

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

PAMELA VICKARYOUS, 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, **PAMELA VICKARYOUS** (“VICKARYOUS” or “Plaintiff”), by and through undersigned counsel, and brings this action against Mason Classical Academy, Inc. (“Defendant”) and states the following for her 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, **PAMELA VICKARYOUS** (“**VICKARYOUS**” or “Plaintiff”) is an individual and a resident of Florida who at all material times resided in Collier 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 Defendant’s 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 her employment with the Defendant in early October 2019 and was employed as its principal.

8. Upon commencing her employment, the Plaintiff signed an employment contract for a 4-year renewable term. (*See Ex. A*).

9. In her position as principal, 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.

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

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

12. On March 27, 2020, Defendant's compliance officer 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*.

13. Thereafter, the Defendant's Board scheduled a meeting for April 14, 2020 to discuss the compliance officer's complaint (though it was not an agenda item, which itself is illegal), but at no time prior did it investigate it.

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

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

16. Seeing no hope of the Defendant rectifying its illegal conduct – particularly in light of its termination of the compliance officer who tried to stop it – the Plaintiff filed complaints with the Florida Department of Education, Florida Office of the Inspector General, Florida Commission on Ethics and the Collier County School Board on April 20, 2020.

17. On April 21, 2020, the Plaintiff sent the Defendant's board president written correspondence advising of the filing of those complaints.

18. On April 28, 2020, the Defendant convened an "emergency" board meeting during which the Defendant appointed an employment defense firm to purportedly investigate the Plaintiff's complaints but which in actuality was hired to investigate the Plaintiff.

19. Just two days later – on April 30, 2020 – the Defendant suspended the Plaintiff.

20. On June 5, 2020, the Defendant convened yet another "emergency" board meeting (in violation of Florida law) where it terminated the Plaintiff's employment for pretextual reasons. The termination was effectuated at approximately 9:20 A.M.

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

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

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

23. Plaintiff incorporates by reference Paragraphs 1-22 of this Complaint as though fully set forth below.

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

25. 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."

26. Plaintiff did engage in statutorily protected activity by her objections, written complaints, and refusal to participate in, the Defendant's illegal practices.

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

28. Plaintiff's termination and her engaging in statutorily protected activity are causally related.

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

30. The Defendant discharged, terminated and retaliated against Plaintiff from her employment and after her employment, and otherwise retaliated against her because of her protected conduct.

31. 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 her employment and has been substantially and significantly injured in her career path that was anticipated from her employment.

32. 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 her, Plaintiff is entitled to all relief necessary to make her 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)

33. Plaintiff incorporates by reference Paragraphs 1-22 of this Complaint as though fully set forth below.

34. This count is thus brought via the PWA.

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

36. Plaintiff was qualified for the position that she held with the Defendant.

37. Plaintiff did engage in statutorily protected activity.

38. Plaintiff did make several disclosures of the Defendant's violations of Florida law to the Defendant and to governmental authorities.

39. Plaintiff did suffer adverse employment action, which is causally linked to her engagement in statutorily protected activity.

40. Plaintiff's complaints and disclosures constitute a protected activity because her complaints and disclosures were concerning an unlawful activity of the Defendant.

41. Said protected activity was the proximate cause of the Defendant's negative employment actions against Plaintiff, which included Plaintiff's termination.

42. Instead of investigating Plaintiff's complaints and lauding her honest reporting of violations of law, the Defendant retaliated against the Plaintiff by terminating her employment.

43. The acts, failures to act, practices and policies of the Defendant set forth above constitute retaliation in violation of the PWA.

44. 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 her employment and has been substantially and significantly injured in her career path.

45. 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 her, Plaintiff is entitled to all relief necessary to make her whole as provided for under the PWA.

46. 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 she maintained her 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.

COUNT III – BREACH OF CONTRACT

- 47. The Plaintiff realleges and incorporates Paragraphs 1-22 in this Count by reference.
- 48. A contract existed between the Plaintiff and the Defendant.
- 49. Both the Plaintiff and the Defendant agreed to those terms, which were clear and unambiguous.
- 50. The Plaintiff fully and satisfactorily performed her duties under the contract.
- 51. The Defendant has breached the contract by terminating the Plaintiff's employment without cause and by not remitting payment for the balance of the remaining contract term.
- 52. The Plaintiff has been damaged as a result of the Defendant's breach of the contract.
- 53. This Count is timely brought and all conditions precedent have occurred or been waived.

