

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

<b>GIBSON BROS., INC., et al.,</b>	)	<b>CASE NO. 17CV193761</b>
	)	
<b>Plaintiffs,</b>	)	
	)	<b>JUDGE JOHN R. MIRALDI</b>
<b>v.</b>	)	
	)	
<b>OBERLIN COLLEGE, et al.,</b>	)	<b>DEFENDANTS' CIVIL RULE 50</b>
	)	<b>MOTION FOR DIRECTED</b>
<b>Defendants.</b>	)	<b><u>VERDICT</u></b>

Pursuant to Rule 50 of the Ohio Rules of Civil Procedure, Defendants Oberlin College (“Oberlin College” or “College”) and Dr. Meredith Raimondo (“Dean Raimondo,” and, collectively with the College, the “Defendants”) move for a directed verdict (the “Motion”) on the following claims: (1) Libel (as to the Student Senate Resolution); (2) Tortious Interference with Contracts; (3) Tortious Interference with Business Relationships; (4) Intentional Infliction of Emotional Distress; and (5) Negligent Hiring, Supervision, and Retention.

Further, Defendants move for a directed verdict as to: (6) Plaintiffs’ damages claim for lost business opportunities; (7) actual malice on Plaintiffs’ Libel claim (as to both the Flyer and the Resolution); and (8) Plaintiffs’ claim for punitive damages.

Based on the evidence presented by Plaintiffs, reasonable minds could only come to but one conclusion, and that conclusion is adverse to Plaintiffs. For the following reasons, this Court

should enter a directed verdict in favor of Defendants on the above-mentioned claims and issues. Defendants reserve the right to supplement this Motion.

### **LEGAL STANDARD**

“When a motion for a directed verdict is entered, what is being tested is a question of law; that is, the legal sufficiency of the evidence to take the case to the jury.” *Ruta v. Breckenridge-Remy Co.*, 69 Ohio St.2d 66, 69 (1982). The Court shall sustain a motion for a directed verdict when “after construing the evidence most strongly in favor of the party against whom the motion is directed, [it] finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party.” Civ.R. 50(A)(4); *see Hawkins v. Ivy*, 50 Ohio St.2d 114, 115 (1977). Just as summary judgment procedures are especially appropriate in the First Amendment area, so too are directed verdicts. *Grau v. Kleinschmidt*, 31 Ohio St.3d 84, 90 (1987), citing *Dupler v. Mansfield News Journal*, 64 Ohio St. 2d 116, 120 (1980).

### **ARGUMENT**

#### **I. Defendants are Entitled to a Directed Verdict on Plaintiffs’ Libel Claim as to the Student Senate Resolution.**

Two allegedly libelous statements are at issue in this lawsuit: (1) the Flyer and (2) the Student Senate Resolution (the “Resolution”).<sup>1</sup> This Motion seeks a directed verdict in Defendants’ favor solely as to the Resolution.

For Plaintiffs to prove their libel claim, they must prove the following five elements:

- (1) a false statement of fact was made;
- (2) the statement was defamatory;
- (3) the statement was published to a third party;
- (4) the plaintiff suffered injury as a proximate result of the publication; and

---

<sup>1</sup> Further discussed *infra* in Section VI, Defendants move for a directed verdict on the requirement to prove actual malice as to **both the Flyer and the Resolution**, which Plaintiffs must prove in connection with their Libel claim.

(5) the defendant acted with the requisite degree of fault in publishing the statement.

*Grubb & Assocs., L.P.A. v. Brown*, 2018-Ohio-3526, -- N.E.3d --, ¶ 9 (9th Dist.). As stated in the Court's Ruling on Defendants' Motions for Summary Judgment, "liability to respond in damages for the publication of defamation must be predicated on a **positive act**." (Emphasis added) April 22, 2019 Entry and Ruling at p. 6, quoting *Cooke v. United Dairy Farmers, Inc.*, 10th Dist. Franklin No. 02AP-781, 2003-Ohio-3118, ¶ 25. "**Nonfeasance**, on the other hand, is not a predicate for liability. **Mere knowledge** of the acts of another is insufficient to support liability." (Emphasis added) *Id.*

Here, Plaintiffs have presented no evidence at trial that Defendants committed any "positive act" in connection with the Resolution.

First, Plaintiffs have presented no evidence that Oberlin College or Dean Raimondo authored, prepared, or even possessed knowledge of the text of the Resolution before the Student Senate unilaterally circulated it to the student body. Dean Raimondo's trial testimony confirms that she first learned of the Resolution **after** it was passed and distributed by the Student Senate:

Q: But you know [the Resolution] was distributed widely, don't you?  
A: I really don't know. That was not a distribution list that I was on. So I only saw it **after the fact** when a student shared it with me.

(Emphasis added) (Trial Tr., May 13, 2019, at 56:19-23.<sup>2</sup>)

Second, Dean Raimondo's status as the Student Senate's faculty advisor is not a positive act for which she can be liable in connection with the Resolution. (See Trial Tr., May 13, 2019, at 55:7-10.) Plaintiffs did not present any evidence that connects Dean Raimondo's role as the faculty advisor to an act involved in the preparation or publication of the Resolution.

---

<sup>2</sup> All May 13, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 1.

Third, in contrast to the Flyer, no third-party witness testified that he or she actually read the Resolution in Wilder Hall. Ohio law is clear: a plaintiff must identify a third party (i.e., not the plaintiff himself) who read 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.”). This Court may not infer that the Resolution was published to a third party simply because the Resolution was posted in Wilder Hall. For example, in *Kinney v. Kroger Co.*, 146 Ohio App.3d 691, 2001-Ohio-3974, 767 N.E.2d 1220, ¶ 27 (10th Dist.), the court held that a photocopy 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.”<sup>3</sup> As with the photocopy at issue in *Kinney*, Plaintiffs have not presented any evidence that an identifiable third party read and understood the Resolution. Plaintiffs’ position that “members of the public might have seen” the Resolution in Wilder Hall is not enough.

Fourth, Plaintiffs failed to present any evidence that Defendants committed any “positive act” in connection with the Resolution being placed on a bulletin board in Wilder Hall. *See Cooke*, 2003-Ohio-3118, at ¶ 25. In fact, there is no evidence that Defendants even had “mere knowledge” that the Resolution was posted in Wilder Hall. *Id.* (“Mere knowledge of the acts of

---

<sup>3</sup> *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.”).

another is insufficient to support liability.”). Indeed, Dean Raimondo’s testimony confirms this lack of knowledge:

Q: So this Student Senate Resolution . . . was posted in the student union, Wilder Hall, right?

A: I learned that about **a year later**, yes.

(Trial Tr., May 14, 2019, at 8:21-25.<sup>4</sup>) Plaintiffs’ theory is effectively because the Resolution was in Wilder Hall, therefore Defendants are liable for it. But Plaintiffs have not presented any evidence to show that Defendants—as opposed to the Student Senate—posted the Resolution in Wilder Hall.

Based on the above, reasonable minds could come to but one conclusion: Defendants did not publish the Resolution. Thus, Defendants are entitled to a directed verdict in their favor.

## **II. Defendants are Entitled to a Directed Verdict on Plaintiffs’ Tortious Interference with Contracts and Tortious Interference with Business Relationships Claims.**

Plaintiffs allege that Defendants tortiously interfered with a contract or a business relationship that purportedly existed between Gibson’s Bakery and Bon Appetit.<sup>5</sup> But no reasonable mind could find in Plaintiffs’ favor, as Bon Appetit acted as Oberlin College’s agent when purchasing food items from Gibson’s Bakery.

A claim for tortious interference with contracts requires Plaintiffs to show: (1) the existence of a contract; (2) the wrongdoer’s knowledge of the contract; (3) the wrongdoer’s intentional procurement of the contract’s breach; (4) the lack of justification; and (5) resulting damages. *Fred*

---

<sup>4</sup> All May 14, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 2.

