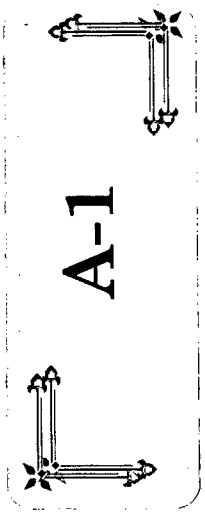
APPENDIX



[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 18-14637; 19-10865
Non-Argument Calendar

D.C. Docket No. 8:15-cv-02787-EAK-AEP

ANGELA W. DEBOSE,

Plaintiff-Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,
ELLUCIAN COMPANY, L.P.,

Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

(April 27, 2020)

Before JILL PRYOR, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

Following her termination by the University of South Florida, Angela DeBose, an African American woman, filed suit under Title VII, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and the Florida Civil Rights Act, Fla. Stat. § 760.01 *et seq.* ("FCRA"), against both the University and Ellucian Company, L.P., a software developer whose products are used for academic and administrative recordkeeping. The district court granted summary judgment to Defendants on several counts, including all counts against Ellucian. After a jury found for DeBose on the remaining counts, the court granted judgment as a matter of law to Defendants and denied DeBose's post-trial motions. After review of the complicated procedural posture and record, we affirm the district court's disposition.

I

DeBose worked as the University Registrar at the University of South Florida. Her position was renewed annually. In 2014, the University began receiving complaints from other employees that DeBose was difficult to collaborate with and unprofessional. On July 15, 2014, DeBose's supervisor, Paul Dosal, informed her that he had promoted another University employee, Billie Jo Hamilton, to an open Assistant Vice President role. Two weeks later, DeBose filed an internal complaint alleging discrimination, and a second complaint the following month. In January 2015, she filed a discrimination complaint with the

EEOC. In February, Dosal issued DeBose a written reprimand for calling a coworker a "little girl" during a meeting.

During this same timeframe, the University was implementing a new software program from Ellucian, Degree Works, which helps students and faculty monitor progress toward graduation. As part of its implementation, an Ellucian consultant met with DeBose in April 2015 and issued a report criticizing the Registrar's implementation of the software, saying the office was uncollaborative and resistant to change. After receiving the Ellucian report, on May 19, 2015, University Provost Ralph Wilcox gave DeBose three months' notice that her employment would not be renewed in August 2015. Wilcox subsequently received a call from the Provost of the University of North Florida asking for his professional opinion of DeBose—Wilcox repeated the Ellucian report's conclusion that DeBose was uncollaborative and resistant to change.

These events—the promotion of another employee, the written reprimand, her termination, and the bad reference—formed the basis of DeBose's complaint. She accused the University of race and gender discrimination and retaliation in violation of Title VII and state law based on its failure to promote, termination, and bad job reference, as well as breach of contract for the termination and tortious interference in a business relationship for the bad reference. She also accused

Ellucian of tortious interference in her business relationship with the University, and accused both Defendants of a civil conspiracy to violate her rights.

Following discovery, the University and Ellucian moved for summary judgment. The district court granted defendants summary judgment on all counts except the discrimination and retaliation claims associated with DeBose's termination and bad reference by the University. Those claims proceeded to trial. Considering the discrimination claim, the jury found that race was a motivating factor in the Provost's decision not to renew the employment contract, but that DeBose would have been terminated regardless of race and was therefore not entitled to damages. As to her retaliation claim, the jury found that the University had taken adverse employment action against DeBose because of her protected activity, and awarded $310,500 in damages.

Following trial, DeBose moved for attorney's fees, costs, and front pay. The district court denied her request for fees, because pro se litigants are not entitled to recover attorney fees, and denied her request for costs because she had not provided sufficient information on them. It scheduled an evidentiary hearing to establish a front-pay amount, to which DeBose was presumptively entitled as the prevailing party.

The district court subsequently granted the University's motion for judgment as a matter of law and overturned the jury's verdict on the retaliation claim, finding

insufficient evidence from which a reasonable jury could find causation. The district court concluded that DeBose had failed as a matter of law to establish causation, a required element of a retaliation claim. Because DeBose was no longer the prevailing party, the district court denied her request for a front-pay award. It also denied a motion for sanctions DeBose had filed in the interim. DeBose then filed her own motion for a new trial, which the district court denied.

* * *

We are therefore confronted on appeal by DeBose's challenge to the district court's orders: (1) granting in part and denying in part the University's motion for summary judgment and granting Ellucian's motion for summary judgment; (2) denying her post-trial motion for attorney's fees and costs; (3) granting the University's post-trial motion for judgment as a matter of law and denying her motion for sanctions; (4) denying her motion for front pay; and (5) denying her motion for a new trial.

II

After a de novo review of the evidence[1] in the light most favorable to DeBose as the nonmoving party, *Moton v. Cowart*, 631 F.3d 1337, 1341 (11th Cir.

[1] DeBose also challenges the district court's refusal to consider 550 unauthenticated documents. She is correct that Federal Rule of Civil Procedure 56 does not require authentication of documents at the summary-judgment stage, and that neither defendant objected to the documents as inadmissible. The court's error in excluding these documents, however, did not affect DeBose's substantial rights, as a review of the documents shows that they would not have affected the outcome. Any error was therefore harmless. *See* Fed. R. Civ. P. 61. Although

2011), we affirm the district court's grant of summary judgment to Ellucian on each count against it, and to the University on several counts.

A

The district court granted the University's summary judgment motion with regard to DeBose's race- and gender-discrimination and retaliation claims stemming from the alleged failure to promote her and the written reprimand she received after insulting a coworker.

Title VII and the FCRA prohibit an employer from discharging an employee because of the employee's sex or race. 42 U.S.C. § 2000e-2(a)(1); Fla. Stat. 760.10(1)(a). Title VII and the FCRA also prohibit an employer from retaliating against an employee for protesting allegedly unlawful discriminatory practices. 42 U.S.C. § 2000e-3(a); Fla. Stat. 760.10(7). Claims under Title VII and the FCRA are analyzed under the same framework and do not require separate analysis. *Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1271 (11th Cir. 2010).

"To prevail on a claim for discrimination under Title VII based on circumstantial evidence, [DeBose] must show that: (1) [s]he is a member of a protected class; (2) [s]he was qualified for the position; (3) [s]he suffered an adverse employment action; and (4) [s]he was replaced by a person outside h[er]

DeBose claims that "the outcome of the case would have been substantially different" if the documents were considered, she does not cite any specific document to substantiate that claim.

protected class or was treated less favorably than a similarly-situated individual outside h[er] protected class." *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003).

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), provides the archetypal burden-shifting framework for evaluating a Title VII case based on circumstantial evidence. *Id.* at 802–04. If an employee successfully makes a prima facie case of discrimination or retaliation, the burden shifts to the employer to provide a legitimate, nondiscriminatory or non-retaliatory reason for the adverse employment action. *Alvarez*, 610 F.3d at 1264. The employer's burden is "exceedingly light" and is one of production only; "the employer need not persuade the court that it was actually motivated by the proffered reasons." *Tipton v. Canadian Imperial Bank of Commerce*, 872 F.2d 1491, 1495 (11th Cir. 1989) (quotations omitted).

If the employer meets this burden, the burden shifts back to the employee to produce evidence that the employer's proffered reasons are merely a pretext for discrimination. *Alvarez*, 610 F.3d at 1264. To show pretext, the employee must specifically respond to the employer's explanation and produce evidence directly rebutting the employer's proffered nondiscriminatory reason. *Crawford v. City of Fairburn*, 482 F.3d 1305, 1309 (11th Cir. 2007). This Court does not inquire into whether the employer's reason for the adverse employment action "is a correct

one, but whether it is an honest one." *Rojas v. Florida*, 285 F.3d 1339, 1342 (11th Cir. 2002) ("We are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." (quotation omitted)).

We can quickly dispense with the written-reprimand claim. DeBose offered no evidence that Dosal's reprimand caused any serious or material change in her employment. *Crawford v. Carroll*, 529 F.3d 961, 970–71 (11th Cir. 2008) ("[W]e require[ ] an employee to demonstrate she suffered a serious and material change in the terms, conditions, or privileges of employment to show an adverse employment action" (emphasis and quotation omitted)). It was merely a warning that such behavior was unacceptable, but carried no disciplinary effect. DeBose therefore failed to establish a prima facie case of discrimination. *Maynard*, 342 F.3d at 1289. The district court did not err in granting summary judgment to the University with respect to that claim.

Concerning the failure-to-promote claim, even if DeBose made out a prima facie case of discrimination, she has failed to rebut the University's proffered non-discriminatory reason for Hamilton's appointment. The undisputed evidence showed that Hamilton was highly qualified for the position, and Dosal, who made the appointment, had received several complaints about DeBose's professionalism

from coworkers before the position even became available. DeBose has failed to show that this explanation is pretextual. *See City of Fairburn*, 482 F.3d at 1309.

DeBose alternatively raises a disparate-impact discrimination claim, alleging that the internal appointment of an employee rather than an open search disadvantages minority candidates. The district court correctly found that she failed to make a prima facie disparate-impact case because she had not supported her allegations with any statistical evidence to demonstrate a discriminatory effect. *See E.E.O.C. v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1274–75 (11th Cir. 2000). We agree, and affirm.

Nor can the failure to promote be considered retaliatory—DeBose did not engage in any protected activity until after learning of Hamilton's promotion. DeBose learned of Hamilton's promotion on July 15, 2014, and her first complaint of discrimination was made July 28, 2014. Therefore the promotion cannot have been retaliation for DeBose's protected activity.

Accordingly, we affirm the district court's partial grant of summary judgment to the University concerning DeBose's race- and gender-discrimination and retaliation claims stemming from the alleged failure to promote and written reprimand.

B

DeBose also brought a breach of contract claim against the University for her termination, alleging that she was not given a required three months' paid notice of her termination. This claim is without merit, and we affirm the district court's grant of summary judgment to the University.

First, the record contains no evidence of any express employment contract. Second, to the extent that any such contract existed, the University gave DeBose three months' notice. It informed her on May 19, 2015 that her employment would not be renewed, effective August 19, 2019.

C

The district court also granted summary judgment to both defendants on DeBose's claims of tortious interference with business relationships. DeBose first alleges that Ellucian interfered with her relationship with the University by intentionally making false statements about her in its report in order to cause her termination. Second, DeBose alleges that after her termination the University tortiously interfered with her relationship with the University of North Florida, claiming that she had received a job offer there which was rescinded based upon Provost Wilcox's poor reference. She did not, however, present any evidence that she had in fact received such an offer, such as an affidavit from a prospective supervisor at North Florida.

To prove a claim for tortious interference, DeBose must show "(1) the existence of a business relationship that affords the plaintiff existing or prospective legal rights; (2) the defendant's knowledge of the business relationship; (3) the defendant's intentional and unjustified interference with the relationship; and (4) damage to the plaintiff." *Int'l Sales & Serv., Inc. v. Austral Insulated Prods., Inc.*, 262 F.3d 1152, 1154 (11th Cir. 2001).

With regard to the University, DeBose has failed to show any relationship with the University of North Florida or damage from the rescission of an unproven job offer. She presented no evidence that she had been offered employment there or what Provost Wilcox said in the phone call with the UNF Provost, other than Wilcox's own account of the call. With respect to Ellucian, there was no evidence in the record that it intentionally interfered with her employment at the University. *See Int'l Sales & Serv., Inc.*, 262 F.3d at 1154. DeBose's testimony that Ellucian's consultant acted with hostility is insufficient to show intent, and her speculation is insufficient to withstand summary judgment. *See Marshall v. City of Cape Coral*, 797 F.2d 1555, 1559 (11th Cir. 1986).

Accordingly, we agree with the district court that summary judgment is appropriate in favor of Defendants with regard to the tortious interference claims, and affirm.

D

Finally, the district court also granted summary judgment to defendants on DeBose's civil-conspiracy claim. She alleges that the University and Ellucian conspired to terminate her in violation of Title VII and state law.

To prove a claim for civil conspiracy under Florida law, the plaintiff must show: (1) the existence of an agreement between two or more parties; (2) to do an unlawful act; (3) the doing of some overt act in furtherance of the conspiracy; and (4) damages. *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1271 (11th Cir. 2009).

Because the record shows no evidence of any agreement between defendants to do an unlawful act, DeBose failed to make a prima facie case. *See id.* DeBose's assertions to the contrary are based upon speculation and are not sufficient to withstand summary judgment. *See Marshall*, 797 F.2d at 1559. The district court correctly granted summary judgment on this claim, and we affirm.

III

DeBose's remaining claims—that the University discriminated and retaliated against her on the basis of race by terminating her and giving a bad reference in violation of Title VII and state law—proceeded to trial. The jury found for her on both claims, but the damages awarded for each claim diverged significantly. Despite concluding that race was a motivating factor in her termination, the jury also found that the University would have fired her even without taking race into

account; accordingly, DeBose was not entitled to damages on her discrimination claim. As to her retaliation claim, however, the jury found that DeBose had engaged in protected activity and that the University took adverse employment action against her because of that activity, and it awarded her damages in the amount of $310,500.00.

DeBose then moved for attorney's fees in the amount of $712,500.00 for hours she spent litigating the case on her own behalf, costs in the amount of $102,520.00, and front pay for five years in the amount of at least $170,000.00. She submitted an affidavit as to her hourly rate and a one-page list of costs. The district court denied DeBose's request for attorney's fees, concluding that a pro se party cannot recover attorney's fees for representing herself, even if she is a licensed attorney. It also denied her request for costs, finding that she had failed to provide sufficient information as to whether they were appropriately taxable against the University. Her request for front pay was sent to a magistrate judge to determine her annual salary, as DeBose presented no evidence at trial other than her own testimony on that point.

DeBose now appeals the denial of the requested attorney's fees and costs. She also raises, for the first, time, fees that she paid to several attorneys before becoming a pro se litigant.

A court may, in its discretion, allow the prevailing party in a discrimination suit to recover reasonable attorney's fees as part of the costs of litigation. 42 U.S.C. § 2000e-5(k). A pro se plaintiff cannot recover attorney's fees for representing herself, even if she is a licensed attorney. *See Kay v. Ehrler*, 499 U.S. 432, 435–38 (1991) (analyzing the similar attorney's fees provision in 42 U.S.C. § 1988); *Hensley v. Eckerhart*, 461 U.S. 424, 433 n. 7 (1983) (noting that an award of attorney's fees under §§ 1988 and 2000e-5 are governed by the same standards). In addition to attorney's fees, prevailing party may also recover the costs enumerated in 28 U.S.C. § 1920. See Fed. R. Civ. P. 54(d). We have held, however, that the party seeking costs and expenses must submit a request that would enable the district court to determine an award. *Loranger v. Stierheim*, 10 F.3d 776, 784 (11th Cir. 1994).

Because she is a pro se litigant, DeBose is not entitled to attorney's fees for her own work. *See Kay*, 499 U.S. at 435–38. Although she claims on appeal that she is entitled to attorneys' fees for the work of her retained counsel prior to proceeding pro se, she did not ask for those attorneys' fees in the district court. We will not consider the merits of issues not raised before the district court. *Narey v. Dean*, 32 F.3d 1521, 1526–27 (11th Cir. 1994).

DeBose's costs were also not itemized sufficiently to permit a district court to determine an award. She did not support the amount of costs requested with any

evidence. We therefore affirm the district court's refusal to allow DeBose to recover. *See Loranger*, 10 F.3d at 784.

IV

The district court subsequently overturned the jury's verdict on the retaliation claim—granting the University's post-trial motion for judgment as a matter of law on the ground that DeBose had not presented sufficient evidence to show a causal connection between her protected activities and the adverse employment actions.

Judgment as a matter of law "is appropriate when a plaintiff presents no legally sufficient evidentiary basis for a reasonable jury to find for h[er] on a material element of h[er] cause of action." *Christopher v. Florida*, 449 F.3d 1360, 1364 (11th Cir. 2006). This Court reviews de novo a district court's grant of judgment as a matter of law. *Id.*

In addition to establishing a statutorily protected activity and adverse employment action, in order to prevail on a retaliation claim a Title VII plaintiff must show a causal connection between the two events. *Carroll*, 529 F.3d at 970. "Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 352 (2013). "If there is a substantial delay between the protected expression and the adverse action in the absence of other evidence

tending to show causation, the complaint of retaliation fails as a matter of law." *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). We have held that a three-to-four-month delay is too large a gap, standing alone, to satisfy the plaintiff's burden to prove causation. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007).

DeBose's earliest protected activity, an internal discrimination complaint, was filed on July 28, 2014. Her difficulties at work had been building for months before this. In the spring and summer of 2014, multiple coworkers complained to Dosal about DeBose's professionalism and difficulty in collaborating, and Dosal informed Provost Wilcox of these complaints. The Ellucian assessment, which took place in April of 2015, was planned prior to DeBose's first complaint.

After receiving the critical Ellucian report (dated May 7, 2015), and having received complaints about DeBose the previous year, Provost Wilcox decided not to renew DeBose's employment in May of 2015—approximately five months after DeBose's EEOC complaint and ten months after her internal complaint. The negative reference to the University of North Florida took place shortly thereafter.

In its judgment-as-a-matter-of-law order, the district court found that this timeline did not give rise to proof of causation. We agree, and affirm. DeBose presented no evidence from which a reasonable jury could conclude that her protected activities—the complaints of discrimination—were the but-for cause of

her termination and poor reference. *See Nassar*, 570 U.S. at 360. And, even assuming causation, she also did not present any evidence directly rebutting the University's proffered nondiscriminatory reason. *See City of Fairburn*, 482 F.3d at 1309.

* * *

In addition to opposing the University's motion for judgment as a matter of law, DeBose also filed a posttrial motion for sanctions, arguing that the University had intentionally destroyed her personnel files and lied about their contents, contending they would have contained an employment contract. We agree with the district court that she failed to produce any evidence that the University destroyed evidence or that she had an employment contract. On the contrary, the record evidence showed that the University had not used employment contracts since 2005. We therefore affirm the denial of sanctions.

V

Having affirmed the district court's award of judgment as a matter of law to the University on the retaliation claim, we turn to DeBose's motion for front pay.

As the prevailing party following the jury verdict, DeBose was, at least presumptively, entitled to front pay. *See E.E.O.C. v. W&O, Inc.*, 213 F.3d 600, 619 (11th Cir. 2000) ("In addition to back pay, prevailing Title VII plaintiffs are presumptively entitled to either reinstatement or front pay." (quotation omitted)).

Following the district court's judgment-as-a-matter-of-law order, though, she is no longer the prevailing party on her retaliation claim. Accordingly, the district court did not err in denying DeBose's motion for front pay on this basis.

Nor is DeBose entitled to front pay on the basis of her discrimination claim. Although the jury found that DeBose had proven that the University took her race into account when it terminated her, the jury also found that the University had proved its "same decision" affirmative defense. When a defendant proves a "same decision" defense, the court may only grant declaratory relief, injunctive relief, and attorney's fees and costs. *See* 42 U.S.C. §2000e-5(g)(2)(B)(i); *see also Quigg v. Thomas Cty. School Dist.*, 814 F.3d 1227, 1239 n.9 (11th Cir. 2016) (noting that the "same decision" defense allows an employer to avoid damages and certain forms of equitable relief in a Title VII case). Front pay is a form of equitable relief. *See Ramsey v. Chrysler First, Inc.*, 861 F.2d 1541, 1545 (11th Cir. 1988). We therefore affirm the district court's denial of front pay on this basis as well.

VI

Finally, we turn to DeBose's motion for a new trial. She argues that the court substituted its own credibility determinations for those of the jury when granting the University's motion for judgment as a matter of law, and that a new trial should have been granted. She also argues that the court erred in denying her

continuance of trial, which left her with inadequate time to prepare for trial, and by denying reopening of discovery.

To the extent that DeBose's motion for a new trial challenged the entry of judgment as a matter of law on her retaliation claim, her arguments are without merit, as already explained.

To the extent that it challenged the jury's discrimination verdict, her motion for a new trial was untimely. After the jury's verdict, the district court entered an amended judgment on October 5, 2018. Although this judgment was later vacated and amended to reflect the court's subsequent grant of judgment as a matter of law on DeBose's retaliation claim, the verdict as to her discrimination claim was not amended and went unchallenged until February 24, 2019, when DeBose filed the instant motion. Thus, her motion for a new trial as to this claim was filed well outside the 28-day time frame provided for in Federal Rule of Civil Procedure 59(b) and is untimely.

And as to the court's refusal to continue the trial and/or reopen discovery, none of DeBose's notices of appeal or amended notices of appeal challenge this ruling. It is thus not properly before this Court on appeal. *See* Fed. R. App. P. 3(c)(1)(B); *White v. State Farm Fire and Cas. Co.*, 664 F.3d 860, 863–64 (11th Cir. 2011).

We therefore affirm the denial of the motion for new trial and the denial of DeBose's motion for continuance and reopening of discovery.

