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Communication Manager of the University of Oregon's  
Division of Equity and Inclusion*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

BRUCE GILLEY,

Plaintiff,

v.

TOVA STABIN, in her individual capacity;  
and the COMMUNICATION MANAGER of  
the University of Oregon's Division of Equity  
and Inclusion, in his or her official capacity,

Defendants.

Case No.: 6:22-cv-01181-AA

**ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANTS TOVA  
STABIN AND THE COMMUNICATION  
MANAGER OF THE UNIVERSITY OF  
OREGON'S DIVISION OF EQUITY  
AND INCLUSION**

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For its Answer to Plaintiff's Amended Complaint, Affirmative Defenses and Demand for Jury Trial, Defendants tova stabin<sup>1</sup> ("stabin") and the Communication Manager of the University of Oregon's Division of Equity and Inclusion ("Communication Manager" individually and along with stabin, "Defendants") state and allege as follows:

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<sup>1</sup> Defendant stabin styles her name using all lowercase letters.

## **ANSWER**

Except as hereinafter admitted, qualified or otherwise explained, Defendants deny each and every allegation set forth in Plaintiff's Complaint.

### **INTRODUCTION**

The Introduction contains argument and legal conclusions to which no response is required. To the extent the Introduction contains factual allegations, Defendants deny.

### **JURISDICTION AND VENUE**

1. Defendants admit the allegations in Paragraph 1 of the Amended Complaint.
2. Defendants admit that venue is proper in the United States District of Oregon. To the extent Plaintiff's allegation in Paragraph 2 of the Amended Complaint is that the Portland Division is the proper division of the United States District of Oregon for this action, Defendants deny.
3. Defendants lack information or knowledge sufficient to form a reasonable belief as to the truth of the allegation in Paragraph 3 of the Amended Complaint and therefore deny the same.

### **THE PARTIES**

4. Defendants lack information or knowledge sufficient to form a reasonable belief as to the truth of the allegations in Paragraph 4 of the Amended Complaint and therefore deny the same.
5. In response to the allegations in Paragraph 5 of the Amended Complaint, Defendants admit that Stabin was employed as Communications Manager and that the position was located within University Communications and assigned to the Division of Equity and Inclusion. Defendants also admit that Stabin is retired. Defendants lack sufficient information or

knowledge to form a reasonable belief as to the truth of the allegation that Stabin was listed as the Communications Manager at the time this lawsuit was initiated and therefore deny the same.

Except as expressly admitted, Defendants deny.

6. In response to Paragraph 6 of the Amended Complaint, Defendants admit that at the time the Amended Complaint was filed the position was unfilled. Except as expressly admitted, Defendants deny.

### **FACTS**

7. In response to Paragraph 7 of the Amended Complaint, Defendants admit that the University of Oregon is established as a public university and is a governmental entity performing governmental functions and exercising governmental powers. Except as expressly admitted, Defendants deny.

8. In response to Paragraphs 8 through 10 of the Amended Complaint, Defendants admit the allegations but do not adopt the phrasing that diversity, equity, and inclusion (DEI) is an “ideology.”

9. Paragraphs 11 through 12 of the Amended Complaint purport to reference writings that speak for themselves, and Defendants deny any allegations or representations that are inconsistent with those writings. Defendants also deny any allegations that attempt to convey the Division’s purpose or actions, and DEI more generally, in a simplistic and reductive manner.

10. In response to Paragraphs 13 through 16 of the Amended Complaint, Defendants deny. Defendants specifically deny any allegations that attempt to convey the Division’s purpose or actions, and DEI more generally, as simplistic and reductive.

11. Paragraph 17 of the Amended Complaint references a writing that speaks for itself, and Defendants deny any allegations or representations that are inconsistent with that

writing. Defendants also deny any allegations that attempt to convey the Division's purpose or actions, and DEI more generally, in a simplistic and reductive manner.

12. In response to Paragraph 18 of the Amended Complaint, Defendants deny any attempt to convey the Division's purpose or actions, and DEI more generally, in a simplistic and reductive manner. On that basis, Defendants deny.

13. In response to Paragraph 19 of the Amended Complaint, Defendants deny. Defendants specifically deny any allegations that attempt to convey the Division's purpose or actions, and DEI more generally, in a simplistic and reductive manner.

14. In response to Paragraph 20 of the Amended Complaint, Defendants admit.

15. Paragraph 21 of the Amended Complaint references a writing that speaks for itself, and Defendants deny any allegations or representations that are inconsistent with that writing. Defendants admit that stabin's job title was Communications Manager. Except as expressly admitted, Defendants deny.

16. Paragraph 22 of the Amended Complaint references a writing that speaks for itself, and Defendants deny any allegations or representations that are inconsistent with that writing.

17. In response to Paragraph 23 of the Amended Complaint, Defendants admit that stabin was acting in the course and scope of her employment with the University of Oregon when she engaged in the conduct at issue in the Amended Complaint. However, to the extent Paragraph 23 suggests University policy authorized stabin to block Bruce Gilley's post, Defendants deny. Except as expressly admitted, Defendants deny.