<sup>5</sup> Consistent with the Court’s April 22, 2019 Entry and Ruling, which analyzed these claims solely as to the relationship between Gibson’s Bakery and Bon Appetit, Plaintiffs confirmed in their proposed jury instructions that each of these claims is limited solely to that relationship. *See* Pls.’ Proposed Jury Instruction No. 13 (“Plaintiffs claim that Defendants intentionally interfered with the Plaintiffs’ business relationship and contractual relations with Bon Appetit[.]”) (filed April 25, 2019); April 22, 2019 Entry and Ruling, at pp. 22-24.

*Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 176, 707 N.E.2d 853 (1999). Similarly, tortious interference with business relationships occurs when a wrongdoer’s interference, rather than procuring a contract breach, causes a third party to not enter into or continue a business relationship. See *Deems v. Ecowater Sys., Inc.*, 9th Dist. Summit No. 27645, 2016-Ohio-5022, ¶ 26, citing *Magnum Steel & Trading, LLC v. Mink*, 9th Dist. Summit Nos. 26127, 26231, 2013-Ohio-2431, ¶ 10.

Under Ohio 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. Further, it is well-settled law in Ohio that tortious interference “must be by someone who is **not a party or agent of the party to the contract or relationship at issue.**” (Emphasis in original.) *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).<sup>6</sup>

Here, the testimony of Plaintiffs’ own fact witness, Michele Gross—the Director of Dining and Operations for Oberlin College during the relevant time at issue—established that Bon Appetit was Oberlin College’s agent in all dealings with Gibson’s Bakery. At the outset of her testimony, Ms. Gross described the relationship between Oberlin College and Bon Appetit, as well as her managerial role as to that relationship:

Q: . . . [Y]ou have an understanding of the relationship between Bon Appetit and Oberlin College, correct?

---

<sup>6</sup> 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. Al 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.’”).

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 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 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.

(Trial Tr., May 14, 2019, at 97:22-98:11, 98:22-99:10; *see* Management Renewal Agreement, Pls.’ Ex. 367.<sup>7</sup>)

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.)

Plaintiffs’ own fact witness, Michele Gross, is the only witness who has testified as to the relationship between the College and Bon Appetit, and her testimony is clear—Bon Appetit was, at all relevant times, the agent of the College in all dealings with Gibson’s Bakery. Because Bon Appetit is Defendants’ agent and acts solely on behalf of Defendants, there is no “contract” or “business relationship” between Bon Appetit and Gibson’s Bakery—the only contractual or business relationship that existed was among Defendants and Gibson’s Bakery, and Defendants cannot tortiously interfere with their own contract or business relationship with Gibson’s Bakery. And because Plaintiffs failed to introduce any evidence of a contract or business relationship with a third party with which Defendants allegedly interfered, reasonable minds can only come to one conclusion: Defendants did not tortiously interfere with a nonexistent contract or business relationship between Bon Appetit and Gibson’s Bakery. Thus, Defendants are entitled to a directed verdict in their favor.

---

<sup>7</sup> Plaintiffs’ Exhibit No. 367 is attached hereto as Exhibit 3.



### III. Defendants are Entitled to a Directed Verdict on Plaintiffs' Negligent Hiring, Retention, and Supervision Claim.

Plaintiffs focus their negligent hiring, retention, and supervision claim on Dean Raimondo, Tita Reed, and Julio Reyes (the "Employees").<sup>8</sup> To prove their claim, Plaintiffs must establish:

- (1) the existence of an employment relationship;
- (2) the employee's incompetence;
- (3) the employer's actual or constructive knowledge of such incompetence;
- (4) the employee's act or omission causing the plaintiff's injuries; and
- (5) the employer's negligence in hiring or retaining the employee as the proximate cause of plaintiff's injuries.

*Collins v. Flowers*, 9th Dist. Lorain No. 04CA008594, 2005-Ohio-3797, ¶ 32. Liability for negligent hiring, retention, or supervision arises only where an "employer chooses to employ an individual who 'had a past history of criminal, tortious, or otherwise dangerous conduct about which the [employer] knew or could have discovered through reasonable investigation.'" *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶ 14 (10th Dist.), quoting *Byrd v. Faber*, 57 Ohio St.3d 56, 61, 565 N.E.2d 584 (1991); *see also Jevack v. McNaughton*, 9th Dist. Lorain No. 06CA008928, 2007-Ohio-2441, ¶ 21 (plaintiff must also prove that the employee's acts were reasonably foreseeable to the employer). In other words, Plaintiffs must show that the College had actual or constructive knowledge of the Employees' **prior incompetence** but failed to do something in the hiring, retention, or supervision of the Employees **prior to the incident giving rise to Plaintiffs' claim**. *See, e.g., Collins*, 2005-Ohio-3797, at ¶ 36 ("Only after the first incident could appellee reasonably foresee the potential for further misconduct.").

Here, as to the second and third elements above, Plaintiffs failed to present any evidence that the Employees, or any other Oberlin College employees, were incompetent or that the College had knowledge of any such incompetence. The only evidence on the credentials of the Employees

---

<sup>8</sup> In its Entry and Ruling on Defendants' Motions for Summary Judgment, the Court held that this claim as to Dean Raimondo was dismissed. *See* April 22, 2019 Entry and Ruling at p. 29.

actually supports their competence—not their incompetence. Plaintiffs’ counsel effectively read into the record Dean Raimondo’s curriculum vitae, her regular and deserved promotions over the years, and her extensive training. (Trial Tr., May 14, 2019, at 54:20-56:15.) Indeed, Plaintiffs’ counsel Lee Plakas characterized Dean Raimondo as “a very well-trained and intelligent person,” the opposite of incompetent. (Trial Tr., May 13, 2019, at 72:12-13.)

Moreover, Plaintiffs have not presented sufficient evidence in support of the fifth element above. Plaintiffs may point to the video deposition of former College President Marvin Krislov, in which he testifies that Dean Raimondo’s appointment as Dean of Students was not the result of a national search. (Trial Tr., May 10, 2019, at 176:13<sup>9</sup>; *see also* Krislov Dep.<sup>10</sup> at 22:23-23:16.) But Plaintiffs have not presented any evidence as to why a national search is necessary in hiring a dean of students or that a failure to do so constitutes negligence. Nor have Plaintiffs made any effort to show that foregoing a national search was “the proximate cause of [their] injuries.” *Collins*, 2005-Ohio-3797, at ¶ 32. Further, there is no evidence in the trial record that demonstrates that Oberlin College negligently retained **any** employee after being on notice of that employee’s incompetence, let alone that the continued employment of that employee was **the proximate cause** of plaintiffs’ injuries. *See Collins*, 2005-Ohio-3797, at ¶ 32

Accordingly, Oberlin College is entitled to a directed verdict in its favor holding that it did not negligently hire, retain, or supervise any Oberlin College employees.

---

<sup>9</sup> All May 10, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 4.

<sup>10</sup> The excerpts cited herein from former President Marvin Krislov’s deposition transcript are attached hereto as Exhibit 5.

**IV. Defendants are Entitled to a Directed Verdict on Plaintiffs' Intentional Infliction of Emotional Distress Claim.**

To prove their intentional infliction of emotional distress ("IIED") claim, Plaintiffs must establish 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.*, 9th Dist. Medina No. 14CA0035-M, 2015-Ohio-2309, ¶ 28. Plaintiffs have not presented any evidence on the second and fourth elements above.

**A. Plaintiffs have not identified any extreme and outrageous conduct.**

Plaintiffs' derivative IIED claim is based on Defendants' allegedly libelous conduct (i.e., Defendants' alleged publication of the Flyer and the Resolution) and Defendants' temporary suspension of orders from the Bakery.<sup>11</sup> This alleged conduct does not rise to the level 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; *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.").