AFFIRMED.

No. 18-14637
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

DeBose v. USF Bd. of Trs.

Decided Apr 27, 2020

No. 18-14637 No. 19-10865

04-27-2020

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Following her termination by the University of South Florida, Angela DeBose, an African American woman, filed suit under Title VII, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and the Florida Civil Rights Act, Fla. Stat. § 760.01 *et seq.* ("FCRA"), against both the University and Ellucian Company, L.P., a software developer whose products are used for academic and administrative recordkeeping. The district court granted summary judgment to Defendants on several counts, including all counts against Ellucian. After a jury found for DeBose on the remaining counts, the court granted judgment as a matter of law to Defendants and denied DeBose's post-trial motions. After review of the complicated procedural posture and record, we affirm the district court's disposition.

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her employment would not be renewed in August 2015. Wilcox subsequently received a call from the Provost of the University of North Florida asking for his professional opinion of DeBose—Wilcox repeated the Ellucian report's conclusion that DeBose was uncollaborative and resistant to change.

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"To prevail on a claim for discrimination under Title VII based on circumstantial evidence, [DeBose] must show that: (1) [s]he is a member of a protected class; (2) [s]he was qualified for the position; (3) [s]he suffered
7 an adverse employment action; and (4) [s]he was replaced by a person outside h[er] *7 protected class or was treated less favorably than a similarly-situated individual outside h[er] protected class." *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003).

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), provides the archetypal burden-shifting framework for evaluating a Title VII case based on circumstantial evidence. *Id.* at 802-04. If an employee successfully makes a prima facie case of discrimination or retaliation, the burden shifts to the employer to provide a legitimate, nondiscriminatory or non-retaliatory reason for the adverse employment action. *Alvarez*, 610 F.3d at 1264. The employer's burden is "exceedingly light" and is one of production only; "the employer need not persuade the court that it was actually motivated by the proffered reasons." *Tipton v. Canadian Imperial Bank of Commerce*, 872 F.2d 1491, 1495 (11th Cir. 1989) (quotations omitted).

If the employer meets this burden, the burden shifts back to the employee to produce evidence that the employer's proffered reasons are merely a pretext for discrimination. *Alvarez*, 610 F.3d at 1264. To show pretext, the employee must specifically respond to the employer's explanation and produce evidence directly rebutting the employer's proffered nondiscriminatory reason. *Crawford v. City of Fairburn*, 482 F.3d 1305, 1309 (11th Cir. 2007). This Court does not inquire into whether the employer's reason for the adverse
8 employment action "is a correct *8 one, but whether it is an honest one." *Rojas v. Florida*, 285 F.3d 1339, 1342 (11th Cir. 2002) ("We are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." (quotation omitted)).

We can quickly dispense with the written-reprimand claim. DeBose offered no evidence that Dosal's reprimand caused any serious or material change in her employment. *Crawford v. Carroll*, 529 F.3d 961, 970-71 (11th Cir. 2008) ("[W]e require[ ] an employee to demonstrate she suffered a serious and material change in the terms, conditions, or privileges of employment to show an adverse employment action" (emphasis and quotation omitted)). It was merely a warning that such behavior was unacceptable, but carried no disciplinary effect. DeBose therefore failed to establish a prima facie case of discrimination. *Maynard*, 342 F.3d at 1289. The district court did not err in granting summary judgment to the University with respect to that claim.

Concerning the failure-to-promote claim, even if DeBose made out a prima facie case of discrimination, she has failed to rebut the University's proffered non-discriminatory reason for Hamilton's appointment. The undisputed evidence showed that Hamilton was highly qualified for the position, and Dosal, who made the
9 appointment, had received several complaints about DeBose's professionalism *9 from coworkers before the position even became available. DeBose has failed to show that this explanation is pretextual. *See City of Fairburn*, 482 F.3d at 1309.

DeBose alternatively raises a disparate-impact discrimination claim, alleging that the internal appointment of an employee rather than an open search disadvantages minority candidates. The district court correctly found that she failed to make a prima facie disparate-impact case because she had not supported her allegations with any statistical evidence to demonstrate a discriminatory effect. *See E.E.O.C. v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1274-75 (11th Cir. 2000). We agree, and affirm.

Nor can the failure to promote be considered retaliatory—DeBose did not engage in any protected activity until after learning of Hamilton's promotion. DeBose learned of Hamilton's promotion on July 15, 2014, and her first complaint of discrimination was made July 28, 2014. Therefore the promotion cannot have been retaliation for DeBose's protected activity.

Accordingly, we affirm the district court's partial grant of summary judgment to the University concerning DeBose's race- and gender-discrimination and retaliation claims stemming from the alleged failure to promote
10 and written reprimand. *10

B

DeBose also brought a breach of contract claim against the University for her termination, alleging that she was not given a required three months' paid notice of her termination. This claim is without merit, and we affirm the district court's grant of summary judgment to the University.

First, the record contains no evidence of any express employment contract. Second, to the extent that any such contract existed, the University gave DeBose three months' notice. It informed her on May 19, 2015 that her employment would not be renewed, effective August 19, 2019.

C

The district court also granted summary judgment to both defendants on DeBose's claims of tortious interference with business relationships. DeBose first alleges that Ellucian interfered with her relationship with the University by intentionally making false statements about her in its report in order to cause her termination. Second, DeBose alleges that after her termination the University tortiously interfered with her relationship with the University of North Florida, claiming that she had received a job offer there which was rescinded based upon Provost Wilcox's poor reference. She did not, however, present any evidence that she had in fact received
11 such an offer, such as an affidavit from a prospective supervisor at North Florida. *11

To prove a claim for tortious interference, DeBose must show "(1) the existence of a business relationship that affords the plaintiff existing or prospective legal rights; (2) the defendant's knowledge of the business relationship; (3) the defendant's intentional and unjustified interference with the relationship; and (4) damage to the plaintiff." *Int'l Sales & Serv., Inc. v. Austral Insulated Prods., Inc.*, 262 F.3d 1152, 1154 (11th Cir. 2001).

With regard to the University, DeBose has failed to show any relationship with the University of North Florida or damage from the rescission of an unproven job offer. She presented no evidence that she had been offered employment there or what Provost Wilcox said in the phone call with the UNF Provost, other than Wilcox's

own account of the call. With respect to Ellucian, there was no evidence in the record that it intentionally interfered with her employment at the University. *See Int'l Sales & Serv., Inc.*, 262 F.3d at 1154. DeBose's testimony that Ellucian's consultant acted with hostility is insufficient to show intent, and her speculation is insufficient to withstand summary judgment. *See Marshall v. City of Cape Coral*, 797 F.2d 1555, 1559 (11th Cir. 1986).

Accordingly, we agree with the district court that summary judgment is appropriate in favor of Defendants with
12 regard to the tortious interference claims, and affirm. *12

D

Finally, the district court also granted summary judgment to defendants on DeBose's civil-conspiracy claim. She alleges that the University and Ellucian conspired to terminate her in violation of Title VII and state law.

To prove a claim for civil conspiracy under Florida law, the plaintiff must show: (1) the existence of an agreement between two or more parties; (2) to do an unlawful act; (3) the doing of some overt act in furtherance of the conspiracy; and (4) damages. *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1271 (11th Cir. 2009).

Because the record shows no evidence of any agreement between defendants to do an unlawful act, DeBose failed to make a prima facie case. *See id.* DeBose's assertions to the contrary are based upon speculation and are not sufficient to withstand summary judgment. *See Marshall*, 797 F.2d at 1559. The district court correctly granted summary judgment on this claim, and we affirm.

III

DeBose's remaining claims—that the University discriminated and retaliated against her on the basis of race by terminating her and giving a bad reference in violation of Title VII and state law—proceeded to trial. The jury found for her on both claims, but the damages awarded for each claim diverged significantly. Despite concluding that race was a motivating factor in her termination, the jury also found that the University would
13 have fired her even without taking race into *13 account; accordingly, DeBose was not entitled to damages on her discrimination claim. As to her retaliation claim, however, the jury found that DeBose had engaged in protected activity and that the University took adverse employment action against her because of that activity, and it awarded her damages in the amount of $310,500.00.

DeBose then moved for attorney's fees in the amount of $712,500.00 for hours she spent litigating the case on her own behalf, costs in the amount of $102,520.00, and front pay for five years in the amount of at least $170,000.00. She submitted an affidavit as to her hourly rate and a one-page list of costs. The district court denied DeBose's request for attorney's fees, concluding that a pro se party cannot recover attorney's fees for representing herself, even if she is a licensed attorney. It also denied her request for costs, finding that she had failed to provide sufficient information as to whether they were appropriately taxable against the University. Her request for front pay was sent to a magistrate judge to determine her annual salary, as DeBose presented no evidence at trial other than her own testimony on that point.

DeBose now appeals the denial of the requested attorney's fees and costs. She also raises, for the first, time,
14 fees that she paid to several attorneys before becoming a pro se litigant. *14

A court may, in its discretion, allow the prevailing party in a discrimination suit to recover reasonable attorney's fees as part of the costs of litigation. 42 U.S.C. § 2000e-5(k). A pro se plaintiff cannot recover attorney's fees for representing herself, even if she is a licensed attorney. *See Kay v. Ehrler*, 499 U.S. 432, 435-38 (1991)

(analyzing the similar attorney's fees provision in 42 U.S.C. § 1988); *Hensley v. Eckerhart*, 461 U.S. 424, 433 n. 7 (1983) (noting that an award of attorney's fees under §§ 1988 and 2000e-5 are governed by the same standards). In addition to attorney's fees, prevailing party may also recover the costs enumerated in 28 U.S.C. § 1920. See Fed. R. Civ. P. 54(d). We have held, however, that the party seeking costs and expenses must submit a request that would enable the district court to determine an award. *Loranger v. Stierheim*, 10 F.3d 776, 784 (11th Cir. 1994).

Because she is a pro se litigant, DeBose is not entitled to attorney's fees for her own work. *See Kay*, 499 U.S. at 435-38. Although she claims on appeal that she is entitled to attorneys' fees for the work of her retained counsel prior to proceeding pro se, she did not ask for those attorneys' fees in the district court. We will not consider the merits of issues not raised before the district court. *Narey v. Dean*, 32 F.3d 1521, 1526-27 (11th Cir. 1994).

DeBose's costs were also not itemized sufficiently to permit a district court to determine an award. She did not
15 support the amount of costs requested with any *15 evidence. We therefore affirm the district court's refusal to allow DeBose to recover. *See Loranger*, 10 F.3d at 784.

IV

The district court subsequently overturned the jury's verdict on the retaliation claim—granting the University's post-trial motion for judgment as a matter of law on the ground that DeBose had not presented sufficient evidence to show a causal connection between her protected activities and the adverse employment actions.

Judgment as a matter of law "is appropriate when a plaintiff presents no legally sufficient evidentiary basis for a reasonable jury to find for h[er] on a material element of h[er] cause of action." *Christopher v. Florida*, 449 F.3d 1360, 1364 (11th Cir. 2006). This Court reviews de novo a district court's grant of judgment as a matter of law. *Id.*

In addition to establishing a statutorily protected activity and adverse employment action, in order to prevail on a retaliation claim a Title VII plaintiff must show a causal connection between the two events. *Carroll*, 529 F.3d at 970. "Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 352 (2013). "If there is a
16 substantial delay between the protected expression and the adverse action in the absence of other evidence *16 tending to show causation, the complaint of retaliation fails as a matter of law." *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). We have held that a three-to-four-month delay is too large a gap, standing alone, to satisfy the plaintiff's burden to prove causation. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007).

DeBose's earliest protected activity, an internal discrimination complaint, was filed on July 28, 2014. Her difficulties at work had been building for months before this. In the spring and summer of 2014, multiple coworkers complained to Dosal about DeBose's professionalism and difficulty in collaborating, and Dosal informed Provost Wilcox of these complaints. The Ellucian assessment, which took place in April of 2015, was planned prior to DeBose's first complaint.

After receiving the critical Ellucian report (dated May 7, 2015), and having received complaints about DeBose the previous year, Provost Wilcox decided not to renew DeBose's employment in May of 2015—approximately five months after DeBose's EEOC complaint and ten months after her internal complaint. The negative reference to the University of North Florida took place shortly thereafter.

In its judgment-as-a-matter-of-law order, the district court found that this timeline did not give rise to proof of causation. We agree, and affirm. DeBose presented no evidence from which a reasonable jury could conclude
17 that her protected activities—the complaints of discrimination—were the but-for cause of *17 her termination and poor reference. *See Nassar*, 570 U.S. at 360. And, even assuming causation, she also did not present any evidence directly rebutting the University's proffered nondiscriminatory reason. *See City of Fairburn*, 482 F.3d at 1309.

* * *

In addition to opposing the University's motion for judgment as a matter of law, DeBose also filed a posttrial motion for sanctions, arguing that the University had intentionally destroyed her personnel files and lied about their contents, contending they would have contained an employment contract. We agree with the district court that she failed to produce any evidence that the University destroyed evidence or that she had an employment contract. On the contrary, the record evidence showed that the University had not used employment contracts since 2005. We therefore affirm the denial of sanctions.

V

Having affirmed the district court's award of judgment as a matter of law to the University on the retaliation claim, we turn to DeBose's motion for front pay.

As the prevailing party following the jury verdict, DeBose was, at least presumptively, entitled to front pay. *See E.E.O.C. v. W&O, Inc.*, 213 F.3d 600, 619 (11th Cir. 2000) ("In addition to back pay, prevailing Title VII
18 plaintiffs are presumptively entitled to either reinstatement or front pay." (quotation omitted)). *18 Following the district court's judgment-as-a-matter-of-law order, though, she is no longer the prevailing party on her retaliation claim. Accordingly, the district court did not err in denying DeBose's motion for front pay on this basis.

Nor is DeBose entitled to front pay on the basis of her discrimination claim. Although the jury found that DeBose had proven that the University took her race into account when it terminated her, the jury also found that the University had proved its "same decision" affirmative defense. When a defendant proves a "same decision" defense, the court may only grant declaratory relief, injunctive relief, and attorney's fees and costs. *See* 42 U.S.C. §2000e-5(g)(2)(B)(i); *see also Quigg v. Thomas Cty. School Dist.*, 814 F.3d 1227, 1239 n.9 (11th Cir. 2016) (noting that the "same decision" defense allows an employer to avoid damages and certain forms of equitable relief in a Title VII case). Front pay is a form of equitable relief. *See Ramsey v. Chrysler First, Inc.*, 861 F.2d 1541, 1545 (11th Cir. 1988). We therefore affirm the district court's denial of front pay on this basis as well.

VI

Finally, we turn to DeBose's motion for a new trial. She argues that the court substituted its own credibility determinations for those of the jury when granting the University's motion for judgment as a matter of law, and
19 that a new trial should have been granted. She also argues that the court erred in denying her *19 continuance of trial, which left her with inadequate time to prepare for trial, and by denying reopening of discovery.

To the extent that DeBose's motion for a new trial challenged the entry of judgment as a matter of law on her retaliation claim, her arguments are without merit, as already explained.

To the extent that it challenged the jury's discrimination verdict, her motion for a new trial was untimely. After the jury's verdict, the district court entered an amended judgment on October 5, 2018. Although this judgment was later vacated and amended to reflect the court's subsequent grant of judgment as a matter of law on DeBose's retaliation claim, the verdict as to her discrimination claim was not amended and went unchallenged until February 24, 2019, when DeBose filed the instant motion. Thus, her motion for a new trial as to this claim was filed well outside the 28-day time frame provided for in Federal Rule of Civil Procedure 59(b) and is untimely.

And as to the court's refusal to continue the trial and/or reopen discovery, none of DeBose's notices of appeal or amended notices of appeal challenge this ruling. It is thus not properly before this Court on appeal. *See* Fed. R.
20 App. P. 3(c)(1)(B); *White v. State Farm Fire and Cas. Co.*, 664 F.3d 860, 863-64 (11th Cir. 2011). *20

We therefore affirm the denial of the motion for new trial and the denial of DeBose's motion for continuance and reopening of discovery.

AFFIRMED.

A-3

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14637-DD

ANGELA W. DEBOSE,

Plaintiff - Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,
Defendant - Appellee,

ELLUCIAN COMPANY, L.P.,
Defedant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before JILL PRYOR, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

A-4

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14637-DD; 19-10865-DD

ANGELA W. DEBOSE,

Plaintiff - Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,
ELLUCIAN COMPANY, L.P.,

Defendants - Appellees.

Appeals from the United States District Court
for the Middle District of Florida

ORDER:

"Appellant's Motion to Consolidate or Alternatively Amend Reply Briefs" is GRANTED, IN PART, to the extent that the Clerk is DIRECTED to accept the second reply attached to Appellant's motion, in addition to the reply brief received by the Court on October 4, 2019.

UNITED STATES CIRCUIT JUDGE

A-5

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 18-14637-DD; 19-10865-DD

ANGELA W. DEBOSE,

Plaintiff - Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,
ELLUCIAN COMPANY, L.P.,

Defendants - Appellees.

Appeals from the United States District Court
for the Middle District of Florida

ORDER:

Before the Court are (1) "Appellant's Objection to Clerical Consolidation;" and (2) "Appellant's Request for Judicial Notice."

The Court has reviewed "Appellant's Objection to Clerical Consolidation." Case nos. 18-14637 and 19-10865 remain CONSOLIDATED.

In light of the consolidation, "Appellant's Request for Judicial Notice," filed in case no. 18-14637, is DENIED AS UNNECESSARY.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

A-6

ANGELA W. DEBOSE,

Plaintiff,

v.

Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES AND ELLUCIAN COMPANY, L.P.,

Defendants.

ORDER

Plaintiff Angela DeBose moves to amend the judgment or, alternatively, for a new trial. (Doc. 551). Defendant University of South Florida Board of Trustees ("**the Board**") opposes. (Doc. 565). The Court will deny the motion.

I. Background

Since the inception of this litigation, DeBose has alleged the Board retaliated against her because she filed internal complaints of discrimination with the University of South Florida ("**USF**"), charges of discrimination with the Equal Employment Opportunity Commission ("**EEOC**"), and a civil action in this Court seeking a preliminary injunction against the Board. (Doc. 45 at ¶147). DeBose has also alleged three, discrete adverse employment actions taken by the Board in retaliation for her protected activity: (1) DeBose's supervisor, Paul Dosal, denied DeBose a promotion to the position of Assistant Vice President for Enrollment Planning and Management ("**AVP EPM**"); (2) USF's Provost, Ralph Wilcox, discharged DeBose's employment;

and (3) Wilcox provided a negative employment reference to University of North Florida's Provost, Earle Traynham. Id. at ¶148.

At summary judgment, the Court dismissed for lack of causation DeBose's claim that she was denied a promotion to AVP EPM in retaliation for her protected activity. (Doc. 210 at 18–21). However, the Court permitted DeBose's retaliation claims based on Wilcox's discharge of DeBose's employment and negative employment reference to Traynham to proceed to trial. Id.

In their joint pretrial statement, DeBose and the Board represented that the only issues of fact that remained to be litigated with respect to DeBose's retaliation claims were (1) whether the Board intentionally retaliated against DeBose because of her protected activity by discharging her employment, and (2) whether the Board intentionally retaliated against DeBose because of her protected activity by providing a negative employment reference to Traynham. (Doc. 361 at 25). Also, in describing the nature of the action, DeBose and the Board explained, "This is an action against [the Board] for . . . alleged retaliation based on termination/non-reappointment as Registrar and a reference to [Traynham.]" Id. at 1–2.

At trial, DeBose introduced evidence that (1) in July and August of 2014, respectively, she filed internal EthicsPoint and DIEO[1] complaints with USF alleging that she had been subjected to unlawful discrimination, (2) in December of 2014, she filed

[1] "DIEO" refers to USF's Office of Diversity, Inclusion, and Equal Opportunity.

a civil injunction action in this Court seeking to preliminarily enjoin the Board from discriminating against her and discharging her employment. In addition, DeBose introduced evidence that (1) Wilcox discharged her employment on May 19, 2015, and (2) Wilcox gave her a negative employment reference during a telephone conversation with Traynham on May 26, 2019. The Court's instructions to the jury were consistent with the evidence introduced at trial. (Doc. 470 at 15–16) ("[DeBose] claims that [the Board] discharged her and gave a negative employment reference to [Tyanham] because [DeBose] filed a charge of discrimination with the [EEOC], filed a petition for a preliminary injunction [in this Court], and filed internal complaints of race discrimination with [USF]."). Although given three opportunities to do so, DeBose never objected to any of the Court's retaliation instructions or requested different or additional instructions. (Docs. 387, 434, 453).

After a trial on the merits, the jury returned a verdict in favor of DeBose and against the Board on DeBose's race discrimination and retaliation claims. (Doc. 471). However, the jury found for the Board on its "same decision" affirmative defense, precluding an award of money damages on DeBose's discrimination claim. Id. The jury awarded DeBose $310,500 on her retaliation claim. Id.

