ‘the marketplace of ideas.’” *Widmar*, 454 U.S. at 267 n.5. Like a political flyer, a student government resolution—particularly *this* resolution urging a boycott—is a “type[] of writing” with a “social convention” signaling that its statements are opinion, *Scott*, 25 Ohio St.3d at 253—namely, the opinion of the students on matters of interest to them.

What is more, trial confirmed the allegedly defamatory statements cannot be verified as actionable fact. For instance, upon cross-examination, Vicky Gaines, an African-American woman who Plaintiffs called as a character witness, testified that people can have a different perspective on whether someone has been subjected to racism:

Q: Mrs. Gaines, you would agree with me that whether someone feels that he or she has been subjected to racism is a matter of that person’s opinion, correct?

A: Correct.

(Trial Tr., May 13, 2019, at 37:11-14.⁷) Similarly, upon cross-examination, Sharon Patmon, another African-American woman and friend of Plaintiffs, testified as follows:

Q: Mrs. Patmon, you would agree with me that whether someone is a racist is a matter of opinion, right?

A: Yes.

(Trial Tr., May 10, 2019, at 94:18-21.⁸) These concessions track the holdings of many jurisdictions that have deemed accusations of racism to be protected opinion. *E.g.*, *Ayyadurai v. Floor64, Inc.*, 270 F.Supp.3d 343, 364-65 (D. Mass. 2017) (statement that those who disagree with an author are “racist” was protected opinion); *Smith v. Sch. Dist. of Philadelphia*, 112 F.Supp.2d 417, 429 (E.D.Pa. 2000) (statement that plaintiff is “racist and anti-Semitic,” although “unflattering, annoying and embarrassing,” is not defamatory as a matter of law because it is “merely non-fact based rhetoric”); *Carto v. Buckley*, 649 F.Supp. 502, 508 (S.D.N.Y. 1986) (“There is no one opinion of what constitutes ‘racial and religious bigotry,’ or for that matter what constitutes ‘bigotry’ generally.”); *In re Green*, 11 P.3d 1078, 1086 (Colo. 2000) (statement that judge was a “racist and bigot” was protected opinion).

An allegation of racism does not become factual when coupled with terms like “long” (as in the Protest Flyer) or “a history” (as in the Student Senate Resolution). Since there is no one opinion of what is racist conduct,⁹ *see Carto*, 649 F.Supp. at 508, there can be no one opinion of what is a “long account” of racist conduct or “a history” of such conduct. Indeed, even in isolation, terms like “long” or “a history” cannot be quantified and thus cannot be verified. This case shows

⁷ All May 13, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 3.

⁸ All May 10, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 4.

⁹ To some, for example, asking a student of color, but not a white student, to remove his or her backpack at the front of Gibson’s Bakery may indicate that the student of color was racially profiled or discriminated compared to his or her white counterpart. To others, however, the request to the student of color may simply suggest that the Bakery enforced its policy of not permitting backpacks in the store haphazardly.

why. Protestors have accused Plaintiffs of racism at least as far back as April 1990.¹⁰ Is almost 30 years sufficient to constitute “long” or “a history”? Or would 5 years, 50 years, or 100 years suffice? Plaintiffs may have a different opinion of what is “long” or “a history” than protesting Oberlin students. But that is the point. While one can certainly verify that Plaintiffs were accused of racism before November 2016, whether they have a “long account” or “a history” of racism is not verifiable and thus not factual.

Nor would it matter if allegations of racism could be characterized as “pejorative.” (4/22/19 Judgment Entry at 9, 15, 16, 19, 20, 21.) That is not—nor has it ever been—the test for whether a statement is verifiable. State and federal constitutional law instead looks to whether a “statement lacks a plausible method of verification,” *Vail*, 72 Ohio St.3d at 283, or whether it “contain[s] a provably false factual connotation,” *Milkovich*, 497 U.S. at 20. The term “pejorative,” which simply refers to an expression of contempt,¹¹ has nothing to do with either inquiry. Thus, even if this Court correctly concluded that allegations of racism are pejorative, such a characterization does not show that those allegations were anything other than an expression of opinion by Oberlin students.

In sum, Plaintiffs’ libel claims fail at the threshold because the Oberlin students’ allegations of racism were constitutionally protected opinions, not verifiable false statements of fact.

¹⁰ See *The Oberlin Review*, “Protestors accuse Gibson of racism,” April 27, 1990, attached hereto as Exhibit 5 and publicly available at <http://cdm15963.contentdm.oclc.org/cdm/pageflip/collection/p15963coll9/id/151078/type/compoundobject/show/151051/cpdtype/document/pftype/image#page/1/mode/2up>.

¹¹ *Pejorative*, Oxford Dictionary of English (2017).

2. **The assault allegations in the Protest Flyer and the Student Senate Resolution were not directed at Plaintiffs, and the racism allegations were not directed at Plaintiffs David Gibson and Allyn W. Gibson.**

The assault accusations in the Protest Flyer and the Student Senate Resolution are the only other allegedly libelous statements. In relevant part, the Protest Flyer provided:

A member of our community was assaulted by the owner of this establishment yesterday. A nineteen y/o young man was apprehended and choked by Allyn Gibson of Gibson's Food Mart & Bakery. The young man, who was accompanied by 2 friends was choked until the 2 forced Allyn to let go. After The young man was free, Allyn chased him across College St. and into Tappan Square. There, Allyn tackled him and restrained him again until Oberlin police arrived. The 3 were racially profiled on the scene. They were arrested

(Pls.' Trial Exhibit 263.) Given that the accusations were made during protests urging a boycott, the assault accusations would be protected opinion if Plaintiffs had the ability to assert a libel claim based on them. *See supra*; *Jorg*, 2003-Ohio-3668, ¶¶ 20-23; *Maddox*, 2019-Ohio-1778, ¶ 58. But Plaintiffs lack the ability to assert a libel claim based on assault accusations directed only at non-party Allyn D. Gibson—the son and grandson of David Gibson and Allyn W. Gibson, respectively. Two legal doctrines explain why.

First, substantive defamation law instructs that statements are not actionable unless a plaintiff proves those statements are “‘of and concerning’ the plaintiff.” *E.g., Great Lakes Capital Partners Ltd. v. Plain Dealer Publishing Co.*, 8th Dist. No. 91215, 2008-Ohio-6495, ¶¶ 48-49. Second, plaintiffs lack standing to sue for statements not directed at them. *See Ebbing v. Stewart*, 12th Dist. Butler No. CA2016-05-085, 2016-Ohio-7645, ¶¶ 15-16 (“it is clear that Erin is not a **real party in interest** to assert such a defamation claim. Neither the television news broadcast nor the online article mentions Erin by name.”); *Kassouf v. White*, 8th Dist. Cuyahoga No. 75446,

2000 WL 235770, at *3 (Mar. 2, 2000) (recognizing that an individual who was not a target of an alleged defamatory statement has no standing to sue); *see also* Civ.R. 17(A) (a litigant must be a **real party in interest** to properly prosecute a case); *BAC Home Loan Serv. v. McFerren*, 2013-Ohio-3228, 6 N.E.3d 51, ¶ 6 (9th Dist.) (“[T]he issue of standing, inasmuch as it is jurisdictional in nature, may be raised at any time during the pendency of the proceedings.”) (internal quotation and citation omitted). Both doctrines bar Plaintiffs from asserting their libel claims based on accusations of assault in the Protest Flyer and the Student Senate Resolution, which were directed only at non-party, Allyn D. Gibson.

The full text of the Protest Flyer makes clear that the accusation of assault is directed only at Allyn D. Gibson, not Plaintiffs:

A member of our community was assaulted by the owner of this establishment yesterday. A nineteen y/o young man was apprehended and choked by **Allyn Gibson** of Gibson’s Food Mart & Bakery. The young man, who was accompanied by 2 friends was choked until the 2 forced **Allyn** to let go. After the young man was free, **Allyn** chased him across College St. and into Tappan Square. There, **Allyn** tackled him and restrained him again until Oberlin police arrived.

(Pls.’ Trial Exhibit 263) (emphasis added.) This Court acknowledged as much throughout this litigation. For instance, in the Court’s written ruling on Defendants’ Motions for Summary Judgment, the Court stated: first, that the November 9, 2016 incident involved “three African-American Oberlin College Students . . . **and Allyn D. Gibson**”; and second, that “the flyer indicates that after the initial assault of choking by **Allyn**, a second assault occurred when **Allyn** tackled the young man and restrained him until the police arrived.” (Emphasis added) (4/22/19 Judgment Entry at 1, 9.) Further, during the hearing on Plaintiffs’ Partial Motion for Directed Verdict, Plaintiffs’ counsel stated that “the assault allegations are false . . . plaintiffs have shown that the only owners of Gibson’s Bakery in November of 2016, were Dave and Grandpa Gibson,”

to which the Court responded, “in the alleged libelous material, didn’t they clarify that with the description of Allyn, you know?” (Trial Tr., June 4, 2019, at 26:19-27:2.¹²)

Not a single witness testified during trial that they understood that the “Allyn” accused in the Protest Flyer of assaulting, choking, and chasing a young man into Tappan Square was 90-year-old Plaintiff Allyn W. Gibson. In contrast, Plaintiffs’ own witnesses understood the accusation of assault to be referring only to Allyn D. Gibson. For example, Oberlin Police Sgt. Victor Ortiz testified that the November 9, 2016 incident involved three College students and Allyn D. Gibson, not David Gibson nor Allyn W. Gibson. (Trial Tr., May 10, 2019, at 160:4-15.) Further, Michele Gross testified that she understood the accusation of assault to be directed at Allyn D. Gibson, not Allyn W. Gibson. (Trial Tr., May 14, 2019, at 111:1-25.¹³) Significantly, when Ms. Gross was asked during trial about the statement that “Allyn Gibson assaulted three black people,” the Court stated the obvious—that the statement is referring to Allyn D. Gibson, not David or Allyn W. Gibson. (Trial Tr., May 14, 2019, at 111:9-12: “*You say ‘Allyn Gibson,’ and there are two Allyn Gibsons. Might be helpful to the jury to know we’re not talking about grandpa.*”).

Because Plaintiffs did not (and could not) prove that the accusation of assault was directed at any of them, they failed to establish that the accusation was “of and concerning them.” They also thus lacked standing to bring a claim based on the alleged defamation of someone else. Therefore, Plaintiffs cannot establish their libel claims based on any accusation of assault.

For the same reasons, Plaintiffs David Gibson and Allyn W. Gibson cannot establish a libel claim based on the racism allegations. The two racism allegations that went to the jury were “of and concerning” **Gibson’s Bakery**, not Plaintiffs David Gibson and Allyn W. Gibson. (See Trial

¹² All June 4, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 6.

¹³ All May 14, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 7.

Tr., June 6, 2019, at 64:2-13 (jury charge identifying allegation that “[t]his is a *racist establishment*,” and allegation that “*Gibson’s* has a history of racial profiling and discriminatory treatment”) (emphasis added).¹⁴ Unidentified individuals may not sue for alleged defamation of a business with which they are affiliated. *E.g., Three Amigos SJJ Rest., Inc. v. CBS News Inc.*, 65 N.E.3d 35, 37-38 (N.Y. 2016) (affirming dismissal of defamation claims asserted by individual plaintiffs where “defendants’ broadcast referred only to the club and failed to include sufficient particulars of identification in order to be actionable by an individual”). Because the racism allegations were only “of and concerning” Gibson’s Bakery itself, Plaintiffs David Gibson and Allyn W. Gibson cannot establish a libel claim based on those allegations.

B. Plaintiffs failed to present sufficient evidence of publication.

1. Plaintiffs introduced insufficient evidence to show that Defendants published the Student Senate Resolution.

Plaintiffs’ libel claims based on the Student Senate Resolution also fail because they did not prove that Defendants published it. This Court stated at the summary judgment phase that “liability to respond in damages for the publication of defamation must be predicated on a **positive act**.” (Emphasis added) (4/22/19 Judgment Entry at 6) (internal citation omitted). “**Nonfeasance**,” this Court explained, “is not a predicate for liability” and “[m]ere knowledge” of what someone else does “is insufficient to support liability.” (Emphasis added) *Id.*

First, Plaintiffs presented no evidence that Oberlin College or Dean Raimondo authored, prepared, or even knew about the text of the Student Senate Resolution before the Student Senate independently circulated it to the student body. Dean Raimondo and former Oberlin College President Marvin Krislov both confirmed that they did not help draft the Student Senate Resolution

¹⁴ All June 6, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 8.

and only became aware of it when a member of the Student Senate sent them a copy after the Student Senate already passed it and emailed it to the entire student body. (Trial Tr., May 28, 2019, at 19:4-21:13¹⁵; Trial Tr., May 29, 2019, at 111:11-112:24¹⁶; Trial Tr., May 13, 2019, at 56:19-23; *see* Defs.' Trial Exhibit A-3.¹⁷) Plaintiffs presented no evidence suggesting otherwise.

Second, Plaintiffs presented no evidence of any "positive act" by Defendants in connection with the placement of the Student Senate Resolution on the Senate's locked bulletin board located in the basement of Wilder Hall. In fact, Plaintiffs presented no evidence that Defendants even knew the Student Senate Resolution was posted there. *See Cooke v. United Dairy Farmers, Inc.*, 10th Dist. Butler No. 02AP-781, 2003-Ohio-3118, ¶ 25 ("Mere knowledge of the acts of another is insufficient to support liability."). Rather, both Dean Raimondo and former President Marvin Krislov testified that they had no knowledge whatsoever that the Student Senate Resolution was posted on the Senate's locked bulletin board in Wilder Hall. (Trial Tr., May 14, 2019, at 8:21-25; Trial Tr., May 28, 2019, at 21:14-24; Trial Tr., May 29, 2019, at 129:9-13.)

Plaintiffs theorized that merely because the Student Senate Resolution was in Wilder Hall, Defendants therefore are liable for it. Attorney Lee Plakas summarized Plaintiffs' theory of Defendants' apparent "positive act":

With regard to the Student Senate Resolution, if people are using your equipment, your facilities, and using that equipment, facilities or power to defame or hurt anyone, then you have the power to say, you can't use our e-mail system for defamatory conduct.

(Trial Tr., June 5, 2019, at 87:15-19.¹⁸) But making facilities or equipment available is not proof of publishing. *See* 3 Restatement of Law 2d, Torts, Section 581, Comment b (1977) (explaining

¹⁵ All May 28, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 9.

¹⁶ All May 29, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 10.

¹⁷ Defendants' Trial Exhibit A-3 is attached hereto as Exhibit 11.

¹⁸ All June 5, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 12.

that “one who merely makes available to another equipment or facilities that he may use himself for general communications purposes” is not even a deliverer or transmitter of defamatory material); Keeton, Dobbs, Keeton & Owen, *Prosser and Keeton on the Law of Torts*, Section 113, 804 (5th ed. 1984) (“Those who supply equipment to others who use the equipment so supplied for publication of defamatory matter are not publishers.”); *see also Lunney v. Prodigy Servs. Co.*, 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”). That is particularly true for email systems, the provider of which is not a publisher as a matter of controlling federal law. *See* 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 content provider.”).¹⁹

What is more, one’s authority to remove something—or withdraw access—is not a “positive act” that can give rise to liability. *See Scott v. Hull*, 22 Ohio App.2d 141, 144-145, 259 N.E.2d 160 (3rd Dist. 1970) (finding that “failing to remove” graffiti was not a “positive act” for which liability may be imposed). And, importantly, there was no evidence that the College administration even possessed the authority or ability to remove content from the Senate’s bulletin board, which was locked and reserved solely for Senate use. Plaintiffs thus cannot establish publication based on a failure to remove the Resolution from the bulletin board in Wilder Hall, where Oberlin College students—not Defendants—placed it.

Third, even if mere nonfeasance were actionable (as discussed, it is not), Plaintiffs still could not establish their libel claims based on the Student Senate Resolution because no third-party witness testified that he or she actually read the Student Senate Resolution in Wilder Hall. Ohio law is clear: a plaintiff must identify a third party (i.e., not the plaintiff himself) who read

¹⁹ Oberlin College’s email system is an interactive computer service protected by federal law. *See* 47 U.S.C. 230(f)(2); *Delfino v. Agilent Technologies, Inc.*, 52 Cal.Rptr.3d 376, 389-390 (Cal.Ct.App.2006).

the allegedly libelous statement and understood its defamatory meaning. See *Hahn v. Kotter*, 43 Ohio St.2d 237, 243 (1975) (defamation requires a plaintiff to establish “a publication to a third person for which the defendant is responsible, [and] the recipient’s understanding of the defamatory meaning.”). The lack of any evidence that someone read the Student Senate Resolution in Wilder Hall dooms Plaintiffs’ libel claims even if Defendants could be held liable for failing to remove it.

Importantly, publication cannot be inferred from the Student Senate Resolution being posted in Wilder Hall. The decision in *Kinney v. Kroger Co.*, 146 Ohio App.3d 691, 2001-Ohio-3974, ¶ 27 (10th Dist.) is instructive on this point. There, the court held that a photocopy of the plaintiff’s bad check that was posted for several months near a cash register in a popular grocery store chain did not constitute publication, even though “members of the public might have seen it.”²⁰ As with the photocopy at issue in *Kinney*, Plaintiffs did not present any evidence that an identifiable third party read and understood the Resolution. Plaintiffs’ position here that “members of the public might have seen” the Student Senate Resolution in Wilder Hall (i.e., circumstantial evidence) is not enough.

Accordingly, because Defendants did not publish the Student Senate Resolution, Plaintiffs cannot establish their libel claims based on the Student Senate Resolution.

²⁰ See also, e.g., *Quamme v. Lancaster-Fairfield Comm. Hosp.*, 5th Dist. Fairfield No. 94-CA-33, 1995 WL 156276, at *2 (Feb. 27, 1995) (“The plaintiff must also allege publication of the statement to an identifiable third party.”); *Wyrick v. Westover Retirement Comm.*, 12th Dist. Butler No. 88-06-086, 1989 WL 21229, at *2 (Mar. 13, 1989) (in a slander claim, “[t]he trial court was not required to assume that a third party heard this statement simply because there were persons present in the dining hall when the statements were made. Quite the contrary, absent some evidence indicating that a third person did indeed hear the statement, there is no publication and therefore no actual defamation.”); *McPeck v. Leetonia Italian-Am. Club*, 174 Ohio App.3d 380, 2007-Ohio-7218, 882 N.E.2d 450, ¶ 14 (7th Dist.) (“Appellant has failed to provide proof that any written statement was published to any third party. . . . Appellant stated in his deposition that he had no knowledge that anyone, other than himself, had seen or read the notice of suspension.”).

2. Plaintiffs failed to show that Defendants delivered the Protest Flyer with reason to know that it was false.

Plaintiffs also cannot establish the publication element with respect to the Protest Flyer. Since the Protest Flyer was written by Oberlin students, Plaintiffs could not prove publication simply by showing that Dean Raimondo delivered a copy of the Protest Flyer to another person. *See* 3 Restatement of the Law 2d, Torts, Section 581, Comment b (1977); Keeton, Dobbs, Keeton & Owen, *Prosser and Keeton on the Law of Torts*, Section 113, 810-811 (5th ed. 1984). Plaintiffs also had to prove that Dean Raimondo knew or had reason to know of the existence of defamatory content in the Protest Flyer when she handed it to Jason Hawk. 3 Restatement of Law 2d, Torts, Section 581, Comment c; Keeton, Dobbs, Keeton & Owen, Section 113, 811; *accord Cubby, Inc. v. CompuServe, Inc.*, 776 F.Supp. 135, 139 (S.D.N.Y. 1991) (explaining that “vendors and distributors of defamatory publications are not liable if they neither know nor have reason to know of the defamation.”).

In this context, “reason to know” means proof that the defendant has information from which a person of reasonable intelligence would infer that the writing contained defamatory material. 3 Restatement of Law 2d, Torts, Section 581, Comment c; *see also* 1 Restatement of the Law 2d, Torts, Section 12(1) (1965). This is different than a “should know” standard and imposes no duty on the defendant to ascertain whether defamatory material exists in the writing. 1 Restatement of Law 2d, Section 12, Comment a.

Here, Plaintiffs did not present sufficient evidence to show that Dean Raimondo either knew or had reason to know of defamatory content in the Protest Flyer. Dean Raimondo testified that she only had a copy of the Protest Flyer for about two minutes before handing it to Jason Hawk, and that she was unable to read the Protest Flyer during that time, let alone ascertain

whether references to racism in the boycott literature were either factual or true.²¹ (Trial Tr., May 28, 2019, at 17:10-18:1.) A reasonable person's understanding of the law would suggest that the content of the Protest Flyer represented the personal opinion of the author. As discussed, *supra* Section II.A.1, the controlling legal authority dictates that the content was not a false statement of fact that could be verified.

Plaintiffs resort to after-the-fact emails, text messages, and opinions from members of the Oberlin community to suggest Defendants should have known that Plaintiffs were not racist. Indeed, in his opening and closing statements during the punitive damages phase of trial, Attorney Lee Plakas published a Power Point to the jury identifying every such email, text message, and opinion.²² But none of these emails, text messages, and personal opinions address what Dean Raimondo **had reason to know** when she delivered a copy of the Protest Flyer to Jason Hawk on November 10, 2016. *See* 1 Restatement of Law 2d, Section 12, Comment a.

Nor would it matter if Defendants made available equipment or facilities for students to use to publish the Protest Flyer. As discussed above, this sort of assistance does not even qualify as delivering or transmitting defamatory material, much less publishing it. *See* 3 Restatement, Section 581, Comment b; Keeton, Dobbs, Keeton & Owen, Section 113, 804.

Since Plaintiffs cannot show that Defendants delivered the Protest Flyer with reason to know of any defamatory material, their libel claims with respect to the Protest Flyer fail as a matter of law.

²¹ Plaintiffs presented testimony from Clarence ("Trey") James—a Bakery employee—that he witnessed Dean Raimondo holding a stack of Protest Flyers on November 10, 2016 and that she handed about half of the stack to a student. (Trial Tr., May 14, 2019, at 178:22-179:7.) Notwithstanding Defendants' attacks on Mr. James' credibility, such activity fails to satisfy the publication element of libel, as discussed above.

²² The relevant Power Point slides are attached hereto as Exhibit 13.

C. Plaintiffs failed to present sufficient evidence that Defendants acted with the constitutionally required degree of fault.

Defendants are separately entitled to JNOV on Plaintiffs' libel claims because the jury determined Defendants did not libel Plaintiffs—who are public or limited-purpose public figures—with actual malice. At the very least, there was insufficient evidence that Defendants libeled Plaintiffs with negligence.

1. Plaintiffs are public figures or limited-purpose public figures, and the jury's finding that Defendants did not commit libel with actual malice dooms Plaintiffs' libel claims.

The jury's finding at the liability phase of trial that Defendants did not libel Plaintiffs with constitutional actual malice is yet another independent reason for which Defendants are entitled to JNOV on Plaintiffs' libel claims. Plaintiffs' status as public or limited-purpose public figures makes the lack of constitutional actual malice dispositive.

Both public figures and limited-purpose public figures “must show by clear and convincing evidence that the statements were made with **actual malice**, that is, with knowledge that the statements were false or with reckless disregard of whether they were false or not.” (Emphasis added) *Daubenmire v. Sommers*, 156 Ohio App.3d 322, 2004-Ohio-914, 805 N.E.2d 571, ¶ 90 (12th Dist.), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964). A plaintiff is a public figure if he or she has “general fame or notoriety in the community.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352 (1974). And a plaintiff becomes a limited-purpose public figure when he “**voluntarily injects himself or is drawn into a particular public controversy**, thereby becoming a public figure for a limited range of issues.” (Emphasis added) *Gilbert v. WNIR 100 FM*, 142 Ohio App.3d 725, 738, 756 N.E.2d 1263 (9th Dist. 2001); *see also Daubenmire*, 2004-Ohio-914, at ¶ 89 (one is a limited-purpose public figure if there is a public controversy, the

plaintiff played a sufficiently central role in the controversy, and the alleged defamation was germane to the plaintiff's involvement in that controversy).

Here, Plaintiff Gibson Bros., Inc. is a public figure because it has general fame in Oberlin, Ohio. As Plaintiffs touted during trial, Gibson's Bakery has been in business for over 100 years; and during this time, it has achieved fame in the Oberlin community. As a result, the Court should find that Plaintiff Gibson Bros., Inc. itself is a public figure. *Gertz*, 418 U.S. at 351-352.

At the very least, however, all three Plaintiffs are limited-purpose public figures because they voluntarily injected themselves and were drawn into a public controversy—regarding the treatment of black customers—during and after the November 9, 2016 incident when a Bakery employee, Allyn D. Gibson, carried out the Bakery's policy of chasing and detaining suspected shoplifters. The police arrived within minutes, took statements from Bakery employees only, and then arrested the three black students. Police body cam footage shows a recognition by Plaintiff David Gibson that the incident drew him and his store into a public controversy: **just moments after the incident took place, David Gibson muttered "[the students] are going to trash us."**²³ In fact, shortly after the police left the Bakery on November 9, 2016, students warned David Gibson that they would protest the way the Bakery handled the student suspected of shoplifting and attempting to purchase wine with a fake ID. Plaintiffs also welcomed the public's ardent support via a Facebook page entitled "Gibson's Bakery Support Page" that resulted in counter protestors coming to the Bakery's defense within days of the November 9, 2016 incident. Importantly, this public controversy over the Bakery's treatment of black customers existed well

²³ The Oberlin Police body cam video is publicly available on YouTube at https://www.youtube.com/watch?time_continue=922&v=M7n8f8sLTDE. The relevant portion of the video begins at the 15:20 mark.

before the ensuing protests, and controversy over how the Bakery treats its patrons dates back to at least the 1990s. *See supra* footnote 10.

The media frenzy that followed shows the magnitude of the controversy. During the 21-months of this litigation, countless media outlets have published interviews, reports, and opinion pieces related to this lawsuit, with the full cooperation of Plaintiffs.²⁴ Indeed, the leading local newspaper, the *Chronicle-Telegram*, sent a reporter every single day throughout trial to report daily on the trial proceedings. Even Plaintiffs' lead counsel, Lee Plakas, told the jury that this case was the subject of substantial media scrutiny, with reporting and opinion pieces published in outlets such as the *The New York Times*, *The Washington Post*, Fox News, CNN, and *The Wall Street Journal*, among others. (Trial Tr., June 12, 2019, at 14:10-16.²⁵) Attorney Plakas even described to the jury their role in this controversial case—that they will forevermore “be known as the Gibson Bakery jury or a Gibson Bakery juror.” (Trial Tr., June 13, 2019, at 53:13-16.²⁶) This extensive media coverage would not exist, nor would the jurors be forever associated with this lawsuit, unless this case were in fact about a “**particular public controversy**,” in which Plaintiffs both voluntarily injected themselves—through their chase and detain policy, public outreach to supporters, and outreach to news media outlets—and into which Plaintiffs were drawn. (Emphasis added) *Gilbert*, 142 Ohio App.3d at 738. Plaintiffs are, at a minimum, limited-purpose public figures.

²⁴ The Court prohibited Defendants from discovering Plaintiffs' counsel's communications with the news media, though ordered Plaintiffs to identify to Defendants each of the media outlets with which Plaintiffs' counsel communicated. *See* April 18, 2018 Entry and Order. In a letter to Defendants following the Court's order, Plaintiffs' counsel stated that they had been in communication with the following media outlets: *Legal Insurrection* blog; *Associated Press*; *The Oberlin News Tribune*; *The Chronicle-Telegram*; and *The Oberlin Review*.

²⁵ All June 12, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 14.

²⁶ All June 13, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 15.

At summary judgment, this Court should have found Plaintiffs to be limited-purpose public figures. It did not, which was error. The Court should now correct that error and find that Plaintiffs are limited-purpose public figures, which requires dismissal of their libel claims. On June 7, 2019, the jury specified on their verdict forms that Defendants did not act with actual malice:

B. Did David R. Gibson prove by clear and convincing evidence that Oberlin College acted with actual malice in libeling him?