WHEREFORE, Plaintiff respectfully demands that this Honorable Court enter its judgment in favor of Plaintiff and against Defendant in the amount consistent with the evidence, together with the costs of this litigation, interest, reasonable attorney's fees, and all other relief as this Court deems proper.

Respectfully submitted,

Dated: June 5, 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

**Employment Agreement Between
Mrs. Pamela Vickaryous
AND
Mason Classical Academy**

THIS AMENDMENT made and entered into this 10th day of **October, 2019**, between **Mason Classical Academy** (hereinafter referred to as the "School", and **Pamela Vickaryous**, hereinafter referred to as "Principal.")

WITNESSETH:

WHEREAS, the School is desirous of securing a Principal to supervise and direct the educational programs of the School under the general supervision of the Governing Board;

WHEREAS, the School and Principal believe a written employment agreement is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the educational program of the School and develop future campuses;

NOW THEREFORE, in consideration of the mutual promises contained herein, the School hereby employs the Principal and the Principal hereby accepts such employment upon the terms and conditions following:

1. **TERM.** This Employment Agreement for the Principal will begin **September 30, 2019** and continue through and terminate **June 30, 2023** except as modified by this Agreement.

2. **SALARY.** The Principal shall be paid **One hundred thousand (\$100,000.00)** annually. The Principal's salary shall be paid according to current payroll practices of the School.

The Principal shall receive a 5% annual salary bonus paid by July 30th of each year for maintaining or improving the Schools overall academic achievement.

3. **DUTIES.** The Principal will work closely with the School's Governing Board to operate and manage every aspect of an educational program and environment that will provide the best educational opportunities for students within the guidelines established by the Charter and Florida State law and further the mission of the School. The Principal shall have general responsibility for the management of all aspects of the educational program and day to day operation of all campuses. The official job responsibilities of the Principal as adopted by the Governing Board are found within the Principal's Job Description. The Governing Board maintains the right to modify the duties as it sees fit to fulfill its mission as set forth in their charter contracts and application. The Principal shall devote full time, skill, labor and attention to these duties.

4. **EVALUATION.** Annually, and not later than **May 15th**, the Governing Board shall initiate Principal's evaluation. The goals and objectives shall be established and be among the criteria

for evaluation of the Principal. By **May 31st**, the Principal and the Governing Board members shall meet for the purpose of evaluation of the performance of the Principal and expressing recommendations and observations on how such performance may be improved.

5. WORK YEAR/VACATION/LEAVES. The work schedule for this position shall be: Full-time, salaried, exempt, **238 days per year**, Monday through Friday, with a minimum daily work schedule as approved by the Board.

Vacation paid time off is earned in accordance with the School's Paid Time Off Policy commensurate with a minimum of 12 Paid Time Off days per school year for the length of the contract.

In support of the achievements of the School's students, the Principal is encouraged to attend various school functions and events as available. Further, the Principal shall be required to participate in certain School programs which may be held outside of normal work hours for the purpose of promoting the School's academic program and building relationships within the School's school community. Examples of such programs include staff meetings, parent meetings, community meetings, certain school board meetings, trainings, school-wide and campus based special events and student promotion/graduation ceremonies. These time commitments shall be designated by the both the Principal and the Governing Board and are factored into the annual compensation.

By virtue of the administrative nature of this position and the required education and training of the employee, the Principal is considered an exempt employee. As such, this position is not eligible for overtime or compensatory time.

6. FRINGE BENEFITS. Except to the extent this Agreement provides to the contrary, the Principal shall be provided no less than those same employment benefits provided to all School employees and administrators. Additionally, Principal's health insurance premium, as well as premiums for any eligible spouse and dependents, shall be paid by the School for the length of the contract.

7. EXPENSES. The School shall reimburse the Principal for all incidental expenses necessary for the operation of the School and the fulfillment of his/her responsibilities herein consistent with the School's policies and procedures.

8. CONFLICTS OF INTEREST. The Principal understands that, while employed at the School, she will have access to confidential and proprietary information. Employee therefore shall not maintain employment or contracts for employment, or engage in any consultant or independent contractor relationship, with any other agency or school that will in any way conflict with her employment with the School without approval from the Governing Board.