The Board subsequently filed its renewed motion for judgment as a matter of law, raising several arguments in support. (Doc. 504). Upon review, the Court determined that DeBose failed to introduce evidence sufficient to convince a reasonable jury that her protected activity was the but-for cause of the Board's adverse

employment action,[2] granted the Board's renewed motion for judgment as a matter of law, and reversed the jury's verdict on DeBose's retaliation claim. (Doc. 548 at 4–8). The Court reasoned that, based on binding Eleventh Circuit precedent, the 104 days between DeBose's civil injunction action (*i.e.*, DeBose's most recent protected activity) and Wilcox's decision to discharge DeBose's employment (*i.e.*, the earlier of the Board's adverse employment actions) was, *without more*, insufficient as a matter of law to convince a reasonable jury that DeBose's protected activity was the but-for cause of the Board's adverse employment action. Id. The same day, the Clerk entered an

[2] In its prior order, the Court couched its causation analysis in terms of DeBose's *prima facie* burden to establish a causal connection between her protected activity and the Board's adverse employment action. (Doc. 548 at 4–8). However, because the Board countered with its own evidence that it legitimately discharged DeBose based on findings in the Ellucian Report, whether DeBose established a *prima facie* case of retaliation "is no longer relevant." Combs v. Plantation Patterns, 106 F.3d 1519, 1539 n.11 (11th Cir. 1997) ("When the trier of fact has before it all the evidence needed to decide the ultimate issue of whether the defendant intentionally discriminated against the plaintiff, the question of whether the plaintiff properly made out a *prima facie* case is no longer relevant.") (internal quotations and citation omitted). Nonetheless, the lens through which the Court examines causation is of no moment because the plaintiff in a Title VII retaliation case *always* carries the ultimate burden of proving that the defendant wouldn't have taken the adverse employment action but for the plaintiff's protected activity. See Smith v. City of Fort Pierce, Fla., 565 F. App'x 774, 779 (11th Cir. 2014) ("[E]ven assuming that [the appellant] could establish a *prima facie* case . . . [her] retaliation claim still fails because she cannot establish that her alleged protected activity was the but-for cause of her termination.") (internal quotations and citation omitted); Whitworth v. SunTrust Banks, Inc., No. 1:16-cv-325-ODE-CMS, 2018 WL 1634301, at *10 (N.D. Ga. Mar. 30, 2018), as amended (Apr. 3, 2018) (explaining, in a Title VII retaliation case, "[W]hether but-for causation [is] examined in the *prima facie* case stage, pretext stage, or as its own additional element, it must be examined closely by the court."); Canty-Aaron v. Bibb Cnty. Sch. Dist., No. 5:14-cv-300-CAR, 2016 WL 3876437, at *9 (M.D. Ga. July 15, 2016) (explaining, in a Title VII retaliation case, the plaintiff has the "ultimate burden" of proving "but-for causation"). See also Sims v. MVM, Inc., 704 F.3d 1327, 1332 (11th Cir. 2013) (reconciling "but-for" causation and the McDonnell Douglas framework in Age Discrimination and Employment Act case and affirming summary judgment where the appellant could not establish that discriminatory animus was the but-for cause of his termination). Thus, the issue here was – and remains – whether DeBose introduced evidence sufficient for a reasonable jury to find that the Board wouldn't have taken adverse employment action against DeBose but for her protected activity.

amended judgment in favor of the Board and against DeBose on DeBose's retaliation claim. (Doc. 549).

II. Legal Standard

Rule 59 of the Federal Rules of Civil Procedure permits the filing of a motion to alter or amend a judgment after its entry. See Fed. R. Civ. P. 59(e). "The only grounds for granting a [Rule 59(e)] motion are newly-discovered evidence or manifest errors of law or fact." Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) (per curiam) (quoting In re Kellogg, 197 F.3d 1116, 1119 (11th Cir. 1999)).

Alternatively, Rule 59 permits the losing party to move for a new trial "on the grounds that 'the verdict is against the weight of the evidence, that the damages are excessive, or that, for other reasons, the trial was not fair . . . and may raise questions of law arising out of alleged substantial errors in admission or rejection of evidence or instructions to the jury.'" McGinnis v. Am. Home Mortg. Servicing, Inc., 817 F.3d 1241, 1254 (11th Cir. 2016) (quoting Montgomery Ward & Co. v. Duncan, 311 U.S. 243, 251 (1940)). See also Fed. R. Civ. P. 59(a).

The decision to alter or amend the judgment or, alternatively, to grant a new trial is committed to the sound discretion of the district judge. American Home Assur. Co. v. Glenn Estess & Assocs., Inc., 763 F.2d 1237, 1238–39 (11th Cir. 1985); Burger King Corp. v. Mason, 710 F.2d 1480, 1486 (11th Cir. 1983).

III. Discussion

DeBose contends the Court manifestly erred, both in fact and in law, in reversing the jury's verdict and moves the Court to amend the judgment so as to

reinstate the jury's verdict. (Doc. 551 at 8–17). Alternatively, DeBose moves for a new trial. Id. at 17–21. DeBose levies multiple arguments in support of each request. Id. at 8–21.

A. Motion to Alter or Amend the Judgment

DeBose argues she introduced evidence sufficient to convince a reasonably jury that her protected activity was the but-for cause of the Board's adverse employment action. Id. at 9–17. Specifically, DeBose contends the Court erroneously "homed in" on only certain protected activity and adverse employment action, and that the Court disregarded and overlooked multiple instances of adverse employment action that were "continual and in close proximity" to DeBose protected activity. Id. at 9. However, DeBose obfuscates the issues and distorts the record evidence. In the chart below, the Court collects what DeBose represents though her motion to be evidence of retaliatory animus that supports the jury's verdict and compares those representations to the record evidence:

DeBose's Representations	Record Evidence
In June of 2014, DeBose informally complained to Dosal about "possible discrimination." (Doc. 551 at 2). Days later, "Dosal and Wilcox decreased DeBose's scope (effectively demoting her) through a reorganization that moved Degree Works and staff from the Registrar's Office to IT." Id. Also, Dosal failed to evaluate DeBose's annual performance in 2014 and 2015 and	DeBose introduced no evidence that Wilcox was aware of her informal complaint to Dosal of "possible discrimination." Wilcox had no role in the decision to move Degree Works from the Registrar's Office to IT. Dosal and Sidney Fernandez (USF's interim Chief Information Officer) jointly made the

approved a disproportionally low salary increase to DeBose compared to her white counterparts. Id.	decision to move Degree Works from the Registrar's Office to IT. Wilcox had no role in Dosal's decisions not to evaluate DeBose in 2014 and 2015. Dosal made those decisions on advice of USF's Human Resource Department and USF's general counsel's office. Also, Wilcox had no role in approving DeBose's salary increase; Dosal approved the increase. Although DeBose argued in her opening remarks that her white counterparts received disproportionately higher salary increases, she introduced no such evidence.
In July and August of 2014, respectively, DeBose filed an internal EthicsPoint complaint against Dosal, Bob Sullins (USF's Dean of Undergraduate Studies), Travis Thompson (USF's former webmaster), and Wilcox and a DIEO complaint against Dosal. (Doc. 551 at 3–4). Dosal and Wilcox subsequently retaliated against DeBose by (1) denying DeBose a promotion to AVP EPM, (2) denying DeBose's request for a pay increase, (3) assigning Tanya Suber (an employee in USF's Division of Human Resources) to work with Camille Blake (a DIEO investigator) in an effort to "undermine DeBose's [internal complaints]," (4) broadcasting DeBose's complaints to "a large number of employees that worked closely with DeBose," (5) excluding DeBose from meetings, and (6) marginalizing and disrespecting DeBose "in an openly hostile environment." Id.	DeBose didn't file her EthicsPoint and DIEO complaints until *after* Dosal, who had previously consulted with Wilcox and Judy Genshaft (USF's President), filled the AVP EPM position, which is why the Court dismissed at summary judgment for lack of causation DeBose's claim that she was denied a promotion to AVP EPM in retaliation for her protected activity. Wilcox had no role in Dosal's denial of DeBose's request for a pay increase; any pay increase (or denial thereof) was at Dosal's discretion. Wilcox had no role in Suber's or Blake's assignment to or involvement in other HR or disciplinary matters involving DeBose. Dosal, not Wilcox, disclosed DeBose's internal complaints to others at USF. Wilcox was unaware that Dosal had disclosed DeBose's internal complaints

	to anyone other than Wilcox, and Wilcox did not disclose DeBose's internal complaints to anyone. Neither Dosal nor Wilcox ever directed others not to include DeBose in meetings. DeBose asked Dosal for permission to be excused from certain meetings. To Dosal's knowledge, DeBose attended all necessary meetings, other than those she asked for permission not to attend, until her departure in May of 2015. Although DeBose argued in her opening and closing remarks that she was marginalized, disrespected, and treated with hostility, DeBose gave no testimony about what she perceived as mistreatment by her colleagues or members of leadership at USF for complaining about discrimination.
On December 26, 2014, DeBose filed a charge of discrimination with the EEOC. (Doc. 551 at 4). Approximately one month after DeBose filed her EEOC charge, during and after a "Shared Services" meeting with DeBose and Alexis Mootoo (a fiscal manager and adjunct professor at USF), Dosal retaliated against DeBose by becoming "increasingly aggressive towards DeBose" and "talking loudly" at DeBose. Id. Also, "Mootoo retaliated against DeBose on behalf of Dosal" when she, at Dosal's request, reported DeBose to Suber for calling Mootoo a "little girl" at a subsequent Shared Services meeting. Id.	DeBose gave no testimony about Dosal's demeanor or actions during or immediately after the Shared Services meeting. Dosal testified that he counseled DeBose on how to be more collegial and collaborative. Wilcox had no role in the Shared Services meeting. Dosal didn't request that Mootoo report DeBose's "little girl" comment to Suber. After Mootoo and other witnesses confirmed DeBose's "little girl" comment, Suber recommended to Dosal that he issue a written reprimand to DeBose.

On February 4, 2015, DeBose filed a civil injunction action in this Court seeking to preliminarily enjoin the Board from discriminating against DeBose and discharging her employment. (Doc. 551 at 5). "Hours after the [action] was filed," Dosal and Wilcox retaliated against DeBose by (1) issuing DeBose her "first ever written reprimand" in violation of USF's progressive discipline policies, (2) rejecting DeBose's grievance and denying her access to the appeals process, (3) commissioning the Ellucian Report, and (4) requesting inclusion of the Registrar's Office within the scope of the Ellucian Report. Also, Mootoo visited the Registrar's Office and used a racial slur. Id.	Dosal drafted the written reprimand (issued to DeBose because of her calling Mootoo "a little girl" at a Shared Services meeting) on *February 2*, 2015 – two days *before* DeBose filed her civil injunction action. Wilcox approved the written reprimand the same day (*i.e.*, February 2, 2015). Dosal and Wilcox had no role in DeBose's grievances and appeals or the "rejection" or "denial" of the same. Rather, Denelta Adderley-Henry (USF's Associate Director of Human Resources) referred DeBose's grievance to DIEO, as required by USF Regulation because DeBose's grievances concerned allegations of unlawful discrimination. Wilcox did not commission Ellucian to conduct the post-implementation assessment report on DegreeWorks (*i.e.*, the "Ellucian Report"). Rather, Carrie Garcia (USF's Director of Application Services in Information Technology) began discussing with Ellucian a post-implementation assessment of DegreeWorks in July of 2014. Dosal requested funding for the assessment in September or October of 2014. Also, Andrea Diamond (Ellucian's consultant and author of the Ellucian Report), made the decision to include the Registrar's Office in the assessment – not Dosal or Wilcox. Mootoo flatly denied using a racial slur in the presence of anyone in the Registrar's Office.
On March 16, 2015, just two months before she was discharged, DeBose	Although marked for identification as DeBose's Exhibit 313, DeBose's March 16, 2015 amended EEOC charge was

amended her EEOC charge to include charges of retaliation. (Doc. 551 at 7).	never admitted into evidence, and thus the jury never considered it.
In April of 2015, before Diamond finalized the Ellucian Report, Wilcox "debriefed" with Diamond in an effort to coax Diamond into writing a negative review of the Registrar's Office so that he'd have grounds to discharge DeBose's employment. (Doc. 551 at 7–8).	Wilcox never debriefed with Diamond.
On May 26, 2015, in retaliation for DeBose's protected activity, Wilcox called Traynham in an effort to "screw DeBose out of a job," referred to DeBose as "toxic," and explained that Tranyham would "regret it" if he hired DeBose. (Doc. 551 at 8–9). DeBose was told by someone at USF that, during the call, Wilcox told Traynham he wanted DeBose "left with nothing, not even a shirt." Id. at 17.	Traynham called Wilcox on May 26, 2015 – not the other way around. Traynham was seeking Wilcox's assessment of DeBose's professional capabilities. During the telephone conversation, Wilcox told Traynham he had great respect for DeBose's technical skills and abilities, but that DeBose lacked collegiality, was uncollaborative, and USF thus decided to move in a different direction.
Dosal admitted he issued DeBose the written reprimand because of her protected activity. (Doc. 551 at 6).	Dosal repeatedly *denied* that he issued DeBose the written reprimand because of her protected activity.
Dosal and Wilcox *admitted* they took adverse employment action against DeBose, including her discharge, because of DeBose protected activity. (Doc. 551 at 11).	Dosal and Wilcox repeatedly *denied* that they took any adverse employment action against DeBose because of her protected activity.
Wilcox discharged DeBose at Dosal's urging. (Doc. 551 at 2).	Dosal was not involved in Wilcox's decision to discharge DeBose's employment. Wilcox discharged DeBose's employment because of findings in the Ellucian Report.

As the chart demonstrates, DeBose fails to identify any manifest errors or oversights by the Court. See In re Sumner, No. 10-41516, 2011 WL 7708384, at *1

(Bankr. S.D. Ga. July 13, 2011) ("A manifest error is one that 'is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.'") (quoting Black's Law Dictionary p. 582 (8th ed. 2004)). Instead, it appears DeBose's motion is simply an effort to reargue the issues decided in the Court's order granting the Board's renewed motion for judgment as a matter of law and inject new issues and legal theories never previously raised or identified in DeBose's prior pleadings, motions, or other papers. DeBose's arguments and representations, however, are not supported by the record evidence. DeBose repeatedly relies on excluded evidence or evidence that was never offered for admission; "facts" DeBose eluded to in her opening and closing remarks; assertions wholly without support in the record evidence; and assertions flatly contradicted by the record evidence.

Additionally, DeBose argues (for the first time) that, when considered in the aggregate, many of Dosal's and Wilcox's employment actions – to the extent they don't, by themselves, amount to unlawful retaliation – establish a "pattern of antagonism" that, at minimum, circumstantially supports an inference of a causal connection. (Doc. 551 at 10–12). While it's true evidence of a pattern of antagonism may operate as the "additional evidence" necessary to demonstrate a causal connection where, as here, the time between the protected activity and the adverse employment action is insufficiently proximate, see Ward v. United Parcel Serv., 580 Fed. App'x. 735, 739 (11th Cir. 2014), DeBose ignores the undisputed record evidence that (1) Dosal had no role in the decision to discharge DeBose's employment, and (2)

Wilcox, the ultimate decision maker, did not direct or initiate the employment actions DeBose claims evidence a pattern of retaliatory animus towards her.

Finally, DeBose argues that the Court erred in granting the Board's renewed motion for judgment as a matter of law by relying on a cherry-picked paragraph from the Court's prior summary judgment order. (Doc. 551 at 12–13). In permitting DeBose's retaliation claims based on Wilcox's discharge of DeBose's employment and negative employment reference to Traynham to survive summary judgment and proceed to trial, the Court reasoned:

> DeBose's version of the facts, *i.e.* that she was the victim of a massive conspiracy because she filed complaints of discrimination, may not ultimately be accepted by a jury, but there is certainly enough circumstantial evidence of retaliation to afford DeBose her day in Court. Specifically, given the close temporal proximity between DeBose's EEOC complaint and [the Board's] decision to engage Ellucian, DeBose's testimony that the Registrar's Office was included in the scope of Ellucian's engagement at the request of [the Board], DeBose's testimony that she was treated differently following her complaints of discrimination, and the timing and circumstances surrounding the Traynham conversation, a reasonable jury could find that [the Board's] actions were retaliatory.

(Doc. 210 at 20–21). DeBose contends she proved those facts at trial and thus did enough to convince a reasonable jury that the Board intentionally retaliated against her. (Doc. 551 at 12–13). The Court disagrees. To be sure, none of the evidence that enabled DeBose to evade summary judgment was introduced at trial, and the evidence that was introduced contradicts the majority, if not all, of the "facts" DeBose injected into the summary judgment record through her counter-affidavits and deposition testimony.

Contrary to what was provided to the Court at summary judgment, the undisputed record evidence at trial was that Garcia, not Wilcox, engaged Ellucian for a post-implementation assessment in July of 2014, and Dosal, not Wilcox, requested funding for the assessment in September or October of 2014 – both months *before* DeBose filed her EEOC charge in December of 2014; that Diamond, alone, made the decision to include the Registrar's Office within the scope of the assessment and never debriefed with Wilcox; that Traynham reached out to Wilcox, not the other way around; and that Wilcox conveyed to Traynham only what was reflected in the Ellucian Report. Unlike at summary judgment, DeBose gave no testimony at trial regarding the alleged mistreatment she received after complaining of discrimination, and DeBose's opposing and more colorful version of the circumstances surrounding the telephone call between Wilcox and Tryanham was similarly absent from the record evidence at trial.

In sum, it's without doubt that DeBose's relationship with her colleagues and members of leadership at USF severely deteriorated in 2014 and 2015. But that this unfortunate turn of events was *because of* DeBose's protected activity, as opposed to the continuing pattern of hostility, lack of collaboration and collegiality, and resistance to change identified by her colleagues and members of leadership at USF – and ultimately confirmed by the Ellucian Report – is simply not supported by the record evidence. Moreover, it's contradicted by the jury's own finding with respect to the Board's "same decision" affirmative defense, where the jury found that the Board had

legitimate business reasons (*i.e.,* reasons *other than* DeBose's race)[3] for discharging DeBose's employment. Indeed, DeBose's story, told both at summary judgment and in the instant motion, is much different and, if believed, more damning than that posited by the Board. However, DeBose neither took the stand during the eleven-day trial to tell that story to the jury nor offered witnesses who could tell it for her. And the evidence DeBose was able to introduce through adversarial direct- and cross-examination was exceedingly lacking and speculative.[4] Consequently, and for the reasons detailed above, the Court – again – finds that no reasonable jury could have found that DeBose's protected activity was the but-for cause of the Board's adverse employment action. The Court will deny DeBose's motion to amend the judgment.

B. Motion for New Trial

DeBose asserts a litany of arguments in support of her alternative request for a new trial:[5] (1) the Court erred in denying her multiple motions to continue the trial setting; (2) the "two-issue" rule precludes judgment as a matter of law on DeBose's retaliation claim; (3) the jury's finding with respect to the Board's same decision affirmative defense was against the great weight of the evidence; (4) the Court erred in

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[3] An employer "may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." Smith, 565 F. App'x at 779 (citation omitted).

[4] DeBose did, in fact, testify, but only after the close of her case-in-chief and only as to her alleged damages.

[5] It's not entirely clear from the motion whether DeBose requests a new trial based on the Court's granting the Board's renewed motion for judgment as a matter of law or otherwise vacating the jury's verdict on her retaliation claim. To the extent she does, the Court will deny such a request for the same reasons it will deny DeBose's request to amend the judgment.

excluding certain evidence before and at trial; (5) the Court erred by not holding a hearing on the Board's alleged destruction of evidence; (6) the Court erred in not re-opening discovery; and (7) the Board's counsel engaged in prejudicial misconduct. DeBose's arguments, however, are either meritless, unsubstantiated, or time-barred. Further, several earlier orders have rejected these same arguments. The Court will deny DeBose's motion for a new trial.

IV. Conclusion

Accordingly, it is

ORDERED that DeBose's Motion for New Trial or in the Alternative, Alter or Amend Judgment (Doc. 551) is **DENIED**.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 24th day of April, 2019.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel/Parties of Record

A-7

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES AND ELLUCIAN COMPANY, L.P.,

Defendants.

ORDER

In this Title VII case, after a trial on the merits, a jury found in favor of Plaintiff Angela DeBose ("**DeBose**") on her race discrimination and retaliation claims. With respect to DeBose's discrimination claim, however, the jury found that Defendant University of South Florida Board of Trustees (the "**Board**") proved its "same decision" affirmative defense, precluding DeBose from recovering compensatory or back pay damages on that claim. The jury awarded DeBose $310,500 on her retaliation claim.

