

COUNT UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FERRUCCIO ROMEO,

Plaintiff,

v.

TOWN OF WINTHROP, TERENCE M.
DELEHANTY, Chief of Police/Interim
Town Manager and AUSTIN FAISON,
Former-Town Manager,

Defendants.

DOCKET NO.: 1:22-CV-10573-DJC

**DEFENDANT TOWN OF WINTHROP'S ANSWER TO COUNT I of
PLAINTIFF'S COMPLAINT AND JURY TRIAL DEMAND**

Defendant Town of Winthrop ("Defendant"), by and through its undersigned counsel, hereby provides its Answer to Plaintiff Ferruccio Romeo's ("Plaintiff") Complaint as follows:

1. These introductory paragraphs, some of which are unnumbered, of the Complaint purport to describe Plaintiff's claims and conclusions of law, and therefore, no response is required.

To the extent an allegation is made requiring a response by the Defendant, the Defendant denies the allegations in these numbered introductory paragraphs.

THE PARTIES

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and therefore denies the allegation.
3. Admitted.

4. This paragraph is not directed at Defendant. Therefore, no response is required. To the extent any response is required, Defendant lacks knowledge of information to form a belief as to the truth of this allegation.
5. This paragraph is not directed at Defendant. Therefore, no response is required. To the extent any response is required, Defendant lacks knowledge of information to form a belief as to the truth of this allegation.

JURISDICTION

6. This paragraph sets forth legal citations rather than factual allegations, to which no response is required. To the extent that any response is required, denied.

STATEMENT OF FACTS

7. Admitted.
8. Admitted.
9. Admitted that Plaintiff was the Local Union President for approximately ten (10) plus years. As to all other allegations contained in this paragraph, Defendant lacks knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore denies the allegations.
10. Denied.
11. Admitted that Defendant reinstated Plaintiff's employment in July 2018. As to all other allegations contained in this paragraph, denied.
12. Admitted Plaintiff applied for FMLA at the stated time. Otherwise, neither admitted nor denied.
13. Denied.

14. Admitted that Defendant's practice has been to award Winthrop Police Officers ten hours of Compensatory Time when they do not call out sick during any three-month consecutive period. As to all other allegations contained in this paragraph, Defendant lacks knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore denies the allegations.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Admitted that Plaintiff's request for Intermittent FMLA Leave was approved through December 31, 2022. As to all other allegations contained in this paragraph, denied.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. The information in this paragraph constitutes legal conclusions, rather than factual allegations, to which no response is required. To the extent that any response is required, denied.

COUNT I
VIOLATIONS OF VII OF THE CIVIL RIGHTS ACT OF 1964 SECTION 2000E, AS
AMENDED

21. Defendant restates and incorporates herein by reference its responses to 1-20 as set forth above.

22. Denied.

COUNT II
VIOLATIONS OF 42 U.S.C. S. 12203 (RETALIATION)

23. Currently, no response is required to this paragraph as Defendants' Motion to Dismiss Count II of Plaintiff's Complaint is pending before the Court.

24. Currently, no response is required to this paragraph as Defendants' Motion to Dismiss Count II of Plaintiff's Complaint is pending before the Court.

COUNT III
VIOLATIONS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993

25. Currently, no response is required to this paragraph as Defendants' Motion to Dismiss Count III of Plaintiff's Complaint is pending before the Court.

26. Currently, no response is required to this paragraph as Defendants' Motion to Dismiss Count III of Plaintiff's Complaint is pending before the Court.

27. Currently, no response is required to this paragraph as Defendants' Motion to Dismiss Count III of Plaintiff's Complaint is pending before the Court.

DEFENSES

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's damages may be barred or reduced, in whole or in part, by his failure to mitigate his damages, if any.

THIRD DEFENSE

Plaintiff's claims are barred to the extent he failed to exhaust internal, contractual, and/or administrative remedies prior to filing his Complaint.

FOURTH DEFENSE

Plaintiff's damages, if any, are subject to statutory damage limitations.

FIFTH DEFENSE

Plaintiff's damages, if any, were caused by Plaintiff's own conduct.

SIXTH DEFENSE

Plaintiff's claims may be barred by the doctrine of waiver, estoppel, or laches.

SEVENTH DEFENSE

Defendant's actions with respect to Plaintiff were non-discriminatory; were based on legitimate reasons and carried out in the good faith exercise of Defendant's reasonable business judgment; and were not based on any discriminatory or retaliatory motive.

EIGHTH DEFENSE

Defendant's actions conformed to applicable statutes, case authority, government regulations and industry standards.

NINTH DEFENSE

Defendant's good faith efforts to comply with applicable law and its own internal policies or procedures preclude liability, vicarious or otherwise, for Plaintiff's claims, including, but not limited to, any claims for punitive or exemplary damages.

TENTH DEFENSE

Defendant maintains adequate and appropriate internal policies to address and redress claims of discrimination and retaliation and takes prompt remedial measures to correct any potentially inappropriate situations. Plaintiff unreasonably failed to take advantage of preventative and corrective opportunities provided by Defendant and otherwise failed to avoid harm.

ELEVENTH DEFENSE

Plaintiff cannot establish a prima facie case for discrimination.

TWELFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

THIRTEENTH DEFENSE

Any claims Plaintiff is asserting are barred in whole or in part because Defendant took prompt, effective, remedial action to end any and all purported discriminatory and/or retaliatory conduct when they became aware of such conduct, the awareness and existence of which Defendant specifically denies.

FOURTEENTH DEFENSE

Defendant reserves the right to assert any additional defenses upon the conclusion of investigation and discovery.

JURY DEMAND

Defendant demands trial by jury on all counts where trial by jury is available.

PRAYER FOR RELIEF

Defendant respectfully requests that this Court enter judgment in its favor and against Plaintiff, dismiss the case, thereby rejecting Plaintiff's attempt to enjoin the Defendants and other relief sought by Plaintiff, and award Defendant other appropriate equitable relief, attorneys' fees, and costs and additional relief as may be just and proper under the circumstances.

Respectfully submitted,
TOWN OF WINTHROP,
TERENCE M. DELEHANTY, and
AUSTIN FAISON,
By their attorneys,

/s/ Janet Barringer

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Dated: July 29, 2022

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be served upon non-registered participants.

/s/ Janet R. Barringer

Janet R. Barringer