9. TERMINATION OF EMPLOYMENT CONTRACT.

A. Termination for Cause. The Agreement and Principal's employment may be terminated by the School at any time for "cause," which for purposes of the Agreement is defined as follows:

1) gross misconduct, including but not limited to dishonesty, fraud, crime of moral turpitude and gross insubordination in violation of any state and/or federal law and as outlined in the Employee Handbook;

2) conviction of a crime, plea of nolo contendere, adjudication withheld, or arrest (coupled with independent, credible information supporting the probable cause for the arrest);

3) failure to comply with reasonable and lawful documented directives of the Board or written policies contained in the School's Employee Handbook;

4) ongoing unsatisfactory performance that does not rise to the level of expectation and standards that the board have set forth. Upon notice of unsatisfactory performance the Principal will have sixty (60) working days to bring the performance level up to standards;

As of the effective date of termination for cause, the Principal will no longer be entitled to receive compensation or any benefits. All of the School's obligations under the Agreement will cease as of the effective date of termination for cause.

As to any contemplated termination of the Principal for cause, the School shall provide the Principal with a written statement of particulars detailing the specific cause(s) and reason(s) for her termination. In response to the statement of particulars, the Principal shall be provided the opportunity, with reasonable notice, to meet with the Board of the School at a reasonable time and place to present any pertinent information and his perspective on the matter. Depending on the particular circumstances of the case, the School may, in its discretion, suspend the Principal, with pay and benefits, pending the outcome of its investigation and its ultimate decision to terminate for cause or reinstatement of the Principal's position. If the School determines to terminate the Principal's employment for cause, the period of suspension will be paid until resolution of the issue.

B. Resignation by Principal. In the event that the Principal, desires to terminate the contract before the term of service has expired; she may do so by giving at least one hundred twenty (120) days' written notice of his intention to the Board. It is at the sole discretion of the Board whether the Principal continues to work for the 120 day period following notice of her resignation. If the Principal is not required to work, she will still be paid for the entire 120-day period following notice of his resignation.

C. Termination for Events

1) **Death.** If the Principal dies during her employment, her employment hereunder shall be deemed terminated on the effective date of her death. The School's

financial obligation to the Principal or her estate thereafter shall include the compensation and benefits which the Principal would be entitled to up to the date of her death.

2) Long Term Absence in Excess of Three Calendar Months. The School may terminate the Agreement should the Principal be unable to perform the essential functions, duties and responsibilities of her position due to illness or incapacity or any other reason whatsoever, for a continuous period of more than 90 days. Such termination shall end any of the School's obligations under the Agreement. The provision shall not supersede the requirements or provisions of the Americans with Disabilities Act or the Family and Medical Leave Act, which laws (and applicable regulations) shall control to the extent that they may conflict with the provision.

D. Termination by Mutual Agreement. The Parties may, by a separately executed document, agree to termination of the Principal's employment.

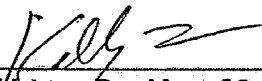
10. RENEWAL OF EMPLOYMENT AGREEMENT. The parties may agree to enter into a new Agreement at the conclusion of this one. The decision to enter into a subsequent Agreement will be made no later than June 2, 2023.

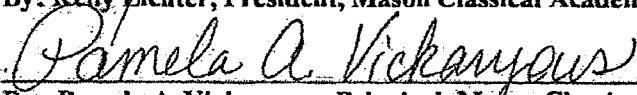
11. PROFESSIONAL LIABILITY. The School shall hold harmless and indemnify the Principal from any and all demands, claims, suits, and legal proceedings brought against the Principal in her individual capacity or in her official capacity as agent and employee of the School, provided the incident arose while the Principal was acting within the scope of employment.

The School shall not be required to pay the costs of any legal proceeding in the event the School and the Principal have adverse interests in any litigation.

12. APPLICABLE LAW. This Agreement is subject to all applicable laws of the state of Florida.

13. MODIFICATION. This Agreement supersedes all prior Agreements and understandings between the parties. The parties may, during the term of this Agreement, mutually agree to modify any of its terms. Any modifications will be in writing, signed by both parties and attached to this document.


By: Kelly Lichter, President, Mason Classical Academy DATE: 10/10/19


By: Pamela A. Vickaryous, Principal, Mason Classical Academy DATE: 10/10/2019