On October 19, 2018, the undersigned determined that, having succeeded on her retaliation claim, DeBose was entitled to an award of front pay. (Doc. 499). Having found for DeBose on the issue of entitlement, the undersigned referred the ultimate issue of an appropriate award of front pay to the assigned Magistrate Judge for an evidentiary hearing and report and recommendation. Id. The Magistrate Judge heard argument and evidence on the issue of front pay on December 11, 2018. (Doc.

534). Following the hearing, but prior to the issuance of a report and recommendation by the Magistrate Judge, the undersigned granted the Board's motion for judgment as a matter of law, finding that DeBose failed to introduce sufficient evidence at trial for a reasonable jury to find a causal connection between her protected activities and the Board's adverse employment actions, and directed a verdict in the Board's favor on DeBose's retaliation claim. (Doc. 548). The Clerk subsequently entered a Second Amended Judgment in favor of the Board. (Doc. 549).

In light of the Second Amended Judgment, the Court must now decide whether DeBose is still entitled to an award of front pay. She is not. Although prevailing Title VII plaintiffs are presumptively entitled to front pay, U.S. E.E.O.C. v. W&O, Inc., 213 F.3d 600, 619 (11th Cir. 2000), DeBose is no longer the prevailing party on her retaliation claim. And while DeBose prevailed on her disparate treatment race discrimination claim, see Harris v. Shelby Cty. Bd. of Educ., 99 F.3d 1078, 1084 (11th Cir. 1996), the jury found that the Board proved its "same decision" affirmative defense. Where a defendant proves that it would have terminated a plaintiff's employment even it hadn't taken the plaintiff's race into account, the plaintiff's available damages are limited. See 42 U.S.C. § 2000e-5(g)(2)(B)(i). In such a situation, the district court may only award "declaratory relief, injunctive relief . . . and attorney's fees and costs demonstrated to be directly attributable . . . to the pursuit" of the discrimination claim. Id. See also Harris, 99 F.3d at 1084; Quigg v. Thomas City. Sch. Dist., 814 F.3d 1227, 1239 n.9 (11th Cir. 2016) ("In Harris, we held that the 'same

decision' defense . . . allow[s] an employer to avoid damages and certain forms of equitable relief in a Title VII case."); Pattern Civ. Jury Instr. 11th Cir. 4.5, Ann. § II(F) (2018) ("[I]n cases where the employer prevails on the 'same decision' defense, the court may grant declaratory relief, *limited* injunctive relief and *limited* attorney's fees and costs; this is an issue for the court, not the jury.") (citing 42 U.S.C. § 2000e-5(g)(2)(B)) (emphasis in original). Front pay, however – a form of equitable relief, see Ramsey v. Chrysler First, Inc., 861 F.2d 1541,1545 (11th Cir. 1988) – is not specifically delineated in Section 2000e-5(g)(B)(i) and is not recoverable where the defendant proves its "same decision" affirmative defense, see Massey v. Trump's Castle Hotel & Casino, 828 F. Supp. 314, 324 (D.N.J. Jul. 30, 1993) (Gerry, J.) ("If the defendant proves that it would have made the same decision, the remedies of front-pay and reinstatement will be barred.").

Because the jury found for the Board on its "same decision" affirmative defense, DeBose is foreclosed from recovering amounts for front pay.

Accordingly, it is **ORDERED** as follows:

1. That potion of DeBose's Motion for Attorney's Fees and Cost of Litigation and Other Miscellaneous Relief ("**Motion**") (Doc. 472) requesting amounts for front pay is no longer referred to the Magistrate Judge;

2. DeBose cannot recover amounts for front pay, and the Motion is **DENIED**; and

3. The Clerk is directed to terminate the Motion.

Case No.: 8:15-cv-2787-EAK-AEP

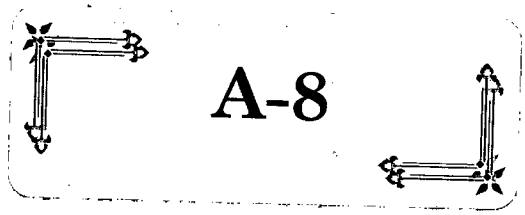
DONE and **ORDERED** in Chambers, in Tampa, Florida this 15th day of February, 2019.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record/
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION



ANGELA W. DEBOSE,

Plaintiff,

v. Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and ELLUCIAN COMPANY, L.P.

Defendants.

SECOND AMENDED JUDGMENT IN A CIVIL CASE

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff Angela DeBose and against Defendant University of South Florida Board of Trustees on Plaintiff's disparate treatment race discrimination claim, in accordance with the jury's verdict; Plaintiff takes nothing on her claim for compensatory or back pay damages.

Decision by Court. This action came before the Court and a decision has been rendered.

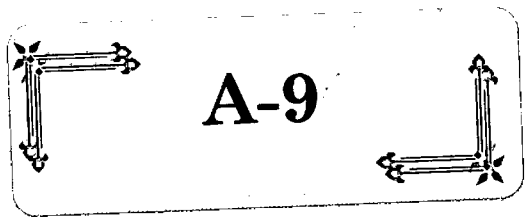
IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Defendant University of South Florida Board of Trustees and against Plaintiff Angela DeBose on Plaintiff's retaliation claim, the jury's verdict notwithstanding.

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to the Court's Order entered on September 29, 2017, judgment is hereby entered in favor of Defendant University of South Florida Board of Trustees and against Plaintiff on Plaintiff's disparate treatment gender discrimination, disparate impact race and gender discrimination, breach of contract, tortious interference, and civil conspiracy claims.

ELIZABETH M. WARREN,
CLERK

s/S.Cohn, Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION



ANGELA W. DEBOSE,

Plaintiff,

v. Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES AND ELLUCIAN COMPANY, L.P.,

Defendants.

ORDER

Pending before the Court and briefed by the parties are the following three post-judgment motions:

1. Defendant University of South Florida Board of Trustees' ("**the Board**") Motion for Judgment as a Matter of Law or, in the Alternative, for New Trial ("**Motion for Judgment as a Matter of Law**") (Doc. 504) and Plaintiff Angela DeBose's ("**DeBose**") Response in Opposition to the Board's Motion for Judgment as a Matter of Law (Doc. 505);

2. The Board's Motion to Supplement Motion for New Trial or, in the Alternative, for Relief from Judgment ("**Motion to Supplement**") (Doc. 539) and DeBose's Response in Opposition to the Board's Motion to Supplement (Doc. 540); and

3. DeBose's Motion for Sanctions or Alternatively Relief from Judgment ("**Motion for Sanctions**") (Doc. 541) and the Board's Opposition to DeBose's Motion for Sanctions (Doc. 542).

After careful consideration, the Court will grant the Board's Motion for Judgment as a Matter of Law. The Court will deny the Board's Motion to Supplement as moot. The Court will deny DeBose's Motion for Sanctions.

I. Background

This employment discrimination case was tried to a jury beginning on September 10, 2018. DeBose, a licensed attorney, represented herself *pro se*[1] against the Board[2]. On September 26, 2018, the jury returned its verdict. The jury found that race was a motivating factor in the Board's decision to discharge DeBose's employment as the Registrar of the University of South Florida, but also found that the Board would have made the same decision even it hadn't taken DeBose's race into account. Because the jury found that the Board had successfully proved its "same decision" affirmative defense, DeBose was precluded from recovering compensatory or back pay damages on her race discrimination claim. The jury further found that the Board retaliated against DeBose for engaging in certain protected activity and awarded

[1] Plaintiff has represented herself *pro se* in this action since her most recent counsel successfully withdrew on March 21, 2017. Plaintiff is admitted to practice law in Wisconsin and is currently in good standing. See State Bar of Wisconsin Lawyer Search, https://www.wisbar.org/directories/pages/lawyerprofile.aspx?Memberid=1101650 (last visited Feb. 14, 2019).

[2] The Court granted summary judgment in favor of Defendant Ellucian Company, L.P., on September 29, 2017.

DeBose $310,500. The Clerk entered judgment in favor of DeBose and against the Board on DeBose's race discrimination and retaliation claims on October 2, 2018.[3] The parties' respective post-trial motions followed on October 29, 2018, (Doc. 504), November 28, 2018, (Doc. 521), and December 31, 2018, (Doc. 541), respectively.

II. Discussion

The Court will address each of the parties' respective post-trial motions in turn:

A. The Board's Motion for Judgment as a Matter of Law

Pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, the Board renews its Rule 50(a) motion made at the close of DeBose's case-in-chief and subsequently renewed after both parties rested. The Board alternatively moves for a new trial pursuant to Rule 59. The Board levies the following arguments:

1. The Board is entitled to judgment as a matter of law on DeBose's retaliation claim because DeBose failed to introduce evidence at trial that she filed a charge of discrimination with the Equal Employment Opportunity Commission ("**EEOC**") alleging retaliatory termination or that she received a Notice of Right to Sue regarding the same;

2. The Board is entitled to judgment as a matter of law on DeBose's retaliation claim because DeBose failed to present sufficient evidence at trial to

[3] The Clerk entered judgment in favor of the Board and Ellucian Company, L.P., on DeBose's remaining disparate treatment gender discrimination, disparate impact race and gender discrimination, breach of contract, tortious interference, and civil conspiracy claims, which the Court dismissed at summary judgment.

establish a *prima facie* case of retaliation or, alternatively, a new trial should be ordered because the verdict is against the great weight of the evidence.

3. The Board is entitled to judgment as a matter of law on DeBose's retaliation claim because DeBose failed to present sufficient evidence to prove pretext or, alternatively, a new trial should be ordered because the verdict is against the great weight of the evidence; and

4. The Court should order a new trial on the issue of DeBose's damages because the Court abused its discretion in granting DeBose leave to re-open her case-in-chief in order to present testimony as to her damages – testimony that, the Board argues, was based on previously undisclosed evidence.

The Court will first address the Board's argument regarding DeBose's failure to establish a *prima facie* case of retaliation. Because the Court, as detailed more fully below, finds that DeBose failed to introduce sufficient evidence at trial for a reasonable jury to find a causal connection between her protected activities and the Board's adverse employment actions, the Court need not address the Board's remaining arguments.

To prevail on a Title VII retaliation case, a plaintiff must satisfy the traditional McDonnell Douglas burden-shifting framework. Goldsmith v. City of Atmore, 996 F.2d 1155, 1162–63 (11th Cir. 1993). Under this framework, the plaintiff must first establish a *prima facie* case of retaliation. Id. (citations omitted). The burden then shifts to the employer to articulate some legitimate non-retaliatory reason for the alleged

retaliation. Id. (citations omitted). Once the employer produces such a reason, the plaintiff must then prove that the legitimate reason was a mere pretext for retaliation. Id. (citations omitted).

To establish a *prima facie* case of retaliation, a plaintiff must establish that (1) she engaged in statutorily protected activity, (2) she suffered a materially adverse employment action, and (3) there exists a causal link between the two. Smith v. City of Fort Pierce, Fla., 565 F. App'x 774, 776–77 (11th Cir. 2014) (unpublished) (per curiam). See also Pattern Civ. Jury Instr. 11th Cir. 4.22 (2018). With respect to causation, in order to succeed on a Title VII retaliation claim, a plaintiff must establish "but-for" causation; the "lessened causation test" applicable to claims of unlawful discrimination under Section 2000e-2(m) does not apply. Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 360 (2013). Put another way, a Title VII plaintiff must prove by a preponderance of the evidence that "the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." Id. Following Nassar, the Eleventh Circuit explained that "the plaintiff always has the burden of persuasion 'to proffer evidence sufficient to permit a reasonable fact finder to conclude that discriminatory animus was the 'but-for' cause of the adverse employment action.'" Smith, 565 F. App'x at 778–79 (quoting Sims v. MVM, Inc., 704 F.3d 1327, 1332 (11th Cir. 2013)).

To establish a causal connection, a plaintiff must show that her employer was aware of her protected activity, and that her protected activity and the adverse

employment action taken by her employer "were not wholly unrelated." Greene v. Ala. Dep't of Revenue, 746 F. App'x 929, 932 (11th Cir. 2018) (per curiam) (unpublished) (quoting Shannon v. BellSouth Telecomms., Inc., 292 F.3d 712, 716 (11th Cir. 2002)). That the protected activity and the adverse employment action were not wholly unrelated can be shown by establishing a "close temporal proximity" between the protected activity and the adverse employment action. Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007) (per curiam) (citing Brungart v. BellSouth Telecomm., Inc., 231 F.3d 791, 798–99 (11th Cir. 2000)). "Yet while temporal proximity between the . . . protected activity and the adverse employment action can be enough . . . 'mere temporal proximity, without more, must be *very close*.'" Hogan v. S. Georgia Med. Ctr., No. 17-14867, 2018 WL 4922777, at *5 (11th Cir. Oct. 10, 2018) (per curiam) (unpublished) (emphasis added) (quoting Thomas, 506 F.3d at 1364).

At trial, DeBose attempted to prove causation by showing that "one followed the other." To that end, DeBose introduced evidence that she engaged in three distinct acts qualifying as "protected activity" for purposes of a Title VII retaliation claim: (1) in July and August of 2014, respectively, DeBose filed internal complaints with the University of South Florida alleging that she had been subjected to unlawful discrimination; (2) in December of 2014, DeBose filed a charge of discrimination with the EEOC; and (3) on February 4, 2015, DeBose filed a civil action in this District seeking to preliminarily enjoin the Board from discriminating against her and

terminating her employment. In addition, DeBose proffered evidence of two adverse employment actions taken by the Board: (1) the Board's termination of DeBose's employment on May 19, 2015; and (2) University of South Florida Provost Ralph Wilcox's negative employment reference to University of North Florida Provost Earle Traynham on May 26, 2019. DeBose offered no direct evidence of retaliation. After deliberation, the jury found that the Board took these adverse employment actions because of DeBose's protected activities.

Upon careful consideration, the Court will reverse the verdict. DeBose's evidence was insufficient to convince a reasonable jury that her protected activities were the "but-for" cause of the Board's adverse employment actions. At best, more than three months – specifically, 104 days – passed between DeBose's most recent protected activity (DeBose's federal injunction action) and the earlier of the Board's adverse employment actions (Wilcox's decision to terminate DeBose's employment). This gap proves too large to establish a causal connection. To be sure, the Eleventh Circuit has held that a three- to four-month disparity between the statutorily protected activity and the adverse employment action is not enough to show "very close" temporal proximity. Thomas, 506 F.3d at 1364. See also, e.g., Embry v. Callahan Eye Found. Hosp., 147 F.App'x 819, 831 (11th Cir. 2005) (per curiam) (unpublished); Higdon v. Jackson, 393 F.3d 1211, 1220–21 (11th Cir. 2004); Wascura v. City of South Miami, 257 F.3d 1238 (11th Cir. 2001). Other circuits have held likewise. See, e.g., Richmond v. Oveok, Inc., 120 F.3d 205, 209 (10th Cir. 1997); Hughes v. Derwinski,

967 F.2d 1168, 1174–75 (7th Cir. 1992). And just recently, the Eleventh Circuit held that, as a matter of law, even seventy-four days between the plaintiff's protected activity and the employer's adverse employment action, standing alone, is insufficiently proximate. Hogan, 2018 WL 4922777, at *5. Thus, because DeBose failed to present any "other evidence tending to show causation," the substantial delay between DeBose's protected activity and the Board's adverse employment action is fatal to her retaliation claim as a matter of law. Thomas, 506 F.3d at 1364.

In sum, DeBose failed to present a legally sufficient evidentiary basis for a reasonable jury to find a causal connection between her protected activities and the Board's adverse employment actions. Accordingly, the Court will grant the Board's Motion for Judgment as a Matter of Law. See Christopher v. Fla., 449 F.3d 1360, 1364 (11th Cir. 2006) ("[Judgment as a matter of law] is appropriate when a plaintiff presents no legally sufficient evidentiary basis for a reasonable jury to find for [her] on a material element of [her] cause of action.") (citation omitted).

B. The Board's Motion to Supplement

The Board moves to supplement its Motion for Judgment as a Matter of Law or, in the Alternative, for New Trial with new evidence related to DeBose's benefits, which the Board obtained, post-trial, from the Florida Department of Management Services. The Board alternatively moves for relief from judgment Pursuant to Rule 60(b).

Having determined that the Board is entitled to judgment as a matter of law on DeBose's retaliation claim, the Court will deny the Board's Motion to Supplement as moot.

C. DeBose's Motion for Sanctions

DeBose moves for sanctions against the Board or, alternatively, relief, pursuant to Rule 60(b), from six interlocutory orders issued by the Court, (Docs. 50, 86, 144, 210, 263, 311), based on the discovery of "new" evidence and fraud. This Court and the assigned Magistrate Judge have exhaustively addressed on multiple occasions the issues and arguments raised by the instant Motion for Sanctions. Since the outset of this litigation, DeBose has failed to substantiate her allegations against the Board related to her "employment contracts," whether it be in the form of their concealment, destruction, or breach. The Court will deny the Motion for Sanctions for the reasons stated in the Board's response.

III. Conclusion

Accordingly, it is

ORDERED as follows:

1. The Board's Motion for Judgment as a Matter of Law or, in the Alternative, for New Trial (Doc. 504) is **GRANTED**. The jury's verdict as to DeBose's retaliation claim is **REVERSED**. The amended final judgment (Doc. 482) is **VACATED**. An appropriate second amended final judgment will issue.

2. The Board's Motion to Supplement Motion for New Trial or, in the Alternative, for Relief from Judgment (Doc. 539) is **DENIED** as moot.

3. DeBose's Motion for Sanctions or Alternatively Relief from Judgment (Doc. 541) is **DENIED**.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 14th day of February, 2019.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record/
Unrepresented Parties

A-11

AO 133 (Rev. 12/09) Bill of Costs

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Angela DeBose)
)
v.) Case No.: 8:15-cv-02787-EAK-AEP
University of South Florida Board of Trustees)
)

BILL OF COSTS

Judgment having been entered in the above entitled action on 10/02/2018 (Date) against USF Board of Trustees ,

the Clerk is requested to tax the following as costs:

Fees of the Clerk	$ 3,500.00
Fees for service of summons and subpoena	7,500.00
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case	3,460.00
Fees and disbursements for printing	10,850.00
Fees for witnesses *(itemize on page two)*	0.00
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case	9,015.00
Docket fees under 28 U.S.C. 1923	
Costs as shown on Mandate of Court of Appeals	
Compensation of court-appointed experts	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	
Other costs *(please itemize)*	
TOTAL	$ 34,325.00

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

☑ Electronic service ☐ First class mail, postage prepaid

☐ Other: _____

s/ Attorney: _____

Name of Attorney: _____

For: Angela DeBose, Plaintiff (Name of Claiming Party) Date: 10/02/2018

Taxation of Costs

Costs are taxed in the amount of $34,325.00 and included in the judgment.

ELIZABETH M. WARREN (Clerk of Court) By: SCd (Deputy Clerk) 11-21-18 (Date)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES AND ELLUCIAN COMPANY, L.P.,

Defendants.

ORDER

Currently before the Court is Plaintiff's Motion for Attorney's Fees and Cost of Litigation and Other Miscellaneous Relief ("Motion") (Doc. 472). Defendant University of South Florida Board of Trustees ("USFBOT") responded in opposition ("Response") (Doc. 484). The Motion is thus ripe for decision.

I. Background

This employment discrimination case was tried to a jury beginning on September 10, 2018. Plaintiff, a licensed attorney, represented herself *pro se*[1] against Defendant USFBOT[2]. On September 26, 2018, the jury returned its verdict.

[1] Plaintiff has represented herself *pro se* in this action since her most recent counsel successfully withdrew on March 21, 2017. (Doc. 122). Plaintiff is admitted to practice law in Wisconsin and is currently in good standing. (Doc. 473, at ¶1).

[2] The Court granted summary judgment in favor of Defendant Ellucian Company, L.P., on September 29, 2017. (Doc. 210).

(Doc. 471). The jury found that race was a motivating factor in USFBOT's decision to discharge Plaintiff's employment as the Registrar of the University of South Florida, but also found that USFBOT would have made the same decision even it hadn't taken Plaintiff's race into account. Id. at 2. Because the jury found that USFBOT had successfully proved its "same decision" affirmative defense, Plaintiff was precluded from recovering compensatory or back pay damages on her race discrimination claim. The jury further found that USFBOT retaliated against Plaintiff for engaging in certain protected activity and awarded Plaintiff $310,500. Id. at 3–4. The Court entered judgment in favor of Plaintiff and against USFBOT on Plaintiff's race discrimination and retaliation claims on October 2, 2018. (Doc. 482). Plaintiff now moves for an award of attorney's fees and costs as the prevailing party, in addition to an award of front pay. (Doc. 427). USFBOT opposes Plaintiff's Motion in all respects. (Doc. 484).

II. Discussion

By her Motion, Plaintiff requests the Court: (1) award her $712,500 as a reasonable attorney's fee, (Doc. 72, at 2–5); (Doc. 473, at ¶3); (2) tax costs against USFBOT in the amount of $102,520, (Doc. 472, at 5–6); and (3) award her $170,000 in front pay. (Doc. 472). The Court will address each of Plaintiff's requests, in turn, below.