18. In response to Paragraph 24 of the Amended Complaint, Defendants deny.

19. In response to Paragraph 25 of the Amended Complaint, Defendants object to the use of this litigation as an opportunity to interrogate any individual for their sincerely held beliefs and opinions. To the extent the quoted phrase refers to something stated in a document, such document speaks for itself, and Defendants deny any allegations or representations that are inconsistent with it.

20. In response to Paragraph 26 of the Amended Complaint, Defendants admit.

21. In response to Paragraph 27 of the Amended Complaint, Defendants deny, with the understanding that “Presently” means the date the Amended Complaint was filed.

22. In response to Paragraphs 28 through 31 of the Amended Complaint, Defendants admit.

23. In response to Paragraph 32 of the Amended Complaint, Defendants lack sufficient information or knowledge to form a reasonable belief regarding the truthfulness of the allegations and therefore deny the same.

24. In response to Paragraph 33 of the Amended Complaint, Defendants admit.

25. In response to Paragraph 34 of the Amended Complaint, Defendants admit that @UOEquity Twitter is an official account for the Division that discusses concepts of diversity, equity, and inclusion. Defendants also admit that University of Oregon is a public institution. Except as expressly admitted, Defendants deny.

26. In response to Paragraph 35 of the Amended Complaint, Defendants admit that the @UOEquity Twitter account has been used to tweet about some or all of the listed topics. Except as expressly admitted, Defendants deny.

27. In response to Paragraphs 36 through 40 of the Amended Complaint, Defendants admit.

28. In response to Paragraph 41 of the Amended Complaint, Defendants deny.

29. Paragraphs 42 through 46 of the Amended Complaint reference writings that speak for themselves, and Defendants deny any allegations or representations that are inconsistent with those writings.

30. Paragraphs 47 through 49 of the Amended Complaint reference writings that speak for themselves, and Defendants deny any allegations or representations that are inconsistent with those writings. Defendants admit the authenticity of the screenshot in Paragraph 49. Except as expressly admitted, Defendants deny.

31. In response to Paragraph 50 of the Amended Complaint, Defendants admit that Stabin was acting in the course and scope of her employment when posting the Racism Interrupter prompt. Except as expressly admitted, Defendants deny.

32. In response to Paragraph 51 of the Amended Complaint, Defendants deny.

33. Paragraphs 52 through 58 of the Amended Complaint do not contain allegations against Defendants and therefore do not require a response. To the extent a response is required, Defendants deny.

34. In response to Paragraph 59 of the Amended Complaint, Defendants admit that Plaintiff retweeted the Racism Interrupter prompt on June 14, 2022. Except as expressly admitted, Defendants deny.

35. In response to Paragraphs 60 through 61 of the Amended Complaint, Defendants admit.

36. In response to Paragraph 62 of the Amended Complaint, Defendants admit that Stabin blocked Plaintiff from the @UOEquity Twitter account. However, to the extent Paragraph

62 suggests University policy required or authorized Stabin to block Bruce Gilley's post, Defendants deny. Except as expressly admitted, Defendants deny.

37. In response to Paragraphs 63 through 65 of the Amended Complaint, Defendants admit.

38. In response to Paragraphs 66 through 67 of the Amended Complaint, Defendants deny.

39. Paragraphs 68 through 69 of the Amended Complaint reference a writing that speaks for itself, and Defendants deny any allegations or representations that are inconsistent with that writing. Defendants admit that Plaintiff filed a public records request and that Plaintiff was informed there were no documents responsive to his request. The exchange referenced in these paragraphs was in writing and the subject documents speak for themselves. Except as otherwise expressly admitted, Defendants deny.

40. In response to Paragraphs 70 through 71 of the Amended Complaint, Defendants deny.

41. In response to Paragraph 72 of the Amended Complaint, Defendants admit that @BruceDGilley was blocked from the @UOEquity account on August 11, 2022, and @BruceDGilley would not have been able to interact with the @UOEquity account on that date. However, neither Plaintiff nor his counsel ever notified senior officials at the University of Oregon about Plaintiff being blocked from the @UOEquity account. Had Plaintiff or his counsel contacted or otherwise notified senior officials, Plaintiff would have been unblocked immediately. Except as expressly admitted, Defendants deny.

42. In response to Paragraph 73 of the Amended Complaint, Defendants deny.

43. Paragraphs 74 through 78 of the Amended Complaint reference writings that speaks for themselves, and Defendants deny any allegations or representations that are inconsistent with those writings.

44. Paragraph 79 of the Amended Complaint does not contain allegations made against Defendants and therefore no response is required. To the extent a response is required, Defendants lack information or knowledge sufficient to form a reasonable belief as to the truth of the allegations and therefore deny the same.

