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2100 Bank One Center  
600 Superior Avenue, E.  
Cleveland, OH 44114-2653  
Telephone (216) 348-5400

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                     |   |                            |
|---------------------|---|----------------------------|
| RUTH E. SIMMONS,    | ) | CASE NO. 1:99 CV 02311     |
|                     | ) |                            |
| Plaintiff,          | ) | JUDGE JOHN M. MANOS        |
|                     | ) |                            |
| vs.                 | ) | <u>ANSWER OF DEFENDANT</u> |
|                     | ) | <u>ELKEM METALS, INC.</u>  |
| ELKEM METALS, INC., | ) |                            |
|                     | ) |                            |
| Defendant.          | ) |                            |

Defendant Elkem Metals, Inc. ("Elkem") states for its Answer to plaintiffs Complaint as follows:

1. Elkem admits that plaintiff purports to bring this action pursuant to Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Americans with Disabilities Act of 1990; denies that plaintiff has stated a claim against Elkem upon which relief can be granted; and denies each and every remaining allegation contained in paragraph 1 of the Complaint.

2. Elkem admits that this Court has subject matter jurisdiction over this case; denies that plaintiff has stated a claim against Elkem upon which relief can be granted; and denies each and every remaining allegation contained in paragraph 2 of the Complaint.

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Burke & Haber CO., L.P.A.  
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3. **Elkem** admits that venue is proper in this judicial district; denies that plaintiff has stated a claim against **Elkem** upon which relief can be granted; and denies each and every remaining allegation contained in paragraph 3 of the Complaint.

4. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 4 of the Complaint.

5. **Elkem** admits the allegations contained in paragraph 5 of the Complaint.

6. **Elkem** admits the allegations contained in paragraph 6 of the Complaint.

7. **Elkem** admits the allegations contained in paragraph 7 of the Complaint.

8. **Elkem** admits that plaintiff was employed by **Elkem** from July 7, 1998 until October 29, 1998 and that, at the time of termination of plaintiff's employment, she was an assistant kiln operator; however, **Elkem** denies each and every remaining allegation contained in paragraph 8 of the Complaint.

9. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 9 of the Complaint.

10. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 10 of the Complaint.

11. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 11 of the Complaint.

12. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 12 of the Complaint.

13. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 13 of the Complaint.

14. **Elkem** admits that plaintiff generally advised Janet Wright, the former Human Resources Specialist of **Elkem**, that she had a minor son who had Tourette's Syndrome; however, **Elkem** denies each and every remaining allegation contained in paragraph 14 of the Complaint.

15. **Elkem** admits that within two weeks after plaintiff commenced her employment at **Elkem**, she began receiving and making many personal telephone calls at **Elkem**; however, **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations regarding the alleged hospitalization of plaintiff's minor son; and denies each and every remaining allegation contained in paragraph 15 of the Complaint.

16. **Elkem** admits that certain incoming telephone calls to **Elkem's** facility are answered at the security office; however, **Elkem** denies each and every remaining allegation contained in paragraph 16 of the Complaint.

17. **Elkem** admits that plaintiff generally advised Wright that her son had Tourette's Syndrome; however, **Elkem** denies each and every remaining allegation contained in paragraph 17 of the Complaint.

18. **Elkem** admits that it permitted plaintiff to "punch off the clock" and leave **Elkem** if an emergency situation occurred involving plaintiff's minor son; however, **Elkem** denies each and every remaining allegation contained in paragraph 18 of the Complaint.

19. **Elkem** admits that plaintiff agreed to "punch off the clock" and leave work if an emergency situation occurred involving her minor son; however, **Elkem** denies each and every remaining allegation contained in paragraph 19 of the Complaint.

20. **Elkem** admits the allegations contained in paragraph 20 of the Complaint.

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21. **Elkem** admits the allegations contained in paragraph 21 of the Complaint.

22. **Elkem** denies, for want of knowledge or information sufficient to form a belief at this time, the allegations contained in paragraph 22 of the Complaint.

23. **Elkem** denies that plaintiffs adult son was, at any time, refused permission to talk to plaintiff when he indicated that his telephone call was of an emergency nature; and denies, for want of knowledge or information sufficient to form a belief at this time, the remaining allegations contained in paragraph 23 of the Complaint.

24. **Elkem** denies that plaintiffs adult son was, at any time, refused permission to contact plaintiff when he indicated that his request was of an emergency nature; and denies each and every remaining allegation contained in paragraph 24 of the Complaint.