A. Attorney's Fees

Although a prevailing plaintiff in a Title VII action is ordinarily entitled to recover a reasonable attorney's fee, see 42 U.S.C. § 2000e–5(k), a *pro se* plaintiff, as a matter of law, cannot recover attorney's fees for representing herself, *even if she is a licensed attorney*, see Kay v. Ehrler, 499 U.S. 432, 435–38 (1991); Cofield v. City of Atlanta, 648 F.2d 986, 987–988 (5th Cir. 1981);[3] Hawkins v. 1115 Legal Serv. Care, 163 F.3d 684, 694–95 (2d Cir. 1998); Smith v. Panera Bread, No. 0:08-cv-60697-AJ, 2009 WL 10666948, at *1 (S.D. Fla. Mar. 23, 2009) (citing Stephens v. U.S. Postal Service, No. 3:05-cv-120-TJC-TEM, 2006 WL 2729654, at *1 (M.D. Fla. Sept. 25, 2006)); Jones v. Mem'l Med. Ctr., Inc., No. 4:91-cv-00311-BAE, 1992 WL 512343, at *3 (S.D. Ga. May 1, 1992) (citations omitted).

The same holds true with respect to Plaintiff's claims under Florida's Civil Rights Act. See State v. Jackson, 650 So.2d 24, 27 (Fla. 1995) ("[A] long-standing rule of statutory construction in Florida recognizes that if a state law is patterned after a federal law on the same subject, the Florida law will be accorded the same construction as given to the federal act in the federal courts."); Palm Beach Cnty. Sch. Bd. v. Wright, 217 So. 3d 163, 164–65 (Fla. 4th DCA 2017), review denied, No. SC17-1186, 2017 WL 4685625 (Fla. Oct. 19, 2017) ("We and other Florida

[3] In Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to the close of business on September 30, 1981.

districts have recognized that [t]he [Florida Civil Rights Act] is patterned after Title VII and that federal case law on Title VII applies to [Florida Civil Rights Act] claims.") (alterations added) (internal quotations and citations omitted).

Plaintiff's request for a reasonable attorney's fee is accordingly due to be denied.[4]

B. Costs

"Unlike attorney fees, however, costs of litigation can be reasonably incurred even by a *pro se* litigant[.]" Clarkson v. I.R.S., 678 F.2d 1368, 1371 (11th Cir. 1982) (prevailing *pro se* plaintiff in Freedom of Information Act case entitled to costs); see also United States v. Evans, 561 F. App'x 877, 880 (11th Cir. 2014) (unpublished) (prevailing *pro se* plaintiff in Civil Asset Forfeiture Reform Act case entitled to costs); Gray v. Sec'y for Dep't of Homeland Sec., 452 F. App'x 873, 875 (11th Cir.

[4] The Court notes that, in the Eleventh Circuit, "*pro se* litigants are entitled to an award of attorney fees only to the extent that the services of an attorney were utilized and fees incurred," – i.e., that the *pro se* litigant actually "paid [an] attorney for work related to [the lawsuit]." United States v. Evans, 561 F. App'x 877, 880 (11th Cir. 2014) (alterations added) (internal quotations and citations omitted). In her "Itemization of Litigation Costs," (Doc. 473, at 3) (emphasis added), Plaintiff requests the Court *tax as costs* against USFBOT expenditures for "Other Attorneys" in the amount of $30,952.00 but provides no further information or supporting documentation. As explained by the Court, infra, expenditures for "Other Attorneys" are not recoverable under 28 U.S.C. § 1920. With regard to an award of attorney fees, Plaintiff requests an *attorney fee* award solely for time *she* spent litigating this case *pro se*. See (Doc. 473, at ¶1) ("Attorney Pro Se time spent on case[.]"). Moreover, there is no record evidence before the Court that Plaintiff, in fact, paid an attorney a fee for work related to her lawsuit, or that the fee charged was a reasonable one. Therefore, Plaintiff is not entitled to an award of attorneys' fees for time her former counsel may (or may not) have billed for in litigating this case.

2011) (unpublished) (prevailing *pro se* plaintiff in Equal Access to Justice Act case entitled to costs).

The general rule is that prevailing parties are presumptively entitled to costs. Marx v. Gen. Revenue Corp., 568 U.S. 371, 377 (2013); Fed. R. Civ. P. 54(d)(1) ("Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party."). "Notwithstanding this presumption . . . the decision whether to award costs ultimately lies within the sound discretion of the district court." Marx, 568 U.S. at 377 (citations omitted).

Federal Rule of Civil Procedure 54(d) permits recovery of those costs specifically enumerated in 28 U.S.C. § 1920.[5] See Arlington Cent. Sch. Bd. of Educ. v. Murphy, 548 U.S. 291, 301 (2006). Section 1920 provides:

> A judge or clerk of any court of the United States may tax as costs the following:
>
> (1) Fees of the clerk and marshal;

[5] Because Plaintiff, as the prevailing party, seeks an award of attorney's fees and costs pursuant to Rule 54, (Doc. 472, at 1), the Court need not decide whether Plaintiff is permitted to recover as costs "reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case" pursuant to 42 U.S.C. § 1988, under which "the traditional limitations of Rule 54(d) and 28 U.S.C. §§ 1920 and 1923(a) do not apply." Dowdell v. City of Apopka, Fla., 698 F.2d 1181, 1188–89 (11th Cir. 1983). Moreover, the Eleventh Circuit permits recovery of such costs *as part of an award of attorney's fees*, id. (holding that in civil rights cases reasonable attorney's *fees*, "must include reasonable expenses because attorneys' fees and expenses are inseparably intertwined as equally vital components of the cost of litigation") (emphasis added), which, as already explained by the Court, supra, Plaintiff, as a *pro se* litigant, is not permitted to recover.

(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title; and

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920(1)–(6).

The party requesting that costs be taxed bears "the burden of submitting a costs request that will allow the Court to determine which costs were incurred and whether [the requesting party is] entitled to them." Caballero v. Sum Yum Gai, Inc., No. 1:08-cv-23018-JJO, 2011 WL 1675001, *5 (S.D. Fla. May 3, 2011) (unpublished) (alterations added) (citing Lee v. American Eagle Airlines, Inc., 93 F.Supp.2d 1322, 1335 (S.D. Fla. 2000)). The requesting party "must state and support its request for costs with sufficient specificity so that the Court may determine whether the costs were necessarily obtained for use in the case." Crouch v. Teledyne Cont'l Motors, Inc., No. 1:10-cv-00072-KD-N, 2013 WL 203408, at *2 (S.D. Ala. Jan. 17, 2013).

Here, Plaintiff requests that costs be taxed against USFBOT in the amount of $102,520 as reimbursement for the following:

Item	Amount
Documents copies	$8,190.00
Filing Fees	$3,500.00
Postage	$2,225.00
Process Server	$4,000.00
Miscellaneous	$2,017.00
Medical Reports	$70.00
Subpoenas	$20.00
Court Records/ECF	$1,050.00
Travel – Mileage	$2,856.00
Witness Fees – Expert	$7,500.00
Witness Fees – Regular	$50.00
Supplies	$5,145.00
Hearing Transcripts	$595.00
Deposition Transcripts	$1,500.00
Exhibits	$825.00
Parking – Vehicle	$200.00
Outside Services	$5,625.00
Other Attorneys	$30,952.00

Printing/Scanning	$10,850.00
Other Fees	$7,000.00
Legal Research	$8,350.00
TOTAL	**102,520.00**

(Doc. 473, at 3).

Upon review, the following costs **do not** fall under Section 1920 are **not** taxable:

Item	**Total**
Postage	$2,225.00
Process Server	$4,000.00
Medical Reports	$70.00
Subpoenas	$20.00
Court Records/ECF	$1,050.00
Travel – Mileage	$2,856.00
Parking – Vehicle	$200.00
Other Attorneys	$30,952.00

As for the remaining costs, Plaintiff has failed to provide the Court with the requisite information to decide whether they are appropriately taxable against

USFBOT, and the Court will accordingly deny Plaintiff's request for costs without prejudice, as detailed infra.

C. Front Pay

In addition to back pay, prevailing Title VII plaintiffs are presumptively entitled to either reinstatement or front pay. U.S. E.E.O.C. v. W&O, Inc., 213 F.3d 600, 619 (11th Cir. 2000). "Although reinstatement is the preferred remedy in a wrongful discharge case, when extenuating circumstances warrant, the court may award a plaintiff front pay in lieu of reinstatement." Armstrong v. Charlotte Cty. Bd. of Cty. Comm'rs, 273 F.Supp.2d 1312, 1315 (M.D. Fla. 2003) (citing Farley v. Nationwide Mutual Ins. Co., 197 F.3d 1322, 1339 (11th Cir. 1999)). "In deciding whether to award front pay, rather than reinstatement, courts look to whether discord and antagonism between the parties would render reinstatement ineffective as a make-whole remedy, the defendant's management [had] intimidated or threatened the plaintiff, or the termination had harmed the plaintiff's emotional well-being." W&O, Inc., 213 F.3d at 619 (alterations in original) (internal quotations and citations omitted).

Here, Plaintiff does not request reinstatement, and USFBOT does not contend that Plaintiff should be awarded reinstatement rather than front pay. This case involved sensitive claims for both race-based wrongful termination and retaliation. The hostility and discord between Plaintiff and her supervisors, peers, and

subordinates was a prevalent theme of USFBOT throughout the trial. Further, it appears that Plaintiff has secured satisfactory employment with another university. Accordingly, the Court finds that reinstatement is neither feasible nor desirable to either party. See Farley, 197 F.3d at 1339 (holding that the district court did not abuse its discretion in awarding front pay in lieu of reinstatement because of hostility between former employee and his supervisors). The issues, then, are (1) whether Plaintiff is entitled to an award of front pay and (2) if so, in what amount.

As explained above, there is a presumption in favor of an award of front pay to a prevailing Title VII plaintiff.[6] W&O, Inc., 213 F.3d at 619. Nonetheless, USFBOT contends that Plaintiff is not entitled to an award of front pay. (Doc. 484, at 7–13). Specifically, USFBOT contends that Plaintiff waived her ability to seek amounts for front pay because she neither disclosed that she would be seeking front pay in her Rule 26 disclosures nor provided any computation of front pay damages or served any documents supporting such a computation. Id. at 7–9. USFBOT further contends that Plaintiff waived her ability to seek amounts for front pay because she failed to provide a statement of the amount of front pay she was seeking in the parties' joint pretrial statement. Id. at 10. The Court rejects both contentions.

[6] The Court notes that the Eleventh Circuit's holding in W&O, Inc. cuts directly against USFBOT's contention that Plaintiff is not entitled to an award of front pay because "an award of front pay is . . . [a] special remedy . . . warranted only by egregious circumstances." (Doc. 484, at 10) (underline in original), and the Court accordingly rejects USFBOT's contention.

Each version of Plaintiff's complaint (of which there were three) includes a request – or can be read to include a request – for front pay. See, e.g., (Doc. 1 at ¶132) ("Except for reinstatement, DeBose demands *all relief* that is just *and equitable*[.]") (emphasis added); (Doc. 39, at ¶1) ("Plaintiff seeks equitable relief and damages including . . . front pay[.]"); (Doc. 45, at ¶1) (same). Thus, since the inception of this case, USFBOT has been on notice of Plaintiff's desire for an award of front pay. In any event, the Eleventh Circuit has held that an award of front pay may be appropriate even when not specifically requested. Nord v. U.S. Steel Corp., 758 F.2d 1462, 1474 n.12 (11th Cir. 1985); see also Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945, 957 (10th Cir. 1980) (holding that an award of front pay was appropriate even though the plaintiff did not request reinstatement); Austrum v. Fed. Cleaning Contractors, Inc., No. 9:14-cv-81245-KAM, 2016 WL 3526130, at *2 (S.D. Fla. June 23, 2016) (holding that the plaintiff did not waive his request for front pay notwithstanding his failure to identify the issue in the parties' joint pretrial stipulation). Accordingly, the Court finds that Plaintiff did not waive her ability to seek amounts for front pay.

That leaves only the determination of the appropriate amount of front pay. As a general matter, "front pay is simply money awarded for lost compensation during the period between judgment and reinstatement or in lieu of reinstatement." Pollard v. E.I. du Pont de Nemours & Co., 532 U.S. 843, 846 (2001). "The plaintiff carries

the initial burden to provide proof of a basis for a front pay award, and the burden then shifts to the defendant to prove it is inappropriate." Curtis v. Elecs. & Space Corp., 113 F.3d 1498, 1503–04 (8th Cir. 1997) (deciding issue in the age discrimination context) (citing Barbour v. Merrill, 48 F.3d 1270, 1280 (D.C. Cir. 1995)).

Here, Plaintiff requests an award of front pay "for an estimated 5 years," which she "estimates" to be "in excess of $175,000." (Doc. 472, at 6). Regrettably, Plaintiff has submitted no evidence to support such an award. The only evidence the Court has is Plaintiff's trial testimony that she was earning "a little less than $135,000" annually when she was discharged from employment at the University of South Florida and is currently earning $124, 000 annually. (Doc. 495, at 103:1 – 18). Thus, questions of fact remain as to what amount of front pay, if any, is appropriate. Accordingly, the Court will refer the issue of an appropriate award of front pay to the assigned Magistrate Judge for an evidentiary hearing and report and recommendation.

III. Conclusion

Accordingly, it is

ORDERED and **ADJUDGED** as follows:

1. That portion of Plaintiff's Motion requesting an award of a reasonable attorney's fee is **DENIED**.

2. That portion of Plaintiff's motion requesting that the Court tax certain costs against USFBOT is **DENIED WITHOUT PREJUDICE**. On or before November 2, 2018, Plaintiff shall file a proposed Bill of Costs,[7] *not inconsistent with this Order*, along with supporting documentation that will allow the Court to determine which costs were actually incurred and in what amount. Failure to support her requests for costs with sufficient specificity so that the Court may determine whether the costs (1) as an initial matter, fall under Section 1920 and (2) were actually incurred and in what amount will result in the Court denying those requests outright.

3. That that portion of Plaintiff's Motion requesting an award of front pay is **REFERRED** to Magistrate Judge Anthony E. Porcelli for an evidentiary hearing, to be set by separate notice, and a Report and Recommendation to the undersigned.

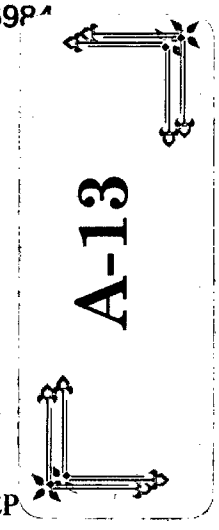
DONE and **ORDERED** in Chambers, in Tampa, Florida this 19th day of October, 2018.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

[7] A form proposed Bill of Costs can be found at http://www.uscourts.gov/forms/other-forms/bill-costs-district-court.

Copies furnished to:

Counsel of Record
Unrepresented Parties



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No.: 8:15-cv-2787-T-17AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and ELLUCIAN COMPANY, L.P.

Defendants.

AMENDED JUDGMENT IN A CIVIL CASE

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff Angela DeBose in the amount of $310,500.00 and against Defendant University of South Florida Board of Trustees on Plaintiff's retaliation claim, in accordance with the jury's verdict.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff and against Defendant University of South Florida Board of Trustees on her disparate treatment race discrimination claim, in accordance with the jury's verdict; Plaintiff takes nothing on her claim for compensatory or back pay damages.

Decision by Court. This action came before the Court and a decision has been rendered.

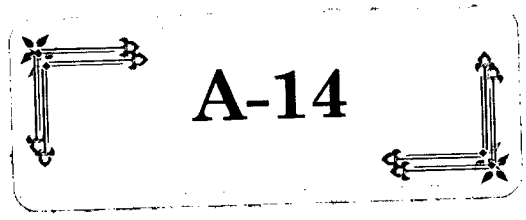
IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order entered September 29, 2017, judgment is hereby entered in favor of Defendant University of South Florida Board of Trustees and against Plaintiff on Plaintiff's disparate treatment gender discrimination,

disparate impact race and gender discrimination, breach of contract, tortious interference, and civil conspiracy claims.

ELIZABETH M. WARREN,
CLERK

s/src, Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION



ANGELA W. DEBOSE,

Plaintiff,

v.

Case No.: 8:15-cv-2787-T-17AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and ELLUCIAN COMPANY, L.P.

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order entered September 29, 2017, judgment is hereby entered in favor of Defendant Ellucian Company, L.P., and against Plaintiff Angela DeBose on Plaintiff's tortious interference and civil conspiracy claims.

ELIZABETH M. WARREN,
CLERK

s/src, Deputy Clerk

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

   (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

   (b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

   (c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

   (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

   (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

   (a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

   (b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

   (c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

   (d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon

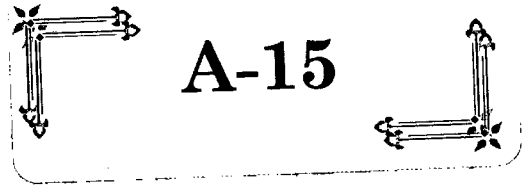
motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

(e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal**: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION



ANGELA W. DEBOSE,

Plaintiff,

v.

Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and ELLUCIAN COMPANY, L.P.

Defendants.

JUDGMENT IN A CIVIL CASE

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff Angela DeBose in the amount of $310,500.00 and against Defendant University of South Florida Board of Trustees on Plaintiff's disparate treatment race discrimination and retaliation claims, in accordance with the jury's verdict.

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to the Court's Order entered September 29, 2017, judgment is hereby entered in favor of Defendant University of South Florida Board of Trustees and against Plaintiff on Plaintiff's disparate treatment gender discrimination, disparate impact race and gender discrimination, breach of contract, tortious interference, and civil conspiracy claims.

ELIZABETH M. WARREN,
CLERK

s/src, Deputy Clerk

A-16

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No.: 8:15-cv-2787-EAK-AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,

Defendant.

COURT'S VERDICT FORM

Please carefully read the questions below and provide your answers in the spaces provided:

I. Race Discrimination

Do you find from a preponderance of the evidence:

(1) That the University of South Florida discharged Ms. DeBose from employment?

Answer Yes or No Yes

[If your answer to this question is "No," this ends your deliberations as to Ms. DeBose's race discrimination claim, and you should skip to question II(1). If your answer to this question is "Yes," go to the next question.]

(2) That Ms. DeBose's race was a motivating factor that prompted the University of South Florida to take that action?

Answer Yes or No Yes

[If your answer to this question is "No," this ends your deliberations as to Ms. DeBose's race discrimination claim, and you should skip to question II(1). If your answer to this question is "Yes," go to the next question.]

(3) That the University of South Florida would have discharged Ms. DeBose from employment even if the University of South Florida had not taken Ms. DeBose's race into account?

Answer Yes or No Yes

[If your answer to this question is "Yes," this ends your deliberations as to Ms. DeBose's race discrimination claim, and you should skip to question II(1). If your answer to this question is "No," go to the next question.]

(4) That Ms. DeBose should be awarded damages to compensate for a net loss of wages and benefits to the date of your verdict?

Answer Yes or No _____

If your answer is "Yes,"
in what amount? $_____

II. Retaliation

Do you find from a preponderance of the evidence:

(1) That Ms. DeBose engaged in protected activity?

Answer Yes or No Yes

[If your answer to this question is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer to this question is "Yes," go to the next question.]

(2) That the University of South Florida took an adverse employment action against Ms. DeBose?

Answer Yes or No Yes

[If your answer to this question is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer to this question is "Yes," go to the next question.]

(3) That the University of South Florida took the adverse employment action because of Ms. DeBose's protected activity?

Answer Yes or No Yes

[If your answer to this question is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer to this question is "Yes," go to the next question.]

(4) That Ms. DeBose suffered damages because of the adverse employment action?

Answer Yes or No Yes

[If your answer to this question is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.]

(5) That Ms. DeBose should be awarded damages to compensate for a net loss of wages and benefits to the date of your verdict?

Answer Yes or No Yes

If your answer is "Yes," in what amount? $ 310,500.00

SO SAY WE ALL.

Crystal Stephens
Foreperson's Signature

DATE: 9.26.18

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

A-17

ANGELA W. DEBOSE,

Plaintiff,

v. Case No: 8:15-cv-2787-T-17AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and ELLUCIAN COMPANY, L.P.,

Defendants.

ORDER

This cause comes before the Court pursuant to the motions for summary judgment (Doc. Nos. 68 and 75) (the "**Summary Judgment Motions**") filed by the Defendants, University of South Florida Board of Trustees ("**USF**"), and Ellucian Company, L.P. ("**Ellucian**"), and the responses in opposition (Doc. Nos. 151 and 169) filed by *pro se* Plaintiff, Angela W. DeBose (the "**Plaintiff**" or "**DeBose**"). For the reasons set forth below, the Summary Judgment Motions are **GRANTED IN PART AND DENIED IN PART**.