Please circle one: YES or NO

(Executed Jury Interrogatory #1 – David Gibson’s Libel Claim Against Oberlin College.)²⁷

B. Did Allyn W. Gibson prove by clear and convincing evidence that Oberlin College acted with actual malice in libeling him?

Please circle one: YES or NO

(Executed Jury Interrogatory #1 – Allyn W. Gibson’s Libel Claim Against Oberlin College.)

B. Did Gibson Bros. Inc. prove by clear and convincing evidence that Oberlin College acted with actual malice in defaming it?

Please circle one: YES or NO

(Executed Jury Interrogatory #1 – Gibson Bros., Inc.’s Libel Claim Against Oberlin College.)

As stated above, Plaintiffs—as public or limited-purpose public figures—were required to show that Defendants acted with actual malice to prevail on their libel claims. Accordingly, because Plaintiffs failed to meet this burden during the liability phase of trial, the Court should enter judgment for Defendants on Plaintiffs’ libel claims.

²⁷ All of the jury’s executed interrogatories for the liability phase of trial are attached hereto as Exhibit 16. The jury similarly answered “NO” in each of the libel interrogatories regarding Dean Raimondo.

2. Plaintiffs' libel claims also fail under a constitutional negligence standard of fault.

Even if Plaintiffs were not public or limited-purpose public figures, and **even if** Defendants were a publisher of one or both of the Protest Flyer and the Student Senate Resolution, the First Amendment and Ohio law still require Plaintiffs to prove by clear and convincing evidence that Defendants failed to act reasonably in attempting to discover the truth or falsity of the Protest Flyer and the Student Senate Resolution. *See Lansdowne v. Beacon Journal Pub. Co.*, 32 Ohio St.3d 176, 180-181 (1987). Plaintiffs did not meet that burden at trial.

As to the Student Senate Resolution, Plaintiffs could not show that Defendants failed to act reasonably in attempting to discover its truth or falsity because it is undisputed that Defendants first became aware of the Student Senate Resolution **after the Oberlin College Student Senate published the Resolution to the entire student body.** *See supra* Section II.B.1. Indeed, there is no evidence that Defendants even knew a copy of the Student Senate Resolution was hanging in the Student Senate's locked bulletin board in the basement of Wilder Hall. *Id.* Under the First Amendment, **fault is assessed at the time of publication.** *New York Times Co. v. Sullivan*, 376 U.S. 254, 286 (1964) (statement irrelevant where it did "not indicate malice at the time of the publication"); *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."). Because Defendants were unaware of the Student Senate Resolution when it was published, they could not have acted unreasonably in attempting to discover its truth or falsity, even if the allegations of racism were verifiable (which, as explained *supra* in Section II.A.1, they were not). Accordingly, Plaintiffs' libel claims based on the Student Senate Resolution fail even under a negligence standard.

The timing of publication also dooms Plaintiffs' efforts to establish fault as to the Protest Flyer, even under the fault standard that would apply to the primary publisher of that Flyer (which

Defendants were not). As discussed, Dean Raimondo was unable to read the Protest Flyer before she delivered it to Jason Hawk. *See supra* Section II.B.2. And after-the-fact emails, text messages, and personal opinions from members of the Oberlin community were unknown to Dean Raimondo at the time she delivered the Protest Flyer to Jason Hawk. *Id.*

Indeed, emails, text messages, and any other conduct that post-dates Dean Raimondo's alleged publication of the Protest Flyer are wholly irrelevant to the constitutional fault analysis—i.e., whether Defendants acted unreasonably in attempting to discover the truth or falsity of the Protest Flyer **at the time of publication**. First, as discussed, courts find it “self-evident that information **acquired after** the publication of defamatory material cannot be relevant to the publisher's state of mind . . . **at the time of publication**.” (Emphasis added) *Herbert v. Lando*, 781 F.2d 298, 306 (2d Cir. 1986) (holding that evidence unavailable to publisher could not show that publisher acted with actual malice at the time of publication); *compare Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 512 (1984) (later efforts by publisher to rationalize earlier mistake do not show an awareness of inaccuracy at the time of publication). Second, a plaintiff cannot circumvent the required fault standard “by pooling all of the information arguably within the knowledge of various employees and imputing all of that knowledge to the corporate defendant” *Reed v. Northwestern Pub. Co.*, 530 N.E.2d 474, 484 (Ill. 1988). Thus, even if they were not public or limited-purpose public figures, the First Amendment would require Plaintiffs to prove, at the very least, that Dean Raimondo herself acted unreasonably in attempting to discover the truth or falsity of the Protest Flyer in the two minutes she had it before handing it to Jason Hawk.

But they were unable to make even that showing. Dean Raimondo did not know (nor could she have known) of the community members' opinions, let alone the witnesses' trial testimony,

when she allegedly handed the Protest Flyer to another on November 10, 2016. Put differently, a reasonable person under like circumstances—i.e., monitoring a protest—would not be able to ascertain these community members’ opinions in the two minutes before the Protest Flyer was handed to Jason Hawk. And because whether someone is racist is a matter of opinion, Dean Raimondo would not be able to verify the truth of the Protest Flyer even if she had more than two minutes to do so. Simply put, there were no reasonable means by which Dean Raimondo could have discovered the truth or falsity of the Protest Flyer. In fact, Dean Raimondo testified during trial—over two years after the November 2016 protests—that she still has not formed an opinion as to the truth of the allegations in the Protest Flyer. (*See* Trial Tr., May 13, 2019, at 43:24-44:6, 47:4-6, 47:23-25.) The Court should therefore enter judgment for Defendants on Plaintiffs’ libel claims.

III. Dean Raimondo is entitled to JNOV on Plaintiff Gibson Bros., Inc.’s tortious interference with business relationships claim.

Dean Raimondo is entitled to JNOV on Plaintiff Gibson Bros., Inc.’s tortious interference claim because (i) the business relationship at issue was between the College and Gibson’s Bakery, and Dean Raimondo—as an employee of the College—cannot interfere with the College’s relationships; and (ii) any purported interference was justified.

A. Dean Raimondo cannot be liable, as a matter of law, for interfering with the College’s business relationship with Gibson’s Bakery.

Plaintiff Gibson Bros., Inc. claimed that Defendants Oberlin College and Dean Raimondo interfered with its business relationship with Bon Appetit. Bon Appetit, however, is an agent of Oberlin College that purchases food **for and on behalf of** Oberlin College. While the jury’s verdict for Oberlin College on this claim is consistent with settled law holding that a party cannot

tortiously interfere with its own business relationship, the verdict against Dean Raimondo is not.²⁸ The same legal principles that insulate Oberlin College from liability for tortious interference also bar the claim against Dean Raimondo. As such, the Court should enter judgment for Dean Raimondo on Gibson Bros., Inc.’s tortious interference claim.

The law is clear. Tortious interference must be by someone who is not a party to the contract or relationship at issue. *Boyd v. Archdiocese of Cincinnati*, 2d Dist. Montgomery No. 25950, 2015-Ohio-1394, ¶ 31, citing *Condon v. Body, Vickers & Daniels*, 99 Ohio App.3d 12, 22, 649 N.E.2d 1259 (8th Dist. 1994).²⁹ Two points about this rule are critical here. First, any contract or relationship entered into by an agent is a contract or relationship of the principal because, as a matter of law, “[o]ne of the most important features of the agency relationship is that the **principal itself becomes a party** to contracts that are made on its behalf by the agent.” (Emphasis in original) *Willoughby Hills Dev. & Distribution, Inc. v. Testa*, 120 N.E.3d 836, 2018-Ohio-4488, ¶ 27; see also *Cincinnati Golf Mgt., Inc. v. Testa*, 132 Ohio St.3d 299, 2012-Ohio-2846, ¶ 23, citing 2 Restatement of the Law 3d, Agency, Sections 6.01, 6.02, and 6.03 (2006). Second, a principal’s employee cannot interfere with a principal’s contract or relationship because, as a matter of law, the employee is a party to the contract or relationship. See, e.g., *Condon*, 99 Ohio App.3d at 22 (holding that company employee is “not a third party subject to liability for tortiously interfering with a contract to which the Firm was a party”). These two points doom Gibson Bros., Inc.’s claim against Dean Raimondo.

²⁸ Importantly, the Parties entered into a stipulation during trial, whereby Dean Raimondo acted on behalf of Oberlin College at all relevant times. (See Trial Tr., June 6, 2019, at 41:17-24.)

²⁹ See also, e.g., *Dolan v. Glouster*, 173 Ohio App.3d 617, 2007-Ohio-6275, 879 N.E.3d 838, ¶ 35 (4th Dist.), citing *Castle Hill Holdings, LLC v. AI Hut, Inc.*, 8th Dist. Cuyahoga No. 86442, 2006-Ohio-1353, ¶ 47 (“A [party] cannot tortiously interfere with [its] own business relationship.”); *Allstate Insurance Co. v. Papanek*, S.D. Ohio No. 3:15-cv-240, 2018 WL 3537140, at *13 (July 23, 2018) (applying Ohio law) (“[T]o state a claim for tortious interference, the alleged wrongdoer must be a ‘third-party to the alleged business relationship.’”).

First, trial testimony showed that Bon Appetit acted as an agent of Oberlin College and on behalf of Oberlin College. Plaintiffs' own witness, Michele Gross—the Director of Dining and Operations for Oberlin College during the relevant period at issue—explained this agency relationship:

- Q: . . . [Y]ou have an understanding of the relationship between Bon Appetit and Oberlin College, correct?
A: Yes.
Q: In fact, that was a relationship that you were managing, correct?
A: Correct.
Q: Is there a written agreement between the parties?
A: Yes.
Q: And under that agreement, do you understand that Bon Appetit became Oberlin College's dining services agent in approximately the year 2000?
A: Correct.

(Trial Tr., May 14, 2019, at 96:7-20.)

Ms. Gross also testified that the Management Renewal Agreement, which she read into the record, established an express agency relationship between Bon Appetit and Oberlin College:

- Q: I'd like for you to read paragraph 1.2 into the record and to the jury, please.
A: 'Agency relationship. Bon Appetit shall act as an agent for Oberlin in the management of the food service operation at the following locations: Stevenson Hall, Baskin Hall, Lord-Saunders Hall, Wilder Hall and such other locations as mutually agreed to by the parties. Bon Appetit shall purchase food and supplies in Bon Appetit's name and shall pay the invoices. As principal, Oberlin may supervise Bon Appetit's daily operation of the food service operations, including working conditions for the food service employees and safety, sanitation and maintenance of the premises.'
Q: All right. So is this document what you understand to be definitive of what the relationship between Bon Appetit and Oberlin College was?
A: Yes.

- Q: As you understood the relationship between Oberlin College and Bon Appetit --
A: Yes.
Q: -- Oberlin College was the principal?
A: Right.
Q: Bon Appetit was the agent?

A: I guess, yes.
Q: All right. So the agent does what the principal requires?
A: Within reason, yes, I'd say.
Q: So if Oberlin College wanted only chocolate cake, the agent would go get only chocolate cake, correct?
A: I guess that's true.

(*Id.* at 97:20-98:11, 98:22-99:10; *see* Management Renewal Agreement, Pls.' Trial Exhibit 367.³⁰)

Thereafter, Ms. Gross testified that Oberlin College, as the principal, pays for all of the food products purchased by its agent, Bon Appetit, from Gibson's Bakery:

Q: Now, anything that is bought by Bon Appetit at Gibson's Bakery or anywhere else, Oberlin College is obligated to pay for, correct?
A: Correct. We reimburse them.
Q: Right. So the principal in the relationship was required to pay anything that the agent bought?
A: Correct.

(Trial Tr., May 14, 2019, at 103:20-104:1.)

Finally, Ms. Gross testified that, to her knowledge, the only relationship that Bon Appetit had with Gibson's Bakery was for the benefit of Oberlin College—or, put differently, Bon Appetit did not purchase food items from Gibson's Bakery for any entity or person other than Oberlin College:

Q: Other than the relationship that Bon Appetit has with Gibson's Bakery for the benefit of Oberlin College, you are aware of no relationship that Bon Appetit has with Gibson's Bakery?
A: I'm not aware of one.

(*Id.* at 164:22-165:1.)

Plaintiffs presented no evidence otherwise. And the express agency relationship described above makes Plaintiffs' authorities inapposite. *E.g.*, *Cincinnati Golf Mgt.*, 2012-Ohio-2846, ¶ 25 (no agency relationship existed because "the contract between the parties expressly disclaims

³⁰ Plaintiffs' Trial Exhibit 367 is attached hereto as Exhibit 17.

agency”); *Willoughby Hills Dev.*, 2018-Ohio-4488, ¶ 29 (no agency relationship existed because contract specified that contractor was “not authorized to act as an agent”).

Indeed, even Plaintiffs’ counsel repeatedly referred to the business relationship at issue as one between Gibson’s Bakery and Oberlin College, and **not** as one between Gibson’s Bakery and Bon Appetit:

- During cross-examination of Dean Raimondo, Attorney Plakas asked whether she “canceled the one-hundred-year-old business relationship with the Gibsons.” (Trial Tr., May 14, 2019, at 72:2-4.)
- During direct examination of David Gibson, Attorney Plakas asked Mr. Gibson about the “century-long business relationship” and about the “over hundred-year relationship.” (Trial Tr., May 21, 2019, at 180:24, 207:2-3.)
- Attorney Plakas also said during the direct examination of David Gibson the following: “This relationship in serving Oberlin College, we’ve heard, goes back a century.” (*Id.* at 212:14-15.)
- During cross-examination of College Vice President for Communications, Ben Jones, Attorney Plakas asked if Mr. Jones thought it was okay “for the college to initiate or support a boycott which terminates a relationship with a hundred-year-old loyal business partner.” (Trial Tr., May 15, 2019, at 62:19-22.³¹)
- And finally, during his closing argument at the liability phase of trial, Attorney Plakas said “[i]s that a real reason to blow up a 134-year old business relationship?” (Trial Tr., June 5, 2019, at 22:21-23.)³²

These admissions confirm that the business relationship at issue was the one that lasted for about a century between Gibson’s Bakery and the College. *See, e.g., Hake v. Wiedemann Brewing Co.*, 23 Ohio St.2d 65, 68, 262 N.E.2d 703 (1970) (explaining that a lawyer’s statements during trial may be judicial admissions). This fact is further highlighted by the fact that Bon Appetit has only served as the College’s dining services agent for **less than two decades**. In the year 2000, Bon

³¹ All May 15, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 18.

³² In the same vein, Plaintiffs’ counsel’s publicly distributed Frequently Asked Questions (“FAQs”) ask “[d]id Oberlin College interfere with a 100-year business relationship . . . ?” *See* FAQs at Table of Contents, publicly available at <http://www.kwgd.com/uploads/faqs-re-gibson-s-bakery-v.pdf>.

Appetit replaced Marriott, which served the College as its dining services agent for 15 to 20 years prior to Bon Appetit. (Trial Tr., May 14, 2019, at 77:23-78:3.) Put differently, regardless which entity served as the College's dining services agent—Bon Appetit, Marriott, or otherwise—the business relationship was between the College and Gibson's Bakery.

Because Bon Appetit was an agent of Oberlin College and acted on behalf of Oberlin College, all of Bon Appetit's actions—and relationships—are imputed to Oberlin College. In other words, when Bon Appetit conducted business and purchased food from Gibson's Bakery, legally, it was as though Oberlin College made those purchases itself. For this reason, the claim against Dean Raimondo is barred. As discussed above, an employee cannot tortiously interfere with her principal's business relationships because, as a matter of law, she is part of those relationships. *See Condon*, 99 Ohio App.3d at 22. Dean Raimondo, as the Oberlin College employee responsible for overseeing campus dining services, thus cannot tortiously interfere with any business relationship the College may have—including its relationship with Gibson's Bakery. The Court should therefore enter judgment in favor of Dean Raimondo on this claim.

B. Even if there were a business relationship between Bon Appetit and Gibson's Bakery, the temporary suspension of orders was justified.

Even if a defendant's alleged interference causes damages to be suffered, "that interference does not constitute a tort if the interference is justified." *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 176, 707 N.E.2d 853 (1998). Here, Defendants' alleged interference was justified for numerous reasons. First, Bon Appetit is the agent of the College, meaning the College could instruct Bon Appetit to do as it requests. *See supra*. Second, neither the College nor Bon Appetit were required to continue placing orders for food products from Gibson's Bakery. (See Trial Tr., May 14, 2019, at 104:2-12, 105:22-25.) Third, Defendants' decision to temporarily suspend orders was the result of legitimate business and safety concerns and the Bakery suing

Defendants. (*See* Trial Tr., May 28, 2019, at 115:8-16; Defs.' Trial Exhibit A-2³³; Trial Tr., May 29, 2019, at 141:21-142:5; Pls.' Trial Exhibit 217.³⁴)

For this independent reason, the Court should enter judgment for Dean Raimondo.

IV. Oberlin College is entitled to JNOV on David Gibson's and Allyn W. Gibson's IIED claims.

The Court also should enter judgment for Oberlin College on Plaintiffs David and Allyn W. Gibson's intentional infliction of emotional distress ("IIED") claim. When asserting an IIED claim, a plaintiff must prove the following elements:

(1) the defendant intended to cause emotional distress, or knew or should have known his actions would result in serious emotional distress; (2) the defendant's conduct was so extreme and outrageous that it went beyond all possible bounds of decency, and can be considered completely intolerable in a civilized community; (3) the defendant's actions proximately caused psychic injury to the plaintiff; and (4) the plaintiff suffered serious mental anguish of the nature no reasonable [person] could be expected to endure.

Teodecki v. Litchfield Twp., 2015-Ohio-2309, 38 N.E.3d 355, ¶ 28 (9th Dist.). The jury correctly found for Dean Raimondo on Plaintiffs' IIED claim, so no conduct by Dean Raimondo may be considered when determining whether Plaintiffs presented sufficient evidence to establish an IIED claim against Oberlin College. Because Plaintiffs failed to present sufficient evidence on at least the second and fourth elements to establish a claim against Oberlin College, the Court should enter a judgment in favor of Oberlin College on Plaintiffs' IIED claim.

A. Plaintiffs did not identify any extreme and outrageous conduct by Oberlin College that is utterly intolerable in a civilized society.

Plaintiffs' derivative IIED claim was based on Oberlin College's allegedly libelous conduct (i.e., its alleged publication of the Protest Flyer and the Student Senate Resolution). As a threshold matter, this derivative claim fails because Plaintiffs' libel claims fail as a matter of law. *See supra*

³³ Defendants' Trial Exhibit A-2 is attached hereto as Exhibit 19.

³⁴ Plaintiffs' Trial Exhibit 217 is attached hereto as Exhibit 20.

Section II; *Prior v. Mukaskey*, No. 3:08CV994, 2008 WL 5076821, at *3 (N.D. Ohio Nov. 21, 2008), quoting *Ferreri v. Plain Dealer Publ'g Co.*, 142 Ohio App.3d 629, 644, 756 N.E.2d 712 (2001) (“[w]hen a plaintiff bases a claim for [IIED] on allegedly defamatory statements, dismissal of the defamation claim requires dismissal of the emotional distress claim.”); *Teodecki*, 2015-Ohio-2309, at ¶¶ 29, 31 (affirming trial court decision to grant summary judgment because IIED claim was derivative of breach of contract claim). Because there is no underlying liability for libel, there can be no derivative liability for IIED.

Yet even if their IIED claim were not purely derivative, Plaintiffs introduced insufficient evidence of “extreme and outrageous conduct,” which must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Howkins v. Walsh Jesuit High School*, 9th Dist. Summit No. 26438, 2013-Ohio-917, ¶ 30. Importantly, conduct that is merely tortious, malicious, or criminal is insufficient to establish this tort, even when such conduct would justify an award of punitive damages for another tort. *Reamsnyder v. Jaskolsky*, 10 Ohio St. 3d 150, 153, 462 N.E.2d 392 (1984); see *Brown v. Denny*, 72 Ohio App.3d 417, 423, 594 N.E.2d 1008 (1991) (“Only the most extreme wrongs, which do gross violence to the norms of a civilized society, will rise to the level of outrageous conduct.”). Thus,

[L]iability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where someone’s feelings are hurt. There must still be freedom to express an unflattering opinion

Yeager v. Local Union 20, Teamsters, Chauffers, Warehousemen, & Helpers of Am., 6 Ohio St.3d 369, 375, 453 N.E.2d 666 (1983). At least one Ohio appellate court has held that, while accusing

another of racism may be construed as “childish and unprofessional, **it does not amount to extreme and outrageous conduct.**” (Emphasis added) *Lennon v. Cuyahoga Cnty. Juvenile Court*, 8th Dist. Cuyahoga No. 86651, 2006-Ohio-2587, ¶ 23.

Adhering to this high standard is crucial when, as here, an IIED claim is based on speech. First Amendment protections forbid a “highly malleable standard” for outrageousness, which would impermissibly “allow a jury to impose liability on the basis of the jurors’ tastes or views, or perhaps on the basis of their dislike of a particular expression.” *Snyder v. Phelps*, 562 U.S. 443, 458 (2011)³⁵ (internal quotation omitted). In this regard, courts must be cautiously aware that juries are “unlikely to be neutral with respect to the content of the speech,” which could pose “a real danger of becoming an instrument for the suppression of vehement, caustic, and sometimes unpleasant expression.” *Id.* “[S]uch a risk is unacceptable,” as “in public debate we must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.” *Id.*

Here, Plaintiffs failed to present sufficient evidence to transform the alleged publication of the Protest Flyer and the Student Senate Resolution into “extreme and outrageous conduct.” And even if Plaintiffs could rely here on the College’s temporary suspension of orders from Gibson’s Bakery that the jury found was proper, Plaintiffs presented insufficient evidence to transform that

³⁵ The facts in *Snyder v. Phelps* are important for analogy purposes here. In *Snyder*, the defendants were members of the Westboro Baptist Church, which notoriously “has picketed military funerals to communicate its belief that God hates the United States for its tolerance of homosexuality.” *Snyder* at syllabus. In the *Snyder* lawsuit, numerous members of the Westboro Baptist Church “traveled to Maryland to picket the funeral of Marine Lance Corporal Matthew Snyder, who was killed in Iraq in the line of duty.” *Id.* The defendants “peacefully displayed their signs,” which included hateful and repugnant statements, such as “Thank God for Dead Soldiers,” “Fags Doom Nations,” “America is Doomed,” “Priests Rape Boys,” and “You’re Going to Hell.” *Id.* As here, a jury held the Westboro Baptist Church defendants liable for IIED for millions of dollars of compensatory and punitive damages. *Id.* Yet, the Supreme Court of the United States overturned the jury’s verdict, holding that the freedoms under the First Amendment protected defendants’ from tort liability for their vulgar speech. *Id.*

reasoned decision into “extreme and outrageous conduct.” Further, Plaintiffs cannot rely on internal emails and text messages between College employees, as Plaintiffs first became aware of these emails and text messages **after** they filed their lawsuit and as a result of discovery. (*See* Trial Tr., May 23, 2019, at 62:22-64:15.³⁶) Regardless of whether Plaintiffs’ IIED claims are purely derivative, the claims fail because Plaintiffs presented insufficient evidence that anyone at Oberlin College engaged in conduct that could exceed the towering threshold of “extreme and outrageous.”

B. Plaintiffs did not present sufficient evidence of any serious mental anguish.

Plaintiffs’ IIED claims against Oberlin College also fail because Plaintiffs introduced insufficient evidence to establish the fourth element of their claims. The term “serious emotional distress” only applies to an “emotional injury that is both **severe and debilitating**, causing a reasonable person, normally constituted, to be unable to cope adequately with the mental distress engendered by the circumstances of the case.” (Emphasis added) *Haefka v. W.W. Extended Care*, 9th Dist. Lorain No. 01CA007863, 2001 WL 1509200, at *3 (Nov. 28, 2001). “[A] court may decide whether . . . the emotional distress is serious as a matter of law.” *Union Federal Sav. Bank v. Hale*, 9th Dist. Summit Nos. 16209, 16211, 1993 WL 488399, at *5 (Nov. 17, 1993), citing *Paugh v. Hanks*, 6 Ohio St.3d 72, 74 (1983).

As a threshold matter, the Court’s May 31, 2018 Order undercuts Plaintiffs’ claim. There, the Court ruled that—following an *in camera* review of Plaintiffs’ medical records—none of those records are “causally or historically” related to Plaintiffs’ IIED claim so as to be discoverable by Defendants. (Order dated May 31, 2018.) In particular, the Court’s ruling stated as follows:

Pursuant to this court’s order dated April 18, 2018, the court has reviewed in camera the medical records provided by Plaintiffs David Gibson and Allyn Gibson for the relevant five year period. The court has reviewed the medical records **for any**

³⁶ All May 23, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 21.

information which would causally or historically relate to the plaintiffs' claims for intentional infliction of emotional distress.

Upon review thereof the court finds that none of the records before it relate to the plaintiffs' claims for intentional infliction of emotional distress such that would exempt them from the physician/patient privilege. Finding that none of these records are discoverable, the defendants' motion to compel signed medical authorizations is hereby denied.

(Emphasis added) (*Id.*) Thus, Plaintiffs were required, but failed, to overcome this high hurdle of seeking to prove a "severe and debilitating" emotional injury without any medical evidence.

Not surprisingly then, Plaintiffs did not present any evidence of a "severe and debilitating" emotional injury. For example, Plaintiff Allyn W. Gibson testified that his mental health is the same now as it was before the fall. (Trial Tr., May 16, 2019, at 45:1-19.³⁷) Similarly, Lorna Gibson—the wife of Plaintiff David Gibson and daughter-in-law of Allyn W. Gibson—testified that, as to Allyn W. Gibson's mental state, he is "doing well now." (Trial Tr., May 15, 2019, at 157:2-12.) Further, Lorna Gibson testified that, following the protests, David Gibson socialized less with friends, ate less, and felt ashamed and embarrassed. (*Id.* at 149:16-151:7.) But this—and any other similar testimony—is not sufficient evidence that David Gibson suffered from a "severe and debilitating" emotional injury. Compare *Thibodeaux v. B E & K Constr. Co.*, 4th Dist. Ross No. 04CA2761, 2005-Ohio-66, ¶ 31 (evidence of stress, humiliation, embarrassment, loss of self-esteem, a lowered resistance causing physical illness, and missing work was insufficient to constitute a "severe and debilitating" emotional injury); *Powell v. Grant Med. Ctr.*, 148 Ohio App.3d 1, 2002-Ohio-443, 771 N.E.2d 874, ¶ 17 (10th Dist.) (feeling shocked, upset, angry, guilty, sad, empty, lost, grief, uncertainty, and inability to eat and sleep, and experiencing nightmares was insufficient to constitute a "severe and debilitating" emotional injury); *Oswald v. Fresh Mark/Sugardale, Inc.*, 5th Dist. Stark No. CA-8906, 1992 WL 330282, at *4 (Nov. 9, 1992)

³⁷ All May 16, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 22.

(Plaintiff's nervous condition, inability to eat or sleep for several months, and inability to function normally with his family was not "severe and debilitating").

For this reason, too, the Court should enter judgment for Oberlin College on Plaintiffs' IIED claim.

V. Defendants are entitled to JNOV on Plaintiffs' punitive damages verdict.

A. The jury's finding at the liability phase of trial that Defendants did not act with constitutional actual malice bars any claim for punitive damages based on the alleged libel.

No punitive damages could be awarded against Defendants based on any alleged libel because the jury found at the liability phase of trial that Defendants did not act with constitutional actual malice.³⁸ This Court ruled before trial that the alleged defamatory statements in the Protest Flyer and the Student Senate Resolution involved matters of public concern. (*See* 4/22/19 Judgment Entry at 12: "*Here, though Plaintiffs are private figures, the nature of the controversy – allegations of racial profiling and discrimination – are matters of public concern.*") As a result, Plaintiffs could not recover **presumed or punitive damages** unless they proved by clear and convincing evidence that Defendants committed libel with constitutional actual malice. *Gilbert v. WNIR 100 FM*, 142 Ohio App.3d 725, 744, 756 N.E.2d 1263 (9th Dist. 2001).³⁹

Here, the jury determined during the liability phase of trial that Defendants did not libel Plaintiffs with constitutional actual malice. The Court gave the jury two interrogatories of

³⁸ By constitutional actual malice, Defendants mean that Plaintiffs "must show that the defamatory statement was made with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Bertsch v. Comm. Workers of Am., Local 4302*, 101 Ohio App.3d 186, 190, 655 N.E.2d 243 (9th Dist.), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964).

