

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

Sam Joseph, an individual,

Plaintiff,

Case No. 2:17-cv-97

v.

Hon. Paul L. Maloney

Northern Michigan University, a public entity,

Defendant.

---

**DEFENDANT NORTHERN MICHIGAN UNIVERSITY'S ANSWER TO COMPLAINT,  
AFFIRMATIVE DEFENSES AND RELIANCE ON JURY DEMAND**

NOW COMES Defendant, Northern Michigan University, by and through its attorneys, MILLER, CANFIELD PADDOCK & STONE, PLC, and for its Answer to Plaintiff's Complaint states the following:

**JURISDICTIONAL ALLEGATIONS**

1. The plaintiff Sam Joseph is an individual who resides in the State of New Jersey.

**ANSWER: Defendant is without sufficient knowledge to either admit or deny the allegations contained in this paragraph and therefore leave Plaintiff to his proofs.**

2. The defendant is a public entity located in the City of Marquette, State of Michigan.

**ANSWER: Admitted.**

3. The plaintiff is a person who is of Middle Eastern origin, having come from Egypt, he is currently 63 years old, and his skin is darker than other Caucasians.

**ANSWER: Defendant is without sufficient knowledge to either admit or deny the allegations contained in this paragraph and therefore leave Plaintiff to his proofs.**

4. This lawsuit arises in part under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §1981, 42 U.S.C. §1981a, and the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq.

**ANSWER: Admitted as to form of the allegation only to the extent that the Complaint purports or attempts to allege violations of such actions for which the “lawsuit arises.” Defendant denies any alleged wrongdoing on its part under 42 U.S.C. 42 U.S.C. §1981, 42 U.S.C. §1981a, and/or 29 U.S.C. §621 et. seq.**

5. Jurisdiction arises under 28 U.S.C. §1331.

**ANSWER: Admitted as to form of the allegation only to the extent that the Complaint purports or attempts to allege violations of such actions for which “[j]urisdiction arises under 28 U.S.C. § 1331.” Defendant denies any alleged wrongdoing on its part.**

6. Certain claims in this action arise under this court's supplemental jurisdiction to hear and decide state law claims arising out of the same transactions and occurrences as the federal law claims.

**ANSWER: Admitted as to form of the allegation only to the extent that the Complaint purports or attempts to allege violations which “arise under this court's supplemental jurisdiction to hear and decide state law claims arising out of the same transactions and occurrences as the federal law claims.” Defendant denies any alleged wrongdoing on its part.**

COMMON ALLEGATIONS

7. The plaintiff restates and realleges as though fully set forth herein paragraphs 1-6 of this complaint.

**ANSWER: Defendant restates and reaffirms its preceding answer as set forth in paragraphs 1-6 of this Answer.**

8. The defendant hired Mr. Joseph on August 11, 2015 as an instructor of Accounting.

**ANSWER: Denied. Defendant offered Plaintiff an appointment as a tenure track instructor with the University on or about August 13, 2015 and Plaintiff accepted this appointment on or about August 17, 2015.**

9. The defendant initially asked Mr. Joseph where he was from because it was curious, and he told it, but the question made him uneasy.

**ANSWER: Defendant is without sufficient knowledge to either admit or deny the allegations contained in this paragraph and therefore leave Plaintiff to his proofs.**

10. Initially in his employment four disgruntled students complained about Mr. Joseph.

**ANSWER: Defendant is without sufficient information to either admit or deny the allegations contained in this paragraph as Plaintiff has failed to identify the time period meant by "initially." It is denied that only four students "complained about" Plaintiff's teaching during his employment.**

11. Throughout Mr. Joseph's employment his numbers and performance improved.

**ANSWER: Denied.**

12. The defendant never formally warned or disciplined Mr. Joseph about his performance.

**ANSWER: Denied.**

13. On March 11, 2016 the defendant precipitously dismissed Mr. Joseph from his job without giving him a reason for it.

**ANSWER: Denied. Further, pursuant to Plaintiff's appointment with the University, his employment was governed by either the applicable collective bargaining agreement (represented employees) or the Personnel Policy Manual (unrepresented employees); and by the University policies and practices, as well as any applicable laws, administrative agency regulation, or court decisions regarding the employment relationship.**

14. Similarly situated Northern European and younger instructors and assistant professors were not treated as harshly as Mr. Joseph was.

**ANSWER: It is denied that Plaintiff was treated "harshly" or that other similarly situated instructors and assistant professors were treated differently.**

15. As a result of the wrongful termination set forth above, Mr. Joseph has suffered and will continue to suffer a loss of income and benefits, emotional distress, damage to his reputation, and other consequential damages.