I. Introduction

The Court must decide whether DeBose is entitled to a jury trial on her claims that USF terminated her employment after 27 years due to race/gender discrimination and/or in retaliation for her complaints of discrimination. Because DeBose has testified under penalty of perjury that high-ranking employees at USF have admitted to her that the person who fired her is, essentially, a virulent racist, DeBose is entitled to her day in Court on her claim that she was fired due to her race/gender. Similarly, DeBose strings together enough circumstantial evidence to proceed to a jury on her retaliation claims, in which

she contends that she was terminated and given a poor employment review for protesting USF's alleged acts of discrimination. The remainder of DeBose's claims, however, are far too speculative and unsupported to withstand summary judgment. As a result, the Summary Judgment Motions are granted in part and denied in part.

II. Background

A. Plaintiff's employment history at USF

The Plaintiff was hired by USF in 1988 and became the USF Registrar on October 1, 1996. (Doc. No. 76, at 1). DeBose remained Registrar until her employment was terminated on August 19, 2015. (Doc. No. 76, at 10).

B. Plaintiff's tenure under the supervision of Paul Dosal

On July 1, 2010, Paul Dosal became DeBose's direct supervisor. (Doc. No. 76, at 2). DeBose initially had a "good relationship" with Dosal. (A. DeBose Dep. Tr. 33:3-6). So much so that during 2011 or 2012, (A. DeBose Dep. Tr. 169:11-14), Dosal allegedly confided in her that USF's Provost, Ralph Wilcox, is "a nasty son of a bitch," and that "he's not going to think highly of you . . . because . . . you're black." (A. DeBose Dep. Tr. 167:19—168:14).

Things "changed" with Dosal, however, in late 2013 and early 2014. (A. DeBose Dep. Tr. 33:12-14). During that time period, DeBose claims that Dosal "started being more aggressive, edgy," "would clench his jaw," and "just stopped being pleasant at all." (A. DeBose Dep. Tr. 34:10-15). According to DeBose, Dosal's animosity towards her spread to others at USF, including another employee named Travis Thompson, who

allegedly told Dosal that DeBose was not collaborative and that things were not going well with Degree Works.[1] (A. DeBose Dep. Tr. 34:18-24—35:1-16).

Bothered by these issues, Dosal allegedly met with DeBose in the spring of 2014 and counseled her to work and behave more collaboratively. (Doc. No. 76, at 3). USF claims that DeBose's behavior did not improve and, in June of 2014, Dosal informed DeBose that responsibility for Degree Works and ATLAS were being transferred from the Registrar's Office to the information technology department. (A. DeBose Dep. Tr. 55:13-19). According to Dosal, the decision to transfer Degree Works and ATLAS away from the Registrar's Office came from USF Provost Ralph Wilcox. (A. DeBose Dep. Tr. 55:23-24). Around the same time, an email circulated within USF that accused DeBose of being responsible for the resignation of another USF employee, Caurie Waddell. (A. DeBose Dep. Tr. 63:17-25); (P. Dosal Dep. Tr. 36:15-19). According to DeBose, she feared that the Caurie Waddell situation was "going to be used as . . . grounds for [her] termination." (A. DeBose Dep. Tr. 63:17-25).

C. The AVP EPM position

During the summer of 2014, while the foregoing issues were percolating through the school, the position of Assistant Vice President for Enrollment Planning and Management ("**AVP EPM**") became vacant at USF. (Doc. No. 76, at 4). Dosal was responsible for filling the vacant AVP EPM position and, after consultation with Ralph Wilcox and USF President Judy Genshaft, USF employee Billie Jo Hamilton was appointed to the AVP EPM position. (Doc. No. 76, at 5). DeBose disagreed with USF's

[1] Previously, in the spring of 2011, Dosal transferred responsibility for USF's degree audit system, Degree Works, and its academic tracking system, ATLAS, to the Registrar's Office. (Doc. No. 76, at 3).

decision to directly appoint Hamilton to the AVP EPM position in lieu of conducting a national search. (A. DeBose Dep. Tr. 305:3-4). In fact, DeBose wanted the job for herself, and believed she was "a very strong candidate for the AVP position." (A. DeBose Dep. Tr. 310:2-4).

Dosal met with DeBose in July of 2014, ostensibly to try and patch things up. At that meeting, Dosal allegedly promised that he would "make it clear" to the USF community that he remained confident in DeBose, and told her he hoped she would remain a member of his team through the end of his tenure in 2019. (A. DeBose Dep. Tr. 66:8-15, 66:16-25—67:1-15). DeBose claims that during the meeting, Dosal responded to her request for an increase in compensation[2] by "allud[ing] to . . . N****r, you already make too much money." (A. DeBose Dep. Tr. 139:17-23). When DeBose responded that she believed she was not selected for the AVP EPM position because of her race, he allegedly "clenched his jaw" and denied that race was a factor, instead telling DeBose "the provost wants this." (A. DeBose Dep. Tr. 150:22—152:21). Following the meeting, on July 28, 2014, DeBose filed an internal complaint with USF, referencing discrimination with respect to the Degree Works/ATLAS transfer, Caurie Waddell email, and the AVP EPM appointment incidents.

D. DeBose's EEOC complaint and alleged acts of retaliation

After DeBose filed her internal complaint, she claims she "got a reprieve" from Dosal's allegedly hostile behavior. (A. DeBose Dep. Tr. 212:19-22). However, towards the end of the year, she filed a complaint with the EEOC, after which she alleges "things began to ramp up to an unacceptable level." (A. DeBose Dep. Tr. 230:6-13). For instance,

[2] Two days after being informed of Hamilton's appointment to the AVP EPM position, DeBose sent a memorandum to Dosal requesting a pay raise. (Doc. No. 76, at 6).

DeBose claims that after she filed the EEOC complaint she was "asked into meetings with no agenda . . . was not treated well or respectfully or civilly . . . was marginalized . . . berated . . . [and] treated poorly." (A. DeBose Dep. Tr. 230:6-20).

E. The Alexis Mootoo incident and subsequent written reprimand

DeBose's acrimony with USF worsened on January 29, 2015, when DeBose attended a meeting with Dosal to discuss implementation of a new shared services model. (A. DeBose Dep. Tr. 77:1-10). Also present at the meeting was another African American employee, Alexis Mootoo, who allegedly had a history of "making [DeBose] and other people in [DeBose's] office uncomfortable with abusive language," including gratuitous use of the word "n****r." (A. DeBose Dep. Tr. 77:11-25—78:1-21). During the meeting, DeBose allegedly took umbrage with Mootoo's involvement in the implementation of the new shared services model, and referred to her as a "little girl" and told her to "stay in her lane." (A. DeBose Dep. Tr. 83:10-21).

While DeBose denies making those statements, Mootoo reported DeBose's alleged "little girl" comment to authorities at USF, who issued DeBose a written reprimand. (A. DeBose Dep. Tr. 83:22-24) (Doc. No. 77-2, at 2). According to DeBose, Mootoo fabricated the story in exchange for a deal with Dosal under which Mootoo would receive more favorable "pay and position." (A. Dep. Tr. 84:2—86:24). In support, DeBose claims that "Alexis Mootoo [would come] into the office supposedly for budget meetings and talking about n****r this and n****r that . . . [but that] Dosal knew about [her use of the word 'n****r]' and didn't have a problem with it." (A. DeBose Dep. Tr. 159:23—160:4).

F. DeBose's allegations of a "backdrop" of racist conduct at USF

DeBose claims that by this time in her career at USF, "[t]here were constant references to [her as an] angry black woman, black bitch, n****r this, n****r that." (A.

DeBose Dep. Tr. 164:11-20). While DeBose reluctantly admits that Dosal did not call her an "angry black woman, black bitch, [or] n****r," (A. DeBose Dep. Tr. 164:21—165:9), she accuses Dosal of making veiled "racial statements" over the course of her time at USF, including a 2010/2011[3] comment in which he told her he was moving out of "the hood" and that she should do the same because they were the "only two people of color in EPM," (A. DeBose Dep. Tr. 166:5-16), a 2013[4] statement in which he asked her to attend Black Faculty Staff Association breakfasts, but that he did not want her to "be a token," (A. DeBose Dep. Tr. 169:24—170:13), and another incident in which he allegedly disparaged a "black Hispanic" person who had accused him of discrimination of having "forgotten . . . where he came from." (A. DeBose Dep. Tr. 172:24—173:21). DeBose further claims that Dosal told her that "others" at USF referred to her as "an angry black woman or black bitch or those kinds of things." (A. DeBose Dep. Tr. 171:19-23). DeBose claims that she asked Dosal who said those things, but that "he would not disclose" the source of his information. (A. DeBose Dep. Tr. 171:24—172:1).[5]

G. The Ellucian audit and report

Approximately one month after DeBose filed her EEOC complaint, during February of 2015, USF engaged a consulting firm, Ellucian, to review and assess its implementation of Degree Works. (Doc. No. 76, at 8). As part of that review, Ellucian selected consultant Andrea Diamond to visit the USF campus and meet with several employees, including DeBose. (Doc. No. 76, at 8). When DeBose met with Diamond,

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[3] (A. DeBose Dep. Tr. 166:17—167:16).
[4] (A. DeBose Dep. Tr. 171:8-12).
[5] The "angry black woman" and "black bitch" comments allegedly occurred during 2014, when DeBose told Dosal about an incident in which some unknown person vandalized her car with the derogatory phrase "wild bitch." (A. DeBose Dep. Tr. 124:23—125:3; 172:2-19).

she claims that Diamond's body language, face, and demeanor were "angry." (A. DeBose Dep. Tr. 97:16-23). After the meeting, Ellucian prepared a report (the "**Ellucian Report**") stating, among other things, that the Registrar's Office lacked an "atmosphere of working together for the good of the institution" and was "not willing to encompass change." (Doc. No. 76, at 8-9).

DeBose vehemently disagrees with the conclusions and recommendations contained in the Ellucian Report, and claims that Diamond "went out of her way . . . to cast a negative light on the registrar's office" and that Diamond did not sincerely or honestly believed the opinions she expressed regarding the Registrar's Office. (A. DeBose Dep. Tr. 98:3—99:24). Rather, DeBose believes that Ellucian colluded with USF to give the school a non-discriminatory reason to fire her form her position. In support, DeBose cites to evidence that the Registrar's Office was included in the scope of Ellucian's review at the request or suggestion of USF. (A. DeBose Dep. Tr. 101:18-102:3). However, DeBose also admits that she lacks any firsthand knowledge that USF was responsible for the inclusion of negative information or opinions about her office in the Ellucian Report. (A. DeBose Dep. Tr. 101:4-10).

H. DeBose's non-reappointment as Registrar

The Ellucian Report was ultimately the final nail in the coffin for DeBose's 27 year career USF. After reviewing the Ellucian Report, Ralph Wilcox made the decision to non-renew DeBose's employment. (Doc. No. 76, at 9). On May 19, 2015, DeBose was issued a notice of non-reappointment, which effectively terminated her employment as of August 19, 2015. (Doc. No. 76, at 10).

I. USF's negative review of DeBose

Following her receipt of the notice of non-reappointment, DeBose communicated with her friend, Albert Colom, regarding possible employment at the University of North Florida ("**UNF**"). (A. DeBose Dep. Tr. 13:15-18). On or around May 20, 2015, Colom sent a text message to DeBose stating that "depending on what you are interested in doing I can help here at UNF. That is if you want to stay in Florida. I have a few ideas." (Doc. No. 79-1, at 1). DeBose responded "Love to talk about them as your time permits." (Doc. No. 79-1, at 1).

On May 26, 2015, Ralph Wilcox had a brief telephone call with UNF Provost Dr. Earle Traynham regarding his assessment of DeBose's professional capabilities for possible employment at UNF. (Doc. No. 78, at ¶¶ 8-9). Wilcox claims he was complementary of DeBose's technical skills and abilities, but indicated that he believed she was not collaborative and was resistant to change. (Doc. No. 78, at ¶¶ 8-9). DeBose tells a far different story, claiming that according to Colom, Wilcox told Traynham that DeBose was "toxic," "horrible," "uncollaborative," "awful," "if he hired [her], that he would regret it," and "he had been trying to get rid of [her] for years." (A. DeBose Dep. Tr. 15:23-25—16:1-2). DeBose further claims "a guy named Lance," who "works at USF," told her that Wilcox bragged to Traynham "about undoing [her]"; that he "wanted [DeBose] to have nothing . . . not even a shirt . . . . bare, exposed with nothing." (A. DeBose Dep. Tr. 290:1-11).

J. DeBose is not selected for employment at UNF

Following the Traynham conversation, on May 27, 2015, DeBose received a text message from Colom stating "Hello spoke to my provost and we decided to pass on the

idea. I had good hope we could work together again. I am so sorry." (Doc. No. 79-1, at 2). Ultimately, DeBose did not obtain employment with UNF.

III. Standard of Review

"Federal Rule of Civil Procedure 56 requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *U.S. Commodity Futures Trading Com'n v. Am. Derivatives Corp.*, 2008 WL 2571691, at *2 (N.D. Ga. June 23, 2008) (internal quotations omitted). "The moving party bears the initial responsibility of informing the court of the bases for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Id.* (internal quotations omitted). "Where the moving party makes such a showing, the burden shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist." *Id.* "A fact is not material if a dispute over that fact will not affect the outcome of the suit under the governing law." *Id.* "An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.*

Importantly, on a motion for summary judgment, the Court "may consider only that evidence which can be reduced to an admissible form." *Rowell v. BellSouth Corp.*, 433 F.3d 794, 800 (11th Cir. 2005). "To be admissible in support of or in opposition to a motion for summary judgment, a document must be authenticated by and attached to an affidavit that meets the requirements of Rule 56[c][4], and the affiant must be a person through whom the exhibits could be admitted into evidence." *Sauders v. Emory*

Healthcare, Inc., 360 F. App'x 110, 113 (11th Cir. 2010). Here, DeBose has not authenticated any of the approximately 550 pages of documents attached to Doc. Nos. 165, 166, 187, and 188 and, as a result, none of those documents will be considered in response to or in support of the Summary Judgment Motions. Instead, the Court will restrict its analysis to those materials properly before the Court, including DeBose's deposition transcript and the affidavits submitted by representatives of the Defendants.

IV. Discussion

In her third amended complaint (Doc. No. 45) (the "**TAC**"), DeBose asserts the following claims: Count I – gender and/or race (primarily gender) discrimination under Title VII[6] and the FCRA[7] based on USF's failure to promote her to the AVP EPM position and her non-reappointment as Registrar; Count II – retaliation under Title VII and the FCRA based on her gender coupled with USF's failure to promote her to the AVP EPM position, her non-reappointment as Registrar, and Wilcox's poor reference to UNF; Count III gender and/or race discrimination (primarily race) under Title VII and the FCRA based on USF's failure to promote her to the AVP EPM position and based on her non-reappointment as Registrar; Count IV – retaliation under Title VII and the FCRA based on her race coupled with USF's failure to promote her to the AVP EPM position, her non-reappointment as Registrar, and Wilcox's poor reference to UNF; Count V – disparate impact based on her gender under Title VII and the FCRA related to the direct appointment of Hamilton to the AVP EPM position; Count VI – disparate impact based on her race under Title VII and the FCRA related to the direct appointment of Hamilton to the AVP EPM position; Count VII – breach of contract; Count VIII – tortious interference based

[6] All references to "Title VII" are to Title VII of the Civil Rights Act of 1964 ("**Title VII**").
[7] All references to the "FCRA" are to Chapter 760 of the Florida Statutes (the "**FCRA**").

on Ellucian's conduct in drafting the Ellucian Report; Count IX – tortious interference based on USF's conduct in giving her a negative review to UNF; and Count X – civil conspiracy between Ellucian and USF related to the Ellucian Report. Because both Defendants have moved for summary judgment on all of the Plaintiff's claims, the Court will address each category of claims, in turn, below.

A. Employment Discrimination Claims

In Counts I and III of the TAC, the Plaintiff asserts claims for gender and race discrimination, respectively, under Title VII and the FCRA. "Title VII prohibits an employer from discriminating 'against any individual with respect to [her] compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin.'" *Vickers v. Fed. Express. Corp.*, 132 F.Supp.2d 1371, 1377 (S.D. Fla. 2000) (quoting 42 U.S.C. § 2000e-2(a)). "Since the FCRA essentially mirrors Title VII, Florida courts look to federal case law construing Title VII" when ruling on FRCA claims. *McCabe v. Excel Hospitality, Inc.*, 294 F.Supp.2d 1311, 1313 n.1 (M.D. Fla. 2003).

Discriminatory intent, the hallmark of a claim for employment discrimination under Title VII and the FRCA, "can be established through either direct or circumstantial evidence." *Vickers*, 132 F.Supp.2d at 1377 (S.D. Fla. 2000). Here, while the Plaintiff's deposition testimony references a plethora of racially charged remarks during her tenure at USF, most of those statements were remote in time from the adverse employment actions at issue in this case and, in any event, do not specifically address USF's reasons for terminating DeBose's employment. *See* (A. DeBose Dep. Tr. 186:11-18) (referencing an alleged "backdrop" of statements about her "race, black woman, angry black woman, black bitch, those kinds of things," but not specifically linking any of the foregoing statements to the alleged adverse employment actions). Thus, given the lack of direct

evidence of discrimination, the Court must consider whether there is sufficient circumstantial evidence of USF's alleged discriminatory intent for the Plaintiff to survive summary judgment.

Where the "plaintiff seeks to prove intentional discrimination through circumstantial evidence of the employer's intent . . . [the] [p]lainitiff has the initial burden of establishing a prima facie case of discrimination." *Id.* at 1378-79. A plaintiff makes out a prima facie case of discrimination when she shows, by a preponderance of the evidence, that (1) she is a member of a protected class, (2) she was qualified for the position, (3) she experienced an adverse employment action, and (4) she was replaced by someone outside of her protected class or received less favorable treatment than a similarly situated person outside of her protected class." *Flowers v. Troup Cty., Ga., Sch. Dist.*, 2015 WL 6081186, at *6 (11th Cir. Oct. 16, 2015).

"[T]he establishment of a prima facie case creates a presumption that the employer discriminated against a plaintiff on the basis of race." *Id.* "[T]he burden then shifts to the employer to produce a legitimate nondiscriminatory reason for the action taken against the plaintiff." *Id.* "Once the employer advances its legitimate, nondiscriminatory reason the plaintiff's prima facie case is rebutted and all presumptions drop from the case." *Id.* The plaintiff then bears the "ultimate burden of persuading the court that she has been the victim of intentional discrimination." *Id.* Accordingly, merely establishing a prima facie case of racial discrimination "is not, and never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion." *Id.* Rather, the "critical decision that must be made is whether the plaintiff has created a triable issue concerning the employer's discriminatory intent." *Id.*

Here, USF acknowledges that (1) DeBose is a member of a protected class, (2) Hamilton's promotion to AVP EPM and DeBose's non-renewal as Registrar constituted adverse employment actions, and (3) genuine issues of material fact exist regarding whether DeBose was qualified for her position as Registrar. However, USF disputes that DeBose has carried her initial burden of establishing that the written reprimand she received following the Alexis Mootoo episode constituted an adverse employment action, or that she received less favorable treatment than a similarly situated person outside of her protected class. Moreover, even if DeBose can make out a prima facie case on her promotion discrimination claim, USF contends that DeBose has failed to show that USF's decision to promote Hamilton was pretextual. The Court will address each issue in turn below.

1. Written Reprimand

For starters, Counts I and III of the TAC assert claims for employment discrimination based on the adverse employment actions of "failure to promote" and for "termination" of employment. (TAC, at ¶¶ 129, 142). Since the written reprimand that DeBose received in connection with the Alexis Mootoo incident has not been identified as an adverse employment action in either Count I or III of the TAC, DeBose has failed to plead, much less prove, that the written reprimand was issued with discriminatory intent. Moreover, even if the Court were to liberally construe the TAC to include such a claim, "to prove adverse employment action . . . an employee must show a *serious and material* change in the terms, conditions, or privileges of employment." *Anderson v. United Parcel Serv., Inc.*, 248 F. App'x 97, 100 (11th Cir. 2007) (emphasis in original). "[T]he employee's subjective view of the significance and adversity of the employer's action is not controlling; the employment action must be materially adverse as viewed by a

reasonable person in the circumstances." *Id.* Here, DeBose has failed to demonstrate that the written reprimand resulted in a serious and material change in the terms, conditions, or privileges of her employment. To the contrary, the record is devoid of any evidence that the written reprimand had *any* adverse effect on DeBose's employment. For that reason alone, USF is entitled to summary judgment on any claim for employment discrimination based on the written reprimand.

