CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

SCOTT MOORE, an individual, Plaintiff, v. **MASON CLASSICAL ACADEMY, INC.**, a Florida not for profit corporation, Defendant.	**CIVIL ACTION** **Case No. 20-CA-1471** **Judge: Elizabeth Krier**

PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO F.S. §57.105

NOW COMES the Plaintiff, **SCOTT MOORE** ("Plaintiff" or "Moore"), by and through undersigned counsel, and files this Motion for Sanctions Pursuant to F.S. §57.105 and in support, the Plaintiff states as follows:

Factual Summary

1. This whistleblower case was initiated on May 5, 2020 by Plaintiff Scott Moore, the Defendant's former compliance officer. As this Court held following a full evidentiary hearing, on March 23, 2020, the Defendant conducted a board meeting in regard to a company named Captivated Health to supply the Defendant's employees with health insurance. On the Defendant's meeting agenda, the action item was placed under "unfinished business" to be brought forward for approval by Defendant's Board Member, David Bolduc. However, at 7:20 A.M. on March 23rd, Mr. Bolduc sent the Defendant's Board President an email indicating he could no longer attend the March 23rd meeting. The Defendant's March 23rd Board Meeting began at 8:29 A.M. and the Board heard a lengthy presentation from a Captivated Health representative. Afterwards, the Board voted to "move forward with next steps" with Captivated Health. Two days after the vote – March

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25, 2020 – Captivated Health issued a press release that announced David Bolduc as Director for the Southeast Region.

2. The Court found that Mr. Bolduc never disclosed his relationship with Captivated Health prior to the Board's vote on March 23, 2020. The Defendant conducted another board meeting on March 26, 2020, during which a community member broached Mr. Bolduc's relationship with Captivated Health. However, Mr. Bolduc did not respond, nor address the matter during that meeting. This caused Mr. Moore as the Compliance Officer to investigate Bolduc's ties to Captivated Health. Mr. Moore then sent the Defendant's Board a whistleblower letter on March 27, 2020 alerting them to Mr. Bolduc's apparent conflict of interest and that "[t]here was no disclosure of the possible conflict before the board voted and no discussion by the board on if it was a conflict." Mr. Moore sent his whistleblower letter to all Board members at 3:42 P.M. on March 27, 2020.

3. On April 1, 2020, Mr. Bolduc sent the Board a response to Mr. Moore's March 27th Whistleblower Letter, stating he knew at least as of February 6, 2020 there was "a high likelihood I will become affiliated with Captivated Health, and a high likelihood that Captivated Health will come before the MCA Board." He "became formally associated with Captivated Health" on February 18, 2020.

4. The Defendant's Board had scheduled a meeting at 4:30 P.M. on April 14, 2020. During the Defendant's April 14th Board Meeting, Mr. Bolduc (i) acknowledged "well of course there was no disclosure of the possible conflict before the board voted, as I did not attend the meeting when the board voted to approve Captivated Health," and (ii) accused Mr. Moore of "working to undermine Mason Classical Academy" and acting "in opposition to MCA's Pillars of Virtue the entire time." (Emphasis in meeting minutes). The Defendant's Board president then

brought a motion to terminate Mr. Moore, stating "it has been determined that there are serious 'red flags' with the way Mr. Moore has been operating." The motion passed by a 4-1 vote, with Mr. Bolduc voting in favor of terminating Mr. Moore.

5. The Court found that Mr. Moore engaged in statutorily protected activity under the PWA. In so doing, the Court made the following legal conclusions:

- The Court finds that there is no place in government or public organizations where that is permissible, and thus what Mr. Moore complained of was an illegal act that created a danger to the public's welfare and treasury, in addition to Mr. Bolduc's actions constituting gross mismanagement, malfeasance, misfeasance, gross waste of public funds, and/or gross neglect of duty.

- The Court finds that Mr. Moore investigated Mr. Bolduc's conflict of interest, and then he did his job and communicated it to the Defendant's Board, which is the appropriate local official to receive such a complaint because the Board is vested with the authority to take remedial action, which it actually then did on April 14, 2020.

- The Court finds that Mr. Moore's March 27, 2020 letter meets either standard. All three elements are necessary to establish statutorily protected activity under the PWA.

Defendant's Frivolous Arguments

6. Despite the Court's evidentiary ruling, the Defendant has filed a second, vexatious Motion to Dismiss that is not reasonably grounded in fact or the law. The Defendant now complains – for the first time – that dismissal of this whistleblower action is required because Moore did not attach a copy of his employment contract to the Amended Complaint. Such an argument is sanctionable because this is not an action for breach of contract, nor is Mr. Moore suing on the employment contract at all. His employment contract is simply not an element of either of Mr. Moore's whistleblower claims, which is obvious. Instead, Moore is suing for retaliatory discharge under the PWA and FWA, and Rule 1.130 is of absolutely no moment. Defendant's argument is a time-waster.