---

<sup>11</sup> Plaintiffs have not presented evidence that Defendants published the Resolution. Thus, this unproven conduct cannot be the basis for Plaintiffs' IIED claim. *See supra* Section I; *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."). Further, Defendants cannot be liable as a matter of law for the temporary suspension of orders from the Bakery. *See supra* Section II.

The Supreme Court of Ohio has held that hurt feelings and unflattering statements cannot give rise to an IIED claim:

The liability 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); *see also Sturdevant v. Likley*, 9th Dist. Medina, 2013-Ohio-987, ¶ 22 (same); *Haefka v. W.W. Extended Care*, 9th Dist. Lorain No. 01CA007863, 2001 WL 1509200, at \*3 (Nov. 28, 2001) (same); *Doe v. Lodi Comm. Hosp.*, 9th Dist. Medina No. 2955-M, 2000 WL 1825095, at \*7 (Dec. 13, 2000) (same). Indeed, one Ohio court has held that, while accusing another of racism can be construed as “childish and unprofessional, it does not amount to extreme and outrageous conduct.” *Lennon v. Cuyahoga Cnty. Juvenile Court*, 8th Dist. Cuyahoga No. 86651, 2006-Ohio-2587, ¶ 23.

Here, Plaintiffs have not presented any evidence that transforms the alleged publication of the statements in the Flyer and the Resolution into “extreme and outrageous conduct.” *See Howkins*, 2013-Ohio-917, at ¶ 30; *Brown*, 72 Ohio App.3d at 423. Nor have Plaintiffs presented any evidence that transforms Defendants’ reasoned decision to temporarily suspend orders from the Bakery into “extreme and outrageous conduct.” *See id.*; *see also supra* Section II.

**B. Plaintiffs have not presented evidence of any serious mental anguish.**

Assuming the Court finds that Plaintiffs have produced sufficient evidence on the second element above, Plaintiffs still carry the burden of establishing evidence to support the fourth element of their IIED claim. 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 an initial 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.) Thus, Plaintiffs must overcome this mountainous hurdle of seeking to prove a “severe and debilitating” emotional injury without any medical evidence.

Not surprisingly, Plaintiffs have not presented any evidence of a “severe and debilitating” emotional injury. For example, 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.<sup>12</sup>) Similarly, Lorna Gibson—the wife of Plaintiff David Gibson and daughter-in-law of Plaintiff 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.<sup>13</sup>) Further, Lorna Gibson testified that, following the protests, Plaintiff David Gibson socialized less with friends, ate less, and felt ashamed and embarrassed. (Trial Tr., May 15, 2019, 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 Oswald v. Fresh Mark/Sugardale, Inc.*, 5th Dist. Stark No. CA-8906, 1992 WL 330282, at \*4 (Nov. 9, 1992) (Plaintiff’s nervous condition, inability to eat or sleep for several months, and inability to function

---

<sup>12</sup> All May 16, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 6.

<sup>13</sup> All May 15, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 7.

normally with his family was not “severe and debilitating”).<sup>14</sup> Accordingly, Defendants are entitled to a directed verdict in their favor holding that Plaintiffs have not identified any “extreme and outrageous conduct” or “severe and debilitating” emotional injury.

**V. Defendants are Entitled to a Directed Verdict on Plaintiffs’ Damages Claim for Lost Business Opportunities.**

Through the valuation of their economic damages expert, Frank Monaco (“Monaco”), Plaintiffs seek \$2.1 million<sup>15</sup> in lost business opportunities. This damages theory is based on the following: David Gibson has owned certain land at 549 West College Street in the city of Oberlin since 2003 (the “Site”), and he had an interest in constructing two additional multi-family rental properties at 549 West College Street, but was unable to pursue this interest because of the November 2016 protests. But, Plaintiffs have presented insufficient evidence in support of these imaginary buildings and the alleged damages arising therefrom.

David Gibson has owned the Site since 2003, but has done nothing to bring his interest to fruition. Plaintiffs do not dispute that the city of Oberlin’s zoning code prohibits multi-family properties on the Site. (Trial Tr., May 21, 2019, at 108:21-24, 114:14-16.<sup>16</sup>) Yet—and notwithstanding the lack of any evidence of actual plans to build these imaginary properties on the Site—Plaintiffs failed to introduce any evidence of an application for rezoning of the Site, or any application for a variance.<sup>17</sup> Ohio law is clear: in assessing damages attached to land, **there must**

---

<sup>14</sup> See also, e.g., *Thibodeaux v. BE & K Constr. Co.*, 4th Dist. Ross No. 04CA2761, 2005-Ohio-66 (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 (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).

<sup>15</sup> According to Monaco, the \$2.1 million valuation of lost business opportunities is divided into (1) \$1.2 million in lost rental opportunities, and (2) \$831,000 in lost present-value cash flow thereon.

<sup>16</sup> All May 21, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 10.

<sup>17</sup> Given that David Gibson sat on the Oberlin Planning Commission for over 20 years, there is no doubt that he is well aware of the required procedures to have the Site rezoned.

**be competent, credible evidence that the zoning might be changed in the reasonably foreseeable future.** In other words, “[w]hen the end to be accomplished is beyond the control of the witness, he cannot be allowed to state what he ‘hoped’ to be able to persuade a legislative body to do.” *Bd. of Educ. of Wilmington City School Dist. v. Graham*, 15 Ohio App.2d 196, 201-202, 239 N.E.2d 752 (1st Dist. 1968). *See also, e.g., Clark Cnty. Bd. of Commissioners v. Seminole Avenue Realty*, 179 Ohio App.3d 37, 2008-Ohio-5465, 900 N.E.2d 672, ¶ 22 (2d Dist.) (rejecting owner’s damages claim based on alleged intent to construct building, which was prohibited by existing zoning restrictions: “[a]t no point prior to the commencement of the appropriation proceedings, however, was an application filed to have the subject property rezoned . . . . Speculation, based on supposed future profits from a hypothetical business, cannot be the basis upon which the damage to the residue can be properly and reliably calculated.”). Mr. Monaco’s testimony was clear: whether the lost business opportunities plan “can move forward or not move forward is **entirely dependent** on what a governmental body determines as to whether or not this property will be rezoned.” (Emphasis added) (Trial Tr., May 21, 2019, at 114:19-23.)

Plaintiffs have not attempted to satisfy the condition precedent to their damages—the rezoning of their land. Plaintiffs’ \$2.1 million “lost business opportunities” theory is, therefore, purely unsupported speculation. Accordingly, reasonable minds could only come to but one conclusion: Plaintiffs are not entitled to their “lost business opportunity” damages of \$2.1 million. Thus, Defendants are entitled to a directed verdict in their favor.

**VI. Defendants are Entitled to a Directed Verdict on Actual Malice as to Plaintiffs’ Libel Claim for both the Flyer and Student Senate Resolution.**

In its Entry and Ruling on Defendants’ Motions for Summary Judgment, the Court held that Plaintiffs were private figures, but that the statements of racial discrimination and racial profiling in the Flyer and the Resolution constituted matters of public concern. *See* April 22, 2019

Entry and Ruling, at pp. 7, 12. Thus, before the jury may consider presumed or punitive damages, Plaintiffs must show with convincing clarity that Defendants published the Flyer or the Resolution with actual malice. *Gilbert v. WNIR 100 FM*, 142 Ohio App.3d 725, 744, 756 N.E.2d 1263 (9th Dist.) (“if one is a private person and the matter is of public concern, one must show actual malice to recover punitive damages.”).