**ANSWER: Denied.**

**COUNTI-NATIONAL ORIGIN AND COLOR DISCRIMINATION**

16. The plaintiff restates and realleges as though fully set forth herein paragraphs 1-15 of this complaint.

**ANSWER: Defendant restates and reaffirms its preceding answer as set forth in paragraphs 1-15 of this Answer.**

17. The defendant terminated Mr. Joseph's employment by it because of his national origin and color.

**ANSWER: Denied.**

18. This claim is actionable under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §1981, 42 U.S.C. §1981a, and the Elliott-Larsen Civil Rights Act, MCL 37.2101 et. seq.

**ANSWER: Denied.**

19. As a result of the unlawful action described above, Mr. Joseph has suffered the damages set forth above.

**ANSWER: Denied.**

WHEREFORE, Defendant respectfully requests that Plaintiff's Count I be dismissed with prejudice and Defendant granted its costs and attorney's fees and any other relief deemed appropriate.

**COUNT II - AGE DISCRIMINATION**

20. The plaintiff restates and realleges as though fully set forth herein paragraphs 1-19 of this complaint.

**ANSWER: Defendant restates and reaffirms its preceding answer as set forth in paragraphs 1-19 of this Answer.**

21. The defendant terminated Mr. Joseph's employment by it in whole or in part because of his age.

**ANSWER: Denied.**

22. This claim is actionable under the Age Discrimination in Employment Act, 29 U.S.C. §621 et. se q. and the Elliott-Larsen Civil Rights Act, MCL 37.2101 et. seq.

**ANSWER: Denied.**

23. As a result of the wrongful termination set forth above, Mr. Joseph has suffered and will continue to suffer the damages set forth above.

**ANSWER: Denied.**

WHEREFORE, Defendant respectfully requests that Plaintiff's Count II be dismissed with prejudice and Defendant granted its costs and attorney's fees and any other relief deemed appropriate.

#### **AFFIRMATIVE DEFENSES**

Defendant may assert the following affirmative defenses and other defenses at trial, if supported by the facts as uncovered through discovery. Defendant does not hereby assume any burden of proof that would otherwise rest on Plaintiff:

1. Plaintiff's claims are barred, in whole or part, by his failure to state a claim.
2. Plaintiff's claims are barred, in whole or part, by his failure to mitigate damages.
3. Plaintiff's claims are barred, in whole or part, by the doctrine of after-acquired evidence.
4. Plaintiff's claims may be barred, in whole or part, if they were not set forth in his administrative charge.
5. Plaintiff's claims are barred, in whole or part, by Defendant's good faith efforts to comply with the law.
6. Plaintiff's claims are barred, in whole or part, by either the applicable collective bargaining agreement (represented employees) or the Personnel Policy Manual (unrepresented

employees); and by the University policies and practices, as well as any applicable laws, administrative agency regulation, or court decisions regarding the employment relationship.

7. Plaintiff's claims are barred, in whole or part, by the doctrine of estoppel.

8. Plaintiff's claims are barred, in whole or part, by the doctrine of laches.

9. Plaintiff has failed to join all necessary parties and/or claims.

10. Plaintiff's claims are barred, in whole or part, by the applicable statute of limitations and/or filing period.

11. Plaintiff's claims are barred, in whole or part, by the defense of waiver.

12. Plaintiff's claims are barred, in whole or part, by release.

13. Plaintiff's claims are barred, in whole or part, by Defendant's actions taken based on bona fide occupational qualifications, a bona fide seniority system and/or a bona fide merit system.

14. Plaintiff's claims are barred, in whole or part, by Defendant's employment decisions on the basis of legitimate reasonable factors other than Plaintiff's national origin, color, race, ethnicity or age.

15. Plaintiff's claims are barred, in whole or part, because all of Defendant's standards, selection, evaluation and continuing employment criterion are job related and consistent with business and educational necessity.

16. Plaintiff's claims are barred, in whole or in part, because he clearly stated his intention to leave NMU employment.

17. Plaintiff's claims are barred, in whole or part, by his failed performance.

18. Plaintiff's claims are barred, in whole or in part, because he clearly stated his intention to [voluntarily and amicably] leave NMU employment.

19. Plaintiff's claims may be barred, in whole or in part by federal and/or state statutory and/or constitutional governmental immunity.

20. Defendant reserves the right to file further affirmative defenses upon the completion of discovery.

Defendant asks that this Court dismiss Plaintiff's Complaint with prejudice and award Defendant its costs and attorney fees.

**RELIANCE ON JURY DEMAND**

Defendant hereby relies on the Plaintiff's Jury Demand.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/Kurt P. McCamman

Kurt P. McCamman (P51477)  
Philip E. Hamilton (P68814)  
Attorneys for Defendant  
277 South Rose Street, Suite 5000  
Kalamazoo, MI 49007  
(269) 381-7030  
[mccamman@millercanfield.com](mailto:mccamman@millercanfield.com)  
[hamilton@millercanfield.com](mailto:hamilton@millercanfield.com)

Dated: July 27, 2017

29284284.3\065483-00247