7. Second, the Defendant – again for the very first time – now argues that this Court does not have subject matter jurisdiction. Its newfound theory appears to be a thinly veiled attempt at judge-shopping as it arises only after this Court granted Mr. Moore temporary reinstatement. Defendant's argument is that at the moment Mr. Moore filed this lawsuit, he had allegedly only incurred $3,900 in lost wages and thus the damages claimed fall below the jurisdictional threshold of this Court. But this completely ignores the fact that Mr. Moore is also seeking injunctive relief, which specifically confers jurisdiction on this Court pursuant to F.S. §26.012(2)(c). *See Swearingen v. Rio Villa, Unit V, Homeowners Ass'n*, 277 So. 3d 778, 781 (Fla. Dist. Ct. App. 2019). The Defendant's jurisdictional argument is objectively frivolous as it is in direct contravention of Florida law.

8. Additionally, the Defendant ignores the fact that lost wages would be but one element of damages available to Mr. Moore and the Defendant deliberately ignores the remaining categories of available damages. Under the PWA, Mr. Moore is entitled to lost wages, temporary reinstatement, permanent reinstatement and lost benefits. And under the FWA, Mr. Moore is entitled to lost wages, lost benefits, emotional distress damages,[1] and reinstatement. As seen in the Amended Complaint, Mr. Moore seeks all such categories of damages. Fatal to the Defendant's newfound jurisdictional argument is that Mr. Moore easily claims in excess of $30,000 for emotional damages and his temporary reinstatement pending trial likewise easily eclipses the $30,000 jurisdictional threshold.

9. The Defendant had an obligation to at least allege that the factual bases supporting subject matter jurisdiction were absent, but it has failed to do so – and indeed, it cannot do so. *Strommen v. Strommen*, 927 So. 2d 176, 184 (Fla. Dist. Ct. App. 2006). The reason is that the

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[1] *See McIntyre v. Delhaize Am., Inc.*, 2009 U.S. DIST. LEXIS 6887 (M.D. Fla. Jan. 22, 2009).

Amended Complaint seeks injunctive relief and alleges material facts demonstrating the existence of a judicial controversy within the subject matter jurisdiction of this Court.

10. Sanctions are plainly warranted here. F.S. §57.105 authorizes sanctions in the form of attorney's fees and other expenses if a trial court determines the party or the party's attorney knew or should have known that at the time a claim or defense was presented that the claim or defense "[w]as not supported by the material facts necessary to establish the claim or defense" or "[w]ould not be supported by the application of then-existing law to those material facts." §57.105(1)(a)-(b), Fla. Stat. F.S. §57.105 is similarly designed "to discourage baseless claims, stonewall defenses, and sham pleadings in civil litigation by placing a price tag through attorneys' fees awards on losing parties who engage in such activities." *United Companies Fin. Corp. v. Hughes*, 460 So. 2d 585, 587 (Fla. Dist. Ct. App. 1984).

Plaintiff's Compliance with F.S. 57.105(4)

11. On September 17, 2020, and consistent with the safe-harbor provision of F.S. §57.105(4), Mr. Moore served the Defendant with this Motion for Sanctions. Notwithstanding the same, and rather than withdrawing its Motion to Dismiss, the Defendant nevertheless has persisted in advancing its frivolous arguments by way of its second Motion to Dismiss filed on September 10, 2020.

Conclusion

12. As a result of the Defendant's vexatious conduct that has unduly multiplied these proceedings, Mr. Moore has been forced to expend unnecessary attorney time and costs in litigating the above-styled matter. Consequently, Mr. Moore is entitled to an award of attorney's fees and costs incurred in bringing this Motion and defending against the Defendant's frivolous claims.

WHEREFORE, the Plaintiff respectfully moves this Court for the entry of an order granting this Motion and entitlement to an award of attorney's fees, and to grant any further relief that the Court deems appropriate.

Respectfully submitted,

Dated: October 11, 2020

/s/ Benjamin H. Yormak

Benjamin H. Yormak
Florida Bar Number 71272
Trial Counsel for Plaintiff
YORMAK EMPLOYMENT & DISABILITY LAW
9990 Coconut Road
Bonita Springs, Florida 34135
Telephone: (239) 985-9691
Fax: (239) 288-2534
Email: byormak@yormaklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2020, I electronically filed the foregoing with the Clerk of Court by using the Portal system, which caused electronic delivery of this document to all counsel of record.

/s/ Benjamin H. Yormak
Benjamin H. Yormak