In libel claims, “[a] showing of actual malice requires evidence that the alleged perpetrator, acting out of spite or ill will, made the representations either with knowledge that they were false, or with reckless disregard for the truth.” *Doe v. Lodi Cmty. Hosp.*, 9th Dist. Medina No. 2955-M, 2000 WL 1825095, at \*3 (Dec. 13, 2000), citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1976). Importantly, the Court “may not infer the existence of actual malice from evidence of personal spite or ill will alone; rather, [the Court’s] focus is on the publisher’s attitude toward the truth or falsity of the publication.” *McKimm v. Ohio Elections Comm.*, 89 Ohio St.3d 139, 147 (2000). “Whether the evidence in the record supports a finding of actual malice is a question of law.” *Id.* Put simply, Plaintiffs must show by clear and convincing evidence that Oberlin College and Dean Raimondo published the Flyer and the Resolution **knowing** that the statements of racial discrimination and racial profiling therein were false, or published the Flyer and the Resolution with **serious doubts** as to the truth of these statements. See *Lodi Cmty. Hosp.*, 2000 WL 1825095, at \*3; *Landsdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 180 (1987).

Plaintiffs have presented character witnesses who have testified that, **in their opinions**, the Gibsons are not racist. (See, e.g., Trial Tr., May 13, 2019, 36:8-21, 37:11-17.) Plaintiffs have also introduced the Oberlin Police Department’s so-called “shoplifting study.” (Trial Tr., May 17, 2019, at 16:16-20.<sup>18</sup>) Finally, Plaintiffs have introduced various emails sent and received **after**

---

<sup>18</sup> All May 17, 2019 Trial Transcript excerpts cited herein are attached hereto as Exhibit 8.



the alleged publication of the Flyer and Resolution, including a November 11, 2016 email from an individual named Emily Crawford. (Trial Tr., May 15, 2019, at 45:21-46:3.) This evidence fails to demonstrate actual malice as to Plaintiffs' Libel claim for three reasons.

First, the Flyer and the Resolution were both allegedly published on November 10, 2016. The Flyer and the Resolution were both allegedly published **before** any purported evidence of the falsity of the allegedly libelous statements contained in the Flyer and the Resolution. Thus, Defendants could not have known of, or recklessly disregarded, any evidence of the falsity of the Flyer or the Resolution, including the shoplifting study, the opinions of community members, or Ms. Crawford's email, as Defendants could only access this purported evidence **after** they allegedly published the Flyer and the Resolution.

Second, as stated *supra*, Plaintiffs failed to present any evidence that Oberlin College or Dean Raimondo authored, prepared, or even possessed knowledge of the text of the Resolution before the Student Senate circulated it to the student body. *See supra* Section I. Indeed, Dean Raimondo's testimony confirms that she first became aware of the Resolution **after** the Student Senate unilaterally passed it and distributed it to the student body. (Trial Tr., May 13, 2019, at 56:19-23, "I only saw [the Resolution] **after the fact** when a student shared it with me.")

Third, Plaintiffs failed to present evidence that Dean Raimondo acted "out of spite or ill will" in handing a copy of the Flyer to Jason Hawk. *See Doe*, 2000 WL 1825095, at \*3. During trial, Dean Raimondo characterized this exchange as a "responsive gesture" to Mr. Hawk's request for information about the protest. (Trial Tr., May 13, 2019, at 53:18-22.) In a similar spirit, Mr. Hawk characterized Dean Raimondo's conduct as "accommodating" his request. (Trial Tr., May 10, 2019, at 105:12-14.) Such accommodating conduct cannot rise to the level of actual malice. Moreover, Dean Raimondo could not have (1) known at the time of her interaction with Mr. Hawk

whether the statements in the Flyer were false, or (2) recklessly disregarded the truth of the statements in the Flyer, as Dean Raimondo only had access to Plaintiffs' purported evidence of falsity **after** her encounter with Mr. Hawk. Put differently, at the time of her interaction with Mr. Hawk, Dean Raimondo was necessarily unaware of the litany of the purported evidence that Plaintiffs argue renders the Flyer false.

Accordingly, Defendants are entitled to a directed verdict in their favor holding that Plaintiffs have failed, as a matter of law, to establish that Defendants published the Flyer or the Resolution with actual malice with convincing clarity. Therefore, the jury cannot consider presumed or punitive damages, but may only consider actual damages if the jury determines Defendants were negligent in publishing the Flyer or the Resolution.

#### **VII. Defendants are Entitled to a Directed Verdict on Plaintiffs' Punitive Damages Claim.**

Plaintiffs have not presented any evidence that Defendants acted in such a way to warrant punitive damages. For Plaintiffs to recover punitive damages, they must show "a **positive element of conscious wrongdoing**. This means that the plaintiff must show that the defendant possessed 'knowledge of the harm that might be caused by his behavior.'" (Emphasis added) *Summa Health Sys. v. Viningre*, 140 Ohio App.3d 780, 790-791, 749 N.E.2d 344 (9th Dist. 2000), citing and quoting *Preston v. Murty*, 32 Ohio St.3d 334, 335, 512 N.E.2d 1174, 1175-1176 (1987). "Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Summa*, 140 Ohio App.3d at syllabus. Moreover, a plaintiff seeking punitive damages bears the burden of proving his entitlement to them by clear and convincing evidence. *Whetstone v. Binner*,

146 Ohio St.3d 395, 2016-Ohio-1006, 57 N.E.3d 1111, ¶ 20; *Desai v. Franklin*, 117 Ohio App.3d 679, 2008-Ohio-3957, 895 N.E.2d 875, ¶ 40 (9th Dist.).

Here, Plaintiffs have presented no evidence—let alone clear and convincing evidence—of a “positive element of conscious wrongdoing” or “actual malice.” At best, Plaintiffs have introduced a number of emails and text messages in which employees of the College use profanity. But, importantly, profanity does not equate to actual malice. *See, e.g., Stoll v. Gardner*, 182 Ohio App.3d 214, 2009-Ohio-1865, 912 N.E.2d 165, ¶ 31 (citing *Tittle v. Corso*, 256 Ga.App. 859, 862 (2002) and *Selvy v. Morrison*, 292 Ga.App. 702, 704 (2008)); *Mender v. Chauncey*, 41 N.E.3d 1289, 2015-Ohio-4105, ¶ 22 (4th Dist.); *Ford v. Baltimore City Sheriff’s Office*, 149 Md.App. 107, 126 (2002).

Further, the emails and text messages upon which Plaintiffs rely are exchanged **after** the protests (November 10-11, 2016) and the date on which the Bakery’s orders were temporarily suspended (November 14, 2016). For example, Plaintiffs have regularly pointed to a text message exchange between Dean Raimondo and Vice President Ben Jones to show that Defendants held ill will toward Plaintiffs. (Pls.’ Ex. 211.<sup>19</sup>) In this text message exchange, Dean Raimondo states “F\*\*\* him. I’d say unleash the students if I wasn’t convinced this needs to be put behind us” and Ben Jones states “F\*\*\*ING ROGER COPELAND.” Notably, this text message exchange is dated September 8, 2017—almost a year after the events underlying this lawsuit. And, again, profanity does not equate to actual malice. Neither this text message nor any other text message or email exchange could be found by any reasonable juror to be evidence of ill will, hatred, actual malice, a spirit of revenge, or a positive element of conscious wrongdoing.

---

<sup>19</sup> Plaintiffs’ Exhibit No. 211 is attached hereto as Exhibit 9.

Accordingly, reasonable minds could only come to but one conclusion: Defendants did not act with actual malice on November 10-11, 2016, or November 14, 2016. Thus, Defendants are entitled to a directed verdict in their favor on Plaintiffs' claim for punitive damages.

### **CONCLUSION**

Plaintiffs have not met their burden at trial to present sufficient evidence in support of their claims and damages. Accordingly, reasonable minds could only come to but one conclusion, and that conclusion is adverse to Plaintiffs. Thus, this Court should order a directed verdict in Defendants' favor as to each and every of the claims and issues identified and discussed above.

