

**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.

Judge:

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, SCOTT MOORE (“Moore” or “Plaintiff”), by and through undersigned counsel, and brings this action against Mason Classical Academy, Inc. (“Defendant”) and states the following for his Complaint:

INTRODUCTION

1. This is an action brought under Florida’s Private Whistleblower Act and Florida’s Public Whistleblower Act (PWA) for (1) retaliation in violation of the FWA, and (2) retaliation in violation of the PWA, the damages for which exceed \$30,000.00.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this matter under F.S. § 26.012.

3. Venue is proper in Collier County under F.S. §47.011 because the Plaintiff worked in, and the Defendant conducts business in, and some or all of the events giving rise to Plaintiff’s claims occurred in Collier County, Florida.

PARTIES

4. Plaintiff, **SCOTT MOORE** (“**MOORE**” or “Plaintiff”) is an individual and a resident of Florida who at all material times resided in Lee County, Florida and was employed by the Defendant in Collier County, Florida.

5. Defendant is a Florida not for profit corporation and employed the Plaintiff in Collier County, Florida. The Defendant is a private company that operates a charter school and has a contract with Collier County Public Schools to provide elementary, middle and secondary school education to students in Collier County, Florida, and it has done so since 2014. Pursuant to F.S. §1002.33(7), a charter school contract was executed between the Defendant and Collier County Public Schools, which sets forth the terms and conditions for the Defendant’s operation. The Defendant employs in excess of 10 employees and is an employer under the FWA.

GENERAL ALLEGATIONS

6. In 2018, Collier County Public Schools initiated an investigation into the Defendant and on June 3, 2019, it issued a 61-page report that concluded the Defendants Board of Directors violated the law, Defendant’s policy, and Defendant’s board norms and values, as well as engaged in improper social media and email communications and breached the terms of the Charter Agreement by their actions. The report also concluded the Defendant’s then-principal violated federal and state law, Defendant’s policy, the Code of Professional Conduct, and mismanaged the Best and Brightest Program.

7. The Plaintiff began his employment with the Defendant on or about September 2, 2019 and was employed as its compliance officer.

8. In that position, the Plaintiff observed a litany of illegal conduct by the Defendant, which included but is not limited to: (i) intentional concealment of public records, (ii) obfuscation

of valid public records requests, (iii) Board Members directing the day-to-day affairs of the school's operations, (iv) Board Members utilizing private email addresses to conduct Board business, (v) Board Members conducting business outside of publicly posted meeting agendas, (vi) Board Member failing to disclose his financial interest in a private healthcare insurance company and inducing the Defendant to enter into a contract with it, (vii) Board Member(s) knowingly approving a contract where a Board Member intentionally failing to publicly disclose his financial interest in a private healthcare insurance company, and (viii) utilizing a private email server in order to conceal public records. Several Board Members conspired – and did – accomplish these illegal ends, which are in violation of a multitude of laws, including but not limited to F.S. §286, F.S. §1002.33, F.S. §112.313(3) and F.S. §112.3143.

9. Specifically, on March 23, 2020, the Defendant's Board of Directors approved switching the school's health insurance over to Captivated Health.

10. During the March 26, 2020 meeting, a community member brought to the attention of the board that as of March 25, 2020 David Bolduc began managing Captivated Health's Tampa-based team and that this was never publicly disclosed.

11. On March 27, 2020, the Plaintiff sent a signed, written complaint to the Defendant's Board of Directors, which specifically objected to the conduct alleged in ¶¶9-10 *supra*, and which conduct is in violation of the laws identified in ¶8, *supra*.

12. Thereafter, the Defendant's Board scheduled a meeting for April 14, 2020 to discuss Plaintiff's complaint, but at no time prior did it investigate it.

13. Instead, the Defendant turned its attention to the Plaintiff, with its Board President asking to have the Plaintiff's contract forwarded to Defendant's legal counsel to find a way to terminate the Plaintiff's employment.

14. During that April 14, 2020 meeting, the Board Member who failed to disclose his financial ties to Captivated Health repeatedly denigrated the Plaintiff for making the complaint, before the Defendant's Board summarily terminated the Plaintiff, which – ironically – was not an agenda item, thus further demonstrating violations of Florida law.

15. The Plaintiff performed his assigned duties in a professional manner, was very well qualified for his position, and had not received any discipline whatsoever prior to suddenly being terminated by the Defendant just weeks after he engaged in statutorily protected activity.

16. As a direct and proximate result of objecting to and filing a complaint regarding the Defendant's violations of law, the Defendant subjected the Plaintiff to adverse employment action, to wit: his termination.

COUNT I –VIOLATION OF FLORIDA STATUTE 448.102: FLORIDA'S PRIVATE WHISTLEBLOWER ACT

17. Plaintiff incorporates by reference Paragraphs 1-16 of this Complaint as though fully set forth below.

18. Plaintiff was an employee of the Defendant, a private company.

19. At all material times, Plaintiff was to be protected from negative employment action by Florida Statute 448.102(1)-(3), commonly known as Florida's "whistleblower statute," which in relevant part provides:

"An employer may not take any retaliatory personnel action against an employee because the employee has:

- (1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice;

(2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer, and;

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.”