³⁹ *Accord, e.g., Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 774-775 (1986); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349-350 (1974); *Gosden v. Louis*, 116 Ohio App.3d 195, 213, 687 N.E.2d 481 (9th Dist. 1996); *Woods v. Capital University*, 10th Dist. Franklin No. 09AP-166., 2009-Ohio-5672, ¶ 35; *Echols v. Lawton*, 913 F.3d 1313, 1321 (11th Cir. 2019); *Chandok v. Klessig*, 632 F.3d 803, 814 (2d Cir. 2011); *Brokers' Choice of America, Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1109 (10th Cir. 2017); *Moore v. Vislosky*, 240 Fed.Appx. 457, 465 (3d Cir. 2007); *Lewinski's, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 132 (1st Cir. 1997).

relevance. The first asked whether Plaintiffs proved by clear and convincing evidence that Defendants libeled Plaintiffs with “actual malice,” which the jury instructions defined as “mak[ing] a false statement either with knowledge that it is false or with reckless disregard of whether it is false or not.” (Jury Instruction p. 10.)⁴⁰ A “YES” would have ended the inquiry as to libel. A “NO” required the jury to answer a second question—whether Plaintiffs proved by clear and convincing evidence that Defendants negligently libeled Plaintiffs. As to all three Plaintiffs, the jury answered the first question “NO” and the second question “YES.” For instance:

B. Did David R. Gibson prove by clear and convincing evidence that Oberlin College acted with actual malice in libeling him?

Please circle one: YES or NO

C. Did David R. Gibson prove by clear and convincing evidence that Oberlin College acted with negligence in libeling him?

Please circle one: YES or NO

(Executed Jury Interrogatory #1 – David R. Gibson’s Libel Claim Against Oberlin College.) These findings not only should have ended the jury’s consideration of constitutional actual malice, but

⁴⁰ Thus, the “actual malice” that the jury was required to consider was constitutional actual malice, as defined by the U.S. Supreme Court, the Ninth District Court of Appeals, and numerous other state and federal appellate courts. *See supra* footnotes 38-39. Plaintiffs never objected to the Court’s definition of constitutional actual malice. Nor did Plaintiffs object to the Court including constitutional actual malice in its jury instructions or in the jury interrogatories during the liability phase of trial. In fact, in Plaintiffs’ proposed jury interrogatories filed on April 25, 2019—before trial and well after the Court ordered that trial be bifurcated—Plaintiffs submitted an interrogatory asking whether Defendants libeled Plaintiffs with constitutional actual malice. *See* Pls.’ Proposed Jury Interrogatories, filed April 25, 2019 (Jury Interrogatory No. 3 – Libel). Moreover, in their Response in Opposition to Defendants’ Motion for Directed Verdict, Plaintiffs dedicated five pages to identifying the evidence they presented during the liability phase of trial in an attempt to show Defendants libeled Plaintiffs with constitutional actual malice. *See* Pls.’ Response in Opp. to Defs.’ Motion for Directed Verdict, filed May 24, 2019, at 34-38. The jury, of course, found otherwise. The important point, though, is that all along, Plaintiffs knew and acted as if they had to prove constitutional actual malice at the liability phase of trial.

they also entitle Defendants to judgment as a matter of law on any claim for punitive damages based on the alleged libel.

The Court—over Defendants’ objections and motion for reconsideration—inexplicably permitted Plaintiffs’ libel claims to proceed to the punitive damages phase of trial and, in doing so, allowed the jury to consider—**for a second time**—whether Defendants committed libel with constitutional actual malice. (Trial Tr., June 11, 2019, at 9:16-10:4.⁴¹) This second-bite-at-the-apple was improper and a nullity. No Civil Rule allows a jury to consider the same issue twice. Moreover, the right to trial by jury—enshrined in Section 5, Article I of the Ohio Constitution—expressly forbids it. “That right to jury trial 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); *see also Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 135 (Cupp, J., concurring) (explaining that federal decisions interpreting the Seventh Amendment are “strongly persuasive” on the scope of the right to trial by jury). Thus, once the jury found Defendants did not act with constitutional actual malice at the liability phase of trial, all inquiries on that issue had to stop as a matter of constitutional law.

However, even if Plaintiffs’ libel claims were rightfully permitted to proceed to the punitive damages phase of trial (they were not), Plaintiffs did not present sufficient evidence that Defendants libeled Plaintiffs with constitutional actual malice. As indicated *supra* in Section II.B.2, Attorney Lee Plakas outlined all of the supposed evidence of constitutional actual malice in a Power Point presented during the punitive damages phase of trial. *See supra* footnote 22. As

⁴¹ All June 11, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 23.

seen in his Power Point, all of the evidence upon which Plaintiffs relied to prove constitutional actual malice **post-dated** Defendants' alleged "publication" of the Protest Flyer and the Student Senate Resolution. *See 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.") Because of this temporal flaw, this evidence is insufficient for a finding of constitutional actual malice—let alone for a finding that Defendants negligently libeled Plaintiffs. *See supra* Section II.C.2.

Accordingly, the jury's second finding on constitutional actual malice is a nullity and Defendants are entitled to a judgment in their favor on any claim for punitive damages based on Plaintiffs' libel claims.

B. Plaintiffs could not recover punitive damages against Oberlin College for their derivative IIED claims.

As discussed *supra* in Section IV.A, Plaintiffs David and Allyn W. Gibson's IIED claims against Oberlin College are purely derivative of their libel claims. Thus, because Plaintiffs' libel claims should not have proceeded to the punitive damages phase of trial, there is no independent basis—and certainly insufficient evidence of common law actual malice—for a punitive damages award against Oberlin College on the IIED claim.⁴² Further, to the extent Plaintiffs argue that their IIED claim is also derivative of Gibson Bros., Inc.'s tortious interference claim, the jury did not find Oberlin College liable for, nor did it award punitive damages against Dean Raimondo on, this claim. Accordingly, Oberlin College is entitled to judgment on any claim for punitive damages against it based on Plaintiffs' IIED claims.

⁴² In other words, since the IIED claim cannot survive without the libel claim, Plaintiffs' inability to recover punitive damages on their libel claims likewise precludes the recovery of punitive damages on their IIED claims. *Compare Smith v. Sandusky Newspapers, Inc.*, No. 3:17CV1135, 2018 WL 3046537, at *5 (N.D. Ohio June 20, 2018) ("When a plaintiff bases a claim for [IIED on] allegedly defamatory statements, dismissal of the defamation claim requires the dismissal of the emotional distress claim.") (quotation and citation omitted).

VI. Defendants are separately entitled to JNOV as to the \$4 million in punitive damages awarded for David Gibson's and Allyn W. Gibson's IIED claims.

In its June 27, 2019 Judgment Entry, the Court improperly capped Plaintiffs' punitive damages award under R.C. 2315.21(D)(2)(a) at twice the uncapped compensatory damages award, rather than twice the capped compensatory award.⁴³ If the Court persists in applying the punitive damages cap to the uncapped compensatory award, the Court will separately err by permitting Plaintiffs David Gibson and Allyn W. Gibson to recover punitive damages for both their libel and IIED claims.⁴⁴ These two claims are derivative of one another and constitute different theories by which Plaintiffs sought to recover for the same allegedly libelous statements.

A plaintiff may recover compensatory damages for multiple torts "governed by a single animus," or motivation, but the Supreme Court of Ohio has held that "defendants may only be punished once by a single award of punitive damages. Recoveries for multiple claims for punitive damages, contained within separately pleaded tort theories, may not be combined, or stacked, when such multiple tort claims arise from the same animus." *Digital & Analog Design Corp. v. North Supply Co.*, 44 Ohio St.3d 36, 45, 540 N.E.2d 1358 (1989); *see also Intrater v. Van Cauwenberghe*, 8th Dist. Cuyahoga No. 78259, 2001 WL 1558573, at *6 (Dec. 6, 2001) (affirming trial court's reduction of punitive damages award by one-half when it determined that two claims from which the jury awarded \$125,000 each in punitive damages arose from one animus).

The Court's jury interrogatories for punitive damages for Plaintiffs David and Allyn W. Gibson did not require the jury to allocate those damages by claim. Even so, the Court improperly

⁴³ Defendants addressed this error in their Motion for Reconsideration of Judgment Entry, which was filed on July 8, 2019.

⁴⁴ Even if the Court were to apply the punitive damages cap to the capped compensatory damages award, a new trial would still be warranted because the jury was not required to allocate economic damages per claim for each Plaintiff. This concern, however, does not apply to the allocation of noneconomic damages, which are capped per plaintiff under R.C. 2315.18(B)(2).

awarded punitive damages for both the libel and IIED claims based on the jury's after-the-fact allocation of compensatory damages, which in and of itself constitutes an error. *See* Motion for New Trial, Section I.B. The jury allocated its compensatory damages per claim as follows:

David R. Gibson

Libel:	\$4,800,000
IIED:	\$1,000,000
Total:	\$5,800,000

Allyn W. Gibson

Libel:	\$2,000,000
IIED:	\$1,000,000
Total:	\$3,000,000

(Jury Interrogatory Nos. 1 and 2 for Apportionment of Compensatory Damages for Allyn W. Gibson and David R. Gibson.) Then, in its June 27, 2019 Judgment Entry, the Court entered judgment for punitive damages for David Gibson in the amount of \$11,600,000 and for Allyn W. Gibson in the amount of \$6,000,000. Both awards improperly “combined or stacked” punitive damages for the claims of libel and IIED, even though the claims sprung from the same animus or conduct.⁴⁵ *See e.g., Digital & Analog Design Corp.*, 44 Ohio St.3d at 45. To eliminate this improper stacking, pursuant to Civ.R. 50, the punitive damages awards for David Gibson and Allyn W. Gibson must each be reduced by \$2 million, which represents two times the jury's allocation of \$1 million in compensatory damages for the IIED claims as to each of these Plaintiffs.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter judgment for Defendants on Plaintiffs' libel, tortious interference, and IIED claims, and Plaintiffs' punitive damages verdict.

⁴⁵ If the Court had awarded punitive damages only for the libel claims, it would have awarded \$9.6 million in punitive damages to David Gibson and \$4 million in punitive damages to Allyn W. Gibson.

Respectfully submitted,

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CERTIFICATE OF SERVICE

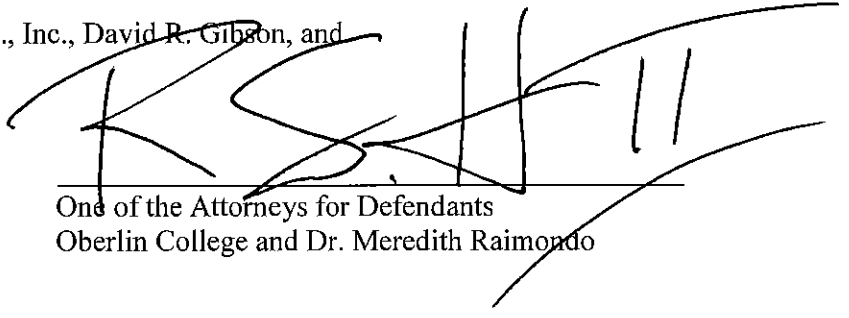
I certify that a copy of the foregoing was served this 14th day of August 2019, via e-mail,
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**DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT**

Gibson Bros., Inc., et al. v. Oberlin College, et al., No. 17CV193761

Filed on August 14, 2019

Index to Exhibits

Number	Description
1	Plaintiffs' Trial Exhibit 263
2	Excerpts from the May 21, 2019 Trial Transcript
3	Excerpts from the May 13, 2019 Trial Transcript
4	Excerpts from the May 10, 2019 Trial Transcript
5	The Oberlin Review, "Protestors accuse Gibson of racism," April 27, 1990, publicly available at http://cdm15963.contentdm.oclc.org/cdm/pageflip/collection/p15963coll9/id/151078/type/compoundobject/show/151051/cpdtype/document/pftype/image#page/1/mode/2up
6	Excerpts from the June 4, 2019 Trial Transcript
7	Excerpts from the May 14, 2019 Trial Transcript
8	Excerpts from the June 6, 2019 Trial Transcript
9	Excerpts from the May 28, 2019 Trial Transcript
10	Excerpts from the May 29, 2019 Trial Transcript
11	Defendants' Trial Exhibit A-3
12	Excerpts from the June 5, 2019 Trial Transcript
13	Power Point Slides from Attorney Lee Plakas' Punitive Damages Statements
14	Excerpts from the June 12, 2019 Trial Transcript
15	Excerpts from the June 13, 2019 Trial Transcript
16	The jury's executed interrogatories for the liability trial
17	Plaintiffs' Trial Exhibit 367
18	Excerpts from the May 15, 2019 Trial Transcript
19	Defendants' Trial Exhibit A-2
20	Plaintiffs' Trial Exhibit 217
21	Excerpts from the May 23, 2019 Trial Transcript
22	Excerpts from the May 16, 2019 Trial Transcript
23	Excerpts from the June 11, 2019 Trial Transcript

EXHIBIT 1



**DON'T
BUY**

This is a RACIST establishment with a
LONG ACCOUNT OF RACIAL
PROFILING and DISCRIMINATION.

Today we urge you to shop elsewhere
in light of a particularly heinous event
involving the owners of this
establishment and local law
enforcement.

PLEASE STAND WITH US

A member of our community was assaulted by the owner of this establishment yesterday. A nineteen y/o young man was apprehended and choked by Allyn Gibson of Gibson's Food Mart & Bakery. The young man, who was accompanied by 2 friends was choked until the 2 forced Allyn to let go. After The young man was free, Allyn chased him across College St. and into Tappan Square. There, Allyn tackled him and restrained him again until Oberlin police arrived. The 3 were racially profiled on the scene. They were arrested without being questioned, asked their names, or read their rights. 2 were released shortly after and charged with assault. The young man is being held in Lorain County Jail, charged with robbery. No bail until his arraignment this Friday 8:30 AM, 65 S Main.

If you have been victimized by this establishment in any capacity, we ask you to stand with us in support of our community member.

If you have any additional information, video or photo evidence of this event, please contact : emailaroni@gmail.com

EXHIBIT

263

Item	Better place to get it!
Bagels	The Local
Alcohol	Johnny's, Mickey Mart, IGA, Drug Mart
Cigarettes	Johnny's, Mickey Mart
Cold/flu meds	CVS, Ben Franklin, Drug Mart
Baked goods (large amnts)	Blue Rooster, The Oberlin Market, IGA, Walmart
Toiletries	Ben Franklin, CVS, Drug Mart
Snack food	ben franklin, CVS
Fruits	IGA
School supplies	Ben Franklin, CVS
Dry Goods	Oberlin Market

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 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.** **Okay.**

2 **Q.** We heard that the protests started on
3 November 10th. Were you out of town for a camping trip
4 with your son on that date?

5 **A.** **Yes, I was.**

6 **Q.** Tell us how you became aware that you and your
7 father and your business were the subject of a protest
8 and defamation back home.

9 **A.** **We had just gotten down -- essentially just**
10 **reached our designation in Tennessee, and I was starting**
11 **to receive phone calls. First phone call came from**
12 **Trey, Trey James, who actually is an employee of ours.**
13 **And he notified me that people were beginning to form**
14 **around the outside of the store and that it appeared**
15 **that several people were showing up and they were**
16 **protesting.**

17 **From that point, I had several phone calls from**
18 **some city council members and other miscellaneous people**
19 **from town notifying me of what was going on, and it was**
20 **getting more and more tense.**

21 **Q.** Did the callers tell you in sum or substance
22 what was being said or written about you?

23 **A.** **They did. They said that the people were**
24 **chanting and yelling and claiming that we were racists**
25 **and had a long history of racism. It -- they were quite**

1 **A. I did.**

2 **Q. And with regard to the first resolution, the**
3 **first resolve, which is the third from the bottom, tell**
4 **us what impact that had on you when you read that, and I**
5 **quote, "The students of Oberlin College immediately**
6 **resolved that the students of Oberlin College**
7 **immediately cease all support, financial and otherwise,**
8 **of Gibson's Food Market and Bakery."**

9 **A. Well, again, we knew that was going to be**
10 **devastating to us. I mean, to lose an entire portion of**
11 **the market, that hurt us deeply.**

12 **Q. And then the next to the last "resolved," where**
13 **it says, "Resolved that the students of Oberlin College**
14 **call on President Marvin Krislov, Dean of Students**
15 **Meredith Raimondo and all other administrators and the**
16 **general faculty to condemn by written promulgation the**
17 **treatment of students of color by Gibson's Food Market**
18 **and Bakery," could you tell us what you felt when you**
19 **saw the students were calling on the president, the vice**
20 **president, the administrators and all of the faculty to**
21 **condemn you by written promulgation? Tell us what went**
22 **through your mind at that time.**

23 **A. Well, with this moving forward in this manner, I**
24 **didn't know how we were going to get through this, this**
25 **problem. Again, I felt that if it was just students**

1 involved with this, I would have been able to talk to
2 students and be able to deal with it and would have been
3 able to go back and forth. Once it became the college,
4 Meredith Raimondo, who is the advisor, and the
5 defamation of this, I knew it was going to hurt us
6 drastically.

7 Q. And with regard to the last portion of the
8 resolution where they called on the college to condemn
9 by written response, by written promulgation, did you
10 then, in the ensuing days, see any formal written
11 response from the college as had been requested by the
12 students?

13 A. Yes, I did. I saw a response that was signed by
14 Meredith Raimondo and President Krislov.

15 Q. And let's go to Exhibit Number 67, please. And
16 you can tell us whether or not this is the response to
17 which you referred.

18 A. Yes, it is.

19 Q. And what is the date at the top, recognizing
20 that the students called on the administration for a
21 response on November 10th? What date, for the record?

22 A. It's dated Friday, November 11th.

23 Q. Okay. And let's read into the record -- I would
24 like your response in terms of the reaction. It starts,
25 "This has been a difficult few days for our community,

1 **A. There's no question.**

2 Q. Did previously what you've described as Meredith
3 Raimondo's giving the flyer to reporter who published
4 this in the newspaper, did that have anything to do with
5 your feeling of intimidation?

6 **A. It did as well.**

7 Q. And can you tell us what part the Student Senate
8 Resolution played and the administration's response to
9 the Student Senate Resolution?

10 **A. Well, the Student Senate Resolution, again, was**
11 **so defaming and the fact that the college stepped right**
12 **in to support it, it just -- it was devastating. It was**
13 **so intimidating that, again, that was intimidating to us**
14 **as well. There were so many aspects that were**
15 **intimidating to go and have a second meeting and trust**
16 **that something was going to be done.**

17 Q. And by that time, was there still any response
18 to your request for some sort of retraction or
19 clarification from the college as to you actually not
20 having a long history of racial profiling and racism?

21 **A. No, there wasn't.**

22 Q. And was there any further explanations from the
23 college or Bon Appétit as to the sudden cancellation of
24 your century-long business relationship?

25 **A. No.**

1 upon everything you've observed and learned and
2 experienced, and in light of this over hundred-year
3 relationship, why did Oberlin College do this from your
4 own observation?

5 A. That's a good question. I tried to get my head
6 around this for some time, why they would do this to us.
7 I think the college, as of recent, has lost their way,
8 there's no question in my mind. We -- I look at this
9 and I realize that the college wanted me to not
10 prosecute these students. They wanted me to set up a
11 system where we didn't prosecute first-time offenders.
12 I know there's many other issues.

13 I believe there was deflection where they wanted
14 to -- they were at the process during this that they
15 were being accused, Marvin Krislov specifically, of
16 racism by students in their college. I believe that
17 they used us to deflect that, to send it to us while
18 they went through this process. They have many demands.
19 Marvin Krislov simply did not respond to those demands
20 and just pushed it off. I think we were used to make it
21 so that would go away.

22 I think there's multiple reasons that are
23 involved with this, and I think that just -- just came
24 together. I saw the statements when they smear our
25 brand, they talked about the Gibsons have many

1 and seeking new markets and new customers to continue
2 the existence of Gibson's Bakery?

3 **A. Yes, we are.**

4 Q. So finally, let's take the last few minutes
5 here. Let's circle back to the beginning. Let's pull
6 up Exhibit 306. Tell the ladies and gentlemen of the
7 jury what that is.

8 **A. That's part of a picture, and the extended**
9 **picture actually cut off, to far left on this picture**
10 **would have been my grandfather and I believe my great**
11 **uncle, his brother were in the picture. He's got a**
12 **cousin that's in this picture as well. But it's one of**
13 **the fleets of the old delivery system of the business.**

14 Q. This relationship in serving Oberlin College,
15 we've heard, goes back a century. Let's pull up 332.
16 Currently, does Oberlin College still, on its official
17 website -- if we could click on -- I didn't click on it
18 today, but very recently. If we would click on the
19 website of Oberlin College, right in the middle under
20 their section "Mission and values," can you tell us what
21 that picture represents?

22 And Beth, are we able to get a clearer picture?

23 MS. BURNS: No, that's the way the photo is
24 taken.

25 Q. So what is in the middle of that picture with

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 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 3

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 IV**

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

15 * * *

16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION OF VICKY GAINES

BY MR. DOYLE:

Q. Good morning, Mrs. Gaines. How are you?

A. Good morning.

Q. I'm Wil Doyle. We met almost a year ago now at your deposition.

A. Uh-huh.

Q. I'm one of the attorneys for Oberlin College, and Dean Raimondo. I just have a few follow-up questions for you based on Mr. McHugh's questioning.

Mrs. Gaines, you would agree with me that whether someone feels that he or she has been subjected to racism is a matter of that person's opinion, correct?

A. Correct.

Q. And some people might disagree that the Gibsons aren't racist, correct?

A. Correct.

Q. And on the -- you testified a moment ago that you went into the store that day, correct?

A. Uh-huh.

Q. You did not see David Gibson in Gibson's Bakery when you went in that afternoon, correct?

A. I didn't see anyone. There was only one employee there, and I asked specifically if Lorna was there.

1 truth. So she should be given the option to say, "I
2 don't know." He's asking her, is it false or isn't it
3 false.

4 THE COURT: I've got your objection.

5 MR. PLAKAS: And my response is, this is
6 cross-examination. She is the vice president, dean of
7 students at the college. If she doesn't know, she will
8 tell us. But --

9 MR. PANZA: For you to direct her --

10 MR. PLAKAS: For you to prompt her, then that's
11 improper. I mean, I'm sure that -- you know, I think we
12 better let this play out and see what happens.

13 MR. PANZA: I object.

14 THE COURT: Very good. I'll overrule the
15 objection.

16 ***

17 (The sidebar discussion ended.)

18 ***

19 BY MR. PLAKAS:

20 Q. Continuing. Vice President Raimondo, you've
21 been thinking about this situation and been aware of it
22 for the last almost two-and-a-half years, right?

23 A. Yes.

24 Q. Okay. So isn't it a fair and simple question,
25 if I ask you, do you agree that the flyer that you gave

1 to Jason Hawk -- and it was being distributed by the
2 dozens or hundreds or thousands -- isn't it a fair
3 question to ask you, do you agree that that flyer made
4 false statements about Allyn W. Or Grandpa Gibson? Do
5 you agree or disagree with that?

6 A. I don't know.

7 Q. Okay. So that we're certain -- and that's your
8 position after two-and-a-half years; is that right?

9 A. Yes, sir.

10 Q. I have a copy of this to make sure I get it
11 right. So this copy is just like this. And if I may
12 approach the witness, Your Honor.

13 I'm going to write in here, "I don't know?" Is
14 that what you want me to write? You don't know the
15 answer to this question?

16 A. My answer was, "I don't know."

17 Q. I'm going to write, with your permission, "I
18 don't know." Did I do that correctly, is that an
19 accurate statement of your position?

20 A. That's what I said, "I don't know."

21 Q. May I impose on you just to give us your
22 initials, please?

23 MR. PANZA: Objection.

24 THE COURT: That's her answer. I think it's on
25 the record. I don't think it's necessary that she

1 with regard to Allyn Gibson. Another party in the case
2 is David Gibson. Would you please pull up TF -- the
3 next one -- 2. Same question.

4 Do you agree that the flyer, Exhibit 263, made
5 false statements about David Gibson?

6 A. I don't know.

7 Q. Okay. May I have your permission to just
8 accelerate this? May I sign it or --

9 A. If you prefer, sure.

10 Q. It's your preference, ma'am.

11 A. No, it's okay. Thank you.

12 Q. I can sign it --

13 THE COURT: Counsel, have her put her initials
14 next to it.

15 MR. PLAKAS: And actually, just to be more
16 efficient, I've got a couple more and I'll just make one
17 trip there, if that's all right, Your Honor.

18 THE COURT: That would be fine.

19 MR. PLAKAS: Good.

20 Q. Would you please pull up TF-8?

21 As you read the flyer -- you saw that the flyer
22 made references to Gibson's Bakery. So let me ask you
23 this. Do you agree that the flyer made false statements
24 about Gibson's Bakery?

25 A. I don't know.

1 A. Student union?

2 Q. Yeah, student union. Student center. And with
3 regard to that, that Exhibit 35, I'm sure you are well
4 familiar with it, but right in the fourth paragraph, if
5 we can pop that out, the first sentence in the fourth
6 paragraph. And it says, "Gibson's has a history of
7 racial profiling and discriminatory treatment of
8 students and residents alike." You knew that was in
9 there, right?

10 A. Once I had seen the resolution, yes.

11 Q. Sure. And that resolution was, again, as you
12 know, issued within 24 hours -- within a day of the
13 arrests at Gibson's, correct?

14 A. It was issued, I believe, on the evening of
15 November 10th.

16 Q. Okay. And it was issued in a mass mailing to
17 the Oberlin community, right, as it says at the top?

18 A. I'm not sure how the students distributed it.

19 Q. Okay. But you know it was distributed widely,
20 don't you?

21 A. I really don't know. That was not a
22 distribution list that I was on. So I only saw it after
23 the fact when a student shared it with me.

24 Q. The student senate has the ability, the
25 capability, when they issue a resolution, to

EXHIBIT 4

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 A. Never.

2 Q. And from your experiences, does Gibson's Bakery
3 or the Gibson family have a long history of racial
4 profiling and discrimination?

5 A. No, they do not.

6 MS. AYOUB: No further questions, Your Honor.

7 THE COURT: Any cross-examination?

8 MR. DOYLE: Yes, Your Honor, a few things. One
9 moment.

10 CROSS-EXAMINATION SHARON PATMON

11 BY MR. DOYLE:

12 Q. Good morning, Mrs. Patmon. How are you?

13 A. I'm doing very well, thank you.

14 Q. My name is Wil Doyle; I'm an attorney
15 representing the defendants Oberlin College and Dean
16 Meredith Raimondo. I have a few follow-up questions
17 based on what Ms. Ayoub just discussed with you.

18 Mrs. Patmon, you would agree with me that
19 whether someone is a racist is a matter of opinion,
20 right?

21 A. Yes.

22 Q. Like, for example, it's possible that someone
23 may not share your opinion that David Gibson is not
24 racist, correct?

25 A. That's correct.

1 would have been like putting gasoline on a fire. So I
2 thought about it a few minutes.

3 I have a personal relationship with Adrian
4 Bautista, who is the dean at the college. He and I used
5 to coach our boys basketball team together. So I had
6 his number. I called him and I told him, I says, "Hey,
7 if we can't get this under control, I'm going to end up
8 calling the county riot team in."

9 We had -- the county had just been doing some
10 training leading up to the, I think it was, the
11 Republican National Convention or Democratic National
12 Convention in Cleveland. We had put a riot team
13 together, and it was available for county use. So I was
14 actually considering making some phone calls and putting
15 a team on standby.