25. **Elkem** denies that plaintiff's minor son was, at any time, refused permission to talk to plaintiff; and denies, for want of knowledge or information sufficient to form a belief at this time, the remaining allegations contained in paragraph 25 of the Complaint.

26. **Elkem** admits that plaintiff was terminated on October 29, 1998 due to, *inter alia*, excessive personal telephone calls that were of a non-emergency nature; however, **Elkem** denies each and every -remaining allegation contained in paragraph 26 of the Complaint.

27. **Elkem** denies each and every remaining allegation contained in paragraph 27 of the Complaint.

28. **Elkem** admits the allegations contained in paragraph 28 of the Complaint.

29. **Elkem** admits that the Equal Employment Opportunity Commission ("EEOC") dismissed plaintiffs Charge of Discrimination because the EEOC was unable to conclude that

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the information obtained established a violation of any statute, and that the EEOC issued plaintiff Notice of her Right to Sue on June 28, 1999.

30. Elkem denies each and every allegation contained in paragraph 30 of the Complaint.

31. Elkem denies each and every allegation contained in paragraph 31 of the Complaint.

32. Elkem denies each and every allegation contained in paragraph 32 of the Complaint.

33. Elkem denies each and every allegation contained in paragraph 33 of the Complaint.

34. In response to paragraph 34 of the Complaint, Elkem incorporates all admissions, denials and allegations contained in paragraphs 1 through 33 above as if fully rewritten herein.

35. Elkem denies each and every allegation contained in paragraph 35 of the Complaint.

36. Elkem denies each and every allegation contained in paragraph 36 of the Complaint.

37. In response to paragraph 37 of the Complaint, Elkem incorporates all admissions, denials and allegations contained in paragraphs 1 through 36 above as if fully rewritten herein.

38. Elkem denies each and every allegation contained in paragraph 38 of the Complaint.

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39. **Elkem** denies each and every allegation contained in paragraph 39 of the Complaint.

40. In response to paragraph 40 of the Complaint, **Elkem** denies that plaintiff is entitled to any of the relief requested therein; and denies each and every remaining allegation contained in paragraph 40 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

41. Plaintiffs Complaint fails to state a claim against **Elkem** upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

42. Any actions taken by **Elkem** with regard to plaintiff were taken for legitimate, nondiscriminatory business reasons.

THIRD AFFIRMATIVE DEFENSE

43. Plaintiffs Complaint is barred by the applicable statutes of limitation.

FOURTH AFFIRMATIVE DEFENSE

44. Plaintiff failed to timely file the within action.

FIFTH AFFIRMATIVE DEFENSE

45. Plaintiff's minor son does not suffer from a disability as defined by the Americans with Disabilities Act.

SIXTH AFFIRMATIVE DEFENSE

46. Plaintiff failed to mitigate the damages, if any, that she suffered.

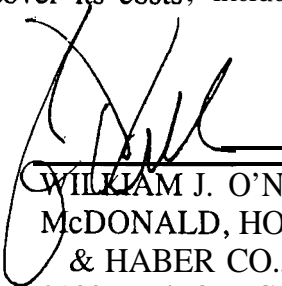
**SEVENTH AFFIRMATIVE DEFENSE**

47. Plaintiffs Complaint is barred by the doctrines of waiver, estoppel and/or laches.

**EIGHTH AFFIRMATIVE DEFENSE**

48. Elkem reserves the right to assert additional defenses as they become known through the course of discovery.

WHEREFORE, Defendant Elkem Metals, Inc. demands that plaintiffs Complaint be dismissed with prejudice and that it recover its costs, including attorney's fees incurred herein.



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WILLIAM J. O'NEILL (0029936)  
McDONALD, HOPKINS, BURKE  
& HABER CO., L.P.A.  
2100 Bank One Center  
600 Superior Avenue, E.  
Cleveland, Ohio 44114-2653  
Phone (216) 348-5400  
Fax (216) 348-5474

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Cleveland, OH 44114-2653  
Telephone (216) 348-5400


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Burke & Haber CO., L.P.A.  
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2100 Bank One Center  
600 Superior Avenue, E.  
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Telephone (216) 3485400

**CERTIFICATE OF SERVICE**

A copy of the foregoing Answer Of Defendant Elkem Metals, Inc. was sent by regular U.S. mail to ALLYSON LEHERE, ESQ., Atty for Plaintiff, at Metropolitan Tower, 7<sup>th</sup> Floor, 11 Federal Plaza Central, Youngstown, Ohio 44503 this 30 day of November, 1999.

  
\_\_\_\_\_  
WILLIAM J. O'NEILL (00299936)  
Attorney for Defendant  
Elkem Metals, Inc.