2. Less Favorable Treatment than a Similarly Situated Person Outside of DeBose's Protected Class

As part of the Title VII plaintiff's prima facie case, the plaintiff must show that "[s]he was replaced by someone outside of [her] protected class or received less favorable treatment than a similarly situated person outside of [her] protected class." *Flowers*, 2015 WL 6081186, at *6. Importantly, "when a Title VII plaintiff alleges that an employer discriminates against black females, the fact that . . . white females are not subject to discrimination is irrelevant and must not form any part of the basis for a finding that the employer did not discriminate against the black female plaintiff." *Jefferies v. Harris Cty. Community Action Ass'n.*, 615 F.2d 1025, 1034 (5th Cir. 1980).

With respect to the Plaintiff's promotion discrimination claim, it is undisputed that Hamilton is a white female. Thus, while DeBose has failed to establish a prima facie case of gender discrimination with respect to the AVP EPM position, *see Jefferies*, 615 F.2d at 1030 (noting that "where both the person seeking to be promoted and the person achieving that promotion were women, 'because the person selected was a woman, we cannot accept sex discrimination as a plausible explanation for (the promotion) decision.'" (quoting *Adams v. Reed*, 567 F.2d 1283, 1287 (5th Cir. 1978))), the Plaintiff has made a prima facie case of intersectional race *and* gender discrimination with respect to

Hamilton's promotion. *See* (A. DeBose Dep. Tr. 127:21-24) (stating that DeBose believes "race/gender" was the reason for her failure to be promoted the AVP EPM position).

As to the Plaintiff's termination claim, the record contains an unverified statement in DeBose's statement of disputed facts that Carrie Garcia, a white female, "was appointed by Wilcox and Dosal as Acting University Registrar following DeBose's termination." (Doc. No. 170, at 33). Since USF does not appear to contest that DeBose's position was filled by someone outside of her protected class as a black female, and it is likely that DeBose would properly support this assertion of fact if "give[n] an opportunity to properly support or address the fact" under Rule 56(e)(1), the Court will presume for purposes of this order that the Acting University Registrar position was filled by a white female. Interestingly, however, at her deposition, DeBose testified that race, and race alone, was the reason for her termination. (A. DeBose Dep. Tr. 128:12-23). Since it is undisputed that the Registrar position was filed by a female, and DeBose appears to have abandoned her claim of intersectional discrimination with respect to her termination claim, USF is entitled to summary judgment on DeBose's termination claim based on gender discrimination. However, because the Registrar position was filled by a white female, DeBose has carried her burden of establishing a prima facie claim for race discrimination on her termination claim.

3. Whether USF's Decisions to Promote Hamilton and Terminate DeBose were Pretextual

USF has proffered a legitimate, non-discriminatory reason for its decision to promote Hamilton, and not DeBose, to the position of AVP EPM, as well as for its decision to terminate DeBose's employment as Registrar. *See* (Doc. No. 77, at ¶ 17) (stating that DeBose was not selected for the AVP EPM position because she was not as qualified for

the position as Hamilton); (Doc. No. 78, at ¶ 6) (stating that DeBose was terminated for not acting in a collaborative manner and based on the opinions stated in the Ellucian Report). The question thus becomes whether DeBose has identified sufficient evidence of intentional discrimination to create a triable issue on her claims for employment discrimination. *See Wheatfall v. Bd. of Regents of Univ. System of Ga.*, 9 F.Supp.3d 1342, 1356 (N.D. Ga. 2014) ("[T]he ultimate question in every employment discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination.").

With respect to the AVP EPM position, DeBose supports her claim that she was subjected to race/gender discrimination on the fact that (1) Dosal gave Hamilton the opportunity to "go back to her position exclusively as director of financial aid" if she didn't do well as AVP EPM; (2) "the [AVP EPM] position was not posted or advertised and that . . . people [including DeBose] were given no knowledge or awareness of the position"; and (3) Dosal attempted to make "concessions" to DeBose regarding her salary and job title if she would "go along" with Hamilton's appointment. (A. DeBose Dep. Tr. 147:2—148:20). Frankly, DeBose's own testimony demonstrates that USF's decision to promote Hamilton over her had nothing to do with the fact that she is a black female. Perhaps Dosal exercised poor judgment by not conducting a nationwide search or hand-picking DeBose for the position. Perhaps he made the right choice. Regardless, whether promoting Hamilton was the right or wrong choice is unimportant because DeBose herself does not cite race or gender as a reason for Hamilton's promotion.

To the contrary, DeBose obfuscates the true reasons for Hamilton's selection by making vague references to a handful of allegedly racial statements uttered by Dosal and

Wilcox during her tenure at USF. Most of these statements, including Dosal's statements about "leaving the hood" and not wanting DeBose to be a "token" were remote in time from Hamilton's promotion. Moreover, even if Wilcox is "a nasty son of a bitch" who was never "going to think highly of [DeBose] . . . because . . . [she is] black," it is undisputed that Dosal, not Wilcox, promoted Hamilton to the AVP EPM position. *See* (Doc. No. 76, at 5) (stating that Dosal appointed Hamilton); (Doc. No. 170, at 12) (failing to dispute that Dosal appointed Hamilton). Since the record is devoid of evidence that race and gender played a role in Dosal's decision to appoint Hamilton to the AVP EPM position, or that Wilcox's alleged racial animus towards DeBose influenced Dosal's hiring decision, DeBose has failed to show that USF's proffered non-discriminatory reason for not promoting DeBose was pretextual.

As for DeBose's claim of race-based termination discrimination, it is undisputed that Wilcox made the decision to terminate DeBose. *See* (Doc. No. 68, at ¶ 6) (stating that Dosal "was not involved in the decision to non-renew DeBose's employment). While Wilcox claims that he made the decision to non-renew DeBose's employment after reviewing the Ellucian Report, USF does not attempt to deal with the so-called evidentiary elephant in the room: DeBose's deposition testimony that Dosal told her that Wilcox was never "going to think highly of [DeBose] . . . because . . . [she is] black." At this stage of the proceedings, the Court is required to draw all reasonable inferences in favor of the non-moving party, DeBose, and given DeBose's testimony that Wilcox harbored racial animus towards her, she is entitled to a reasonable inference that her termination was discriminatory. This is true even though Dosal's alleged statement that Wilcox harbored racist views towards DeBose was remote in time from her termination. Stated simply,

DeBose's sworn testimony that Wilcox is a virulent racist cannot be discounted on summary judgment and, as a result, is enough to get her to a jury on her claim for race-based termination discrimination.

B. Retaliation Claims

"Title VII's retaliation provision makes it unlawful to discriminate against any individual because she has opposed any practice made an unlawful practice by the Act." *Demers v. Adams Homes of Nw. Fla., Inc.*, 321 F. App'x 847, 852 (11th Cir. 2009). "To establish a prima facie case of retaliation, the plaintiff must show: (1) that [s]he engaged in statutorily protect expression; (2) that [s]he suffered an adverse employment action; and (3) that there is some causal relationship between the two events." *Holifield v. Reno*, 115 F.3d 1555, 1566 (11th Cir. 1997). Once the plaintiff establishes her prima facie case, the employer must proffer a legitimate, non-discriminatory reason for the adverse employment action. *Id.* "If the employer offers legitimate reasons for the employment action, the plaintiff must then demonstrate that the employer's proffered explanation is a pretext for retaliation." *Id.*

In Counts II and IV of the TAC, the Plaintiff asserts claims for retaliation based on her gender and race, respectively. Specifically, the Plaintiff alleges that she was retaliated against for filing internal complaints with USF, charges of discrimination with the EEOC, and an action seeking a preliminary injunction before this Court. *See* (Doc. No. 45, at ¶ 147). DeBose claims that because she engaged in the foregoing protected activities, she was denied a promotion to the AVP EPM position, terminated from her position as Registrar, and given a poor reference to the Provost of UNF. (Doc. No. 45,a t ¶ 148).

For starters, the Plaintiff's claims that she was denied the AVP EPM promotion due to unlawful retaliation are without merit. It is undisputed that DeBose did not engage in any statutorily protected activity until *after* she learned that Hamilton had been appointed to the AVP EPM position. *Compare* (Doc. No. 79-8) (demonstrating that DeBose's first ethics point complaint was submitted on July 28, 2014), *with* (Doc. No. 77, at ¶ 19) (stating that Dosal notified DeBose of Hamilton's appointment to the AVP EPM position on July 15, 2014). Thus, Counts II and IV, to the extent they are based on Hamilton's promotion to AVP EPM, fail as a matter of law due to a lack of causation. *See Univ. of Tex. Sw. Med. Center v. Nassar*, 133 S.Ct. 2517, 2534 (2013) (stating that to satisfy the causation element, the plaintiff "must establish that his or her protected activity was a but for cause of the alleged adverse action by the employer.").

The Plaintiff's claims that she was terminated and given a poor reference in retaliation for engaging in statutorily protected activities, however, require a more thorough analysis. USF does not dispute that the Plaintiff engaged in statutorily protected activity, or that she suffered an adverse employment action when she was terminated and given a negative reference to the Provost of UNF. To the contrary, USF attacks the Plaintiff's ability to establish the causation element of her prima facie case and, to the extent she can make out a prima facie case, USF contends that DeBose cannot show that her termination and any poor review were pretext for retaliation.

Prior to the Supreme Court's *Nassar* decision, a plaintiff could satisfy this requirement by showing, among other things, "close temporal proximity" between the protected activity and the adverse employment action. *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). Following *Nassar*, however, a plaintiff must show more than

temporal proximity between the protected activity and their termination. *Cf. Smith v. City of New Smyrna Beach*, 588 F. App'x 965, 981-82 (11th Cir. 2014). Instead, to establish a claim for retaliation, the plaintiff must present evidence "that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Nassar*, 133 S.Ct. at 2533.

Here, the record contains testimonial evidence that after DeBose filed her EEOC complaint on January 15, 2015, (Doc. No. 76, at 6), she was "asked into meetings with no agenda." (A. DeBose Dep. Tr. 230:6-20). Shortly thereafter, the Alexis Mootoo incident occurred, which DeBose claims was part of a deal in which Dosal promised Mootoo more favorable "pay and position." (A. Dep. Tr. 84:2—86:24). Approximately one month later, in February of 2015, USF engaged Ellucian to review and assess its implementation of Degree Works. (Doc. No. 76, at 8). This, as we now know, ultimately culminated in the Ellucian Report, which USF cited as its basis for its decision not to renew DeBose's employment. Shortly thereafter, Ralph Wilcox acknowledges that he told UNF Provost Earle Traynham that DeBose was "not collaborative and that she was resistant to change." (Doc. No. 78, at ¶ 9). DeBose's version of the negative reference is far more colorful, with DeBose claiming that people at USF and elsewhere told her Ralph Wilcox told Traynham he wanted DeBose "to have nothing . . . not even a shirt . . . . bare, exposed with nothing." (A. DeBose Dep. Tr. 290:1-11).

Clearly, things between DeBose and USF went sideways between 2014 and 2015, and during that period of time, DeBose filed multiple internal and external complaints alleging discrimination. DeBose's version of the facts, i.e. that she was the victim of a massive conspiracy because she filed complaints of discrimination, may not ultimately be

accepted by a jury, but there is certainly enough circumstantial evidence of retaliation to afford DeBose her day in Court. Specifically, given the close temporal proximity between DeBose's EEOC complaint and USF's decision to engage Ellucian, DeBose's testimony that the Registrar's Office was included in the scope of Ellucian's engagement at the request of USF, DeBose's testimony that she was treated differently following her complaints of discrimination, and the timing and circumstances surrounding the Traynham conversation, a reasonable jury could find that USF's actions were retaliatory. Thus, USF's motion for summary judgment is denied as to DeBose's claims that her termination and poor reference were retaliatory.

C. Disparate Impact Claims

A disparate impact theory of discrimination "prohibits *neutral* employment practices which, while non-discriminatory on their face, visit an adverse, disproportionate impact on a statutorily-protected group." *E.E.O.C. v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1274 (11th Cir. 2000) (emphasis in original). To prove a disparate impact claim, the plaintiff must show: (1) there is a significant statistical disparity between the proportion of minorities available in the labor pool and the proportion of minorities hired by the employer; (2) there is a specific, facially-neutral employment practice causing the disparity; and (3) that a causal nexus exists between the identified employment practice and the statistical disparity. *Id.* Importantly, to prevail on a claim for disparate impact, "the plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group." *Id.* At 1274-75.

Here, the only statistical evidence offered in support of the Plaintiff's disparate impact claims is an "Affidavit of Expert Opinion" offered by Saba Baptiste-Alkebu-Lan, a

purported subject matter expert on employment discrimination, (Doc. No. 177), and an unauthenticated spreadsheet attached to Doc. No. 188. *See* (Doc. No. 188, at 179). Since Ms. Baptiste-Alkebu-Lan's report is dated September 5, 2017, well after the deadline to disclose expert reports and the close of discovery, the affidavit is untimely and inadmissible in response to USF's motion for summary judgment. The same holds true for the spreadsheets submitted by the Plaintiff, which have not been authenticated and, as a result, are not admissible in response to summary judgment. Given, the Plaintiff's failure to support her disparate impact claims with admissible evidence in response to summary judgment, USF is entitled to summary judgment on Counts V and VI of the TAC.

D. Breach of Contract

To recover damages for breach of contract, the plaintiff must prove: (1) the plaintiff and defendant entered into a contract, (2) the plaintiff did what the contract required, (3) all conditions required by the contract for defendant's performance occurred, (4) the defendant failed to perform under the contract, and (5) the plaintiff was harmed by that failure. *Atlantica One, LLC v. Adragna*, 177 So. 3d 89, 91 (Fla. 5th DCA 2015). The Court previously dismissed DeBose's claims for breach of contract not based on an express contract. (Doc. No. 50, at 3-4). While DeBose previously represented that USF withheld a copy of her written employment agreement, (Doc. No. 49, at 6), discovery is now complete, and no written employment agreement has been shown to exist. For this reason alone, DeBose's breach of contract claim fails as a matter of law.

Moreover, it appears that in actuality DeBose was employed pursuant to USF Regulation 10.210, which states that "employment is at will and . . . employees may be non-reappointed upon written notice from the CAO." (Doc. No. 206-1, at 2). Under

Regulation 10.201, "the [required] period of notification prior to the effective date of non-reappointment is . . . [t]hree (3) months' . . . for employees with two (2) or more years of continuous employment." (Doc. No. 206-1, at 2). "Following receipt of the notice of non-reappointment, the CAO has the option to assign the employee other duties and responsibilities and/or to require the employee to use accrued annual leave." (Doc. No. 206-1, at 3). It is undisputed that this is exactly what happened here: DeBose was given three months' notice of her non-renewal, and was required to use accrued annual leave during the three month period following receipt of the notice of non-reappointment. As a result, DeBose has failed to prove that USF breached any of its non-reappointment procedures.

E. Tortious Interference

Under Florida law, the elements of a claim for tortious interference are: "(1) the existence of a business relationship that affords the plaintiff existing or prospective rights; (2) the defendant's knowledge of the business relationship; (3) the defendant's intentional and unjustified interference with the relationship; and (4) damage to the plaintiff." *Int'l Sales & Serv., Inc. v. Austral Insulated Products, Inc.*, 262 F.3d 1152, 1154 (11th Cir. 2001). In the TAC, the Plaintiff asserts claims for tortious interference against USF and Ellucian, claiming that Ralph Wilcox's negative review of her performance cost her a prospective employment opportunity at UNF, and that Ellucian's statements criticizing the Registrar's Office in its report caused her termination from USF. Neither claim holds water for one very simple reason: despite DeBose's plethora of allegations concerning USF and Ellucian's improper behavior, the record is devoid of evidence that either entity *intentionally* interfered with her existing or prospective rights of employment.

With respect to USF, the only person who could have intentionally interfered with DeBose's prospective rights of employment at UNF is Wilcox. While DeBose claims Wilcox told Traynham he wanted DeBose "to have nothing . . . not even a shirt . . . . bare, exposed with nothing," (A. DeBose Dep. Tr. 290:1-11), during her deposition DeBose was unable to clearly articulate who informed her of Wilcox's alleged "not even a shirt" statement. (A. DeBose Dep. Tr. 290:12-20). The best DeBose could do was to identify "a guy named Lance . . . who works at USF." (A. DeBose Dep. Tr. 290:18-20). Given the lack of information regarding the proponent of the "not even a shirt" comment, DeBose has failed to demonstrate that the testimony can be reduced to an admissible form. The same holds true for any statements regarding Wilcox's conversation with Traynham that were relayed to her by her friend Albert Colom. Mr. Colom is not a USF employee and, as a result, anything he told DeBose in May of 2015 is hearsay, and does not qualify as an admission of a party opponent or under any other exception to the rule against hearsay. Thus, DeBose's recitation of Colom's alleged version of the Traynham conversation is inadmissible in opposition to USF's summary judgment motion. Since DeBose lacks any firsthand knowledge regarding Wilcox's intentions pertaining to the Traynham conversation, and Wilcox unequivocally denies interfering with DeBose's prospective rights of employment, USF is entitled to summary judgment on Count V of the TAC.

As for Ellucian, DeBose similarly lacks any firsthand knowledge regarding why Ellucian was critical of the Registrar's Office in its report. DeBose claims that Diamond's body language, face, and demeanor was "angry," (A. DeBose Dep. Tr. 97:16-23), that she "went out of her way . . . to cast a negative light on the registrar's office," and she that

did not sincerely or honestly believe the opinions she expressed regarding the Registrar's Office. (A. DeBose Dep. Tr. 98:3—99:24). However, having an "angry" demeanor does not equate to tortious interference, and DeBose's beliefs regarding Diamond's alleged targeting of her office and lack of sincerity are pure conjecture. As a result, Ellucian is entitled to summary judgment on Count VI of the TAC.

F. Civil Conspiracy

To prove a claim for civil conspiracy, the plaintiff must show: (1) the existence of an agreement between two or more parties, (2) to do an unlawful act, (3) the doing of some overt act in furtherance of the conspiracy, and (4) damages. *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1271 (11th Cir. 2009). In the TAC, DeBose accuses USF and Ellucian of conspiring "to terminate Plaintiff's employment for pretextual reasons by knowingly including inaccurate and improper information in the Ellucian Report with the intent of damaging Plaintiff." (Doc. No. 45, at ¶ 230). The problem for DeBose, however, is that there is absolutely no record evidence of any agreement between USF and Ellucian to include information critical of the Registrar's Office in the Ellucian Report. There are no emails, letters, or alleged oral statements that show any anti-DeBose collusion between USF and Ellucian. Any belief by DeBose that such collusion occurred is pure conjecture and has not been properly supported for purposes of opposing the Defendants' summary judgment motions. As a result, DeBose's civil conspiracy claims fail as a matter of law.

V. Conclusion

Accordingly, it is

ORDERED that the Summary Judgment Motions are **GRANTED IN PART AND DENIED IN PART AS FOLLOWS:**

(1) USF's motion for summary judgment is **GRANTED** with respect to DeBose's claims of gender discrimination (Count I);

(2) USF's motion for summary judgment is **GRANTED** with respect to DeBose's claims of race *and* gender discrimination based on Hamilton's promotion to AVP EPM (Count I and III);

(3) USF's motion for summary judgment is **DENIED** with respect to DeBose's claims of race discrimination based on DeBose's non-reappointment as Registrar (Counts I and III);

(4) USF's motion for summary judgment is **GRANTED** with respect to DeBose's claims of retaliation based on Hamilton's promotion to AVP EPM (Counts II and IV);

(5) USF's motion for summary judgment is **DENIED** as to DeBose's claims of retaliation based on her non-reappointment as Registrar and Wilcox's poor reference to UNF (Counts II and IV);

(6) USF's motion for summary judgment is **GRANTED** as to DeBose's claims for disparate impact, breach of contract, tortious interference, and civil conspiracy (Counts V, VI, VII, IX, X);

(7) Ellucian's motion for summary judgment is **GRANTED** as to DeBose's claims for tortious interference and civil conspiracy (Counts VIII and X).

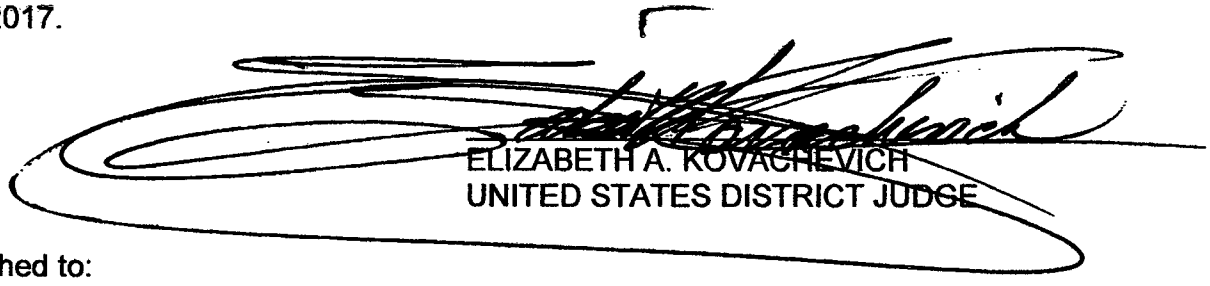
It is further **ORDERED** that DeBose and USF are directed to confer and file a status report within 30 days that contains the following information:

(1) The status or result of any previously or currently scheduled mediation and, if already concluded, the result of such mediation;

(2) Proposed dates for the mediation (if not already conducted) and trial of the remaining claims in this matter; and

(3) Any remaining issues to be addressed by the Court.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 29th day of September, 2017.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

Case No: 8:15-cv-2787-T-17AEP
UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

DeBose v. Univ. of S. Fla. Bd. of Trs.