16 So I made a phone call to Adrian Bautista. I
17 didn't actually see him down there. It wasn't long
18 after that where I saw some of the college students move
19 over across the street to Tappan Square. It was still
20 -- it was still just a mob kind of mentality. Was there
21 a lot of yelling and screaming, flyers being thrown
22 about. There were people not associated with the
23 protests getting flyers shoved in their face, curse
24 words, allegations of, you know, the Gibsons being
25 racists being thrown around.

1 A. Not friends. I mean, I don't go over for
2 dinner. I've known them since I started working at
3 Oberlin.

4 Q. And I wanted to clarify, you had talked about
5 the situation you saw involving Allyn Gibson and three
6 Oberlin students --

7 A. Yes.

8 Q. -- when Mr. Plakas was questioning you. And I
9 just wanted to clarify who the Allyn Gibson was you were
10 referencing. That's Allyn D. Gibson, the younger son of
11 David Gibsons, correct?

12 A. Yes.

13 Q. It's not Allyn Gibson sitting in the courtroom
14 today, correct?

15 A. Right.

16 Q. You referenced the three students who were
17 arrested that evening of November 9th?

18 A. Yes.

19 Q. Jonathan Aladin, Cecelia Whettston, and Endia
20 Lawrence?

21 A. Yes.

22 Q. And are you aware that the three students pled
23 not guilty when they were arraigned?

24 A. That's customary.

25 Q. Are you aware that about a year later, in August

EXHIBIT 5

THE UNIVERSITY OF CHICAGO LIBRARY

Protesters boycott bakery

Continued from page 1

the bakery, which the protesters said was a "white supremacist bakery." The protesters said they had been informed by a "friend" that the bakery was a "white supremacist bakery." The protesters said they had been informed by a "friend" that the bakery was a "white supremacist bakery."

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Jones claims Starr lied

Continued from page 1

although Starr said the protesters were "in the wrong."

The protesters said they had been informed by a "friend" that the bakery was a "white supremacist bakery." The protesters said they had been informed by a "friend" that the bakery was a "white supremacist bakery."

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Protestor sits at table in front of Starr's Bakery.

A protestor sits at table in front of Starr's Bakery.

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PROFESSOR OF WOMEN'S
STUDIES
"Shaping the Future"
Friday, May 4, 12:10 p.m.
Finney Chapel
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and presented in cooperation with the
Assembly Committee

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EXHIBIT 6

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 TUESDAY, JUNE 4, 2019, BEFORE
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID
COURT.

* * *

1 James and others. These Oberlin residents universally
2 testified that the plaintiffs are not racist and do not
3 have a history of racial profiling or discrimination.
4 And that testimony is not limited to just Oberlin
5 residents.

6 Victor Ortiz and Lieutenant Michael McCloskey of
7 the Oberlin Police Department testified that in their
8 experience, dealing with shoplifters at Gibson's Bakery,
9 they never witnessed any racial profiling. And even
10 Oberlin College employees, like Ferdinand Protzman and
11 Greta Williams, and Leslie or Leeann Lubinski admitted
12 prior to November of 2016, there was not even a hint,
13 and they had not even heard, of racism or racial
14 profiling at Gibson's Bakery.

15 Now, conversely, defendants did not provide any
16 evidence that has any tendency to prove the truth of the
17 racism allegations in the flyer or the Student Senate
18 Resolution.

19 Similarly, plaintiffs produced substantial
20 evidence showing that the assault allegations are false.
21 First, through testimony and documents, plaintiffs have
22 shown that the only owners of Gibson's Bakery in
23 November of 2016, were Dave and Grandpa Gibson. And
24 second --

25 THE COURT: Didn't they -- didn't they, in the

1 alleged libelous material, didn't they clarify that with
2 the description of Allyn, you know?

3 MS. AYOUB: Well, they went on to say that Allyn
4 choked and Allyn did this. As we know, there are two
5 Allyns in this case, and the only Allyn who is an owner
6 of Gibson's Bakery, which what the flyer says, is
7 Grandpa Gibson.

8 THE COURT: All right.

9 MS. AYOUB: And Dave had also testified that
10 neither he nor his father had committed any assault on
11 November 9th, 2016. And that's confirmed by the
12 criminal convictions of the three students who were
13 arrested on November 9th, 2016, where they pled guilty
14 to the aggravated trespass and the attempted theft.
15 Plus, Dave and Grandpa Gibson were not charged,
16 arrested, prosecuted, or convicted of any crime on
17 November 9th, 2016. And.

18 On the other hand, defendants did not produce
19 any evidence whatsoever that had any tendency to prove
20 the truth of the assault allegations from the flyer. No
21 one has stood up and said, Grandpa Gibson, Allyn Gibson
22 assaulted someone on that day. Therefore, plaintiffs
23 are entitled to the directed verdict on the falsity
24 element of their libel claim and on defendants'
25 affirmative defense of truth.

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 4, 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 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 **VOLUME V**

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

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1 up the Student Senate Resolution, that's Exhibit 35.

2 And we know that that was issued immediately -- I'm
3 sorry, I'll let you get there.

4 And this is a Student Senate Resolution where it
5 indicated that the Gibsons, paragraph 4, if we could pop
6 that out, where it says, "The Gibsons have a history of
7 racial profiling and discriminatory treatment of
8 students and residents alike." With regard to that
9 Student Senate Resolution -- and you actually talked
10 with the two leaders to which you sent the e-mail,
11 Exhibit 91, that we just saw. You actually interacted
12 with those students over the Student Senate Resolution.
13 They presented that to you, didn't they?

14 A. After it had been completed and sent out to
15 other students.

16 Q. Sure. And of course, we have already
17 established that during that entire time up to the
18 present time, you're the official faculty advisor to the
19 student senate, correct?

20 A. Yes, I am their advisor.

21 Q. Okay. So this Student Senate Resolution that
22 was telling everyone that the Gibsons have a history of
23 racial profiling and discriminatory treatment, this was
24 posted in the student union, Wilder Hall, right?

25 A. I learned that about a year later, yes.

1 students, that you supported the defamation of the
2 Gibsons by this small extreme group, you canceled the
3 one-hundred-year-old business relationship with the
4 Gibsons, and you did those things to appease the
5 students who were critical of the lack of response by
6 the college regarding their concerns about the college
7 not treating minorities properly; isn't that a true
8 statement?

9 A. That statement is absolutely false.

10 Q. Okay.

11 MR. PLAKAS: Thank you, I have nothing further.

12 THE WITNESS: Thank you.

13 THE COURT: You can step aside from the witness
14 chair.

15 Who are you calling next?

16 MR. ONEST: Your Honor, Michele Gross.

17 THE COURT: Counsel, let's approach before you
18 call this witness.

19 ***

20 (A sidebar discussion was had as follows.)

21 ***

22 THE COURT: So is this another witness just at
23 the protest?

24 MR. ONEST: No. She was the director of dining
25 services. She's the one who ran all the dining

1 departments ever make orders for food?

2 A. Yes. We did catering.

3 Q. And how would that process work?

4 A. We had a catering department, so the department
5 would contact the employees in that department and place
6 their order and then the food would be made in the
7 kitchen.

8 Q. And earlier you mentioned Bon Appétit. Could
9 you tell the jury, what exactly is Bon Appétit?

10 A. Bon Appétit is a food management company. So
11 they are hired to help you manage dining operations.

12 Q. And are they separate -- are they a separate
13 company from the college?

14 A. Yes.

15 Q. And as director of dining services, would you be
16 interacting with Bon Appétit managers?

17 A. Yes, regularly.

18 Q. And did you have any sort of special
19 relationship, a title between you and Bon Appétit?

20 A. My position was defined as the contract liaison.

21 Q. Between Oberlin College and Bon Appétit?

22 A. Correct.

23 Q. And what -- how long was Bon Appétit providing
24 services to Oberlin College?

25 A. About 20 years. They came in 2001.

1 Q. And did they replace another company?

2 A. Yeah. We had Marriott for probably 15 to 20
3 years before that.

4 Q. And with regard to getting food and goods for
5 dining services, who would be responsible for actually
6 going out and getting those goods from vendors?

7 A. Bon Appétit.

8 Q. And who would actually be responsible for paying
9 those vendors for those goods?

10 A. Bon Appétit.

11 Q. Do you know the Gibsons?

12 A. Yes, I do.

13 Q. And how do you know the Gibsons?

14 A. Just casually, from living in town all these
15 years.

16 Q. Did you ever have to interact with any of the
17 Gibsons as -- within your employment at Oberlin
18 College?

19 A. I would occasionally run into them. I sometimes
20 would see Mr. Gibson, Sr. delivering to Stevenson, one
21 of the dining halls.

22 Q. That would be Mr. Allyn W. Gibson sitting in
23 here in the courtroom?

24 A. Correct.

25 Q. Did he personally make deliveries to Oberlin?

1 between Oberlin College and Gibson's Bakery went back
2 far longer than?

3 A. I think it did, yes.

4 Q. Do you have any understanding of how long it
5 went back?

6 A. Just as long as I can remember.

7 Q. That's fine. Can you -- you have an
8 understanding of the relationship between Bon Appétit
9 and Oberlin College, correct?

10 A. Yes.

11 Q. In fact, that was a relationship that you were
12 managing, correct?

13 A. Correct.

14 Q. Is there a written agreement between the
15 parties?

16 A. Yes.

17 Q. And under that agreement, do you understand that
18 Bon Appétit became Oberlin College's dining services
19 agent in approximately the year 2000?

20 A. Correct.

21 MR. MATTHEW NAKON: Theresa, you could put up
22 Exhibit 367? Plaintiffs Exhibit 367. I understand this
23 is a small document.

24 May I approach and give the witness a copy?

25 Q. I'm going to hand you a copy of what has been

1 Plaintiffs' Exhibit 367. And I know the print on page 1
2 is very small. But really what I want to do is, you
3 will see at the very top of the page it says "Bon
4 Appétit fee proposal for 2015 to 2019"?

5 A. Correct.

6 Q. All right. And this would have been the
7 relationship that you were operating under with Bon
8 Appétit in 2016 from your last years, your last time
9 with the college, correct?

10 A. We were still under that fee structure, yes.

11 Q. Okay. If you flip one page for me to the
12 management renewal agreement. Do you see that, that's
13 attached to this?

14 A. Yes.

15 Q. If you look, please, at paragraph 1.2.

16 Theresa, can you by chance pull that out a
17 little further?

18 And what I'd like for you to do is, as we're
19 trying to get this out a little deeper so that the jury
20 can read it, I'd like for you to read paragraph 1.2 into
21 the record and to the jury, please.

22 A. "Agency relationship. Bon Appétit shall act as
23 an agent for Oberlin in the management of the food
24 service operation at the following locations: Stevenson
25 Hall, Baskin Hall, Lord-Saunders Hall, Wilder Hall and

1 such other locations as mutually agreed to by the
2 parties. Bon Appétit shall purchase food and supplies
3 in Bon Appétit's name and shall pay the invoices. As
4 principal, Oberlin may supervise Bon Appétit's daily
5 operation of the food service operations, including
6 working conditions for the food service employees and
7 safety, sanitation and maintenance of the premises."

8 Q. All right. So is this document what you
9 understand to be definitive of what the relationship
10 between Bon Appétit and Oberlin College was?

11 A. Yes.

12 Q. All right. And thus, Oberlin College is, as you
13 understood it, the principal in the relationship, and
14 Bon Appétit is the college's agent?

15 MR. ONEST: Objection, Your Honor. Legal
16 conclusion.

17 MR. PLAKAS: To the extent this witness
18 understands.

19 THE COURT: Yes, I'll let the witness answer.
20 Overruled.

21 A. I'm sorry, will you ask it again?

22 Q. I certainly will. As you understood the
23 relationship between Oberlin College and Bon Appétit --

24 A. Yes.

25 Q. -- Oberlin College was the principal?

1 A. Right.

2 Q. Bon Appétit was the agent?

3 A. I guess, yes.

4 Q. All right. So the agent does what the principal
5 requires?

6 A. Within reason, yes, I'd say.

7 Q. So if Oberlin College wanted only chocolate
8 cake, the agent would go get only chocolate cake,
9 correct?

10 A. I guess that's true.

11 Q. All right. Will you please turn to page 9 of
12 the agreement?

13 MR. MATTHEW NAKON: Your Honor, I'm going to
14 hand you one just because I don't think you are going to
15 be able to read it.

16 Q. If you would please, under section 7.3,
17 Liability For Non-Bon Appétit-Approved Vendors. Do you
18 see that section?

19 A. Yes.

20 Q. Would you please read for me Section A?

21 A. "Oberlin understands that Bon Appétit has
22 entered into agreements with many vendors and suppliers
23 of products which give Bon Appétit the right to inspect
24 such vendors and suppliers plans and/or storage
25 facilities, and requires such vendors and suppliers to

1 Q. If I told you it was 20 percent, would you have
2 any reason to suspect it was different than that?

3 A. I know that the goal was for it to continue to
4 increase.

5 Q. Okay. And Oberlin College wanted local vendors
6 used as high as possible, correct?

7 A. Within the limits, yes, absolutely, on
8 availability.

9 Q. To the best of your knowledge, all of the
10 products that Bon Appétit would have ordered from
11 Gibson's Bakery were for service at the dining halls at
12 Oberlin College, correct?

13 A. What we bought was for the dining halls
14 primarily, yes.

15 Q. And to the best of your knowledge, Gibson's
16 Bakery had never been a supplier to any other
17 institution for which Bon Appétit had provided
18 management services?

19 A. I am not aware of that.

20 Q. Now, anything that is bought by Bon Appétit at
21 Gibson's Bakery or anywhere else, Oberlin College is
22 obligated to pay for, correct?

23 A. Correct. We reimburse them.

24 Q. Right. So the principal in the relationship was
25 required to pay anything that the agent bought?

1 A. Correct.

2 Q. As far as you know, there was no obligation on
3 Oberlin College to place any order with Gibson's Bakery,
4 and the college could stop ordering product any time it
5 desired, correct?

6 A. I would assume that's true, yes.

7 Q. And as far as you know, there was never an
8 obligation on Bon Appétit to place any order with
9 Gibson's Bakery and that Bon Appétit could stop ordering
10 at any time if it were directed to do so by Oberlin
11 College, correct?

12 A. Correct.

13 Q. And you've mentioned a standing order. It is
14 true that the standing order was subject to change at
15 the college's will, correct?

16 A. Correct.

17 Q. As far as you know, Oberlin College never had a
18 direct contract with Gibson's Bakery in any way,
19 correct?

20 MR. ONEST: Objection. Legal conclusion, Your
21 Honor.

22 THE COURT: I'll overrule it. Do you know?

23 THE WITNESS: As far as I know, there was there
24 no written document.

25 BY MR. PLAKAS:

1 Q. Same would be true of Bon Appétit. Bon Appétit
2 didn't have a contract with Gibson's Bakery, correct?

3 A. Not that I'm aware of, no.

4 Q. And there has never been any term, oral or
5 otherwise, as you understand it, that required Oberlin
6 College to purchase any specific amount of goods from
7 Gibson's Bakery, correct?

8 A. There -- as far as I know, there was no
9 obligation, no.

10 Q. So that if the college wanted product, the
11 college ordered product through Bon Appétit, and that
12 product was paid for?

13 A. Right.

14 Q. If the college wanted to stop ordering product,
15 it could stop ordering product?

16 A. Yes.

17 Q. Same with Bon Appétit. If Bon Appétit wanted to
18 order product for the college, it ordered product and
19 was paid for the product -- and paid for the product,
20 correct?

21 A. Correct.

22 Q. There was no obligation on Bon Appétit, that you
23 understand, to continue to order product from Gibson's
24 Bakery?

25 A. Correct.

1 Q. Thank you. I'll go back. I'll reread you my
2 question. Did Olivia Scott and Emma advise you at the
3 recycler meeting about an incident at Gibson's that had
4 occurred the previous day and state that Allyn Gibson
5 assaulted three black people?

6 A. According to the memo, that is what they said.
7 I don't have any real recollection of that. I know she
8 was concerned.

9 THE COURT: Counsel, just so we're clear. You
10 say "Allyn Gibson," and there are two Allyn Gibsons.
11 Might be helpful to the jury to know we're not talking
12 about grandpa.

13 MR. MATTHEW NAKON: Exactly. And we're going to
14 be going into that in detail. Why don't we do that
15 right now, Your Honor.

16 BY MR. MATTHEW NAKON:

17 Q. You know the Gibson family, correct?

18 A. Casually, yes.

19 Q. And you understand that Allyn Gibson, the person
20 that's been referred to as Grandpa Gibson, was not the
21 person that was --

22 A. Yes.

23 Q. In fact, it was his grandson, Allyn D. Gibson,
24 correct, who is not in the courtroom?

25 A. Correct.

1 A. In November '16?

2 Q. Of 2016?

3 A. Yes.

4 Q. How long had that relationship existed?

5 A. For as long as I can remember.

6 Q. And did Meredith Raimondo order you to cause
7 that business relationship to end?

8 A. She asked us to stop ordering, yes.

9 Q. Did you it follow that order?

10 A. I did follow that order.

11 Q. Did you feel the termination of that business
12 relationship was justified?

13 A. No.

14 Q. Did you feel that Gibson's had done anything to
15 justify that termination?

16 A. I did not believe so, no.

17 MR. ONEST: I have nothing further, Your Honor.

18 THE COURT: Any recross on just those issues.

19 MR. MATTHEW NAKON: One question.

20 RECROSS-EXAMINATION OF MICHELLE GROSS

21 BY MR. MATTHEW NAKON:

22 Q. Other than the relationship that Bon Appétit has
23 with Gibson's Bakery for the benefit of Oberlin College,
24 you are aware of no relationship that Bon Appétit has
25 with Gibson's Bakery?

1 A. I'm not aware of one.

2 MR. MATTHEW NAKON: Thank you.

3 THE COURT: Now you may step aside. Thank you.

4 We will take our afternoon break for 15 minutes.

5 Remember my admonition not to talk about the case.

6 Please leave your notepad on the bench, and we will be
7 back in the courtroom at 2:45.

8 ***

9 (A recess was had.)

10 ***

11 THE COURT: Next witness, plaintiffs.

12 MR. PLAKAS: Thank you, Your Honor. If it
13 please the Court. At this time we would like to call
14 Clarence Trey James.

15 ***

16 Thereupon, the witness, **CLARENCE TREY JAMES**, was
17 duly sworn to tell the truth, the whole truth, and
18 nothing but the truth, and testified as follows:

19 ***

20 DIRECT EXAMINATION OF CLARENCE TREY JAMES

21 BY MR. PLAKAS:

22 Q. Good afternoon, Mr. James. How are you?

23 A. Fine, thank you.

24 Q. Good. Will you please introduce yourself to the
25 ladies and gentlemen of the jury?

1 water and restrooms, telling the students where they
2 could find additional support for their materials, and
3 including where to make copies. Seemed that she was an
4 authority in the situation in terms of influencing what
5 was happening.

6 Q. Okay. When you talk -- when you relay that she
7 was giving authority with regard to their materials,
8 what materials are you talking about?

9 A. Well, they were passing out a flyer that was
10 urging people not to shop at Gibson's.

11 Q. And how do you know that she was telling people
12 to make -- where they could make more copies of those
13 flyers?

14 A. I heard her.

15 Q. And with regard to that flyer -- let's pull it
16 up for a second. I think that it is 263.

17 Did you have the opportunity to observe the
18 flyer that you indicate was being passed around?

19 A. Yes.

20 Q. And is Exhibit 263 a copy of that flyer?

21 A. Yes, it is.

22 Q. And with regard to that flyer, can you tell us
23 what your observations were with regard to Vice
24 President Raimondo utilizing or in any way dealing with
25 that flyer?

1 A. Well, throughout, the most specific thing I can
2 recall is she had a stack of them. It looked like it
3 might have been half a stack of a paper ream. And while
4 she was talking through the bullhorn, she actually
5 handed it, about half of that stack, to another student
6 who was standing next to her, who walked off and started
7 passing out the flyers.

8 Q. From your observation, were there a lot of
9 flyers being passed out?

10 A. Yes.

11 Q. And did you see, in addition to seeing doctor --
12 excuse me -- Vice President Raimondo taking that half a
13 ream, or whatever, that stack of flyers and giving them
14 to a student who then passed them out, did you see her
15 do anything else with those flyers?

16 A. Yeah, she did. There was a table behind her and
17 she had things behind her, so she turned and put some
18 down and picked some up and handed some to another kid,
19 and handed them several times.

20 Q. Are you telling the jury she was actually
21 helping to distribute the flyers?

22 A. No. She was passing them to other students who
23 was passing out the flyers.

24 Q. That was -- I understand. Now, did you consider
25 that helping to distribute the flyers by giving them 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 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.

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 8

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 interrogatories, but the stipulation, they kind of go
2 hand in hand on that.

3 THE COURT: Do you want to place that on the
4 record?

5 MR. MCHUGH: I believe we e-mailed that to
6 counsel last night. I believe we do have agreement.

7 MS. CROCKER: We do.

8 MR. MCHUGH: So the proposed stipulation --

9 MR. DOYLE: I'm sorry.

10 MS. CROCKER: So sorry.

11 MR. DOYLE: Would it make more sense to chat off
12 the record? It's very minor.

13 THE COURT: Sure. Chat off the record.

14 ***

15 (Discussion had off the record.)

16 ***

17 MR. MCHUGH: So this is the stipulation that
18 we've reached. The parties have agreed to the following
19 stipulation: Oberlin College agrees that it will be
20 vicariously and jointly and severally liable from any
21 verdict and/or judgment entered in any plaintiff's favor
22 against the defendant, Meredith Raimondo, regardless of
23 whether a separate verdict and/or judgment is entered
24 against Oberlin College.

25 THE COURT: All right. And that doesn't need to

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

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 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 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 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 Q. What happened to the flyer in your pocket?

2 A. After we discussed photographs, the man said,
3 "Well, what's going on here?" And I said, "I don't
4 know. I can't speak for the protesters, but I was just
5 handed a flyer and if you'd like it, I believe that it
6 has an explanation in it." And I took the flyer out of
7 my pocket and offered it to him.

8 Q. And did he take it?

9 A. He did take it.

10 Q. Now, from the time the flyer was handed to you
11 until the time that you handed it to this stranger, what
12 was the amount of time that passed?

13 A. Less than two minutes. I was moving across
14 Tappan Square the entire time.

15 Q. In that two-minute time span, did you have the
16 opportunity to read the flyer?

17 A. No, I did not.

18 Q. So during that particular time span, you did not
19 know what was in the flyer, therefore you did not know
20 whether or not what was contained in the flyer was true
21 or false; is that correct?

22 A. That's correct. I glanced at the flyer when I
23 first got it, you know, saw the large title that said,
24 "Don't Buy," and maybe the first sentence that said it
25 was a racist establishment, and then I had to stop

1 **looking because I didn't want to run into anybody.**

2 Q. Now, after you handed the flyer to the stranger,
3 did you at any time, on November 10th, have a copy of
4 the flyer in your possession?

5 A. **No. That was the only copy that I ever had on**
6 **November 10th.**

7 Q. Now, were you at the protests on November 11th?

8 A. **Yes, I was.**

9 Q. At any time on November 11th, did you have a
10 copy of a flyer in your possession?

11 A. **No, I did not.**

12 Q. There has been testimony from an individual,
13 sworn testimony from an employee of Gibson's Bakery, a
14 man by the name of Trey James, that he observed you with
15 a stack of flyers in your hand, passing them out. Is
16 that testimony true?

17 A. **No, it is not true.**

18 MR. PANZA: Would you please bring up
19 Exhibit 35? Thank you.

20 Q. You were asked about Exhibit 35 during your
21 cross-examination, were you not?

22 A. **Yes, I was.**

23 Q. And you recall this has come to be known as the
24 Oberlin student resolution, correct?

25 A. **Yes, that's right.**

1 Q. You are an advisor to the student senate, are
2 you not?

3 A. **That's correct.**

4 Q. Did you counsel any member of the senate in
5 regards to the creation of Plaintiffs' Exhibit 35?

6 A. **No, I did not.**

7 Q. When was the first time you received or viewed a
8 copy of the student resolution; do you recall?

9 A. **I believe it was a bit after 11:00 p.m. on
10 November 10th, when I received an e-mail that had the
11 resolution attached.**

12 MR. PANZA: I'd like to blow up the language,
13 the last half of the resolution, please.

14 Q. Dean Raimondo, are you familiar with the
15 language contained in the student resolution marked as
16 Plaintiffs' Exhibit 35?

17 A. **Yes, I am.**

18 Q. Did you at any time assist in the preparation of
19 that language?

20 A. **No, I did not.**

21 MR. PANZA: Could I have Exhibit A-3, please?

22 Q. Your testimony is that you received a copy of
23 this resolution on the evening of November 10th, first
24 day of the protests?

25 A. **That's correct.**

1 Q. Handing you what's been marked as Defendants'
2 Exhibit A-3.

3 MR. PANZA: Could you bring that up,
4 please? Could you blow up the first half of it?

5 Q. Who is K. Dunbar?

6 A. Kameron Dunbar at the time was a student
7 senator, so an elected member of the student senate.

8 Q. Could you identify this particular exhibit for
9 the jury, please?

10 A. Sure. So this is the e-mail that I received
11 that evening. As you can see, it's 11:15 p.m. and it is
12 an e-mail that Kam sent to President Krislov and to me,
13 letting us know that student senate had passed a
14 resolution and attaching the text of it.

15 Q. So you received a copy of the resolution for the
16 first time on November 10th at 11:15 p.m.; is that
17 correct?

18 A. That's correct.

19 Q. There's a bottom half to this particular e-mail.

20 Would you blow up the bottom half, please?

21 Could you tell us what this bottom half
22 represents, please?

23 A. It appears to be an e-mail from student senate
24 to the student e-mail distribution list. So this is a
25 ListServ that will send an e-mail to all students, and

1 **it appears to be student senate informing student body**
2 **that they had passed the resolution.**

3 Q. So if I'm reading this e-mail correctly, at
4 11:11, four minutes before you received a copy of the
5 resolution, the student sends it out to the entire
6 student body?

7 **A. That's correct.**

8 Q. Twenty-eight hundred students?

9 **A. Yes, that's correct.**

10 Q. That's before it's ever in your possession?

11 **A. Right, that's correct. I was not subscribed to**
12 **the student list, so I didn't receive this e-mail that**
13 **was at the bottom.**

14 Q. You have heard testimony that a copy of this
15 resolution was placed in the student union, I believe
16 it's called Wilder Hall?

17 **A. That's correct.**

18 Q. Did you have any knowledge that this particular
19 resolution was hanging in Wilder Hall on or around
20 November, December, January 2016?

21 **A. No, I did not at that time.**

22 Q. When was the first you learned that a copy of
23 the resolution was hanging in Wilder Hall?

24 **A. In November 2017.**

25 Q. Now, do you know where the resolution was

1 Oberlin who made open threats of violence against
2 members of this community on all sides of the dispute.
3 The legal process is the only authority that could
4 determine whether unlawful behavior occurred, and the
5 college honors the value of fairness and due process
6 that this system strives to achieve."

7 Q. The second paragraph?

8 A. "Shortly after the incident, the college
9 temporarily suspended its standing baked goods order
10 with Gibson's in an effort to de-escalate a complicated
11 and very tense situation involving our campus community,
12 our downtown businesses, local residents, and law
13 enforcement. Since the initial incident, the college
14 has communicated actively with all parties in an effort
15 to contribute to a restorative resolution for all
16 involved."

17 "To that end, following discussions with
18 Mr. Gibson and local community and spiritual leaders,
19 the college has chosen to resume its business
20 relationship with Gibson's as a good faith effort in
21 hopes of positive resolution for everyone affected, as
22 our community explores concerns and questions about how
23 we live, learn and thrive together."

24 "We understand from our conversations with
25 Mr. Gibson that his family and employees are committed

[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 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 10

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 businesses were okay and talk to the other business
2 owners and explain whatever, you know, she could do
3 about what was happening and also try to reassure people
4 that we were trying to be supportive of the situation
5 for the businesses in the downtown.

6 Q. I want to now move to a subject that the jury
7 has heard a great deal about, and that's the Student
8 Senate Resolution. Are you familiar with that,
9 President Krislov?