Respectfully submitted,

/s/ Ronald D. Holman, II

Ronald D. Holman, II (0036776)

*rholman@taftlaw.com*

Julie A. Crocker (0081231)

*jcrocker@taftlaw.com*

Cary M. Snyder (0096517)

*csnyder@taftlaw.com*

William A. Doyle (0090987)

*wdoyle@taftlaw.com*

Josh M. Mandel (0098102)

*jmandel@taftlaw.com*

TAFT STETTINIUS & HOLLISTER LLP

200 Public Square, Suite 3500

Cleveland, OH 44114-2302

Phone: (216) 241-2838

Fax: (216) 241-3707

Richard D. Panza (0011487)  
*RPanza@WickensLaw.com*  
Matthew W. Nakon (0040497)  
*MNakon@WickensLaw.com*  
Malorie A. Alverson (0089279)  
*MAlverson@WickensLaw.com*  
Rachelle Kuznicki Zidar (0066741)  
*RZidar@WickensLaw.com*  
Wilbert V. Farrell IV (0088552)  
*WFarrell@WickensLaw.com*  
Michael R. Nakon (0097003)  
*MRNakon@WickensLaw.com*  
Wickens, Herzer, Panza, Cook & Batista Co.  
35765 Chester Road  
Avon, OH 44011-1262  
Phone: (440) 695-8000

Co-Counsel for Defendants Oberlin College  
and Dr. Meredith Raimondo

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served this 23rd day of May 2019, via e-mail, pursuant to Civ.R. 5(B)(2)(f) of the Ohio Rules of Civil Procedure, upon the following:

Owen J. Rarric  
Terry A. Moore  
Matthew W. Onest  
Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.  
4775 Munson Street, NW  
P.O. Box 36963  
Canton, OH 44735  
*orarric@kwgd.com*  
*tmoore@kwgd.com*  
*monest@kwgd.com*

Lee E. Plakas  
Brandon W. McHugh  
Jeananne M. Ayoub  
Tzangas, Plakas, Mannos & Raies  
220 Market Avenue South  
8th Floor  
Canton, OH 44702  
*lplakas@lawlion.com*  
*bmchugh@lawlion.com*  
*jayoub@lawlion.com*

James N. Taylor  
James N. Taylor Co., L.P.A.  
409 East Avenue, Suite A  
Elyria, OH 44035  
*taylor@jamestaylorlpa.com*

Attorneys for Plaintiffs Gibson Bros., Inc., David R. Gibson, and  
Allyn W. Gibson

/s/ Ronald D. Holman, II

One of the Attorneys for Defendants  
Oberlin College and Dr. Meredith Raimondo

# **EXHIBIT 1**

IN THE COURT OF COMMON PLEAS

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

PLAINTIFFS, )

VS. ) NO. 17CV193761

OBERLIN COLLEGE, ET AL., )

DEFENDANTS. )

VOLUME IV

\* \* \*



1 Gibson's Bakery. Are you also a customer of Gibson's  
2 Bakery?

3 A. Yep.

4 Q. And how often do you think you shop there?

5 A. In the summer, every day. We go for ice cream  
6 every day, take my grandson every day. During the rest,  
7 maybe once or twice a month.

8 Q. And during your decades of experience with  
9 Gibson's Bakery, did you ever witness Gibson's Bakery  
10 racially profiling against anyone?

11 A. No, I haven't.

12 Q. Did you ever witness them racially  
13 discriminating against anyone?

14 A. No.

15 Q. As a customer of Gibson's Bakery, did you ever  
16 feel that you were treated differently on account of  
17 your race?

18 A. Absolutely not.

19 Q. Prior to November of 2016, were you aware of  
20 even a hint of racial profiling at Gibson's Bakery?

21 A. Never crossed my mind, no.

22 MR. MCHUGH: No further questions at this time,  
23 Your Honor.

24 THE COURT: Any cross-examination?

25 MR. DOYLE: A few questions, Judge.

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 Tell us what you did publicly, either on behalf of the  
2 administration or with the administration and the  
3 students together, tell us what you did publicly to  
4 correct the defamation and damage that had been caused.

5 A. Sir, I did not write the flyer.

6 Q. I understand. But you were in charge of the  
7 demonstrations, weren't you?

8 A. No, sir, I was not.

9 Q. Well, let me get to that. In addition, as you  
10 are here under oath today, in addition to passing out  
11 the flyer to the reporter Jason Hawk, did you pass out  
12 the flyer to others?

13 A. I handed one copy of the flyer to Mr. Hawk, I  
14 did not pass it out.

15 Q. I'm not sure what the difference is between  
16 passing out and handing. In other words, the flyer goes  
17 from you to him, right?

18 A. Mr. Hawk asked me for information, and I  
19 provided it in response. So I see handing it to him as  
20 describing it as a responsive gesture, as opposed to  
21 initiating -- me initiating the offer to him. He asked  
22 me about it.

23 Q. And you saw hundreds of those flyers being  
24 passed out or distributed by others, right?

25 A. No.

1 please. Your -- it's there. You can also access it in  
2 the book. This is Exhibit 35. And this is the  
3 resolution of the Oberlin student senate that was issued  
4 November 10th, 2016, right?

5 A. I believe so. I can't see that, and I don't see  
6 a 35, but it looks like the top part of it is.

7 Q. Okay. At that time in November of 2016, and  
8 currently, you're actually the faculty advisor for the  
9 Oberlin student senate, correct?

10 A. Yes, that's correct.

11 Q. And this Exhibit Number 35, you were able to  
12 confirm that this was posted in Wilder Hall, which is  
13 where your office is, correct?

14 A. I learned that later, yes.

15 Q. Okay. And you learned that it had been posted  
16 for more than a year, correct? It was still posted in  
17 November of 2017, a year after the protests, right?

18 A. Yes, a year. That's right.

19 Q. In fact, it was in a glass case of announcements  
20 that are posted in Wilder Hall, right?

21 A. It's a small glass case that student senate uses  
22 for their announcements. Yes.

23 Q. Wilder Hall is like the -- what would you call  
24 that building? We used to call them something  
25 different.

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

1 Q. That sounds more like advice rather than  
2 support. But, all right.

3 A. That's how I understand support. But we could  
4 call it advice, if you prefer.

5 Q. And you would agree that if you assemble a team,  
6 you would not want them to jump to conclusions or rush  
7 to judgment and just believe that they are being  
8 assembled to support one side or the other; that  
9 wouldn't be right in your role, would it?

10 A. That's not -- that's not an appropriate position  
11 for any student affairs professional.

12 Q. Sure. And generally -- you're a very  
13 well-trained and intelligent person. Generally, you  
14 would agree with me that support, the word "support"  
15 indicates that, to most people, that you are supporting  
16 one side or the other. I support the Cleveland Indians.

17 A. Yeah, no, that's not what it means in the  
18 professional field I'm in.

19 Q. The professional field you're in uses the  
20 English language, doesn't it?

21 A. Well, so does the law, I think, but I don't  
22 understand all of the words in this courtroom. So I  
23 think all professional fields have terms that have  
24 particular meaning that are specific to a work that  
25 people 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 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 May, 2019.

Colleen M. Caffrey

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

My Commission expires August 3, 2020

## **EXHIBIT 2**



IN THE Court OF COMMON PLEAS

GIBSON BROS., INC., ET AL.,        )

                                  PLAINTIFFS,        )

                                  VS.                        )        NO. 17CV193761

OBERLIN COLLEGE, ET AL.,        )

                                  DEFENDANTS.        )

VOLUME V

\* \* \*

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 A. Yes.

2 Q. We heard President Krislov talk about your  
3 different positions, and ultimately your promotion to  
4 vice president and dean of students. In terms of your  
5 progress in that regard, let's take a short look at your  
6 positions with the college.