45. Paragraphs 80 through 81 do not contain allegations made against Defendants, and therefore no responses are required. To the extent a response is required, Defendants deny.

**FIRST CLAIM FOR RELIEF**  
**Right of Free Speech, U.S. Const. Amends. I, XIV, 42 U.S.C. § 1983**  
**As-Applied Challenge to Twitter Blocking**

46. In response to Paragraph 82 of the Amended Complaint, Defendants reallege and incorporate their responses above to Paragraphs 1 through 81 of the Amended Complaint as if fully alleged herein.

47. Paragraphs 83 through 93 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny.

**SECOND CLAIM FOR RELIEF**  
**Right of Free Speech, U.S. Const. Amends. I, XIV, 42 U.S.C. § 1983**  
**Facial Challenge to Twitter Blocking Custom, Policy and Practice**

48. In response to Paragraph 94 of the Amended Complaint, Defendants reallege and incorporate their responses above to Paragraphs 1 through 93 of the Amended Complaint as if fully alleged herein.

49. Paragraphs 95 through 98 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny.



**THIRD CLAIM FOR RELIEF**  
**Right of Free Speech, U.S. Const. Amends. I, XIV, 42 U.S.C. § 1983**  
**Facial Challenge to UO's Social Media Guidelines**

50. In response to Paragraph 99 of the Amended Complaint, Defendants reallege and incorporate their responses above to Paragraphs 1 through 98 of the Amended Complaint as if fully alleged herein.

51. Paragraphs 100 through 113 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny.

**FOURTH CLAIM FOR RELIEF**  
**Right of Free Speech, U.S. Const. Amends. I, XIV, 42 U.S.C. § 1983**  
**As-Applied Challenge to UO's Social Media Guidelines**

52. In response to Paragraph 114 of the Amended Complaint, Defendants reallege and incorporate their responses above to Paragraphs 1 through 113 of the Amended Complaint as if fully alleged herein.

53. Paragraph 115 of the Amended Complaint references a writing that speaks for itself, and Defendants deny any allegations or representations that are inconsistent with that writing. Defendants admit that it has social media guidelines and that those existed at the time Stabin blocked Plaintiff on June 14, 2022, from the @UOEquity account. Except as expressly admitted, Defendants deny.

54. Paragraphs 116 through 118 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny.

**AFFIRMATIVE DEFENSES**

55. Without assuming plaintiff's burden of proof as to any claim or issue, Defendants assert the following affirmative defenses, incorporating and realleging responses above, and

specifically reserving the right to amend their Answer and raise additional Affirmative Defenses as the case proceeds:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

56. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Mootness / Standing / Lack of Subject-Matter Jurisdiction)**

57. Plaintiff's claims are moot because he has received the sum demanded for as damages, is not actively blocked from the @UOEquity Twitter page, and the University has policies in place that prohibit University employees from blocking users based on the viewpoints the user expresses.

58. Plaintiff lacks standing. Plaintiff manipulated the Court's subject-matter jurisdiction by failing to confer prior to filing this lawsuit. On that basis, his standing should not be determined from the time he filed the complaint. Furthermore, Plaintiff's standing should be determined based on the facts as they existed at the time he filed the amended complaint.

**THIRD AFFIRMATIVE DEFENSE**

**(Qualified Immunity)**

59. Defendant stabin is entitled to qualified immunity because she did not act unreasonably in light of clearly established law.

**FOURTH AFFIRMATIVE DEFENSE**

**(Legitimate, nondiscriminatory reason)**

60. The decisions made and actions taken of which Plaintiff complaints were based solely on legitimate, non-discriminatory, and non-retaliatory business considerations.

**FIFTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

61. Plaintiff has failed to mitigate his alleged damages, if any, in whole or in part.

**SIXTH AFFIRMATIVE DEFENSE**

**(Reasonable Care/Failure to Report)**

62. Defendants exercised reasonable care to prevent illegal discrimination. Plaintiff unreasonably failed to take advantage of corrective opportunities provided.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

63. Plaintiff did not contest stabin's decision to block him from the Division's social media account through avenues available to him or otherwise confer with the University of Oregon prior to filing his lawsuit. Plaintiff took that course of action because he wanted the proverbial "federal case" for the purposes of publicity and not for the purpose of redressing any alleged harms. Plaintiff should be estopped from pursuing his claims under the circumstances.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Judicial Estoppel)**

64. Plaintiff did not contest stabin's decision to block him from the Division's social media account through avenues available to him or otherwise confer with the University of Oregon prior to filing his lawsuit. Plaintiff took that course of action because he wanted the proverbial "federal case" for the purposes of publicity and not for the purpose of redressing any alleged harms. Plaintiff should be estopped from pursuing his claims under the circumstances.

**PRAYER FOR RELIEF**

Defendants request that the Court deny Plaintiff's Prayer for Relief and enter a judgment in Defendants' favor on each of Plaintiff's claims.

DATED: November 25, 2024

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