10 A. Yes.

11 Q. When did you first become familiar or see or
12 even know about the Student Senate Resolution?

13 A. Well, I got a late-night e-mail, and I cannot
14 remember as I sit here whether I was awake to read it or
15 I read it first thing in the morning. I just can't
16 remember that.

17 Q. Okay. Let's actually pull up that e-mail, if we
18 can, please, which is Exhibit A-3. And let's blow up
19 the first part of that, please.

20 And can you identify for us who the e-mail is
21 from and who it's directed to?

22 A. So it's from a student named Kameron Dunbar, who
23 was a student senator, and he, along with Thobeka Mnisi,
24 who was also a student, were charged with being the
25 student senate liaison to the president's office.

1 Q. And this e-mail was sent to you and Dean
2 Raimondo on Thursday, November 10th; is that right?

3 A. Yes, at 11:15 p.m.

4 Q. And it has an attachment. Can you read what it
5 says next to the phrase, or the word "attachments"?

6 A. Oh, the "FYI"?

7 Q. Actually, just right there below the forward.
8 Can you read that?

9 A. It says, "Attachment, Senate Resolution
10 11-10-2016."

11 Q. Okay. What does the message from Mr. Dunbar
12 actually say?

13 A. It says, "FYI, senate passed this resolution
14 tonight."

15 Q. Then it says, "Best, Kam"?

16 A. "Best, Kam."

17 Q. Was this the first notice that you had that the
18 student senate had passed a resolution?

19 A. Yes.

20 Q. Did you have any knowledge that the student
21 senate was even meeting to discuss a resolution?

22 A. No.

23 Q. Did you ever see a draft of this resolution?

24 A. No.

25 Q. And then attached to this document is the

1 other documents, did you ever see, President Krislov,
2 the Student Senate Resolution in Wilder Hall?

3 **A. No.**

4 Q. Okay. And let's pull up Exhibit 299, please.

5 And that is a picture that purportedly shows a
6 showcase at Wilder Hall. And so prior to the lawsuit
7 being filed, have you ever seen this picture?

8 **A. I don't think so.**

9 Q. Okay. And again, your testimony is that prior
10 to the lawsuit, you had no awareness whatsoever that the
11 Student Senate Resolution was posted in Wilder Hall?

12 MR. PLAKAS: Objection, leading.

13 **A. I did not.**

14 THE COURT: He's already answered.

15 **A. I did not.**

16 Q. Would you turn your attention to Exhibit L-32,
17 please?

18 **A. Yes.**

19 Q. Okay. And that -- that e-mail reflects an
20 exchange that you had with David Gibson, correct?

21 **A. Yes.**

22 Q. Would you take a look at the e-mail and just
23 summarize it for the jury?

24 **A. Summarize this exhibit?**

25 Q. Yes. So it starts at the very bottom and you

1 **A.** November 15th. So it was before the meeting we
2 **had.**

3 **Q.** Was Tita Reed reporting to you about this
4 matter?

5 **A.** Yes.

6 **Q.** Okay. And what did she write?

7 **A.** She said, "I spoke to Dave Gibson this afternoon
8 about the phone call he received regarding an
9 institutional boycott. He said he received a call from
10 Campus Dining but couldn't identify the caller. I let
11 him know that no such policy exists. He's relieved, so
12 a call from Walsh right now will be welcomed."

13 **Q.** Thank you. So let's move forward in time a
14 little bit and talk about the dining hall services just
15 a little bit more. You've already described the three
16 lines of business connecting Gibson's Bakery to Oberlin
17 College. Did Oberlin College at some point in time
18 temporarily suspend ordering food for its dining halls
19 from Gibson's Bakery?

20 **A.** Yes.

21 **Q.** And what's your understanding as to why Oberlin
22 College did that?

23 **A.** Well, before that, Meredith had decided that --
24 had determined that the food would not be eaten and so
25 she had purchased it, but she donated it. And that's

1 when sometime after that I found out there had been this
2 practice of ordering. Meredith, based on her
3 discussions with students, determined that the students
4 wouldn't eat the food, and so the question for us is,
5 why would you pay for food that people won't eat?

6 Q. And what's your best recollection -- I know
7 you've been gone from Oberlin for a while. What's your
8 best recollection for the period of time during which
9 Oberlin College hit the pause button and stopped
10 ordering food for the dining halls?

11 A. So that would have been, I don't know, a few
12 days after the -- about a week or so after the incident,
13 maybe a little less than a week after the incident. It
14 continued for the rest of that semester, which ended in
15 mid-December.

16 Q. And you mentioned earlier about Obie Dollars and
17 the Ladies and Gentlemen have heard about the Obie
18 Dollars. Was that ever suspended or curtailed by
19 Oberlin College?

20 A. No.

21 Q. And the Ladies and Gentlemen are also familiar
22 with orders that were sometimes placed by departments
23 for special events, special programs. Was that ever
24 suspended or terminated at any time by Oberlin
25 College?

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 11

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>

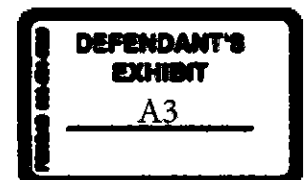
Hello Students,

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 Raimondo, 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 12

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 and making sure no products went to the dining
2 halls? On 22, and we saw this, he said that "There was
3 a fear that the students, that the angry students would
4 be dumping food or throwing food on the floor and then
5 stomping on it." And I couldn't believe he said that in
6 a courtroom. As now the chief of staff for the college
7 saying, we blew up 134-year old business relationship
8 because we were fearful the students were going to throw
9 food and stomp on it.

10 . And then when I asked him at 23, I said, you
11 know, "That sounds like a nursery school." And he said,
12 "Yeah, that's what nursery school children do, they
13 throw food on the floor sometimes, yeah."

14 And the interesting thing to me is, with all the
15 students and all the student relationships and their
16 relationship with student senate, was there one student
17 that came in here and said, yeah, we were ready to throw
18 food on the cafeteria floor and stomp on it, and we went
19 in there and warned our administrators that we were
20 going to do it?

21 So I'm not sure. That still baffles me. Is
22 that a real reason to blow up a 134-year old business
23 relationship? And if only again, if only there had been
24 a commitment to be the adults in the room, to guide the
25 students -- on 25 -- what if instead of saying oh, geez,

1 the last thing, they wouldn't even write a letter that
2 confirmed that David Gibson and his family and Allyn
3 Gibson were not white supremacists.

4 Now, that's why it's important to understand the
5 attitudes. And we understand why they did it, because
6 they didn't want to offend their customer base. That's
7 their business plan. Their business plan must be to
8 attract a certain type of student or employee or
9 administrator and let them do whatever they darn well
10 please, regardless of the consequences or the collateral
11 damage.

12 The element of defamation, look for the words
13 "aid and abetted." I've already touched on that, but
14 it's important.

15 With regard to the Student Senate Resolution, if
16 people are using your equipment, your facilities, and
17 using that equipment, facilities or power to defame or
18 hurt anyone, then you have the power to say, you can't
19 use our e-mail system for defamatory conduct. If you
20 look at policies, they warn the students to avoid
21 libelous defamatory conduct. But they turn -- they
22 turned away. Why? Because they had other pressures,
23 other things going on that caused them to appease their
24 customer base.

25 You know, it's not only the big things. It'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
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 13

LIBEL-PUNITIVE DAMAGES

Reckless disregard of the truth or falsity of the Flyer
FLYER: "... RACIST establishment with a LONG ACCOUNT of RACIAL PROFILING
and DISCRIMINATION ..."

STUDENT SENATE RESOLUTION: "Gibson's has a history of racial profiling and
discriminatory treatment of students and residents alike"

Trial
Testimony
May 16,
2019

90-year-old Grandpa Gibson testified that Gibson's Bakery had been doing business
with Oberlin College since "before [he] was born" (P17:2-9). No claims of racial
profiling or discrimination for that century-long relationship

EX. 111
[NEW]

On November 16, 2016, while the Student Senate Resolution was posted in Wilder
Hall, an Oberlin College alum sent an email that was forwarded to President Krislov
and VP Raimondo stating: "***To treat either Mr. Gibson or his business as racist ...***
seems to us completely inappropriate in multiple ways."

EX. 161
[NEW]

On December 20, 2016, while the Student Senate Resolution was posted in Wilder
Hall, an Oberlin College alum sent President Krislov an email that was forwarded to
VP Raimondo stating: "I have known Dave Gibson and his father for more than fifty
years. ***They are a family of gentle and fine people***."

On November 11, 2016, during the protests, James Henderson, a long-time resident of Oberlin, sent V.P. Ramondo an email stating, "My greatest concern is a statement that Gibson's bakery and the Gibson family specifically are racists, and that they have a long history of mistreating customers of color. *That does not sound like the family that I have known for nearly my entire life.*" []

EX 485
[NEW]

Trial

Testimony Chief of Staff Protzman confirmed that *none of the Oberlin College administrators "thought the Gibsons are racists."* (P23:19-22)

May 10,
2019

EX 458-1 On November 10, 2016, V.P. Ben Jones sent V.P. Ramondo a text message relaying that [NEW] he heard that "the shoplifting was clear and *there was no racial profiling*"

Trial

Testimony Chief of Staff Protzman confirmed that *he "had never heard anything that suggested, prior to November of '16, that the Gibson family or the Gibson's Bakery had a long history of racial profiling"* [] (P19:17-23)

May 10,
2019

Trial

Testimony Special Assistant Fira Reed testified that she has not had *any* experience of racism with David Gibson. (P75:22,76-6)

May 10,
2019

Trial
Testimony
May 10,
2019

President Krislov confirmed that during his tenure with Oberlin College, "no one had ever suggested to [him] that the Gibson family or Gibson's Bakery was racist[.]" (Ex. 460, pp. 5-6).

Trial
Testimony
May 13,
2019

Former Oberlin College Director of Security Rick McDaniel confirmed that in his 15 years with the college there was no "issue with racial profiling or racial discrimination by the Gibsons." (P8, 8-17).

EX. 63

On November 11, 2016, in the middle of the protests, former Oberlin College employee Emily Crawford sent an email to VP Ben Jones that was forwarded to VP Raimondo, stating, "I have talked to 15 townie friends who are [people of color] and they are disgusted and embarrassed by the protest ... 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."

Tita Reed responded on November 11, 2016 that the information "***Doesn't change a damned thing for me***."

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 XXIII

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE
ABOVE-ENTITLED MATTER ON WEDNESDAY, JUNE 12, 2019,
BEFORE THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF
SAID COURT.

 * * *

1 shouldn't be a burden on the Gibsons. You determine how
2 much it is. That's totally his discretion.

3 So with these issues -- and we've talked about
4 deterrence and importance and discouragement. Why? At
5 the end of the last case, last portion of the case, I
6 said -- I asked you, I think you asked yourself, "Why
7 should you care about the Gibsons?" And in this
8 portion, I'm going to ask you, "Why should the rest of
9 the country care?"

10 And we talked about a national tipping point.
11 And if indeed, when you are finally able to read
12 newspapers and read articles and read the internet and
13 watch TV, if indeed there was interest and if indeed you
14 come across stories in the New York Times or the
15 Washington Post or Fox News or CNN or Wall Street
16 Journal, if indeed something like that would happen,
17 whatever the media source it is, why do you think they
18 would have been and are so interested? And I would
19 submit to you that it's because words have indeed become
20 weapons. And what's happening in our society as a
21 result of words becoming weapons and the internet and
22 defamation and people attacking each other, and the
23 atmosphere, all of us have lived long enough to
24 recognize, that something is happening in terms of the
25 atmosphere in our country, and our anger and our words

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 12, 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 15

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 know what, they're begging for it. We're not doing the
2 students any favors by letting them act like nursery
3 school students and threaten tantrums or throw tantrums.
4 Everyone needs discipline and guidance.

5 In that regard, to give you the power to do
6 something, that's a forever thing. And to be frank, I'm
7 envious of your position. I honor, I respect it. But
8 you forevermore, in this case, will know that you
9 executed, I hope, a power that helps our entire country,
10 students everywhere.

11 It is a tipping point. You will learn that
12 soon. I know you had blinders on. You had to by order
13 of the Court. You will learn that soon. But
14 forevermore, depending upon your verdict, you will be
15 known as the Gibson Bakery jury or a Gibson Bakery
16 juror, and you can talk or give interviews or do
17 whatever you feel that is appropriate in the future.
18 But to have that badge, to have that mantle, that is
19 fate, because none of us get that opportunity to
20 actually do good things that are lasting that will
21 affect literally our entire country. It's a tipping
22 point. You have the power to tip it in the right
23 direction.

24 So finally, with regard to how this affects all
25 of us. You've heard too many words from me too long,

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 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 16

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #1 – ALLYN W. GIBSON LIBEL CLAIM AGAINST
OBERLIN COLLEGE

A. Did Allyn W. Gibson prove by a preponderance of the evidence that Oberlin College libeled him?

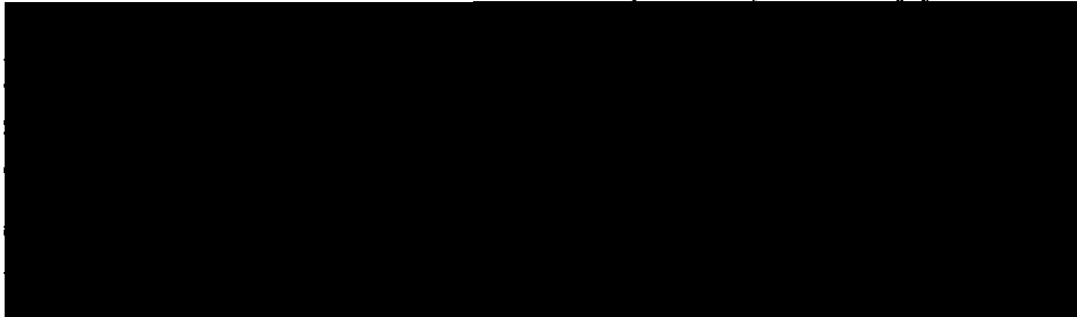
Please circle one: YES or NO

If six (6) or more jurors answered "NO" to part (A), skip parts (B) and (C) and sign the general verdict form that follows this Interrogatory for Oberlin College.

If six (6) or more jurors answered "YES" to part (A), only those jurors shall participate in part (B) below. In order to have found Oberlin College libeled Allyn W. Gibson, you must answer "YES" to EITHER part (B) or part (C) but not both.

B. Did Allyn W. Gibson prove by clear and convincing evidence that Oberlin College acted with actual malice in libeling him?

Please circle one: YES or NO



If six (6) or more jurors answered "NO" to part (B), proceed to part (C).

If six (6) or more jurors answered "YES" to part (B) – skip part (C) and sign the general verdict form that follows this Interrogatory for Allyn W. Gibson.

C. Did Allyn W. Gibson prove by clear and convincing evidence that Oberlin College acted with negligence in libeling him?

Please circle one: YES or NO



If six (6) or more jurors answered "YES" to part (C) sign the general verdict form that follows this Interrogatory for Allyn W. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

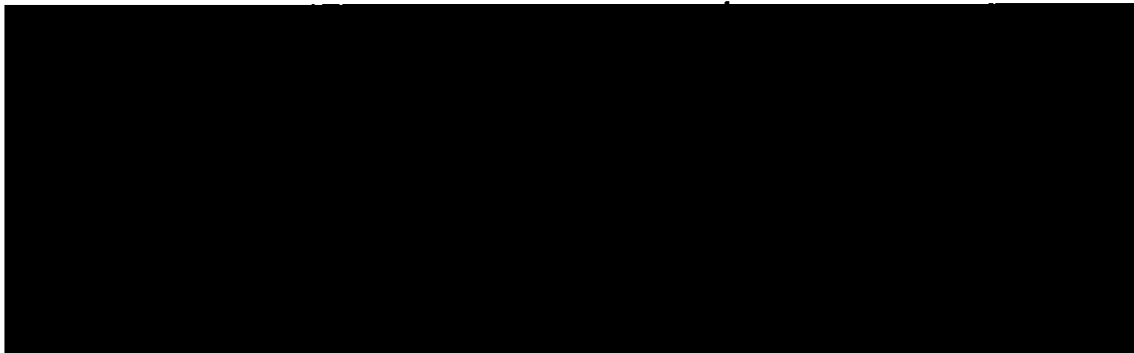
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – LIBEL CLAIM OF PLAINTIFF ALLYN W. GIBSON
AGAINST DEFENDANT OBERLIN COLLEGE

A. We, the jury, do hereby find for the Plaintiff Allyn W. Gibson, and against Oberlin College, on Allyn W. Gibson's libel claim.



B. We, the jury, do hereby find for the Defendant Oberlin College and against Allyn W. Gibson on Allyn W. Gibson's libel claim against Oberlin College

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**JURY INTERROGATORY #2- ALLYN W. GIBSON'S LIBEL CLAIM AGAINST
MEREDITH RAIMONDO**

A. Did Allyn W. Gibson prove by a preponderance of the evidence that Meredith Raimondo libeled him?

Please circle one:

YES

or

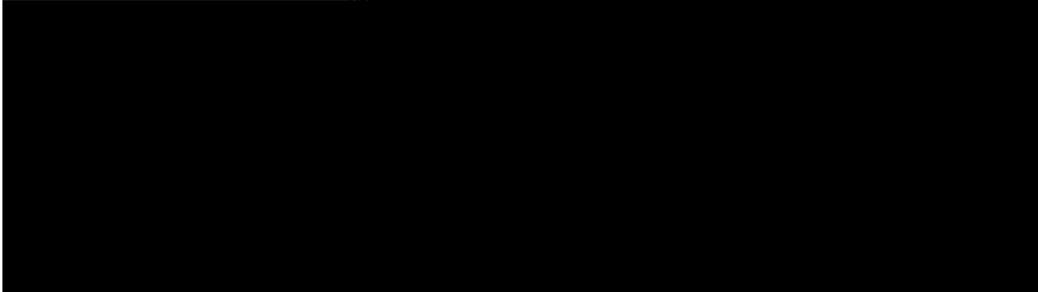
NO

If six (6) or more jurors answered "NO" to part (A), skip parts (B) and (C) and sign the general verdict form that follows this Interrogatory for Meredith Raimondo.

If six (6) or more jurors answered "YES" to part (A), only those jurors shall participate in part (B) below. In order to have found Meredith Raimondo libeled Allyn W. Gibson, you must answer "YES" to EITHER part (B) or part (C) but not both.

B. Did Allyn W. Gibson prove by clear and convincing evidence that Meredith Raimondo acted with actual malice in libeling him?

Please circle one: YES or NO

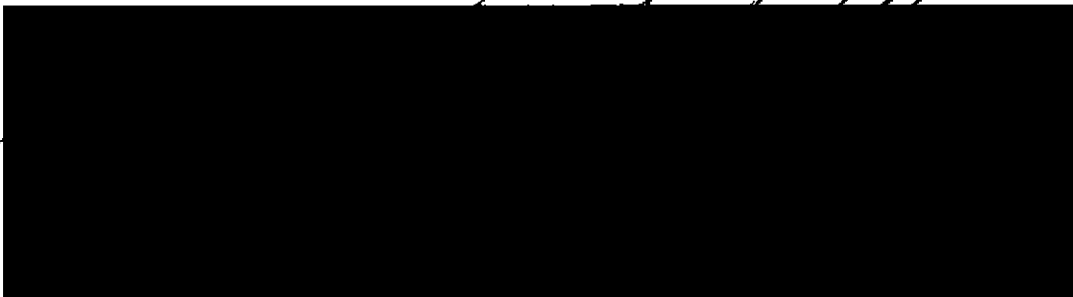


If six (6) or more jurors answered "NO" to part (B), proceed to part (C).

If six (6) or more jurors answered "YES" to part (B), skip part (C) and then sign the general verdict form that follows this Interrogatory for Allyn W. Gibson.

C. Did Allyn W. Gibson prove by clear and convincing evidence that Meredith Raimondo acted with negligence in libeling him?

Please circle one: YES or NO



If six (6) or more jurors answered "YES" to part (C), sign the general verdict form that follows this Interrogatory for Allyn W. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

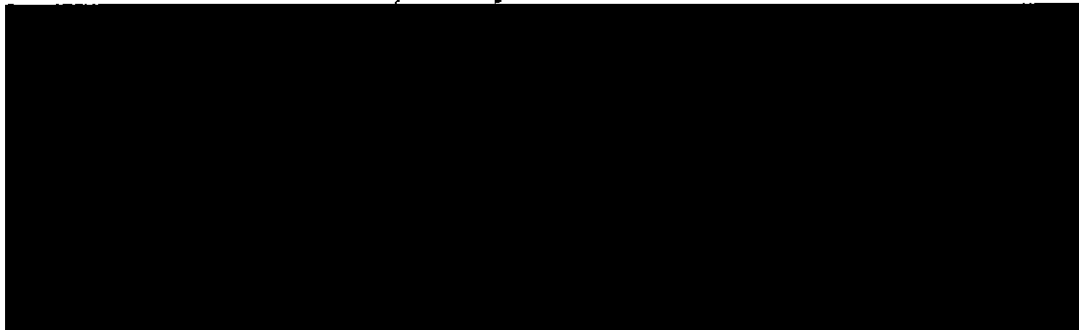
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – LIBEL CLAIM OF PLAINTIFF ALLYN W. GIBSON
AGAINST DEFENDANT MEREDITH RAIMONDO

A. We, the jury, do hereby find for the Plaintiff Allyn W. Gibson, and against
Meredith Raimondo, on Allyn W. Gibson's libel claim.



B. We, the jury, do hereby find for the Defendant Meredith Raimondo and against
Allyn W. Gibson on Allyn W. Gibson's libel claim.

_____	_____
_____	_____
_____	_____
_____	_____

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

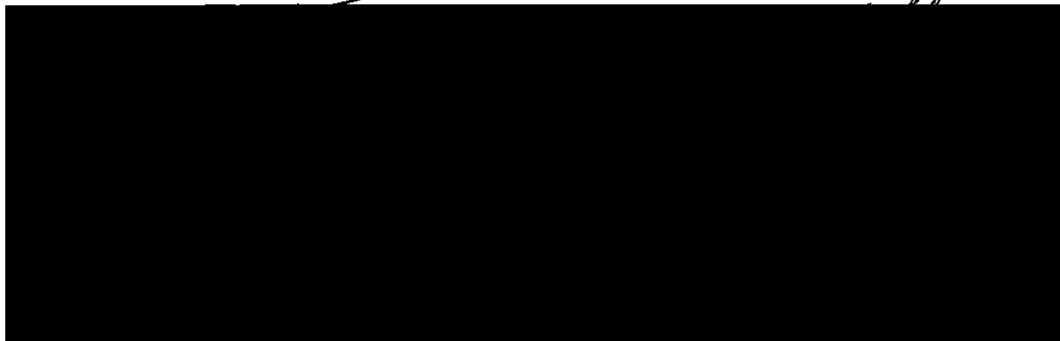
CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #3
ALLYN W. GIBSON'S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
CLAIM AGAINST OBERLIN COLLEGE

A. Did Allyn W. Gibson prove by a preponderance of the evidence that Oberlin College intentionally caused him serious emotional distress?

Please circle one: YES or NO



If six (6) or more of the jurors have answered "NO" to Interrogatory (A), sign the general verdict that follows this Interrogatory for Oberlin College.

If six (6) or more jurors answered "YES" to part (A), those jurors shall participate in part (B) below.

B. Was Oberlin College's intentional infliction of emotional distress a direct and proximate cause of any damages to Allyn W. Gibson?

Please circle one: YES or NO



If the jurors that answered "YES" to part (A) have answered "NO" to part (B), sign the general verdict that follows this Interrogatory for Oberlin College.

If the jurors that answered "YES" to part (A) have answered "YES" to part (B), sign the general verdict that follows this Interrogatory for Allyn W. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

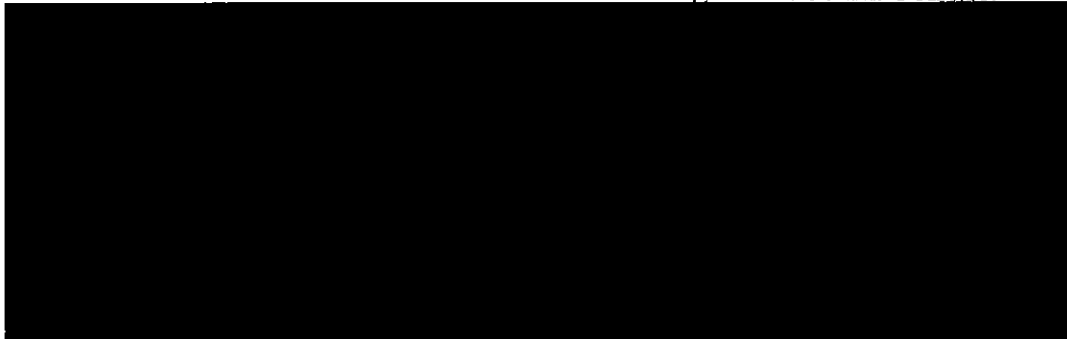
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – ALLYN W. GIBSON’S INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS CLAIM AGAINST OBERLIN COLLEGE

A. We, the jury, do hereby find for the Plaintiff Allyn W. Gibson, on his claim for intentional infliction of emotional distress against Oberlin College.



B. We, the jury, do hereby find for the Defendant Oberlin College on Allyn W. Gibson’s claim for intentional infliction of emotional distress.

_____	_____
_____	_____
_____	_____
_____	_____

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

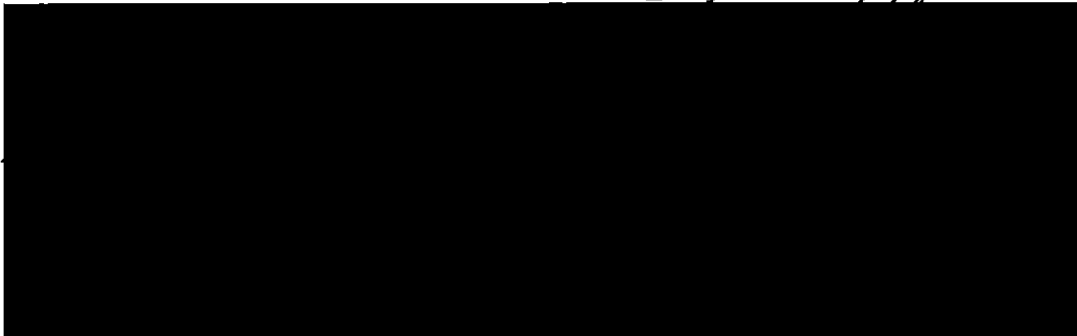
CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #4
ALLYN W. GIBSON'S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
CLAIM AGAINST MEREDITH RAIMONDO

A. Did Allyn W. Gibson prove by a preponderance of the evidence that Meredith Raimondo intentionally caused him serious emotional distress?

Please circle one: YES or NO



If six (6) or more of the jurors have answered "NO" to Interrogatory (A), skip part (B) and sign the general verdict for Meredith Raimondo.

If six (6) or more jurors answered "YES" to part (A), those jurors shall participate in part (B) below.

B. Was Meredith Raimondo's intentional infliction of emotional distress a direct and proximate cause of damages to Allyn W. Gibson?

Please circle one: YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the jurors that answered "YES" to part (A) have answered "NO" to part (B), sign the general verdict that follows this Interrogatory for Meredith Raimondo.