7 So you would agree that starting on July 1st,  
8 2013, you were an associate dean, right?

9 A. That's correct.

10 Q. Okay. And that engagement was established for a  
11 three-year period, July 1st through June 30th, 2016,  
12 right?

13 A. Yes.

14 Q. And during that time, you received an additional  
15 position and you got a raise, and you became  
16 additionally the special assistant to the president for  
17 equity, diversity and inclusion; is that right?

18 A. I believe when I accepted that position, I left  
19 the associate team role.

20 Q. Okay. Can we agree that at least starting on  
21 July 1st, 2014, you became the special assistant to the  
22 president for equity, diversity and inclusion?

23 A. Yes.

24 Q. And the end date for that was for a three-year  
25 period, from July 1st, 2014 to June 30th, 2017, right?

1 A. Yes.

2 Q. Then the next thing that develops is in that  
3 three-year period, with the start date of July 1st,  
4 2016, 2016 now, you received a raise and a promotion and  
5 you now became the interim vice president and dean of  
6 students, right?

7 A. Yes, that's correct.

8 Q. And you did that because the former dean of  
9 students, Eric Estes, as President Krislov has  
10 described, left without a lot of advanced notice, right?

11 A. Yes, that's correct.

12 Q. And so this is July 1st, you took that position.  
13 And did you receive any special training to be able to  
14 accept that position as interim vice president and dean  
15 of students?

16 A. I would say yes.

17 Q. So you had been working as special assistant to  
18 the president for equity, diversity and inclusion. Eric  
19 Estes left in 2016. Between the time that he left and  
20 the time that you were appointed for the start date of  
21 July 1st, did you actually get special training to  
22 assume the position of interim VP and dean of students?

23 A. The training I got would have been prior to  
24 that.

25 Q. Okay. In the years prior, the general training

1 that you had received?

2 A. Yes.

3 Q. Okay. And as you assumed that position of vice  
4 president, interim vice president and dean of students,  
5 you received a letter from Marvin Krislov during that  
6 same period of time that he says, you will -- "I'm  
7 writing to confirm that you will serve as special  
8 assistant to the president for equity, diversity and  
9 inclusion in 2016 and 2017."

10 A. Yes, that's correct.

11 Q. So at the same time that you are the interim  
12 vice president and dean of students, you also had the  
13 role of special assistant to the president for equity,  
14 diversity and inclusion in 2016 and 2017, right?

15 A. Yes.

16 Q. And he took special efforts to outline the  
17 responsibilities and actually bullet-pointed or  
18 highlighted five specific responsibilities. Do you  
19 remember that?

20 A. I'd have to look at the document.

21 Q. Okay. So let's go to Exhibit 303, Bates stamp  
22 number 3598. I think it's in the next book right in  
23 front of you. If I can help -- may I help you?

24 A. Yes, that would be great.

25 Q. What's the number at the bottom? I can't see

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:

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 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.

Colleen M. Caffrey

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**

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 Fixed Fees	% Increase \$ Increase Fixed Fees	% Increase \$ Increase Fixed Fees	% Increase \$ Increase Fixed Fees
Academic Year	222,000	-88,800	133,200 0%	137,200 3%	141,300 3%	145,500 3%
Commencement	8,000	-3,200	4,800 0%	5,000 3%	5,150 3%	5,500 3%
Conference Services	20,000	-8,000	12,000 0%	12,300 3%	12,700 3%	13,100 3%
	250,000		150,000	154,500	159,150	164,100
				4,500	4,650	4,950
Budget Incentive	Current Incentive Fee		Proposed Incentive Fees	Proposed Incentive Fees	Proposed Incentive Fees	Proposed Incentive Fees
Satisfaction Incentive	25,000		25,000	25,000	25,000	25,000
Sustainability Incentive				2,000	2,000	2,000
Oberlin Athletics				5,000	5,000	5,000
TTL Incentive Fee for BA				-3,000	-3,000	-3,000
				27,000	29,000	29,000
Fee Total	275,000	-103,000	172,000	5,500	4,650	4,950
				183,500	188,150	193,100
BA PBO Potential	275,000		177,000		188,150	193,100

Subsidy before fees 5,248,006 4,782,973 4,923,891 4,721,563 4,870,045 4,835,372

Fee Saving per year \$ 103,000 \$ 98,000 \$ 91,500 \$ 86,850 \$ 81,900

Cumulative Savings \$ 103,000 \$ 201,000 \$ 292,500 \$ 379,350 \$ 461,250

\*Bon Appetit will support George Jones Farm and other Oberlin F2F 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	Fixed Fees	% Increase	\$ Increase	Fixed Fees	% Increase	\$ Increase	Fixed Fees	% Increase	\$ Increase	Fixed Fees	% Increase	\$ Increase	Fixed Fees
Academic Year	0%	\$ -	145,500	0%	\$ -	145,500	3%	4,365	149,865	3%	4,496	154,361	3%	4,631	158,992
Commencement	0%	\$ -	5,500	0%	\$ -	5,500	3%	165	5,665	3%	170	5,835	3%	175	6,010
Conference Services	0%	\$ -	13,100	0%	\$ -	13,100	3%	393	13,493	3%	405	13,898	3%	417	14,315
		\$ -	164,100			164,100		4,923	169,023		5,071	174,094		5,223	179,317
			Proposed Incentive Fees			Proposed Incentive Fees			Proposed Incentive Fees			Proposed Incentive Fees			Proposed Incentive Fees
Budget Incentive	0%	\$ -	25,000	0%	\$ -	25,000	3%	750	25,750	3%	773	26,523	3%	796	27,318
Satisfaction Incentive	0%	\$ -	2,000	0%	\$ -	2,000	3%	60	2,060	3%	62	2,122	3%	64	2,185
Sustainability Incentive	0%	\$ -	5,000	0%	\$ -	5,000	3%	150	5,150	3%	155	5,305	3%	159	5,464
TTL Incentive Fee for BA		0	32,000		960	32,960		989	33,949		1,018	34,967			
Fee Total		0	196,100		5,983	201,983		6,059	208,042		6,241	214,284			
BA PBO Potential			196,100			201,983			208,042			214,284			

Fee Saving per year \$ 78,900 \$ 73,017 \$ 66,988 \$ 60,716 \$ 50,716

Cumulative Savings \$ 540,150 \$ 619,050 \$ 692,067 \$ 759,025 \$ 819,741

Starting in 2015, Bon Appetit will consider support for Oberlin activities as a separate transaction from management and incentive fees.

**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 Appétit 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 11375 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 Appétit 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 Appetit: 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:

Academic Year 3, 4  
 Access 1  
 Accounting Period 10  
 Agency Relationship 1  
 Agreement 1, 4, 5, 8, 10, 11, 12, 13, 14  
 Amendments To Agreement 14  
 Annual Budget Operating Expenses 8  
 Approval Notice 8  
 Approved Budget 8, 9  
 Assignment. 12  
 Audit of operating statements 10  
 Billing 10  
 Bon Appétit 1  
 Bon Appétit Comprehensive Insurance. 11  
 Bon Appétit Management Employees 5  
 Budgeted Operating Expense 8, 9  
 Cash Sales Deposits 10  
 Catastrophe 13  
 Catering Program. 3  
 Changes to Annual Budget Operating Expenses 9  
 Changes to Menus and Prices 4  
 Commencement Activities 3  
 Composting 4  
 Condition of Premises  
 Construction and Effect 13  
 County Health Department Inspection Reports 5  
 Dietitian 5  
 Driver Qualifications Standards 10  
 Exclusive 1  
 Fiscal Year 4, 8  
 Food Service Employees 1  
 Food Service Equipment 6, 7  
 Food Service Operation 1, 3, 4, 6, 8, 10, 11  
 Governing Law 14  
 Health Department Inspections 5  
 Hiring and annual evaluation 5  
 Indemnity 12  
 Independent Contractor 1  
 Inventories of Food and Supplies 7  
 Inventory Smallwares 7.  
 Legal Fees 12  
 Licenses and permits 4, 8  
 Local vendors 2  
 Locations 3  
 Lorain County Health Inspector 5  
 Maintenance 7  
 Management Employment Commitment 6  
 Management Fee 7, 8  
 Nondiscrimination 6  
 Oberlin 1  
 Oberlin Nonmanagement Employees 5  
 Oberlin Student Employees 5  
 Oberlin's Expenses 10  
 Office Facilities 10  
 Office of Human Resources 4  
 Operating Expenses 8  
 Personnel Expenses 6, 8  
 Premises 1, 2, 3, 6, 11  
 Proposed Budget 4, 8, 9  
 Proprietary Information 12  
 Purpose of Agreement 1  
 Quarterly Cleanliness and Sanitation Inspections 4  
 Recycling 4  
 Resident Dining & Retail Program 3, 4

