

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BRITNEE KENYON,

Plaintiff,

v.

BOARD OF EDUCATION OF TOWNSHIP  
HIGH SCHOOL DISTRICT 113, DANIEL  
STRUCK, THOMAS KRIEGER, MICHELLE  
HAMMER BERNSTEIN,

Defendants.

Case No. 1:24-cv-09878

Judge Sharon Johnson Coleman

Magistrate Judge Beth W. Jantz

**DEFENDANT MICHELLE BERNSTEIN'S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Michelle Bernstein, by and through undersigned counsel, hereby, pursuant to Fed R. Civ. P. 12(a)(4)(A), answers Plaintiff's Amended Complaint as follows:

1. Defendant Bernstein otherwise admits this paragraph, but she lacks enough knowledge or information to respond to Plaintiff's allegations that Plaintiff Britnee Kenyon is Jewish.
2. The allegations of this paragraph call for a legal conclusion to which no response is required.
3. Defendant Bernstein admits that Daniel Struck was formerly the President of the Board of Education Township of High School District 113 ("Board of Education"); that Plaintiff purports to name Struck as a defendant in his individual and official capacities; and that Struck resigned from his position as Board President. Defendant Bernstein otherwise lacks enough knowledge or information to respond to Plaintiff's allegations in this paragraph.
4. Defendant Bernstein otherwise admits this paragraph, but she lacks enough knowledge or information to respond to Plaintiff's allegations about Defendant Krieger's residence.

5. Defendant Bernstein admits she is an individual but denies this allegation about her residence. Defendant Bernstein currently resides in Boca Raton, Florida.

6. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

7. The allegations of this paragraph call for a legal conclusion to which no response is required. Defendant Bernstein admits that she was domiciled within Illinois when her actions at issue in this case occurred, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8. The allegations of this paragraph call for a legal conclusion to which no response is required.

9. Admitted.

10. Admitted.

11. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

12. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph, although the relevant document speaks for itself.

13. Denied.

14. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

15. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

16. Defendant Bernstein denies that the individual mentioned in this paragraph is the only one who made complaints about Kenyon's conduct and denies that this individual's conduct should be characterized as harassment, defamation, or coercion. Defendant Bernstein does admit that this

individual has made complaints about Plaintiff Kenyon's conduct.

17. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

18. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

19. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

20. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

21. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

22. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

23. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

24. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

25. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

26. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

27. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

28. Admitted that Columbinus was chosen for the class staged reading and that it is a play

about the events that led to the well-known Columbine High School shooting. Defendant Bernstein otherwise lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

29. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

30. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

31. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

32. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

33. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

34. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

35. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

36. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

37. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

38. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

39. Denied.

40. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

41. Admitted.

42. Admitted.

43. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

44. Denied.

45. Denied.

46. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

47. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

48. Admitted.

49. Defendant Bernstein denies that she used a "pseudonym" when she posted on social media using her own First and Middle name and denies Plaintiff's characterization of Defendant Bernstein's Facebook post. Bernstein's Facebook post speaks for itself, and Bernstein otherwise denies this paragraph.

50. Denied. See Exhibit C. This is also not the only post that Plaintiff Kenyon shared.

51. Defendant Bernstein denies that she "demanded" anything in her post, which speaks for itself.

52. Admitted.

53. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

54. Defendant Bernstein denies that her posts were false and defamatory. Defendant

Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

55. Defendant Bernstein admits that she communicated to the Board, but denies that her communication was false in any respect and otherwise denies the allegations of this paragraph.

56. Admitted that a statement was issued on December 14, 2023. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in this paragraph.

57. Denied.

58. Denied.

59. Defendant Bernstein denies that this statement was specifically in response to any statements or posts Defendant Bernstein may have made and also denies that Defendant Bernstein's posts were false. Defendant Bernstein lacks sufficient knowledge or information sufficient to form a belief as to the truth of Plaintiff's other allegations in this paragraph.

60. Defendant Bernstein lacks sufficient knowledge or information sufficient to form a belief as to the truth of Plaintiff's other allegations in this paragraph.

61. Denied.

62. Defendant Bernstein lacks sufficient knowledge or information sufficient to form a belief as to the truth of Plaintiff's other allegations in this paragraph.

63. Denied.

64. The allegations of this paragraph call for a legal conclusion to which no response is required.

65. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the nature of all communications Plaintiff Kenyon may have received.

66. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to

the truth of Plaintiff's allegations in this paragraph. Defendant Bernstein denies that any of her communications were false, threatening, or harassing.

67. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

68. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

69. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

70. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

71. The allegations of this paragraph call for a legal conclusion to which no response is required.

72. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

73. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

74. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

75. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

76. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

77. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

78. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

79. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph. The Written Reprimand speaks for itself. Otherwise denied.

80. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

81. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph. This paragraph also makes a legal conclusion to which no response can be provided.

82. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

83. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

84. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

85. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

86. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

87. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

88. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.



89. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

90. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

91. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph regarding the reasons for the investigation by the Board of Education, Struck, and Krieger, and whether those reasons were pretextual. All other allegations in this paragraph are denied.

92. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph regarding the reasons for the investigation by the Board of Education, Struck, and Krieger, and whether those reasons were pretextual. All other allegations in this paragraph are denied.

93. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph regarding the reasons for the investigation by the Board of Education, Struck, and Krieger, and whether those reasons were pretextual. All other allegations in this paragraph are denied.

94. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

95. Denied.

96. Defendant Bernstein's public statement speaks for itself. Defendant Bernstein otherwise denies the allegations in this paragraph, including the allegation that her statement was false. She also denies that she ever made any statement urging for Plaintiff Kenyon to be fired.

97. Denied.

98. Denied.

99. Defendant Bernstein admits that Kenyon took a leave of absence. Defendant Bernstein lacks knowledge or information sufficient to admit or deny the truth of the remaining allegations of this paragraph, including the timing of that leave of absence.

100. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

101. Denied.

102. Denied.

103. Denied.

104. Defendant Bernstein lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations in this paragraph.

105. Denied.

106. Denied.

107. Counts I through VII are not brought against Defendant Bernstein. As such, Defendant Bernstein does not respond to the allegations contained therein as they are not alleged against her.

150. Defendant Bernstein incorporates and realleges her answers to the previous paragraphs as though fully set forth here.

151. Defendant Bernstein denies that she used a "pseudonym" when she posted on social media using her own First and Middle name and denies that she acted maliciously. Her post speaks for itself, and this paragraph is otherwise denied.

152. Defendant Bernstein denies that she sought Ms. Kenyon's termination or to harm her, or that she "demanded" anything. Nowhere in this post or in any communication did Bernstein call for Kenyon's termination. Her post speaks for itself, and this paragraph is otherwise denied.

153. Admitted.

154. Defendant Bernstein's post speaks for itself, and this paragraph is otherwise denied. Defendant Bernstein denies that any of her statements were false.

155. Denied.

156. Defendant Bernstein lacks knowledge or information concerning how many people may have viewed her posts. She also lacks knowledge or information as to how many people may have independently discovered Plaintiff Kenyon's conduct and made their own posts.

157. Denied.

158. Denied. This statement also calls for a legal conclusion that cannot be answered.

159. Denied.

160. Denied. Defendant Bernstein also denies that Plaintiff Kenyon suffered damages as a result of her conduct and denies that Plaintiff Kenyon is entitled to entry of judgment in her favor, an award of damages, plus attorneys' fees, costs, punitive damages, prejudgment interest, and/or any other relief.

161. Defendant Bernstein incorporates and realleges her answers to the previous paragraphs as though fully set forth here.

162. Defendant Bernstein denies that she used a "pseudonym" when she posted on social media using her own First and Middle name and denies that she acted maliciously. Her post speaks for itself, and this paragraph is otherwise denied.

163. Defendant Bernstein denies that she sought Ms. Kenyon's termination or to harm her. Her post speaks for itself, and this paragraph is otherwise denied.

164. Admitted.

165. Defendant Bernstein's post speaks for itself, all other allegations in this paragraph are denied.

166. Denied.

167. Defendant Bernstein lacks knowledge or information concerning how many people may have viewed her posts.

168. Denied. This statement also calls for legal conclusion.

169. Denied. This statement also calls for legal conclusion.

170. Denied.

171. Denied.

172. Denied. Also denied that Plaintiff Kenyon is entitled to entry of judgment in her favor, an award of damages, plus attorneys' fees, costs, punitive damages, prejudgment interest, and/or any other relief.

173. As Count X has been dismissed by the Court, Plaintiff does not answer this Count at this time.

179. Count XI is not brought against Defendant Bernstein. As such, Defendant Bernstein does not respond to the allegations contained therein as they are not alleged against her.

181. All allegations of the Amended Complaint not specifically admitted, denied, or otherwise controverted are denied.

#### **AFFIRMATIVE DEFENSES**

1. Defendant Bernstein's statements were fully protected by the Constitution of the United States as statements of opinion, and accordingly, because they are subject to this constitutional privilege, cannot be the basis of liability.

2. Defendant Bernstein's statements were statements of opinion, and accordingly cannot be the basis of liability under Illinois law.

3. Defendant Bernstein's statements on Facebook that are at issue in this case were true.

Dated: April 28, 2025

Respectfully submitted,

CHARLES E. HERVAS,  
[REDACTED]  
HERVAS, CONDON & BERSANI, P.C.  
[REDACTED]

THE AMERICAN CENTER FOR  
LAW AND JUSTICE

By: /s/ Nathan J. Moelker  
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GEOFFREY R. SURTEES\*  
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ABIGAIL SOUTHERLAND\*\*  
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*Counsel for Defendant Michelle Bernstein*

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\*\* Admitted Pro Hac Vice

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on April 28, 2025, he caused a copy of the foregoing Defendant's Answer to be e-filed using the CM/ECF e-filing system which will serve all parties of record.

/s/ Nathan J. Moelker