If the jurors that answered "YES" to part (A) have answered "YES" to part (B), sign the general verdict that follows this Interrogatory for Allyn W. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

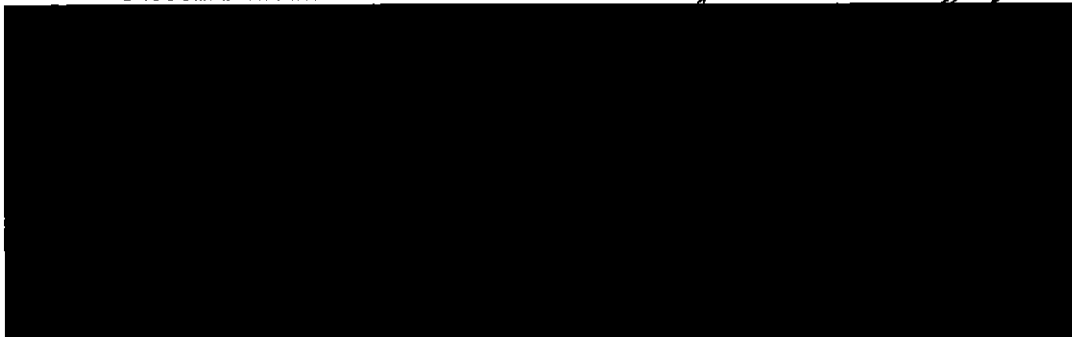
CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**GENERAL VERDICT –ALLYN W. GIBSON’S INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS CLAIM AGAINST MEREDITH RAIMONDO**

A. We, the jury, do hereby find for the Plaintiff Allyn W. Gibson, on his claim for intentional infliction of emotional distress against Meredith Raimondo.

B. We, the jury, do hereby find for the Defendant Meredith Raimondo on Allyn W. Gibson’s claim for intentional infliction of emotional distress. //



Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

COMPENSATORY DAMAGES FOR ALLYN W. GIBSON

Please specify the amount of damages, past and future, you are awarding to Plaintiff Allyn W. Gibson:

Total Compensatory Damages: \$ 3,000,000.00

Amount of total compensatory damages that represents past economic loss:

\$ 0

Amount of the total compensatory damages that represents past non-economic loss:

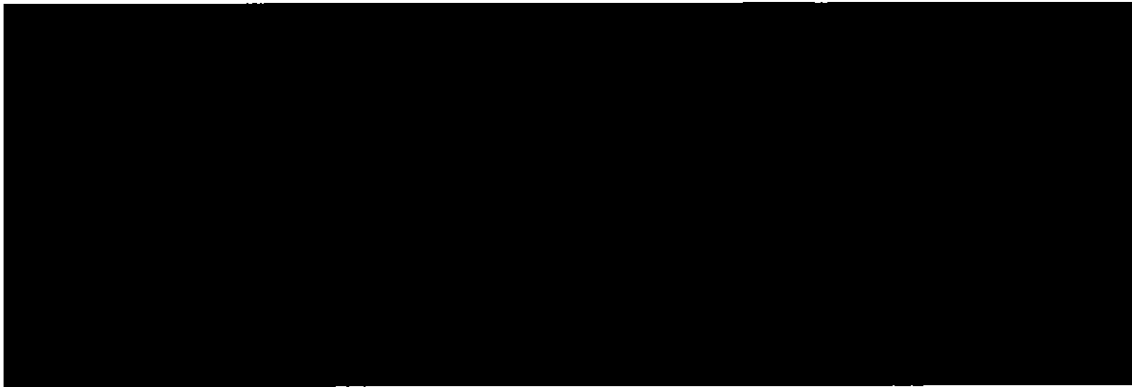
\$ 1,500,000.00

Amount of the total compensatory damages that represents future economic loss:

\$ 0

Amount of the total compensatory damages that represents future non-economic loss:

\$ 1,500,000.00



IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #1 – DAVID R. GIBSON LIBEL CLAIM AGAINST
OBERLIN COLLEGE

A. Did David R. Gibson prove by a preponderance of the evidence that Oberlin College libeled him?

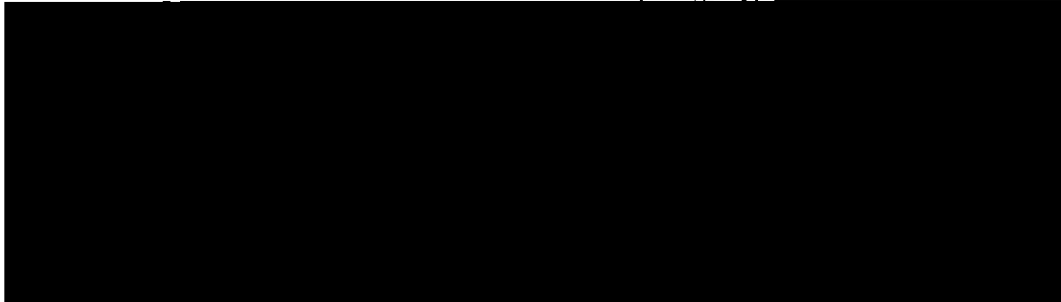
Please circle one: YES or NO

If six (6) or more jurors answered "NO" to part (A), skip parts (B) and (C) and sign the general verdict form that follows this Interrogatory for Oberlin College.

If six (6) or more jurors answered "YES" to part (A), only those jurors shall participate in part (B) below. In order to have found Oberlin College libeled David R. Gibson, you must answer "YES" to EITHER part (B) or part (C) but not both.

B. Did David R. Gibson prove by clear and convincing evidence that Oberlin College acted with actual malice in libeling him?

Please circle one: YES or NO

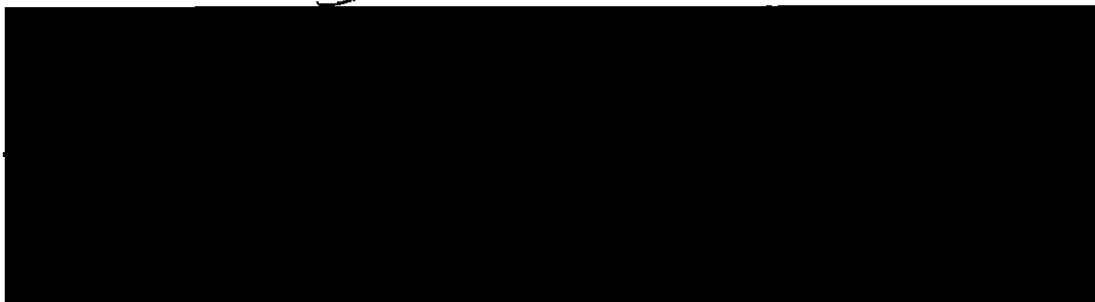


If six (6) or more jurors answered "NO" to part (B), proceed to part (C).

If six (6) or more jurors answered "YES" to part (B) – skip part (C) and sign the general verdict form that follows this Interrogatory for David R. Gibson.

C. Did David R. Gibson prove by clear and convincing evidence that Oberlin College acted with negligence in libeling him?

Please circle one: YES or NO



If six (6) or more jurors answered "YES" to part (C) sign the general verdict form that follows this Interrogatory for David R. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

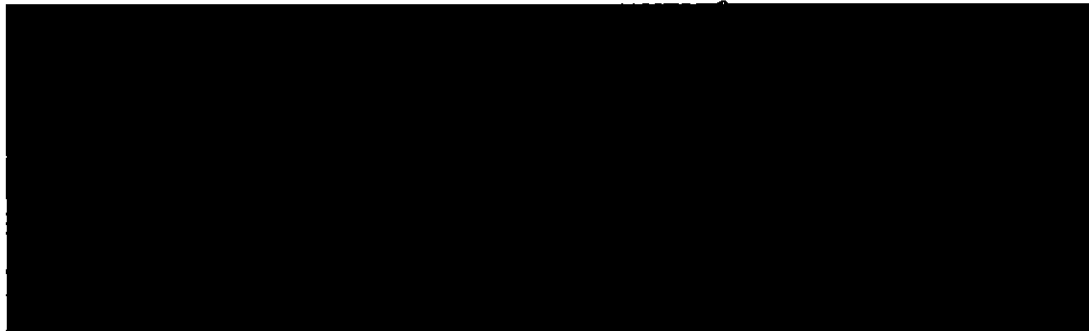
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – LIBEL CLAIM OF PLAINTIFF DAVID R. GIBSON AGAINST
DEFENDANT OBERLIN COLLEGE

A. We, the jury, do hereby find for the Plaintiff David R. Gibson, and against Oberlin College, on David R. Gibson's libel claim.



B. We, the jury, do hereby find for the Defendant Oberlin College and against David R. Gibson on David R. Gibson's libel claim against Oberlin College

_____	_____
_____	_____
_____	_____
_____	_____

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #2- DAVID R. GIBSON'S LIBEL CLAIM AGAINST
MEREDITH RAIMONDO

A. Did David R. Gibson prove by a preponderance of the evidence that Meredith Raimondo libeled him?

Please circle one:

YES

or

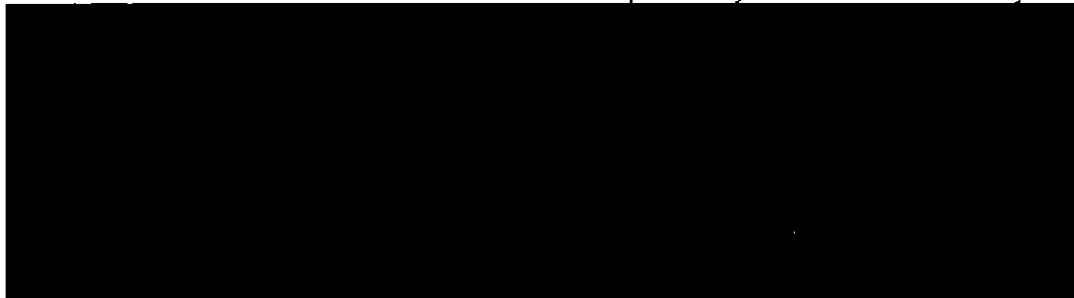
NO

If six (6) or more jurors answered "NO" to part (A), skip parts (B), and (C), and sign the general verdict form that follows this Interrogatory for Meredith Raimondo.

If six (6) or more jurors answered "YES" to part (A), only those jurors shall participate in part (B) or (C) below. In order to have found Meredith Raimondo libeled David R. Gibson, you must answer "YES" to EITHER part (B) or part (C) but not both.

B. Did David R. Gibson prove by clear and convincing evidence that Meredith Raimondo acted with actual malice in libeling him?

Please circle one: YES or NO

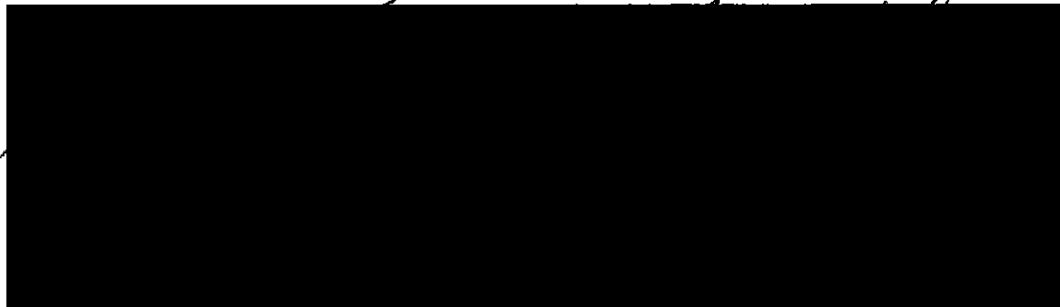


If six (6) or more jurors answered "NO" to part (B), proceed to part (C).

If six (6) or more jurors answered "YES" to part (B), skip part (C) and then sign the general verdict form that follows this Interrogatory for David R. Gibson.

C. Did David R. Gibson prove by clear and convincing evidence that Meredith Raimondo acted with negligence in libeling him?

Please circle one: YES or NO



If six (6) or more jurors answered "YES" to part (C), sign the general verdict form that follows this Interrogatory for David R. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

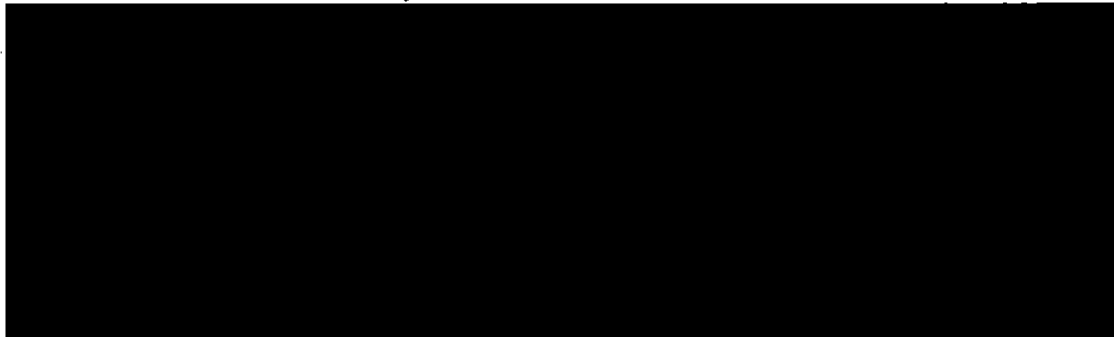
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – LIBEL CLAIM OF PLAINTIFF DAVID R. GIBSON AGAINST
DEFENDANT MEREDITH RAIMONDO

A. We, the jury, do hereby find for the Plaintiff David R. Gibson, and against
Meredith Raimondo, on David R. Gibson's libel claim.



B. We, the jury, do hereby find for the Defendant Meredith Raimondo and against
David R. Gibson on David R. Gibson's libel claim.

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #3
DAVID R. GIBSON'S INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
CLAIM AGAINST OBERLIN COLLEGE

A. Did David R. Gibson prove by a preponderance of the evidence that Oberlin College intentionally caused him serious emotional distress?

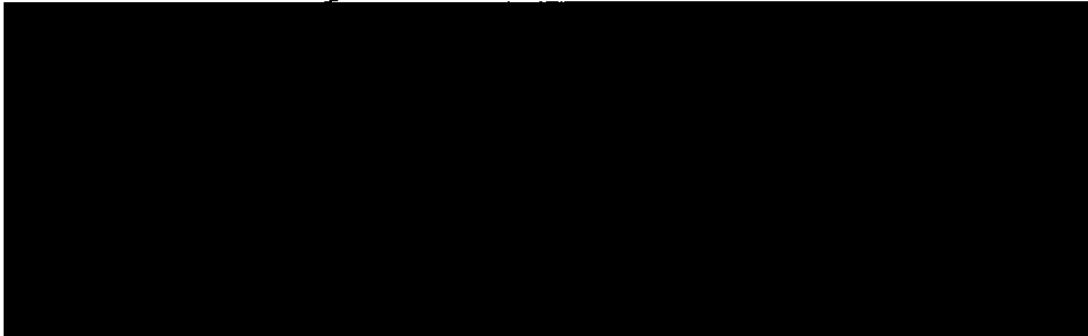
Please circle one: YES or NO

If six (6) or more of the jurors have answered "NO" to Interrogatory (A), sign the general verdict that follows this Interrogatory for Oberlin College.

If six (6) or more jurors answered "YES" to part (A), those jurors shall participate in part (B) below.

B. Was Oberlin College's intentional infliction of emotional distress a direct and proximate cause of any damages to David R. Gibson?

Please circle one: YES or NO



If the jurors that answered "YES" to part (A) have answered "NO" to part (B), sign the general verdict that follows this Interrogatory for Oberlin College.

If the jurors that answered "YES" to part (A) have answered "YES" to part (B), sign the general verdict that follows this Interrogatory for David R. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

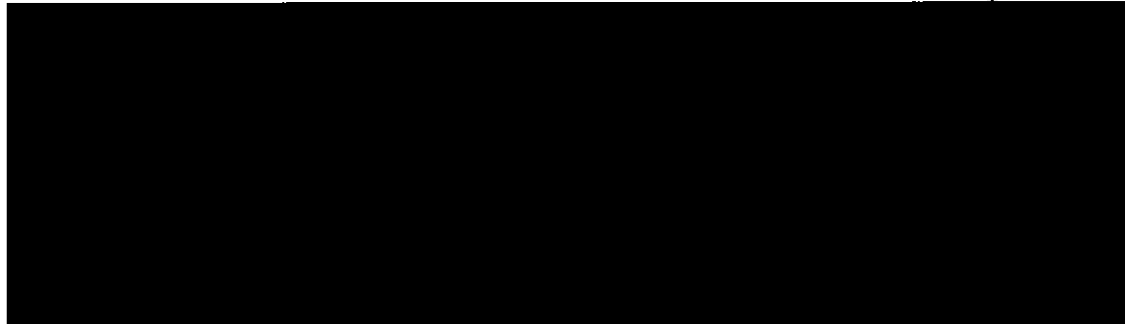
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT –DAVID R. GIBSON’S INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS CLAIM AGAINST OBERLIN COLLEGE

A. We, the jury, do hereby find for the Plaintiff David R. Gibson, on his claim for intentional infliction of emotional distress against Oberlin College.



B. We, the jury, do hereby find for the Defendant Oberlin College on David R. Gibson’s claim for intentional infliction of emotional distress.

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #4
DAVID R. GIBSON'S INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
CLAIM AGAINST MEREDITH RAIMONDO

A. Did David R. Gibson prove by a preponderance of the evidence that Meredith Raimondo intentionally caused him serious emotional distress?

Please circle one: YES or NO

If six (6) or more of the jurors have answered "NO" to Interrogatory (A), skip part (B) and sign the general verdict for Meredith Raimondo.

If six (6) or more jurors answered "YES" to part (A), those jurors shall participate in part (B) below.

B. Was Meredith Raimondo's intentional infliction of emotional distress a direct and proximate cause of damages to David R. Gibson?

Please circle one: YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the jurors that answered "YES" to part (A) have answered "NO" to part (B), sign the general verdict that follows this Interrogatory for Meredith Raimondo.

If the jurors that answered "YES" to part (A) have answered "YES" to part (B) sign the general verdict that follows this Interrogatory for David R. Gibson.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

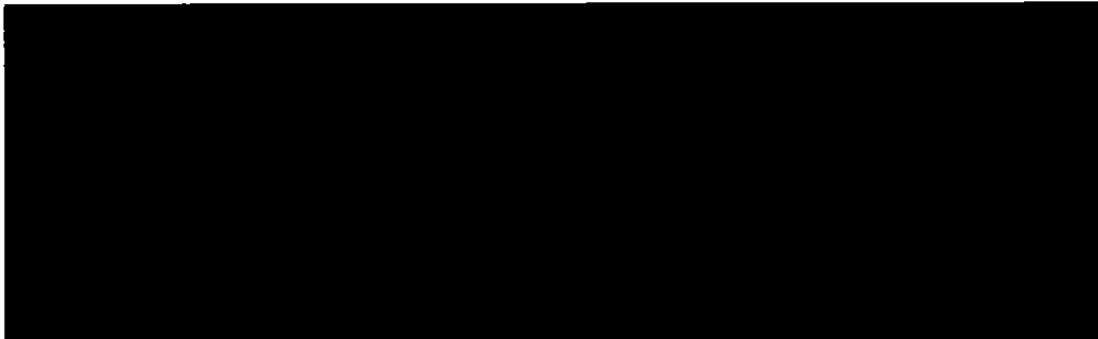
CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**GENERAL VERDICT –DAVID R. GIBSON’S INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS CLAIM AGAINST MEREDITH RAIMONDO**

A. We, the jury, do hereby find for the Plaintiff David R. Gibson, on his claim for intentional infliction of emotional distress against Meredith Raimondo.

B. We, the jury, do hereby find for the Defendant Meredith Raimondo on David R. Gibson’s claim for intentional infliction of emotional distress.



Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

COMPENSATORY DAMAGES FOR DAVID R. GIBSON

Please specify the amount of damages, past and future, you are awarding to Plaintiff David R. Gibson:

Total Compensatory Damages: \$ 5,800,000.00

Amount of total compensatory damages that represents past economic loss:

\$ 0

Amount of the total compensatory damages that represents past non-economic loss:

\$ 2,000,000.00

Amount of the total compensatory damages that represents future economic loss:

\$ 1,800,000.00

Amount of the total compensatory damages that represents future non-economic loss:

\$ 2,000,000.00



IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #1 – GIBSON BROS., INC. LIBEL CLAIM AGAINST
OBERLIN COLLEGE

A. Did Gibson Bros. Inc. prove by a preponderance of the evidence that Oberlin College libeled it?

Please circle one:

☒ YES

or

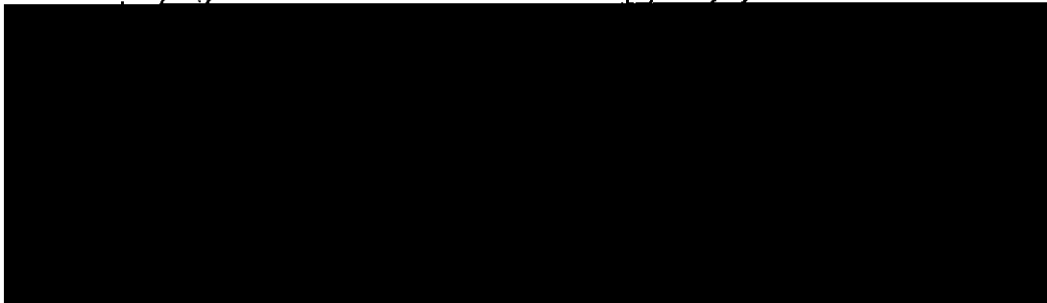
NO

If six (6) or more jurors answered "NO" to part (A), skip parts (B) and (C) and sign the general verdict form that follows this Interrogatory for Oberlin College.

If six (6) or more jurors answered "YES" to part (A), only those jurors shall participate in part (B) below. In order to have found Oberlin College libeled Gibson Bros. Inc., you must answer "YES" to EITHER part (B) or part (C) but not both.

B. Did Gibson Bros. Inc. prove by clear and convincing evidence that Oberlin College acted with actual malice in defaming it?

Please circle one: YES or (NO)



If six (6) or more jurors answered "NO" to part (B), proceed to part (C).

If six (6) or more jurors answered "YES" to part (B) – skip part (C) and sign the general verdict form that follows this Interrogatory for Gibson Bros., Inc.

C. Did Gibson Bros. Inc. prove by clear and convincing evidence that Oberlin College acted with negligence in defaming it?

Please circle one: (YES) or NO



If six (6) or more jurors answered "YES" to part (C) sign the general verdict that follows this interrogatory for Gibson Bros., Inc.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

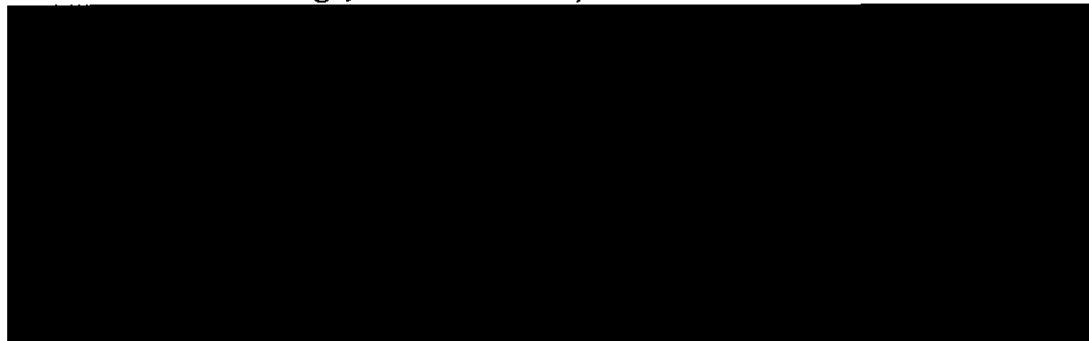
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – LIBEL CLAIM OF PLAINTIFF GIBSON BROS., INC.
AGAINST DEFENDANT OBERLIN COLLEGE

A. We, the jury, do hereby find for the Plaintiff Gibson Bros., Inc., and against Oberlin College, on Gibson Bros., Inc.'s libel claim.



B. We, the jury, do hereby find for the Defendant Oberlin College and against Gibson Bros., Inc. on Gibson Bros., Inc.'s libel claim against Oberlin College

_____	_____
_____	_____
_____	_____
_____	_____

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**JURY INTERROGATORY #2- GIBSON BROS., INC.'S LIBEL CLAIM AGAINST
MEREDITH RAIMONDO**

A. Did Gibson Bros., Inc. prove by a preponderance of the evidence that Meredith Raimondo libeled it?

Please circle one:

☒ YES

or

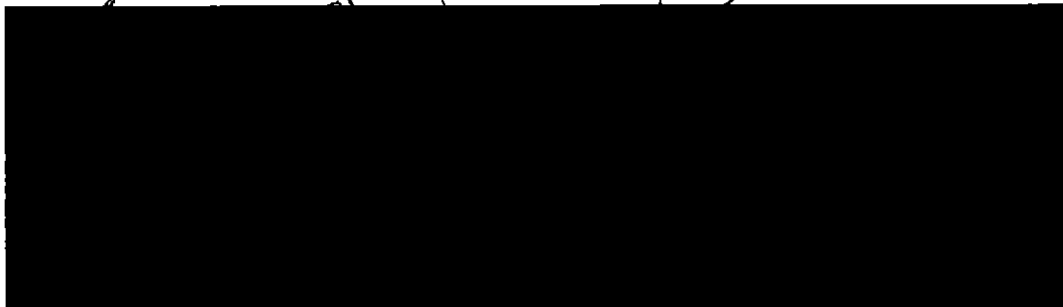
☐ NO

If six (6) or more jurors answered "NO" to part (A), skip parts (B) and (C), and sign the general verdict form that follows this Interrogatory for Meredith Raimondo.

If six (6) or more jurors answered "YES" to part (A), only those jurors shall participate in part (B) below. In order to have found Meredith Raimondo libeled Gibson Bros., Inc., you must answer "YES" to EITHER part (B) or part (C) but not both.

B. Did Gibson Bros., Inc. prove by clear and convincing evidence that Meredith Raimondo acted with actual malice in libeling it?

Please circle one: YES or NO

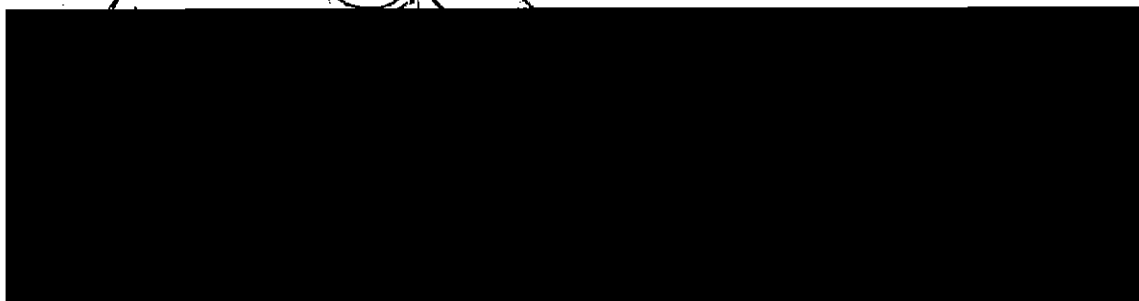


If six (6) or more jurors answered "NO" to part (B), proceed to part (C).

If six (6) or more jurors answered "YES" to part (B), skip part (C), and then sign the general verdict form that follows this Interrogatory for Gibson Bros., Inc.

C. Did Gibson Bros., Inc. prove by clear and convincing evidence that Meredith Raimondo acted with negligence in defaming it?

Please circle one: YES or NO



If six (6) or more jurors answered "YES" to part (C), sign the general verdict form that follows this Interrogatory for Gibson Bros., Inc.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

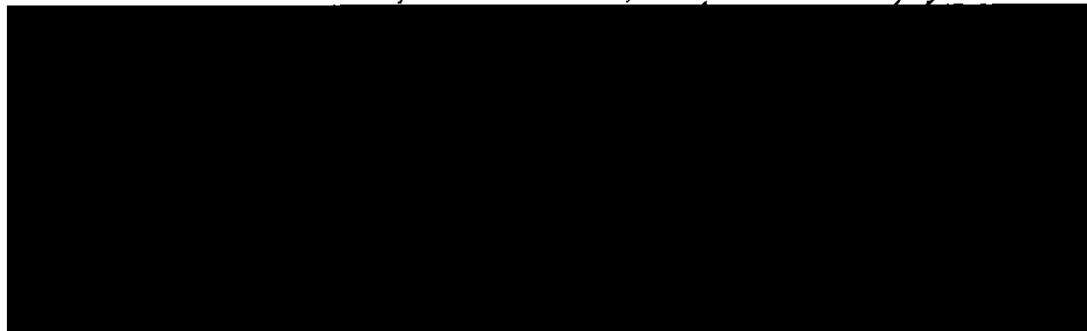
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

GENERAL VERDICT – LIBEL CLAIM OF PLAINTIFF GIBSON BROS., INC.
AGAINST DEFENDANT MEREDITH RAIMONDO

A. We, the jury, do hereby find for the Plaintiff Gibson Bros., Inc., and against
Meredith Raimondo, on Gibson Bros., Inc.'s libel claim.