Retail Sales 3  
Sanitary Standards 4, 6  
Schedule A -Resident Dining & Retail Program 3  
Schedule B - Hours of Operation 3  
Schedule C - Opening/Closing Schedule 3  
Schedule D - Major & Mini-Special Schedule 3  
Schedule E - Retail Selections 3  
Schedule F - Catering Service 3  
Schedule G - Sanitary & Safety Standards 4, 6  
Schedule H - Academic Year Serving Standards 4  
Schedule I - Summer Conference Serving Standards 4  
Schedule J - Program Review Standards 4  
Schedule K - Staff Standards 4  
Schedule L - Smallwares Standards 7  
Severability 13  
Special Diets 4  
Student Accounts Office. 10  
Summer Conference 3  
Taxes 11  
Telephone Expenses 10  
Term of Agreement. 1  
Termination for Cause 1  
Termination Notice 12  
Termination without Cause 1  
Time Periods 3  
Trade Secrets 12  
Utilities 7  
Vehicle 10  
Waiver of Insurance Subrogation Rights 12  
Waiver of Jury Trial 14  
Written notice 1, 6, 8, 9, 11, 12

# **EXHIBIT 4**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 III**

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

\* \* \*

1 Q. And once that person had a flyer in their  
2 hands -- was it a female student or a male student?

3 A. I don't recall.

4 Q. Okay. Did that person bring the flyer back to  
5 where you were standing with Dean Raimondo?

6 A. Yes.

7 Q. What did that student do with the flyer?

8 A. They gave it to the dean.

9 Q. Okay. And then Dean Raimondo, herself, handed  
10 you the flyer; is that right?

11 A. Yes.

12 Q. Did Dean Raimondo appear eager to get that flyer  
13 in your hands?

14 A. She made an offer that was accommodating me.

15 Q. And in your experience as editor of the Oberlin  
16 News-Tribune, would you expect an Oberlin College  
17 administrator to hand out flyers if the college was not  
18 directly -- directly connected to the literature?

19 MR. HOLMAN: Objection, Your Honor.

20 THE COURT: Basis?

21 MR. HOLMAN: No foundation.

22 THE COURT: Response?

23 MR. HOLMAN: Relevance, too.

24 THE COURT: I don't think there is a foundation  
25 if he's just a news reporter, if he knows what the

1 outside the subpoena power of the plaintiffs in this  
2 county. We can't command him to be here.

3 You understand that the defendants, because he's  
4 a former employee of the college, will actually have  
5 Mr. Krislov here to testify as a part of their case. So  
6 this will be another situation where you will hear  
7 excerpts from Mr. Krislov now, and then later on the  
8 college will get an opportunity to have him here live.

9 All right. Permission is granted to go ahead  
10 and play the excerpts as discussed.

11 MR. PLAKAS: Thank you, Your Honor.

12 \*\*\*

13 (Playing the video testimony clips of Marvin Krislov.)

14 \*\*\*

15 THE COURT: I believe that will concludes the  
16 testimony for today. We're going to be excused. Please  
17 remember my admonition not to discuss this case with  
18 anyone. Don't look at local papers or do any online  
19 information. We will see you back here Monday.

20 Monday is my criminal day, so I will have that  
21 in the morning. I'd like you back just around 1:00, and  
22 we will get started shortly after that. We will just  
23 have an afternoon of testimony on Monday, then go the  
24 rest of the week, okay. So if you would, now we have  
25 your notepads for good. The bailiff will collect them

## 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 10, 2019.

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

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



---

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

My Commission expires August 3, 2020



# **EXHIBIT 5**

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY,

GIBSON BROS., INC., )  
et al., )  
Plaintiffs, )  
vs. ) Case No.  
OBERLIN COLLEGE, aka ) 17CV193761  
OBERLIN COLLEGE AND )  
CONSERVATORY, et al., )  
Defendants. )  
----- )

DEPOSITION OF MARVIN KRISLOV  
New York, New York  
Monday, December 10, 2018

Reported By:  
CATHI IRISH, RPR, CRR, CLVS, CCR

1 some form of communication.

2 Q. Who served as dean of students  
3 while you were at Oberlin College?

4 A. Well, I had the pleasure of  
5 working with three different deans of  
6 students. My first dean of students was  
7 Linda Gates. When she retired, the search  
8 committee recommended and I selected Eric  
9 Estes, who is now in the same position at  
10 Brown University, and then when Eric  
11 assumed that other job, we selected  
12 Meredith Raimondo.

13 Q. You mentioned a search committee  
14 located or identified Eric Estes; is that  
15 right?

16 A. Yes.

17 Q. Was there a national search  
18 performed?

19 A. Yes.

20 Q. And was there a company that  
21 performed that search?

22 A. I believe so but I don't recall.

23 Q. Okay. Was there a national  
24 search done to identify the replacement  
25 dean of students for Eric Estes?

1           A.     I think what happened was that  
2     because of the timing, we didn't have as  
3     much lead time and so I think we --  
4     Meredith had been serving as the special  
5     assistant for diversity and inclusion, I  
6     think was her title was, and so on Eric's  
7     recommendation and the strong feeling of  
8     others, including student leaders and  
9     colleagues and faculty and staff, we  
10    appointed Meredith as the interim dean of  
11    students, and later we appointed her to  
12    the job on a permanent basis.

13          Q.     And so is the answer that there  
14    was no national search then for a dean of  
15    students to replace Eric Estes?

16          A.     That's my recollection.

17          Q.     And there was no search committee  
18    engaged to identify a potential  
19    replacement as dean of students for Eric  
20    Estes; correct?

21          A.     There was -- there was a  
22    consultation process with the search chair  
23    of the committee that had picked Dean  
24    Estes and had picked I believe his  
25    predecessors as well, and there was a

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NASSAU )

I, CATHI IRISH, a Registered  
Professional Reporter, Certified Realtime  
Reporter, and Notary Public within and for  
the State of New York, do hereby certify:

That MARVIN KRISLOV, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition  
is a true record of the testimony given by  
the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 17th day of December,  
2018.



CATHI IRISH, RPR, CRR, CLVS, CCR

## **EXHIBIT 6**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF OHIO,                    )  
                                      )  SS:  
COUNTY OF LORAIN.            )  
  
                          IN THE COURT OF COMMON PLEAS  
  
GIBSON BROS., INC., ET AL.,    )  
  
                          PLAINTIFFS,        )  
  
                          VS.                                        )       NO. 17CV193761  
  
OBERLIN COLLEGE, ET AL.,        )  
  
                          DEFENDANTS.        )

\* \* \*

**VOLUME VII**

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

\* \* \*

1 Q. 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,



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

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

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

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

Colleen M. Caffrey

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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 Q. Okay, that wasn't my question. My question is,  
2 you actually should take into consideration information,  
3 even if it was contrary to the students' attempts to be  
4 critical of the Gibsons, right?