20. Plaintiff did engage in statutorily protected activity by his objections, written complaints, and refusal to participate in, the Defendant’s illegal practices.

21. Immediately after engaging in statutorily protected activity, Plaintiff suffered negative employment action, his termination, which is a direct result of this statutorily protected activity.

22. Plaintiff’s termination and his engaging in statutorily protected activity are causally related.

23. The Defendant knew that Plaintiff was engaged in protected conduct as referenced herein.

24. The Defendant discharged, terminated and retaliated against Plaintiff from him employment and after his employment, and otherwise retaliated against him because of his protected conduct.

25. As a direct and proximate result of the violations of F.S. § 448.102, as referenced and cited herein, Plaintiff has lost all of the benefits and privileges of his employment and has been substantially and significantly injured in his career path that was anticipated from his employment.

26. As a direct and proximate result of the violations of F.S. § 448.102, as referenced and cited herein, and as a direct and proximate result of the prohibited acts perpetrated against him, Plaintiff is entitled to all relief necessary to make him whole.

WHEREFORE, Plaintiff demands damages against Defendant for violation of Florida's Private Sector Whistle-blower's Act (Section 448.102, Fla. Stat.), including but not limited to all relief available under Section 448.103, Fla. Stat., such as:

- (a) an injunction restraining continued violation of this act,
- (b) reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position,
- (c) reinstatement of full fringe benefits and seniority rights,
- (d) compensation for lost wages, benefits, and other remuneration,
- (e) any other compensatory damages allowable at law,
- (f) attorney's fees, court costs and expenses, and
- (g) such other relief this Court deems just and proper.

COUNT II – VIOLATION OF FLORIDA'S PUBLIC WHISTLEBLOWER ACT (PWA)

27. Plaintiff incorporates by reference Paragraphs 1-16 of this Complaint as though fully set forth below.

28. By virtue of allowing its employees to commit theft of public property, the Defendant and its offending employees violated the Florida False Claims Act (FFCA).

29. This count is thus brought via the PWA pursuant to F.S. §68.088, which provides:

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this act, including investigation for initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall have a cause of action under s. 112.3187.

30. At all material times, Plaintiff was an employee and the Defendant was his employer covered by and within the meaning of the PWA.

31. Plaintiff was qualified for the position that he held with the Defendant.

32. Plaintiff did engage in statutorily protected activity.
33. Plaintiff did make several disclosures of the Defendant's violations of Florida law to the Defendant.
34. Plaintiff did suffer adverse employment action, which is causally linked to his engagement in statutorily protected activity.
35. Plaintiff's complaints and disclosures constitute a protected activity because his complaints and disclosures were concerning an unlawful activity of the Defendant.
36. Said protected activity was the proximate cause of the Defendant's negative employment actions against Plaintiff, which included Plaintiff's termination.
37. Instead of investigating Plaintiff's complaints and lauding his honest reporting of violations of law, the Defendant retaliated against the Plaintiff by terminating his employment.
38. The acts, failures to act, practices and policies of the Defendant set forth above constitute retaliation in violation of the PWA.
39. As a direct and proximate result of the violations of the PWA, as referenced and cited herein, Plaintiff has lost all of the benefits and privileges of his employment and has been substantially and significantly injured in his career path.
40. As a direct and proximate result of the violations of the PWA, as referenced and cited herein, and as a direct and proximate result of the prohibited acts perpetrated against him, Plaintiff is entitled to all relief necessary to make him whole as provided for under the PWA.
41. As a direct and proximate result of the Defendant's actions, Plaintiff has suffered damages, including but not limited to, a loss of employment opportunities, loss of past and future employment income and fringe benefits, humiliation, and non-economic damages for physical injuries, mental and emotional distress.

WHEREFORE, Plaintiff requests trial by jury of all issues so triable as of right, and:

- i. Injunctive relief directing the Defendant to cease and desist from all retaliation against employees who engage in statutorily protected acts;
- ii. Back pay and all other benefits, perquisites and other compensation for employment which Plaintiff would have received had he maintained his position with the Defendant, plus interest, including but not limited to lost salary and bonuses;
- iii. Front pay, including raises, benefits, insurance costs, benefits costs, and retirement benefits;
- iv. Reimbursement of all expenses and financial losses Plaintiff has incurred as a result of Defendant's actions;
- v. Declaratory relief declaring the acts and practices of the Defendant to be in violation of the statute cited above;
- vi. Temporary reinstatement under F.S. §112.3187(9)(f);
- vii. Reasonable attorney's fees plus costs;
- viii. Compensatory damages, and;
- ix. Such other relief as this Court shall deem appropriate.

Respectfully submitted,

Dated: May 5, 2020

/s/ Benjamin H. Yormak

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