B. We, the jury, do hereby find for the Defendant Meredith Raimondo and against
Gibson Bros., Inc. on Gibson Bros., Inc.'s libel claim.

Please proceed to the next Interrogatory.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

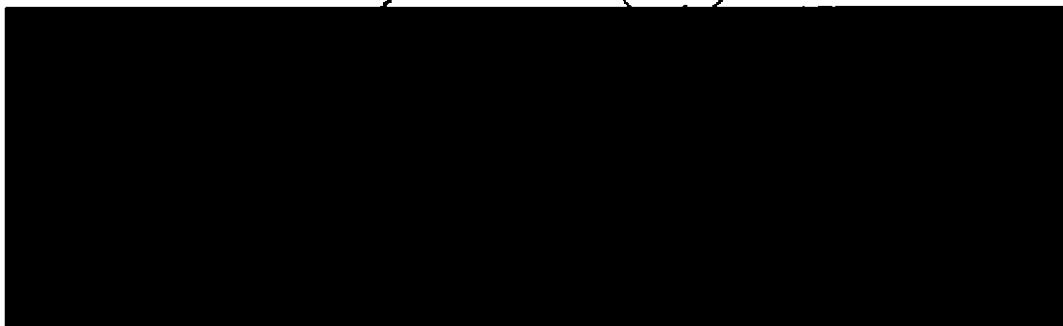
CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

JURY INTERROGATORY #3
GIBSON BROS., INC.'S INTENTIONAL INTERFERENCE WITH BUSINESS
RELATIONSHIP CLAIM AGAINST OBERLIN COLLEGE

A. Did Gibson Bros., Inc. prove by a preponderance of the evidence that Oberlin College intentionally interfered with its business relationship with Bon Appetit Management Company?

Please circle one: YES or NO



If six (6) or more of the jurors have answered "NO" to Interrogatory (A), sign the general verdict that follows this Interrogatory for Oberlin College.

If six (6) or more jurors answered "YES" to part (A), those jurors shall participate in part (B) below.

B. Was Oberlin College's intentional interference with Gibson Bros., Inc.'s business relationship with Bon Appetit a direct and proximate cause of damage to Gibson Bros., Inc.?

Please circle one: YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the jurors that answered "YES" to part (A) have answered "NO" to part (B), sign the general verdict that follows this Interrogatory for Oberlin College.

If the jurors that answered "YES" to part (A) have answered "YES" to part (B), sign the general verdict that follows this Interrogatory for Gibson Bros., Inc.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

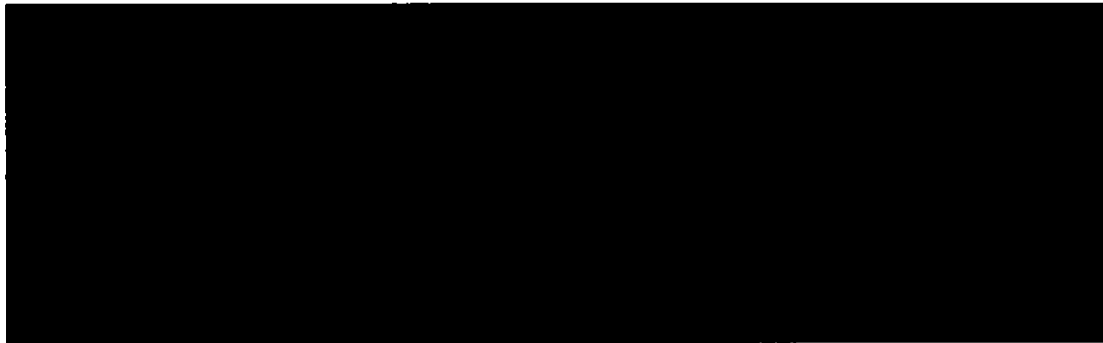
CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**GENERAL VERDICT --GIBSON BROS., INC.'S INTENTIONAL INTERFERENCE
WITH BUSINESS RELATIONSHIP CLAIM AGAINST OBERLIN COLLEGE**

A. We, the jury, do hereby find for the Plaintiff Gibson Bros., Inc., on its claim for intentional interference with business relationship against Oberlin College

B. We, the jury, do hereby find for the Defendant Oberlin College on Gibson Bros., Inc.'s claim for intentional interference with business relationship.



Please proceed to the next Interrogatory

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

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

**OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,**

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**JURY INTERROGATORY #4
GIBSON BROS., INC.'S INTENTIONAL INTERFERENCE WITH BUSINESS
RELATIONSHIP CLAIM AGAINST MEREDITH RAIMONDO**

A. Did Gibson Bros., Inc. prove by a preponderance of the evidence that Meredith Raimondo intentionally interfered with its business relationship with Bon Appetit Management Company?

Please circle one:

YES

or

NO

If six (6) or more of the jurors have answered "NO" to Interrogatory (A), skip part (B) and sign the general verdict that follows this Interrogatory for Meredith Raimondo.

If six (6) or more jurors answered "YES" to part (A), those jurors shall participate in part (B) below.

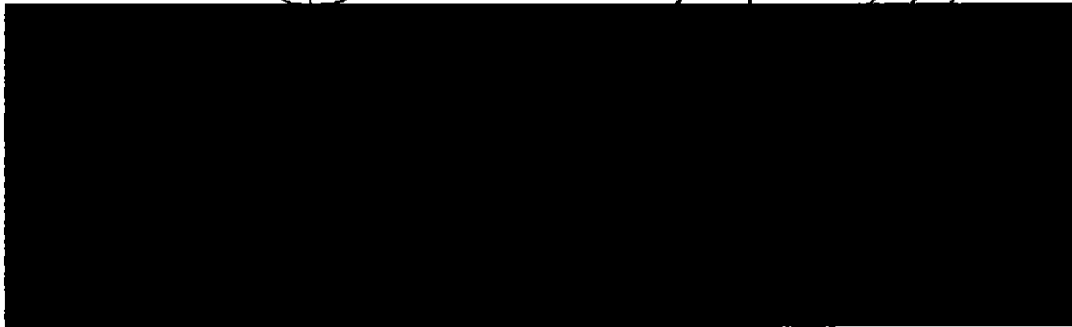
B. Was Meredith Raimondo's intentional interference with Gibson Bros., Inc.'s business relationship with Bon Appetit Management Company a direct and proximate cause of damage to Gibson Bros., Inc.?

Please circle one:

YES

or

NO



If the jurors that answered "YES" to part (A) have answered "NO" to part (B), sign the general verdict that follows this Interrogatory for Meredith Raimondo.

If the jurors that answered "YES" to part (A) have answered "YES" to part (B), sign the general verdict that follows this Interrogatory for Gibson Bros., Inc.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

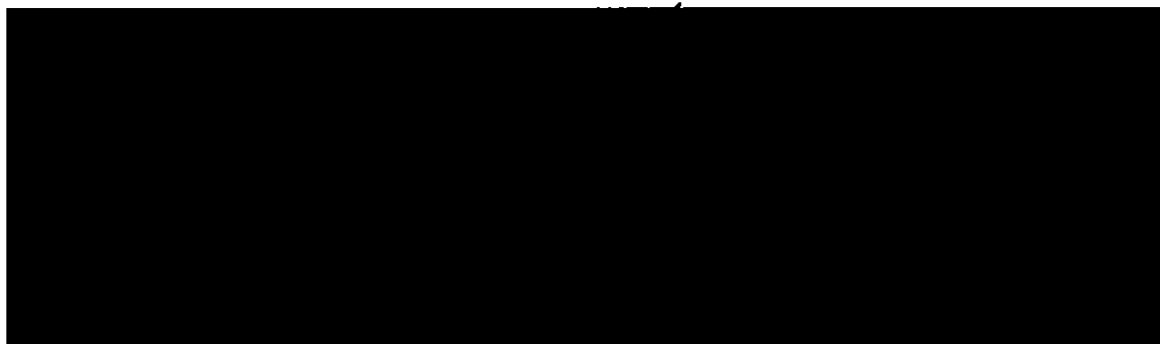
Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

**GENERAL VERDICT –GIBSON BROS., INC.’S INTENTIONAL INTERFERENCE
WITH BUSINESS RELATIONSHIP CLAIM AGAINST MEREDITH RAIMONDO**

A. We, the jury, do hereby find for the Plaintiff Gibson Bros., Inc., on its claim for intentional interference with business relationship against Meredith Raimondo.



B. We, the jury, do hereby find for the Defendant Meredith Raimondo on Gibson Bros., Inc.’s claim for intentional interference with business relationship.

_____	_____
_____	_____
_____	_____
_____	_____

Please proceed to the next Interrogatory

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
CIVIL DIVISION

GIBSON BROS, INC., *et al.*,

Plaintiffs,

vs.

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY,
et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

COMPENSATORY DAMAGES FOR GIBSON BROS., INC.

Please specify the amount of damages, past and future, you are awarding to Plaintiff Gibson Bros., Inc.:

Total Compensatory Damages: \$ 2,274,500.00

Amount of total compensatory damages that represents past economic loss:

\$ 420,000.00

Amount of the total compensatory damages that represents future economic loss:

\$ 1,854,500.00

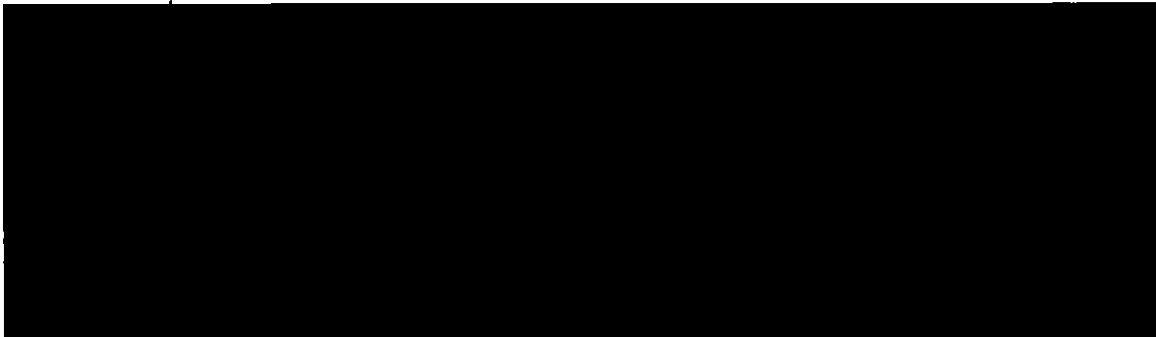


EXHIBIT 17

Bon Appetit Fee Proposal for 2015-2019

Actual Fees through 2014	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
	Fixed Fees	Proposed Fee Reduction	% Increase	% Increase	% Increase	% Increase
Academic Year Commencement	222,000	-89,800	133,200	133,200	141,300	145,500
Conference Services	20,000	-3,200	4,800	12,000	15,150	13,100
	250,000	-93,000	157,000	145,200	156,450	158,600
Budget Incentive Satisfaction Incentive Sustainability Incentive Oberlin Athletics	Current Incentive Fee 25,000	Proposed Incentive Fees 25,000		Proposed Incentive Fees 25,000	Proposed Incentive Fees 25,000	Proposed Incentive Fees 25,000
TTL Incentive Fee for BA		-3,000	22,000	29,000	29,000	29,000
Fee Total	275,000	-103,000	172,000	174,200	185,450	187,600
BA PBO Potential	275,000	172,000	172,000	183,500	188,150	193,100

Subsidy before fees 8,248,006 4,782,973 4,923,891 4,721,263 4,870,045 4,835,372

Fee Saving per year \$ 103,000 \$ 98,000 \$ 91,500 \$ 86,850 \$ 81,900 \$ 81,900
Cumulative Savings \$ 103,000 \$ 201,000 \$ 292,500 \$ 379,350 \$ 461,250 \$ 461,250

*Bon Appetit will support George Jones Farm and other Oberlin CFZ initiatives with a \$3,000 annual donation.

Bon Appetit Fee Proposal for 2015-2019	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
	% Increase	% Increase	% Increase	% Increase	% Increase
Academic Year Commencement	0% \$ -	0% \$ -	3% 4,365	3% 4,496	3% 4,631
Conference Services	0% \$ -	0% \$ -	3% 165	3% 170	3% 175
	0% \$ -	0% \$ -	3% 13,100	3% 13,493	3% 13,886
	0% \$ -	0% \$ -	3% 164,100	3% 169,023	3% 173,946
Budget Incentive Satisfaction Incentive Sustainability Incentive	0% \$ -	0% \$ -	3% 25,000	3% 25,750	3% 26,500
TTL Incentive Fee for BA	0% \$ -	0% \$ -	3% 2,000	3% 2,060	3% 2,120
	0% \$ -	0% \$ -	3% 5,000	3% 5,150	3% 5,300
	0% \$ -	0% \$ -	3% 32,000	3% 32,960	3% 33,920
Fee Total	0% \$ -	0% \$ -	3% 156,100	3% 161,023	3% 165,946
BA PBO Potential	156,100	156,100	201,983	208,042	214,284

Fee Saving per year \$ 78,900 \$ 73,917 \$ 69,067 \$ 64,116 \$ 59,165 \$ 54,214
Cumulative Savings \$ 540,150 \$ 619,060 \$ 688,127 \$ 757,191 \$ 826,256 \$ 895,320

Starting in 2015, Bon Appetit will consider support for Oberlin activities as a separate transaction from management and incentive fees.

EXHIBIT
367

MANAGEMENT AGREEMENT
RENEWAL 2004-2009

This Management Agreement ("Agreement") Renewal is entered into as of and for July 1, 2004, by and between Oberlin College, an Ohio not for profit corporation ("Oberlin"), and Compass Group USA, Inc., a Delaware corporation by and through its Bon Appétit Division ("Bon Appétit") (collectively the "Parties"), who agree as follows:

ARTICLE I
PURPOSE OF THE AGREEMENT

1.1 **Purpose of Agreement.** The Agreement sets forth the terms and conditions upon which Oberlin retains Bon Appétit to manage and operate Food Service for Oberlin's students, faculty, staff, employees and invited guests at its campus in Oberlin, Ohio (the "Premises").

1.2 **Agency Relationship.** Bon Appétit shall act as agent for Oberlin in the management of the Food Service operation at the following locations: Stevenson Hall, Dascomb Hall, Lord Saunders Hall, Wilder Hall and such other locations as mutually agreed to by the Parties. Bon Appétit shall purchase food and supplies in Bon Appétit's name and shall pay the invoices. As principal, Oberlin may supervise Bon Appétit's daily operation of the Food Service Operations, including working conditions for Food Service Employees and safety, sanitation and maintenance of the Premises.

1.4 **Regulations and Access.** Neither this Agreement nor Bon Appétit's occupancy of the Premises shall constitute a lease or license of all or a portion of the Premises to Bon Appétit. Oberlin may make reasonable regulations with regard to the use and occupancy of the Premises with which Bon Appétit will comply as soon as possible after written notice. Oberlin authorized representatives shall have access to all food service areas at all times.

ARTICLE II
TERM AND EXCLUSIVITY

2.1 **Term and Termination.**

A. **Term of Renewal Agreement** This Renewal Agreement is for a term of five (5) year commencing on July, 1, 2004, and shall continue from year to year thereafter, unless terminated by either party as provided in this Agreement.

B. **Termination for Cause.** If either Party breaches a provision hereof ("Cause"), the non-breaching party shall give the other party written notice of such Cause. If the Cause is remedied within twenty (20) days after such notice is received, the notice shall be null and void. If such Cause is not remedied within the specific period, the party giving notice shall have the right to terminate this Agreement upon expiration of such remedy period by delivering a second notice to the breaching party, in which event this Agreement shall terminate upon receipt of such second written notice by the breaching party. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

C. **Termination without Cause.** Either party may terminate this Agreement at any time without cause upon ninety (90) days' prior written notice to the other party with the specific termination date.

2.2 **Exclusive.** Oberlin grants Bon Appétit the exclusive right to perform Food Services on or from the Premises during the term of this Agreement. The grant to Bon Appétit shall not prohibit Oberlin from engaging third parties using their own personnel and equipment to provide services to catered functions and special events, in locations not specifically assigned to Bon Appétit. Without limiting the generality of the foregoing, notwithstanding any provision to the contrary contained in this Agreement, and subject to the terms and conditions contained in Section 7.3, Oberlin may contract directly with local vendors, distributors and restaurants for the retail sale or consignment of goods and food stuffs in any convenience store located on the Premises, including, without limitation, ethnic foods from local ethnic restaurants and bakery goods from local bakers.

ARTICLE III
SERVICES TO BE PERFORMED

3.1 Service and Locations. Bon Appétit shall provide Food Service at the following Locations:

Stevenson Hall
Dascomb Hall
Lord Saunders Hall
Wilder Hall

3.2 Types of Food Services.

(A) Resident Dining & Retail Program.

(i) During the time periods set forth in Section 3.2 (D), Bon Appétit shall provide Food Services to Oberlin students on a "cafeteria style" basis in accordance with the meal plan programs set forth on Schedule A, attached hereto (the "Schedule A: Resident Dining & Retail Program"). Bon Appétit shall serve meals in connection with the Resident Dining & Retail Program at the dining halls and during the hours of operation set forth on Schedule B, attached hereto (the "Schedule B: Hours of Operation"), and Bon Appétit shall conduct all preparation and cleaning activities necessary for the Resident Dining & Retail Program during the times set forth on Schedule C, attached hereto (the "Schedule C: Opening/Closing Schedule").

(ii) As part of the Resident Dining & Retail Program, Bon Appétit shall offer the major and mini specials set forth on Schedule D, attached hereto (the "Schedule D: Major & Mini-Special Schedule"). The Major & Mini-Special Schedule shall contain at least eight (8) major menu specials per academic year and one (1) mini-special promotion each week.

(B) Retail Sales. As part of the Resident Dining & Retail Program and during the times set forth in Section 3.2 (D), Bon Appétit shall provide Food Services to Oberlin students on a retail basis consistent with the selections and prices set forth on Schedule E, attached hereto (the "Schedule E: Retail Selections"). Bon Appétit shall offer the retail portion of the Resident Dining & Retail Program to students, employees and invitees of Oberlin during the Hours of Operation.

(C) Catering Program. During the time periods set forth in Section 3.2 (D) and to the extent requested by Oberlin (which request shall specify the times, location, number and types of meals to be served), Bon Appétit shall provide catered food service at the Premises or other facilities located within a two (2) mile radius of the Premises, consistent with the menu options and prices set forth on Schedule F, attached hereto (the "Schedule F: Catering Service"). Prices for special events will depend upon the menu, décor and time and manner of services and shall be established by agreement of the parties at the time the services are requested.

(D) Time Periods. Solely to the extent provided in the Budget, Bon Appétit shall provide the Food Services during:

- (i) the academic year comprising approximately ten (10) months starting in August and ending in May (the "Academic Year");
- (ii) Oberlin's two (2) week commencement program held during May (the "Commencement Activities"); and;
- (iii) Oberlin's ten (10) week summer conference program commencing in June and ending in August (the "Summer Conference"); the Academic Year, Commencement Activities and Summer Conference are hereinafter collectively referred to as a "Fiscal Year").

3.3 Changes to Menus and Prices. As part of the budgeting process described in Section 6.4, for each fiscal year during the term of this Agreement, Bon Appétit shall set forth in the Proposed Budget any suggested changes to the menus or prices charged in connection with the Food Service or set forth in the schedules to this Agreement. Oberlin shall approve or disapprove of such charges within the Approval Notice (as defined herein).

3.4 Special Diets. Bon Appetit shall supply any medically required special diets for resident dining patrons when prescribed and approved in writing by a medical doctor and Oberlin.

3.5 Standards.

(A) Sanitary Standards. Bon Appétit shall provide the Food Services in accordance with the sanitary, safety and food handling standards set forth on Schedule G, attached hereto (the "Schedule G: Sanitary & Safety Standards"). Bon Appétit and Oberlin agree to work together to set standards and develop programs for campus wide recycling and composting.

(B) Program Standards.

- (i) All food served by Bon Appétit during the Academic Year in connection with the Resident Dining & Retail Program shall be served in accordance with the Resident Dining & Retail Program serving standards set forth on Schedule H attached hereto (the "Schedule H: Academic Year Serving Standards"). Bon Appétit and Oberlin will annually evaluate the program.
- (ii) All food served by Bon Appétit during the Summer Conference shall be served in accordance with the serving standards set forth on Schedule I, attached hereto (the "Schedule I: Summer Conference Serving Standards").
- (iii) Bon Appétit will be responsible for conducting regular Program Reviews according to the Schedule J, attached hereto (the "Schedule J: Program Review Standards").

(C) Without limiting the generality of the foregoing:

- (i) Compliance with the Law. Bon Appétit shall operate the Food Services in accordance with all applicable federal, state, county and municipal laws, ordinances, regulations and rules;
- (ii) Licenses and Permits. Bon Appétit shall obtain and maintain all necessary licenses and permits to operate the Food Services, and Oberlin shall cooperate, with Bon Appétit's efforts to obtain such licenses and permits, provided, however, Oberlin shall obtain and maintain any necessary liquor licenses or permits, and;
- (iii) Bon Appétit shall provide evaluations, training and staff support for those Oberlin employees supervised by Bon Appétit in connection with the Food Services, each to the extent set forth on Schedule K, attached hereto (the "Schedule K: Staff Standards"). All such training materials will be developed in coordination with and reviewed by the Oberlin's Office of Human Resources.

3.6 Inspections.

- (i) Quarterly. Oberlin and Bon Appétit shall jointly schedule and conduct Quarterly Cleanliness and Sanitation Inspections of the Premises by Location to insure that the "College Standards" (copies of which have been provided to Bon Appétit), are maintained.
- (ii) Health Department Inspections. Bon Appétit will notify Residential Life and Services whenever the Lorain County Health Inspector is on campus so that a member of the staff can (if available) participate in the inspection process. Bon Appétit shall provide copies of any Health Department Inspection Reports immediately after receipt of said report. Oberlin and/or Bon Appétit shall make all necessary corrections, within the scope of their respective responsibilities as defined under this Agreement

ARTICLE IV
EMPLOYEES

4.1 Bon Appétit Management Employees.

(A) Bon Appétit shall provide sufficient numbers of qualified management employees to provide the Food Services and to adequately supervise all Food Service employees, including, without limitation, a competent and qualified Dietitian.

(B) Oberlin will participate in the hiring and annual evaluation process of the management and administrative office employees.

4.2 Oberlin Nonmanagement Employees. Except for administrative office staff, all non-management and hourly supervisory Food Service employees shall be employees of Oberlin. Bon Appétit's managers shall supervise such employees; provided, however, that Oberlin shall be responsible for its obligations described in Section 4.4.

4.3 Oberlin Student Employees. Subject to Bon Appétit's approval, Oberlin may assign certain students to the Food Service Operations in furtherance of Oberlin's policy to provide on-campus employment opportunities for students. Notwithstanding such assignment, student employees shall remain employees of Oberlin.

4.4 Personnel Expenses and Obligations. Each party hereto shall be solely responsible for all personnel actions and all claims arising out of injuries occurring on the job regarding employees on its respective payroll. Each party shall withhold all applicable federal, state and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees and worker's compensation costs and shall file all required documents and forms.

4.5 Management Employment Commitment. For the duration of this Agreement, Oberlin shall not, directly or indirectly, without Bon Appétit's written consent, hire or contract, with any person for Food Service who is, or was within the preceding six-month period, a management employee of Bon Appétit connected in any manner with the operation of Oberlin's Food Service.

4.6 Nondiscrimination. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability, or status as a Vietnam veteran, as defined and prohibited by applicable governmental law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning Food Service employees. In addition, each party affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11376 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; The Americans With Disabilities Act; and any additions or amendments thereto.

4.7 Staff Relations, Wages and Benefits. Bon Appétit shall be responsible for the wages and benefits of all of its employees at Oberlin. Bon Appétit shall provide Oberlin with affirmative evidence of its full and absolute compliance with any and all federal and state fair and minimum wage laws.

4.8 Unions. Bon Appétit agrees that it will not engage in any union avoidance activities while operating Oberlin's Food Service.

ARTICLE V
INVENTORIES, PREMISES, EQUIPMENT AND MAINTENANCE

5.1 **Premises and Equipment.** Bon Appétit and Oberlin jointly have inventoried Oberlin's Food Service Equipment. Upon termination of this Agreement, Bon Appétit shall present such inventory of equipment to Oberlin.

5.2 **Condition of Premises and Food Service Equipment.** Oberlin shall maintain in good condition the Premises and Food Service Equipment provided by Oberlin for use in the Food Service Operation to ensure material compliance with applicable laws concerning building conditions, sanitation, safety and health (including, without limitation, OSHA regulations); provided, however, Bon Appétit shall promptly deliver to Oberlin any written notice received by Bon Appétit concerning any violation of applicable law with respect to sanitation, safety or health conditions (including OSHA violations) relating to the Food Service Operations. Bon Appétit shall take reasonable and proper care of the Premises and equipment under its custody and control and will use them in a manner which will not cause violations of applicable laws.

5.3 **Sanitation.** The responsibilities of the parties with respect to the usual and customary cleaning and sanitation of the Premises shall be as follows:

A. **Bon Appétit's Responsibilities.** Bon Appétit shall be responsible for housekeeping and sanitation in food preparation, customer traffic areas, storage and serving areas, and Bon Appétit shall maintain such areas in a clean, attractive and sanitary condition and in accordance with all applicable laws and regulations and Schedule C: Sanitary & Safety Standards. Bon Appétit shall clean floors and tops of tables and chairs in the dining area and clean up any spillage or breakage occurring during serving periods, and transport refuse to designated refuse collection areas.

B. **Oberlin's Responsibilities.** Oberlin shall be responsible for housekeeping and sanitation in all areas of the Premises not required to be maintained by Bon Appétit pursuant to Section 5.3(A), including, without limitation, carpets and all windows, walls (above shoulder height), ceilings, ceiling fixtures, drapes, fixtures, air ducts and hood vent systems (per local ordinance). Oberlin shall provide and maintain adequate fire extinguishing equipment for the Premises, pest control and shall be responsible for removal of refuse from refuse collection areas.

5.4 **Maintenance.** Oberlin shall, at Oberlin's expense, provide maintenance personnel and outside maintenance services, parts and supplies required to properly maintain the Premises and Oberlin-owned Food Service Equipment.

5.5 **Inventories of Food and Supplies.** Bon Appétit has purchased existing useable inventories of food, beverages and supplies at invoice cost. Bon Appétit shall purchase and maintain reasonable inventories of foodstuffs and operational supplies for the Food Service Operations. Oberlin shall pay for these purchases to the extent included in the Budget. Upon termination of the Agreement, Oberlin shall either purchase or cause the successor operator to purchase, Bon Appétit's useable inventories of food, beverages and supplies at invoice cost.

5.6 **Inventory Smallwares.** Bon Appétit and Oberlin jointly have inventoried all Smallwares owned by Oberlin. Bon Appétit shall maintain the inventory levels approved by Oberlin by ordering Smallwares as needed, in accordance with the standards set forth on Schedule L, attached hereto (the "Schedule L: Smallwares Standards") Oberlin shall pay for these purchases to the extent included in the Budget.

5.7 **Utilities.** Oberlin shall be responsible for the cost of utilities consumed in the Food Service Operation.