5 A. Yes.

6 Q. All right. And Emily Crawford was an employee  
7 at that time of Oberlin College, correct?

8 A. Correct.

9 Q. You knew her because she worked in your  
10 department, didn't she?

11 A. That's right.

12 Q. And you considered her a rational and credible  
13 person, right?

14 A. I did.

15 Q. And in fact, Emily Crawford attempted to bring  
16 to your attention and through you to the -- this group's  
17 attention, that there was actually information that  
18 directly contradicted what the narrative was that the  
19 students were attempting to create; isn't that true?

20 A. No, I wouldn't characterize it that way.

21 Q. Well, then let's pull up Exhibit Number 63,  
22 please. And on the first page of Exhibit 63 at the  
23 bottom, you see an e-mail from Emily Crawford. And her  
24 e-mail address is "oberlin.edu" because she's an  
25 employee, and it's November 11th, 2016, and it's 11:42

1 a.m. and it's to you, correct?

2 A. Yes, sir. And I'm familiar with this. You  
3 don't have to read it.

4 Q. Well, let's go to the -- where the e-mail  
5 begins. And for the record, I'm on the second page.  
6 She states -- this e-mail string starts, November 11th,  
7 2016, 11:26 a.m., and she brings it to your attention or  
8 your consideration, and she says, "I've been doing  
9 recon, and the students are on the wrong side of this  
10 protest. They acted without ascertaining the facts  
11 first. They didn't even consider consulting POC --"  
12 that's persons of color "-- in the community who know  
13 the Gibson family a lot better than they do. I talked  
14 to some of the protesters, and they refuse to hear  
15 anything that doesn't fit their narrative. The  
16 townspeople are furious, and I think the college needs  
17 to speak out. This is not good." So you of course  
18 received this from Emily?

19 A. Yes.

20 Q. And she says that the college needs to speak  
21 out. And you actually learned through this process that  
22 David Gibson asked the college to speak out and not let  
23 these students run away and create their own narrative,  
24 right?

25 A. Right.

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. Camp

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**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 VIII**

A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE  
ABOVE-ENTITLED MATTER ON FRIDAY, MAY 17, 2019, BEFORE  
THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID  
COURT.

\* \* \*

1           MR. HOLMAN: A couple bases. It's relevance and  
2 it's not necessarily a regular business practice of the  
3 Oberlin police to prepare an analysis like this; and in  
4 fact, we heard from the witness that she's never done  
5 anything like this, to the extent like this.

6           MR. PLAKAS: The extent -- the extent isn't the  
7 issue. We have some -- I'm sorry. Your motion.

8           MR. ONEST: The rule, Your Honor, doesn't talk  
9 about extend prior practice. It just has to be a  
10 purported public report or data compilation. It's a  
11 data compilation of public records.

12          MR. HOLMAN: The question is, Your Honor,  
13 whether it's a regular practice to make, in this case,  
14 analyses like that. And our view it's not a regular  
15 practice.

16          THE COURT: I'm going to admit the exhibit over  
17 the objection of the defense. I believe it was  
18 established that the underlying data is from regularly  
19 kept records and that this is a summary compilation of  
20 that.

21          MR. PANZA: Thank you, Your Honor.

22          MR. HOLMAN: Thank you.

23          MR. PANZA: We don't have a problem with this.

24          MR. PLAKAS: No problem with that?

25          MR. PANZA: No.



## **EXHIBIT 9**

Start Time: 8/26/2017 13:57(UTC-4)

Last Activity: 7/31/2018 15:11(UTC-4)

Participants: REDACTED Meredith Raimondo, REDACTED Ben Jones

# Redacted

From: From: REDACTED Ben Jones

Timestamp: 9/8/2017 17:34(UTC-4)

Source App: iMessage: REDACTED

Body:

FUCKING ROGER COPELAND

From: From: REDACTED Ben Jones

EXHIBIT

211



Timestamp: 9/8/2017 17:35 (UTC-4)  
Source App: iMessage: [REDACTED]  
Attachments:  
#1: chats\iMessage [REDACTED]\attachments128\5D13B068-4778-40A3-A7C5-3C9A31278658.pluginPayloadAttachment  
#2: files\Image\A9CE371A-7919-41FB-B5C0-9B99220591D9.pluginPayloadAttachment  
Body:  
<https://oberlinreview.org/14086/opinions/gibsons-boycott-denies-due-process/>

-----  
From: From: [REDACTED] Meredith Raimondo  
Timestamp: 9/8/2017 17:42 (UTC-4)  
Source App: iMessage: [REDACTED]  
Body:  
Fuck him. I'd say unleash the students if I wasn't convinced this needs to be put behind us

-----  
From: From: [REDACTED] Ben Jones  
Timestamp: 9/8/2017 17:43 (UTC-4)  
Source App: iMessage: [REDACTED]  
Body:  
Agreed. Does the guy really not understand how plea deals work? The students have always maintained their innocence.

-----  
From: From: [REDACTED] Meredith Raimondo  
Timestamp: 9/8/2017 17:47 (UTC-4)  
Source App: iMessage: [REDACTED]  
Body:  
He's a complete asshole. This is all about his wife hating me.

-----  
From: From: [REDACTED] Ben Jones  
Timestamp: 9/8/2017 17:57 (UTC-4)  
Source App: iMessage: [REDACTED]  
Body:  
I'm so sorry. And after everything you've done for the kids and this school. He should be ashamed.

-----  
  
-----

# **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 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           That's \$400,000 on this one building that you  
2   are saying that, had it been built, he would have used  
3   the cash flow from another building, after it was paid  
4   off he would have gotten 400,000?

5   **A.           I'm saying that net worth from the cash flow of**  
6   **that building took an impact of \$400,000.**

7   Q.           Right. I got it. I understand what you are  
8   saying. "Mr. Gibson and his family's business plan to  
9   add additional rental units will not be realized. Thus,  
10   the total reduction over the next 30 years to his net  
11   worth will be approximately \$1,200,000." Do you see  
12   that?

13   **A.           Yes.**

14   Q.           All right. So now on these two buildings that  
15   don't exist -- I want to make sure that I understand  
16   what you are talking about in terms of \$1.2 million.  
17   Mr. Monaco, your expectation is that David Gibson was  
18   going to put two structures at this site we're talking  
19   about, correct?

20   **A.           Yes.**

21   Q.           And you know, we're going to go into this in a  
22   minute. You know that site is not currently zoned for  
23   multi-family units, correct?

24   **A.           Right.**

25   Q.           And to do that, you believe it's going to cost

1     **A.**        The reality is that property, as I said  
2     yesterday, property --

3     Q.        That's a "yes" or "no" question, Mr. Monaco.  
4     Yes or no?

5     **A.**        Probably doesn't -- I can't answer that question  
6     the way it was asked.

7     Q.        I think the jury understands.

8     **A.**        I think they do, too.

9     Q.        So let's take a look at what you didn't look at  
10    before you concluded that this building, these buildings  
11    would have been built. You did not -- you in fact know  
12    that the properties got the wrong zoning, correct?

13    **A.**        It needs to be rezoned, yes.

14    Q.        You know the property has the wrong zoning as  
15    you sit here today?

16    **A.**        Yes.

17    Q.        All right. And I understand that David is on,  
18    or was on, the planning commission of the city of  
19    Oberlin. But the reality is, whether this project can  
20    move forward or not move forward is entirely dependent  
21    upon what a governmental body determines as to whether  
22    or not this property will be rezoned, correct?

23    **A.**        Yes.

24               MR. MATTHEW NAKON: Theresa, could you put  
25    up -- you know what, let's do this before we go here.

[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