ARTICLE VI
FINANCIAL ARRANGEMENTS

6.1 **Management Fee for Resident Dining** For its services in connection with the Resident Dining & Retail Program, Catering Service and Oberlin sponsored functions during the Academic Year, Bon Appétit shall be entitled to the following payments:

Payment of Personnel Management Fee and Administration Fee (together, the "Fees") based on the following schedule:

<u>Academic Year</u>	<u>Management Fee</u>
2004-05	\$ 247,000
2005-06	\$ 247,000
2006-07	\$ 247,000
2007-08	\$ 247,000
2008-09	\$ 247,000

6.2 **Management Fee For Commencement** For its services in connection with the Oberlin sponsored functions during the Commencement Activities, Bon Appétit shall be entitled to the following payments:

Payment of a Professional Management Fee and Administration Fee (together, the "Fees" based on the following schedule:

<u>Commencement</u>	<u>Management Fee</u>
2004-05	\$8,000
2005-06	\$8,000
2006-07	\$8,000
2007-08	\$8,000
2008-09	\$8,000

6.3 **Management Fee For Summer Conference**. For its services in connection with Oberlin sponsored functions during the Summer Conference, Bon Appétit shall be entitled to the following payments:

Payment of Personnel Management Fee to Bon Appetit based on the following schedule:

<u>Summer Conference</u>	<u>Management Fee</u>
2004-05	\$ 20,000
2005-06	\$ 20,000
2006-07	\$ 20,000
2007-08	\$ 20,000
2008-09	\$ 20,000

6.4 **Budgeted Operating Expenses.**

(A) **Operating Expenses.** Operating expenses, including but not limited to the following:

- (i) The cost of food, beverages, operational supplies and materials;
- (ii) Personnel Expenses
- (iii) Other direct costs arising from Bon Appétit's performance of the Agreement, including but not limited to: office supplies and postage, general liability, uniforms, linens and laundry, paper goods and disposables, catering expenses, printing and marketing materials, insurance, licenses and permits, armored car service, banking charges and interest, taxes, flowers and decorations, repairs and maintenance.
- (iv) Administrative expenses, commissions from subcontractors, purchase credits, expense reimbursements or other sources of profit should be identified.

(B) **Annual Budget Operating Expenses.**

- (i) Subject to the terms contained in Section 6.5(C), Oberlin shall have no obligation to reimburse Bon Appétit for any Operating Expenses that in the aggregate exceed the Budgeted Operating Expenses (as defined below). To establish Budgeted Operating Expenses for each Fiscal Year during the Term of this Agreement, Bon Appétit shall prepare and deliver to Oberlin, prior to January 1 of each Fiscal Year during the Term of this Agreement, a written proposed operating budget depicting all costs and expenses, by location, and all associated prices and menus, expected to be incurred or offered by Bon Appétit in connection with the Food Service Operation during the upcoming Fiscal Year (the "Proposed Budget").

Bon Appétit will not be held responsible for unanticipated variances, since some variables might have been missed or misjudged which could cause some costs to exceed budget. Bon Appétit will work diligently, however, to achieve the desired bottom line for Oberlin and will manage this process through biweekly financial reviews comparing performance to budget. Each fiscal year for Dining Services shall end on the last day of Bon Appétit's June accounting month.

(ii) Oberlin shall deliver written notice to Bon Appétit approving or disapproving any cost or expense contained in such Proposed Budget (an "Approval Notice"), and those items approved by Oberlin shall be included in the budget for the upcoming Fiscal Year (the "Approved Budget"). Any cost or expense approved by Oberlin in an Approval Notice shall be deemed a "Budgeted Operating Expense" and shall be included in the Approved Budget. Oberlin and Bon Appétit shall jointly determine, in good faith, whether any disputed cost or expense included in the Proposed Budget shall be a Budgeted Operating Expense and included in the Approved Budget.

(C) Changes to Annual Budget Operating Expenses. During the Fiscal Year pertaining to the Approved Budget, should Oberlin or Bon Appétit desire to add or delete or otherwise modify an item or expense to or from the Approved Budget, and thereby include or delete such item or expense as a Budgeted Operating Expense, the requesting party shall deliver written notice to the non-requesting party, and the non-requesting party shall either approve or disapprove such request within thirty (30) days after receipt of such request. In the event such request is approved by the non-requesting party, the approved item or expense shall be added to or deleted from the then current Approved Budget, as the case may be, and added or deleted as a Budgeted Operating Expense, as the case may be. Notwithstanding the terms contained in the immediately preceding two sentences, during an emergency situation either party shall have the right to request the non-requesting party's prior verbal consent to add or delete an item or expense to or from the Approved Budget, in which event, not later than seven (7) days after such verbal request, the requesting party shall deliver to the non-requesting party written notice of such verbal request, whereupon the non-requesting party shall promptly deliver to the requesting party written notice of its response thereto.

6.5 Billing. Bon Appétit shall maintain all books and records associated with the Food Service Operation in accordance with generally accepted accounting principles, consistently applied. No later than thirty (30) days after the end of each Accounting Period during the term of this Agreement, Bon Appétit shall submit to Oberlin a detailed invoice containing the following items:

- (i) Any Budgeted Operating Expenses paid by Bon Appétit during such Accounting Period;
- (ii) Fees described in Sections 6.1, 6.2 or 6.3 and incurred during such Accounting Period;
- (iii) Any adjustments for any cash paid to and retained by Bon Appétit in connection with the Food Service Operation during such Accounting Period, together with sufficient documentation to substantiate each line item contained in such invoice, including, without limitation, guest meals, charge sales, and retail sales.
- (iv) Oberlin shall pay the invoiced amount within thirty (30) days after the invoice date.
- (v) Oberlin and its accountants shall have the right, at its expense and during ordinary business hours, to audit all Bon Appétit operating statements, invoices, and books and records pertaining to the Food Services Operations. Any discrepancies uncovered by such audit shall be promptly adjusted between the parties.
- (vi) Bon Appétit's Accounting Periods will ordinarily have two four week and one five week accounting months in each quarter of the year.

6.6 Cash Sales Deposits. Bon Appétit, acting on behalf of Oberlin, shall collect and record all daily receipts from the Food Service Operation and retail concession sales and other sales in the Premises and deposit such receipts at Oberlin's Student Accounts Office. Bon Appétit shall at all times observe prudent cash handling procedures in accordance with generally accepted accounting principles, consistently applied.

6.7 Oberlin's Expense Obligations. Oberlin's Expenses shall include but are not limited to the following: telephone service, utilities, pest control, maintenance and renovation of Premises and Food Service Equipment, refuse removal.

6.8 Office Facilities. Oberlin shall provide, at its expense, such offices, furniture and equipment (including facilities for safekeeping of funds and receipts) as are reasonably necessary for the Food Service Operations. Bon Appétit shall, at its expense, maintain all non-structural, interior portions of any such offices, and repair any damage to such offices arising from the negligent or intentional acts of Bon Appétit, its employees and agents. Upon the expiration or earlier termination of this Agreement, Bon Appétit shall surrender such offices and office equipment in good condition and repair, subject to casualty loss and reasonable wear and tear.

6.9 Vehicle. Oberlin shall provide two (2) vehicle for use in the Food Service Operation. Bon Appétit shall only permit drivers who have met Oberlin's Driver Qualifications Standards to operate any such vehicle, and Bon Appétit shall cause such Bon Appétit drivers to operate the Oberlin vehicle in accordance with all applicable laws and in a prudent and safe manner. Oberlin shall be responsible for the vehicle's gas, oil, maintenance, and repair, and automobile liability insurance.

6.10 Telephone Expenses. Oberlin shall pay all telephone installation costs, and local and long distance charges, incurred in the discharge of Bon Appétit's obligations under this Agreement, which costs shall be paid directly to the supplying utility company. Bon Appétit shall reimburse Oberlin for the cost of local and long distance calls placed by Bon Appétit personnel not directly related to Bon Appétit's discharge of its obligations under this Agreement. This provision shall survive the expiration or earlier termination of the Agreement.

6.11 Taxes Bon Appétit shall bill and collect sales and use taxes, if applicable, on all meals and services rendered on or from the Premises. If the parties disagree as to taxability of any meals or services, Bon Appétit shall promptly obtain a ruling from the appropriate governmental authority. If additional taxes are assessed against the Food Service Operations, and any interest and penalties, Oberlin shall reimburse Bon Appétit for such assessment upon receipt of an invoice (in the absence of negligence or intentional misconduct on the part of Bon Appétit). If a tax refund is received, Bon Appétit shall return amounts paid by Oberlin, including any interest thereon (if refunded) to Oberlin. Bon Appétit shall be responsible for its city, state or federal income taxes including any tax burdens or benefits arising from its operations hereunder. This provision shall survive the expiration or earlier termination of the Agreement.

**ARTICLE VII
GENERAL TERMS AND CONDITIONS**

7.1 Bon Appétit Comprehensive Insurance. Bon Appétit shall, as a charge to the Food Service operation, maintain during the term of the Agreement the following insurance:

- a. worker's compensation and employer's liability insurance and such other insurance as may be required by applicable state statutes.
- b. general comprehensive liability or commercial general bodily injury and property damage liability insurance in the combined single limit of not less than Three Million Dollars (\$3,000,000) for each occurrence, including, without limitation, personal injury liability, broad form property damage liability, blanket contractual liability and products liability, covering only the activities of Bon Appétit under this Agreement.
- c. motor vehicle liability insurance with limits of \$100,000 per person and \$300,000 per occurrence and \$50,000 in property damage.
- d. In all instances Oberlin shall be named as the loss payee on each policy of insurance.

7.2 Bon Appétit shall provide Oberlin with a certificate evidencing such policies within 30 days after the execution of this Agreement by both parties. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days' prior written notice.

7.3 Liability for Non- Bon Appétit Approved Vendors.

(A) Oberlin understands that Bon Appétit has entered into agreements with many vendors and suppliers of products which give Bon Appétit the right to inspect such vendors' and suppliers' plants and/or storage facilities and require such vendors and suppliers to adhere to standards to ensure the quality of the products purchased by Bon Appétit for or on behalf of Oberlin.

(B) Oberlin may, however, direct Bon Appétit to purchase products from non- Bon Appétit approved vendors. In such instances, for the mutual protection of Oberlin and Bon Appétit, Oberlin will require each such vendor to obtain from a reputable insurance company acceptable to Oberlin and Bon Appétit liability insurance (including products liability coverage) and contractual liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) for each occurrence naming Oberlin and Bon Appétit as additional insureds and which insurance shall not exclude the negligence of Oberlin or Bon Appétit. A certificate evidencing such insurance shall be provided to Oberlin and Bon Appétit upon the request of either party. Oberlin shall also require each such vendor to sign an indemnity certificate (acceptable to Oberlin and Bon Appétit) in which such vendor shall agree to defend, indemnify, and hold harmless Oberlin and Bon Appétit from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses, and attorneys' fees which may arise as a result of using such vendor's product, except when such liability arises as a result of the sole negligence of Bon Appétit and/or Oberlin.

(C) Notwithstanding any provision to the contrary contained in Section 7.3(A), in the event Oberlin does not obtain the insurance certificates and indemnity certificates required under Section 7.3(A), and Oberlin nevertheless desires that Bon Appétit purchase products from such non- Bon Appétit approved vendors, Oberlin shall have the right, exercisable by delivering written notice to Bon Appétit, to direct Bon Appétit to use products from such non- Bon Appétit approved vendors, in which event Oberlin shall indemnify, defend and hold harmless Bon Appétit from and against any loss, cost, expense, claim or cause of action arising in connection with products purchased by Bon Appétit from such non- Bon Appétit approved vendor, except to the extent such liability arises as a result of the negligence of Bon Appétit.

7.4 Indemnity. Except as otherwise expressly provided, Bon Appétit and Oberlin shall defend, indemnify and hold each other harmless from and against all claims, liability, loss and expense, including, without limitation, reasonable collection expenses, attorneys' fees and court costs, which may arise because of: (x) any negligence, misconduct, or other fault of the indemnifying party, its agents or employees, during the performance of its obligations under this Agreement, and; (y) any breach of this Agreement by such indemnifying party. Such obligations shall be allocated in proportion to the indemnifying party's fault. Notwithstanding the foregoing, with respect to property insurance, for which the parties maintain a system of coverage on their respective property, each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies. This clause shall survive the expiration or earlier termination of the Agreement.

7.5 Legal Fees. If any actions or proceeding is necessary to enforce the provisions of this Agreement, including any claim or demand, or to interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may otherwise be entitled, whether or not such action or proceeding is prosecuted to judgement.

7.6 Waiver of Insurance Subrogation Rights. The parties hereby mutually waive any right either may have against the other on account of any loss or damage to their respective real and personal property arising from any risk which is generally covered by insurance for fire, extended coverage perils, vandalism, malicious mischief or sprinkler leakage. The parties shall cause their respective insurers providing coverage for any such losses to waive any rights of subrogation they may have against the other party.

7.7 Trade Secrets and Proprietary Information. During the term of the Agreement, Bon Appétit may grant to Oberlin a nonexclusive right to access certain proprietary materials of Bon Appétit, including recipes, signage, Food Service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed to Bon Appétit), computerized data bases and similar compilations and documents regularly used in Bon Appétit's business operations ("Trade Secrets"). Oberlin shall not disclose any of Bon Appétit's Trade Secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. Oberlin shall not photocopy or otherwise duplicate any such material without the prior written consent of Bon Appétit. All Trade Secrets and other confidential information shall remain the exclusive property of Bon Appétit and shall be returned to Bon Appétit immediately upon termination of the Agreement. Upon termination of the Agreement, Bon Appétit and Oberlin will establish a depreciated value for all Proprietary Materials which were purchased solely by Oberlin and that will be returned to Oberlin at the end of the term of this Agreement.

7.8 Assignment. The Agreement may not be assigned by either party without the written consent of the other, except Bon Appétit may, without prior approval and without being released from any of its responsibilities hereunder, assign the Agreement to any affiliate or wholly-owned subsidiary of Bon Appétit. Without limiting the generality of the foregoing, Bon Appétit shall not enter into any subcontract with any third party to perform any of the services required to be performed by Bon Appétit without the prior written consent of Oberlin, which consent may be withheld by Oberlin in its sole discretion.

7.9 Notice. All notices shall be effective when received. Except for any termination notice sent by Oberlin pursuant to Section 2.1, all written notices or communications required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To Oberlin: Oberlin College
Attention: Michele Gross
Director of RL&DS Business Operations & Dining Services
155 N Professor Street
Oberlin, Ohio 44074

To Bon Appétit: Bon Appétit Management Co.
155 N Professor Street
Oberlin, Ohio 44074

and/or to such other persons or places as either of the parties may hereafter designate in writing. Any notice of termination by Oberlin under Section 2.1 shall be sent to the following address, or to such other persons or places as Bon Appétit may hereafter designate in writing.:

To: Ernest Collins
Bon Appétit Management Co.
100 Hamilton Avenue, Suite 300
Palo Alto, CA 94301

Any notice of termination by Bon Appétit under Section 2.1 shall be sent to the following address, or to such other persons or places as Oberlin may hereafter designate in writing.:

Oberlin College
Attention: Michele Gross
Director of RL&DS Business Operations & Dining Services
155 N Professor Street
Oberlin, Ohio 44074

and to: Linda Gates
Acting Dean of Students
105 Wilder Hall
Oberlin, Ohio 44074

and to: Ronald Watts
V.P. Finance & Admin
173 West Lorain Street
Oberlin, Ohio 44074

7.10 Catastrophe. Neither Bon Appétit nor Oberlin shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.

7.11 Construction and Effect. A waiver of any failure to perform under this Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any schedules attached hereto are made a part of the Agreement and incorporated herein by reference, provided that in the event of a conflict between the terms of such schedule or any other document incorporated herein, and the terms of this Agreement, the terms of the Agreement shall govern. The Agreement may be executed in several counterparts, each of which shall be deemed an original.

7.12 Severability. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent or for any reasons be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.13 Waiver of Jury Trial. Bon Appétit and Oberlin hereby waive their rights to trial by jury with respect to any dispute or litigation between them arising under or related to this Agreement.

7.14 Amendments To Agreement. All provisions of the Agreement hereto shall remain in effect throughout the term thereof unless the parties agree, in a written document signed by both parties and attached to this Agreement, to amend, add or delete any provision. Any amendment to this Agreement shall become effective at the time specified in the Amendment.

7.15 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have entered into the Agreement as of the date first signed or the first day of the Term, whichever is sooner.

OBERLIN COLLEGE

By: Ronald Watts
Name (printed): _____
Title: VP Finances & Admin

BON APPÉTIT MANAGEMENT COMPANY

By:
Name (printed): _____
Title:

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EXHIBIT 18

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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 A. Yes, sir.

2 Q. Does that help you then?

3 A. Yes.

4 Q. Okay. Now, back to then the question. You
5 would agree with me that if the college instituted or
6 supported a boycott against Gibson's because of that
7 incident that we just heard about, you would agree with
8 me that would be wrong, if they instituted or supported
9 a boycott?

10 A. No.

11 Q. And you think it's okay to institute or support
12 a boycott when it's clear that the students did what
13 they did and the official position of Oberlin College is
14 that the students got exactly what they deserved? You
15 still think it's okay, in the face of that, for the
16 college to initiate or support a boycott of a
17 hundred-year business relationship?

18 A. No, I didn't say that.

19 Q. Is it okay, based upon that incident, for the
20 college to initiate or support a boycott which
21 terminates a relationship with a hundred-year-old loyal
22 business partner? Is it okay to do that?

23 A. When you say "boycott," are you using that
24 interchangeably with "suspension"?

25 Q. Well, a boycott to me means that you take

1 about any of this because it's part of our claims, you
2 are entitled to seek for defamation, non-economic
3 damages, pain and suffering, mental anguish. I'm going
4 very clear. I'm going to tell her time frame of 2016
5 and '17. That's my question.

6 THE COURT: And he was diagnosed after that.

7 MR. ONEST: It was in '18 when he was diagnosed.

8 THE COURT: Perfect.

9 MR. ONEST: Whenever I ask these questions, I'll
10 repeat myself, 2016, 2017.

11 MS. CROCKER: That's fine, thank you.

12 ***

13 (The sidebar discussion ended.)

14 ***

15 BY MR. ONEST:

16 Q. Mrs. Gibson, I want to talk specifically about
17 in the immediate aftermath of the protests, so the fall,
18 early winter of 2016, okay. Were you able to observe
19 any change in your husband's mental or emotional state
20 at that time?

21 A. Yes.

22 Q. And can you tell the jury what you observed?

23 A. He was -- he was upset. Everything pretty much
24 devastated him. To have the lies being told about him
25 and the store, it was very upsetting. He, he kind of

1 got withdrawn and wouldn't speak to people. He just
2 really tried to internalize a lot of it. It was a very
3 upsetting time.

4 Q. And when did you first start seeing that? I'm
5 talking in relation to the protests. Was it close in
6 time of the protests?

7 A. Yeah. I mean, it would build. It would -- you
8 know, it started after the protests, and it just seemed
9 to build. He just kept getting more and more emotional
10 and upset about it.

11 Q. And at that same time, so 2016, 2017, did you
12 observe -- observe, you know, any sort of -- more than
13 usual stress that your husband was exhibiting?

14 A. Yes. It got to where not only was -- could he
15 not -- he wouldn't talk to people or socialize, he
16 couldn't eat, he was always sick to his stomach, he
17 couldn't eat, wasn't sleeping well. He started having
18 some heart issues, and just completely beside himself.

19 Q. In that same time, so we're talking 2016, 2017,
20 did he ever express anything that you would say is, you
21 know, feelings of shame or embarrassment?

22 A. Yeah, he would. He didn't want to hang out with
23 his friends or socialize anymore because it was just so
24 embarrassing. He did feel very ashamed in how people
25 were treating him and just looking at him.

1 Q. So can you tell the jury whether or not he
2 became generally less social in 2016 and 2017?

3 A. He did. He pretty much quit hanging out with,
4 you know, his friends. They'd go out and hang out every
5 week. He would go out and play golf or we'd have
6 friends over to the house. And that just all
7 diminished. We didn't do that anymore.

8 Q. And during that time period, did his --
9 everything we just talked about, did it improve in that
10 time frame?

11 A. No.

12 Q. I want to talk a little bit about your
13 father-in-law. Prior to the protests, can you tell the
14 jury how often would you interact with your
15 father-in-law?

16 A. Oh, you know, he would come over and eat dinner
17 with us every week or so, and if I went to the store, I
18 would see him there. So you know, we were always in
19 contact.

20 Q. And how many years had he been your
21 father-in-law before the protests?

22 A. Thirty-six.

23 Q. And when did his wife pass away?

24 A. She passed away in 1999.

25 Q. And did that affect his work habits at the

1 A. No.

2 Q. And you would agree that your father-in-law,
3 Allyn Gibson's, mental state is fine, correct?

4 A. I don't understand your question.

5 Q. Sure. During your deposition I had asked you,
6 "How would you describe your father-in-law's mental
7 state?" And you said it was fine. And I could point
8 you to that.

9 A. Is that at this time or -- I'm sorry.

10 Q. At the time of your deposition in January of
11 this year.

12 A. Well, he's doing well now.

13 Q. And you're not aware of anyone being arrested in
14 connection with the fall that Mr. Allyn Gibson, your
15 father-in-law, sustained, correct?

16 A. No.

17 Q. And you aren't aware of anyone being arrested
18 with the tire slashing that you referenced earlier, are
19 you?

20 A. No.

21 Q. And you had also mentioned some property damage
22 to a door that's connected to your garage at your
23 residence, correct?

24 A. Yes.

25 Q. And you don't know who caused that damage, do

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 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.

Colleen M. Berg

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 19

Message

From: owner-stafflist@venus.cc.oberlin.edu [owner-stafflist@venus.cc.oberlin.edu]
on behalf of Oberlin College, Office of the President [presidents.office@oberlin.edu]
Sent: 1/23/2017 9:31:39 PM
To: stafflist [stafflist@oberlin.edu]
Subject: Message from President Krislov regarding Gibson's Bakery

Dear Students, Faculty, and Staff,

The arrest on November 9, 2016 of three Oberlin College students at Gibson's Bakery caused members of the Oberlin community—locally and elsewhere—to voice a range of opinions and assumptions based on information reported by individuals and organizations of varying reliability. Particularly challenging was the role of outsiders to Oberlin who made open threats of violence against members of this community on all sides of the dispute. The legal process is the only authority that can determine whether unlawful behavior occurred, and the College honors the values of fairness and due process that this system strives to achieve.

Shortly after the incident, the College temporarily suspended its standing baked goods order with Gibson's in an effort to deescalate a complicated and very tense situation involving our campus community, our downtown businesses, local residents, and law enforcement. Since the initial incident, the College has communicated actively with all parties in an effort to contribute to a restorative resolution for all involved. To that end, following discussions with Mr. Gibson and local community and spiritual leaders, the College has chosen to resume its business relationship with Gibson's as a good-faith effort in hopes of positive resolution for everyone affected as our community explores concerns and questions about how we live, learn, and thrive together.

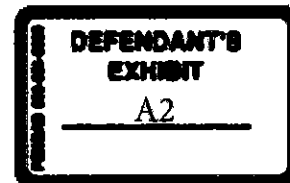
We understand from our conversations with Mr. Gibson that his family and employees are committed to providing safe, fair, and respectful treatment of all patrons of their establishment moving forward. In all its business relationships, the College expects that its vendors will put into practice these core values, and we hope that this resolution will allow our broader community to envision strategies to resolve conflicts without violence.

We take these steps in a spirit of mutual respect, a belief in the willingness of all members of our community to share responsibility for conflict resolution, and a deep and abiding commitment to the safety and dignity of all Oberlin residents, college and town. Oberlin College and Conservatory will continue to work with our students and community partners to protect the safety of all people, to nurture a diverse and inclusive community, and to support a thriving local business community that includes the College and our many valued partners.

Marvin Krislov
President

--
President's Office
Oberlin College
Cox Administration Building, Room 201
Oberlin, OH 44074

Phone: 440-775-8400



CONFIDENTIAL

OBERLIN_00003815

EXHIBIT 20

Message

From: owner-stafflist@venus.cc.oberlin.edu [owner-stafflist@venus.cc.oberlin.edu]
on behalf of Christine Saylor [csaylor@oberlin.edu]
Sent: 11/9/2017 4:34:01 PM
To: stafflist@oberlin.edu
Subject: Gibson's Bakery

Dear Faculty and Staff,

I am writing to inform you that Gibson Bros., Inc. has filed a lawsuit against Oberlin College and Dean of Students Meredith Raimondo in the Lorain County Court of Common Pleas. The College and Dr. Raimondo deny and reject all claims asserted in the lawsuit and we will vigorously defend against them.

Because of the litigation initiated against the College, all College business with Gibson's, i.e., purchases with College funds, is prohibited effective as of November 10, 2017, and until further notice. Orders approved previously that are scheduled to be completed by Nov 17 will be processed.

Thank you for your cooperation in this matter.

Alan J. Norton

Interim Vice President for Finance and Administration

--

Christine L. Saylor
Confidential Assistant to the
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EXHIBIT

217

CONFIDENTIAL

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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?

1 **A. Not exactly, but I recall that they were shown.**
2 **I couldn't repeat them.**

3 Q. Sure. And fortunately, I'm not going to ask you
4 to do that. But you would agree with me that you were
5 not a party to any of those e-mail communications,
6 correct?

7 **A. I was not.**

8 Q. Okay. Those e-mails were exchanged between
9 these various officials at Oberlin College; is that
10 correct?

11 **A. I was made aware of them, but I was not a party**
12 **to them; that's correct.**

13 Q. And isn't it true -- and you gave some testimony
14 regarding your opinions and sentiments about those
15 e-mails. Isn't it true that to this day you have never
16 talked to Ben Jones regarding any of his e-mails?

17 **A. That's correct.**

18 Q. And isn't it also true that you have never
19 talked to Tita Reed about any of the e-mails that you
20 were questioned on?

21 **A. I don't believe so.**

22 Q. Isn't it also true that you've never talked to
23 Toni Myers about any of the e-mails that involved her or
24 were authored or sent by her?

25 **A. The e-mails, I have not.**

1 Q. Okay. Would you also agree with me that all of
2 the e-mails that Mr. Plakas asked you about, that all of
3 those e-mails involving Toni Myers and Tita Reed and Ben
4 Jones, those were all e-mails that occurred after the
5 protests?

6 A. I believe there were some e-mails concerning
7 Tita Reed that occurred before the protests, but I'm
8 not -- I'm not certain.

9 Q. You are not sure?

10 A. Yeah, I'm not. That, I was shown, but I was not
11 a party to it.

12 Q. Right. But you were not a party to any of
13 those. And you were not -- you were not copied on any
14 of those e-mails, correct?

15 A. No, that's correct.

16 Q. During your direct examination by Mr. Plakas,
17 you testified regarding the flyer; is that right?

18 A. Testified to the flyer that was handed out, yes.

19 Q. Yes, okay. And you also testified regarding a
20 newspaper article that was authored by Jason Hawk; he's
21 the reporter who wrote several articles about the
22 protests and who took the stand a few days ago. Is that
23 correct?

24 A. Yes.

25 Q. Okay. And would you agree with me that Jason

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 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

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 VII**

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

16 * * *

1 Q. But during your deposition, Mr. Gibson -- this
2 is page 171, line 20. We had -- we were talking about
3 your mental health your during deposition, how you were
4 feeling. And I asked you, I said, "And what I'm trying
5 to get at is if you could rate it, your mental health,
6 on a scale of one to ten from the time period before the
7 fall, how your mental health was." And your response
8 was, "Oh, my mental health as far as attitude and
9 whatnot, and so forth, I don't think it's dropped a
10 bit."

11 And then I asked you, "So it's the same from
12 before the fall and after?" And you said "Right."

13 And then I said "Okay." And you said, "As far
14 as that's concerned, yes. My depression -- depression
15 or something of the sort, no way."

16 A. Uh-huh.

17 Q. And it's true, you don't see a psychologist or a
18 therapist, correct?

19 A. That's right.

20 Q. And I know that you still go to the bakery
21 sometimes. But your son, David Gibson, he handled the
22 day-to-day operations at the bakery, right?

23 A. Correct.

24 Q. And it's true that you transferred the majority
25 of your ownership interest in the bakery to your son,

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 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

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