Decided Sep 29, 2017

Case No: 8:15-cv-2787-T-17AEP

09-29-2017

ANGELA W. DEBOSE, Plaintiff, v. UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and ELLUCIAN COMPANY, L.P., Defendants.

ELIZABETH A. KOVACHEVICH UNITED STATES DISTRICT JUDGE

ORDER

This cause comes before the Court pursuant to the motions for summary judgment (Doc. Nos. 68 and 75) (the "**Summary Judgment Motions**") filed by the Defendants, University of South Florida Board of Trustees ("**USF**"), and Ellucian Company, L.P. ("**Ellucian**"), and the responses in opposition (Doc. Nos. 151 and 169) filed by *pro se* Plaintiff, Angela W. DeBose (the "**Plaintiff**" or "**DeBose**"). For the reasons set forth below, the Summary Judgment Motions are **GRANTED IN PART AND DENIED IN PART.**

I. Introduction

The Court must decide whether DeBose is entitled to a jury trial on her claims that USF terminated her employment after 27 years due to race/gender discrimination and/or in retaliation for her complaints of discrimination. Because DeBose has testified under penalty of perjury that high-ranking employees at USF have admitted to her that the person who fired her is, essentially, a virulent racist, DeBose is entitled to her day in Court on her claim that she was fired due to her race/gender. Similarly, DeBose strings together enough
2 circumstantial evidence to proceed to a jury on her retaliation claims, in which *2 she contends that she was terminated and given a poor employment review for protesting USF's alleged acts of discrimination. The remainder of DeBose's claims, however, are far too speculative and unsupported to withstand summary judgment. As a result, the Summary Judgment Motions are granted in part and denied in part.

II. Background

A. Plaintiff's employment history at USF

The Plaintiff was hired by USF in 1988 and became the USF Registrar on October 1, 1996. (Doc. No. 76, at 1). DeBose remained Registrar until her employment was terminated on August 19, 2015. (Doc. No. 76, at 10).

B. Plaintiff's tenure under the supervision of Paul Dosal

On July 1, 2010, Paul Dosal became DeBose's direct supervisor. (Doc. No. 76, at 2). DeBose initially had a "good relationship" with Dosal. (A. DeBose Dep. Tr. 33:3-6). So much so that during 2011 or 2012, (A. DeBose Dep. Tr. 169:11-14), Dosal allegedly confided in her that USF's Provost, Ralph Wilcox, is "a nasty son

of a bitch," and that "he's not going to think highly of you . . . because . . . you're black." (A. DeBose Dep. Tr. 167:19—168:14).

Things "changed" with Dosal, however, in late 2013 and early 2014. (A. DeBose Dep. Tr. 33:12-14). During that time period, DeBose claims that Dosal "started being more aggressive, edgy," "would clench his jaw," and "just stopped being pleasant at all." (A. DeBose Dep. Tr. 34:10-15). According to DeBose, Dosal's animosity towards her spread to others at USF, including another employee named Travis Thompson, who *3 allegedly told Dosal that DeBose was not collaborative and that things were not going well with Degree Works.[1] (A. DeBose Dep. Tr. 34:18-24—35:1-16).

[1] Previously, in the spring of 2011, Dosal transferred responsibility for USF's degree audit system, Degree Works, and its academic tracking system, ATLAS, to the Registrar's Office. (Doc. No. 76, at 3).

Bothered by these issues, Dosal allegedly met with DeBose in the spring of 2014 and counseled her to work and behave more collaboratively. (Doc. No. 76, at 3). USF claims that DeBose's behavior did not improve and, in June of 2014, Dosal informed DeBose that responsibility for Degree Works and ATLAS were being transferred from the Registrar's Office to the information technology department. (A. DeBose Dep. Tr. 55:13-19). According to Dosal, the decision to transfer Degree Works and ATLAS away from the Registrar's Office came from USF Provost Ralph Wilcox. (A. DeBose Dep. Tr. 55:23-24). Around the same time, an email circulated within USF that accused DeBose of being responsible for the resignation of another USF employee, Caurie Waddell. (A. DeBose Dep. Tr. 63:17-25); (P. Dosal Dep. Tr. 36:15-19). According to DeBose, she feared that the Caurie Waddell situation was "going to be used as . . . grounds for [her] termination." (A. DeBose Dep. Tr. 63:17-25).

C. The AVP EPM position

During the summer of 2014, while the foregoing issues were percolating through the school, the position of Assistant Vice President for Enrollment Planning and Management ("**AVP EPM**") became vacant at USF. (Doc. No. 76, at 4). Dosal was responsible for filling the vacant AVP EPM position and, after consultation with Ralph Wilcox and USF President Judy Genshaft, USF employee Billie Jo Hamilton was appointed to the AVP EPM position. (Doc. No. 76, at 5). DeBose disagreed with USF's *4 decision to directly appoint Hamilton to the AVP EPM position in lieu of conducting a national search. (A. DeBose Dep. Tr. 305:3-4). In fact, DeBose wanted the job for herself, and believed she was "a very strong candidate for the AVP position." (A. DeBose Dep. Tr. 310:2-4).

Dosal met with DeBose in July of 2014, ostensibly to try and patch things up. At that meeting, Dosal allegedly promised that he would "make it clear" to the USF community that he remained confident in DeBose, and told her he hoped she would remain a member of his team through the end of his tenure in 2019. (A. DeBose Dep. Tr. 66:8-15, 66:16-25—67:1-15). DeBose claims that during the meeting, Dosal responded to her request for an increase in compensation[2] by "allud[ing] to . . . N****r, you already make too much money." (A. DeBose Dep. Tr. 139:17-23). When DeBose responded that she believed she was not selected for the AVP EPM position because of her race, he allegedly "clenched his jaw" and denied that race was a factor, instead telling DeBose "the provost wants this." (A. DeBose Dep. Tr. 150:22—152:21). Following the meeting, on July 28, 2014, DeBose filed an internal complaint with USF, referencing discrimination with respect to the Degree Works/ATLAS transfer, Caurie Waddell email, and the AVP EPM appointment incidents.

[2] Two days after being informed of Hamilton's appointment to the AVP EPM position, DeBose sent a memorandum to Dosal requesting a pay raise. (Doc. No. 76, at 6).

D. DeBose's EEOC complaint and alleged acts of retaliation

After DeBose filed her internal complaint, she claims she "got a reprieve" from Dosal's allegedly hostile behavior. (A. DeBose Dep. Tr. 212:19-22). However, towards the end of the year, she filed a complaint with the EEOC, after which she alleges "things began to ramp up to an unacceptable level." (A. DeBose Dep. Tr. 230:6-
5 13). For instance, *5 DeBose claims that after she filed the EEOC complaint she was "asked into meetings with no agenda . . . was not treated well or respectfully or civilly . . . was marginalized . . . berated . . . [and] treated poorly." (A. DeBose Dep. Tr. 230:6-20).

E. The Alexis Mootoo incident and subsequent written reprimand

DeBose's acrimony with USF worsened on January 29, 2015, when DeBose attended a meeting with Dosal to discuss implementation of a new shared services model. (A. DeBose Dep. Tr. 77:1-10). Also present at the meeting was another African American employee, Alexis Mootoo, who allegedly had a history of "making [DeBose] and other people in [DeBose's] office uncomfortable with abusive language," including gratuitous use of the word "n****r." (A. DeBose Dep. Tr. 77:11-25—78:1-21). During the meeting, DeBose allegedly took umbrage with Mootoo's involvement in the implementation of the new shared services model, and referred to her as a "little girl" and told her to "stay in her lane." (A. DeBose Dep. Tr. 83:10-21).

While DeBose denies making those statements, Mootoo reported DeBose's alleged "little girl" comment to authorities at USF, who issued DeBose a written reprimand. (A. DeBose Dep. Tr. 83:22-24) (Doc. No. 77-2, at 2). According to DeBose, Mootoo fabricated the story in exchange for a deal with Dosal under which Mootoo would receive more favorable "pay and position." (A. Dep. Tr. 84:2—86:24). In support, DeBose claims that "Alexis Mootoo [would come] into the office supposedly for budget meetings and talking about n****r this and n****r that . . . [but that] Dosal knew about [her use of the word 'n****r]' and didn't have a problem with it." (A. DeBose Dep. Tr. 159:23—160:4).

F. DeBose's allegations of a "backdrop" of racist conduct at USF

DeBose claims that by this time in her career at USF, "[t]here were constant references to [her as an] angry
6 black woman, black bitch, n****r this, n****r that." (A. *6 DeBose Dep. Tr. 164:11-20). While DeBose reluctantly admits that Dosal did not call her an "angry black woman, black bitch, [or] n****r," (A. DeBose Dep. Tr. 164:21—165:9), she accuses Dosal of making veiled "racial statements" over the course of her time at USF, including a 2010/2011[3] comment in which he told her he was moving out of "the hood" and that she should do the same because they were the "only two people of color in EPM," (A. DeBose Dep. Tr. 166:5-16), a 2013[4] statement in which he asked her to attend Black Faculty Staff Association breakfasts, but that he did not want her to "be a token," (A. DeBose Dep. Tr. 169:24—170:13), and another incident in which he allegedly disparaged a "black Hispanic" person who had accused him of discrimination of having "forgotten . . . where he came from." (A. DeBose Dep. Tr. 172:24—173:21). DeBose further claims that Dosal told her that "others" at USF referred to her as "an angry black woman or black bitch or those kinds of things." (A. DeBose Dep. Tr. 171:19-23). DeBose claims that she asked Dosal who said those things, but that "he would not disclose" the source of his information. (A. DeBose Dep. Tr. 171:24—172:1).[5]

[3] (A. DeBose Dep. Tr. 166:17—167:16).

[4] (A. DeBose Dep. Tr. 171:8-12).

5 The "angry black woman" and "black bitch" comments allegedly occurred during 2014, when DeBose told Dosal about an incident in which some unknown person vandalized her car with the derogatory phrase "wild bitch." (A. DeBose Dep. Tr. 124:23—125:3; 172:2-19).

G. The Ellucian audit and report

Approximately one month after DeBose filed her EEOC complaint, during February of 2015, USF engaged a consulting firm, Ellucian, to review and assess its implementation of Degree Works. (Doc. No. 76, at 8). As part of that review, Ellucian selected consultant Andrea Diamond to visit the USF campus and meet with several employees, including DeBose. (Doc. No. 76, at 8). When DeBose met with Diamond, *7 she claims that Diamond's body language, face, and demeanor were "angry." (A. DeBose Dep. Tr. 97:16-23). After the meeting, Ellucian prepared a report (the "**Ellucian Report**") stating, among other things, that the Registrar's Office lacked an "atmosphere of working together for the good of the institution" and was "not willing to encompass change." (Doc. No. 76, at 8-9).

7

DeBose vehemently disagrees with the conclusions and recommendations contained in the Ellucian Report, and claims that Diamond "went out of her way . . . to cast a negative light on the registrar's office" and that Diamond did not sincerely or honestly believed the opinions she expressed regarding the Registrar's Office. (A. DeBose Dep. Tr. 98:3—99:24). Rather, DeBose believes that Ellucian colluded with USF to give the school a non-discriminatory reason to fire her form her position. In support, DeBose cites to evidence that the Registrar's Office was included in the scope of Ellucian's review at the request or suggestion of USF. (A. DeBose Dep. Tr. 101:18-102:3). However, DeBose also admits that she lacks any firsthand knowledge that USF was responsible for the inclusion of negative information or opinions about her office in the Ellucian Report. (A. DeBose Dep. Tr. 101:4-10).

H. DeBose's non-reappointment as Registrar

The Ellucian Report was ultimately the final nail in the coffin for DeBose's 27 year career USF. After reviewing the Ellucian Report, Ralph Wilcox made the decision to non-renew DeBose's employment. (Doc. No. 76, at 9). On May 19, 2015, DeBose was issued a notice of non-reappointment, which effectively terminated her employment as of August 19, 2015. (Doc. No. 76, at 10). *8

8

I. USF's negative review of DeBose

Following her receipt of the notice of non-reappointment, DeBose communicated with her friend, Albert Colom, regarding possible employment at the University of North Florida ("**UNF**"). (A. DeBose Dep. Tr. 13:15-18). On or around May 20, 2015, Colom sent a text message to DeBose stating that "depending on what you are interested in doing I can help here at UNF. That is if you want to stay in Florida. I have a few ideas." (Doc. No. 79-1, at 1). DeBose responded "Love to talk about them as your time permits." (Doc. No. 79-1, at 1).

On May 26, 2015, Ralph Wilcox had a brief telephone call with UNF Provost Dr. Earle Traynham regarding his assessment of DeBose's professional capabilities for possible employment at UNF. (Doc. No. 78, at ¶¶ 8-9). Wilcox claims he was complementary of DeBose's technical skills and abilities, but indicated that he believed she was not collaborative and was resistant to change. (Doc. No. 78, at ¶¶ 8-9). DeBose tells a far different story, claiming that according to Colom, Wilcox told Traynham that DeBose was "toxic," "horrible," "uncollaborative," "awful," "if he hired [her], that he would regret it," and "he had been trying to get rid of [her] for years." (A. DeBose Dep. Tr. 15:23-25—16:1-2). DeBose further claims "a guy named Lance," who "works at USF," told her that Wilcox bragged to Traynham "about undoing [her]"; that he "wanted [DeBose] to have nothing . . . not even a shirt . . . . bare, exposed with nothing." (A. DeBose Dep. Tr. 290:1-11).

J. DeBose is not selected for employment at UNF

Following the Traynham conversation, on May 27, 2015, DeBose received a text message from Colom stating
9 "Hello spoke to my provost and we decided to pass on the *9 idea. I had good hope we could work together again. I am so sorry." (Doc. No. 79-1, at 2). Ultimately, DeBose did not obtain employment with UNF.

III. Standard of Review

"Federal Rule of Civil Procedure 56 requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *U.S. Commodity Futures Trading Com'n v. Am. Derivatives Corp.*, 2008 WL 2571691, at *2 (N.D. Ga. June 23, 2008) (internal quotations omitted). "The moving party bears the initial responsibility of informing the court of the bases for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Id.* (internal quotations omitted). "Where the moving party makes such a showing, the burden shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist." *Id.* "A fact is not material if a dispute over that fact will not affect the outcome of the suit under the governing law." *Id.* "An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.*

Importantly, on a motion for summary judgment, the Court "may consider only that evidence which can be reduced to an admissible form." *Rowell v. BellSouth Corp.*, 433 F.3d 794, 800 (11th Cir. 2005). "To be admissible in support of or in opposition to a motion for summary judgment, a document must be authenticated by and attached to an affidavit that meets the requirements of Rule 56[c][4], and the affiant must be a person
10 through whom the exhibits could be admitted into evidence." *Sauders v. Emory* *10 *Healthcare, Inc.*, 360 F. App'x 110, 113 (11th Cir. 2010). Here, DeBose has not authenticated any of the approximately 550 pages of documents attached to Doc. Nos. 165, 166, 187, and 188 and, as a result, none of those documents will be considered in response to or in support of the Summary Judgment Motions. Instead, the Court will restrict its analysis to those materials properly before the Court, including DeBose's deposition transcript and the affidavits submitted by representatives of the Defendants.

IV. Discussion

In her third amended complaint (Doc. No. 45) (the "**TAC**"), DeBose asserts the following claims: Count I - gender and/or race (primarily gender) discrimination under Title VII[6] and the FCRA[7] based on USF's failure to promote her to the AVP EPM position and her non-reappointment as Registrar; Count II - retaliation under Title VII and the FCRA based on her gender coupled with USF's failure to promote her to the AVP EPM position, her non-reappointment as Registrar, and Wilcox's poor reference to UNF; Count III gender and/or race discrimination (primarily race) under Title VII and the FCRA based on USF's failure to promote her to the AVP EPM position and based on her non-reappointment as Registrar; Count IV - retaliation under Title VII and the FCRA based on her race coupled with USF's failure to promote her to the AVP EPM position, her non-reappointment as Registrar, and Wilcox's poor reference to UNF; Count V - disparate impact based on her gender under Title VII and the FCRA related to the direct appointment of Hamilton to the AVP EPM position; Count VI - disparate impact based on her race under Title VII and the FCRA related to the direct appointment of Hamilton to the AVP EPM position; Count VII - breach of contract; Count VIII - tortious interference based
11 *11 on Ellucian's conduct in drafting the Ellucian Report; Count IX - tortious interference based on USF's

conduct in giving her a negative review to UNF; and Count X - civil conspiracy between Ellucian and USF related to the Ellucian Report. Because both Defendants have moved for summary judgment on all of the Plaintiff's claims, the Court will address each category of claims, in turn, below.

[6] All references to "Title VII" are to Title VII of the Civil Rights Act of 1964 ("**Title VII**").

[7] All references to the "FCRA" are to Chapter 760 of the Florida Statutes (the "**FCRA**"). --------

A. Employment Discrimination Claims

In Counts I and III of the TAC, the Plaintiff asserts claims for gender and race discrimination, respectively, under Title VII and the FCRA. "Title VII prohibits an employer from discriminating 'against any individual with respect to [her] compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin.'" *Vickers v. Fed. Express. Corp.*, 132 F.Supp.2d 1371, 1377 (S.D. Fla. 2000) (quoting 42 U.S.C. § 2000e-2(a)). "Since the FCRA essentially mirrors Title VII, Florida courts look to federal case law construing Title VII" when ruling on FRCA claims. *McCabe v. Excel Hospitality, Inc.*, 294 F.Supp.2d 1311, 1313 n.1 (M.D. Fla. 2003).

Discriminatory intent, the hallmark of a claim for employment discrimination under Title VII and the FRCA, "can be established through either direct or circumstantial evidence." *Vickers*, 132 F.Supp.2d at 1377 (S.D. Fla. 2000). Here, while the Plaintiff's deposition testimony references a plethora of racially charged remarks during her tenure at USF, most of those statements were remote in time from the adverse employment actions at issue in this case and, in any event, do not specifically address USF's reasons for terminating DeBose's employment. *See* (A. DeBose Dep. Tr. 186:11-18) (referencing an alleged "backdrop" of statements about her "race, black woman, angry black woman, black bitch, those kinds of things," but not specifically linking any of the
12 foregoing statements to the alleged adverse employment actions). Thus, given the lack of direct *12 evidence of discrimination, the Court must consider whether there is sufficient circumstantial evidence of USF's alleged discriminatory intent for the Plaintiff to survive summary judgment.

Where the "plaintiff seeks to prove intentional discrimination through circumstantial evidence of the employer's intent . . . [the] [p]lainitiff has the initial burden of establishing a prima facie case of discrimination." *Id.* at 1378-79. A plaintiff makes out a prima facie case of discrimination when she shows, by a preponderance of the evidence, that (1) she is a member of a protected class, (2) she was qualified for the position, (3) she experienced an adverse employment action, and (4) she was replaced by someone outside of her protected class or received less favorable treatment than a similarly situated person outside of her protected class." *Flowers v. Troup Cty., Ga., Sch. Dist.*, 2015 WL 6081186, at *6 (11th Cir. Oct. 16, 2015).

"[T]he establishment of a prima facie case creates a presumption that the employer discriminated against a plaintiff on the basis of race." *Id.* "[T]he burden then shifts to the employer to produce a legitimate nondiscriminatory reason for the action taken against the plaintiff." *Id.* "Once the employer advances its legitimate, nondiscriminatory reason the plaintiff's prima facie case is rebutted and all presumptions drop from the case." *Id.* The plaintiff then bears the "ultimate burden of persuading the court that she has been the victim of intentional discrimination." *Id.* Accordingly, merely establishing a prima facie case of racial discrimination "is not, and never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion." *Id.* Rather, the "critical decision that must be made is whether the plaintiff has created a triable issue concerning
13 the employer's discriminatory intent." *Id.* *13

Here, USF acknowledges that (1) DeBose is a member of a protected class, (2) Hamilton's promotion to AVP EPM and DeBose's non-renewal as Registrar constituted adverse employment actions, and (3) genuine issues of material fact exist regarding whether DeBose was qualified for her position as Registrar. However, USF disputes that DeBose has carried her initial burden of establishing that the written reprimand she received following the Alexis Mootoo episode constituted an adverse employment action, or that she received less favorable treatment than a similarly situated person outside of her protected class. Moreover, even if DeBose can make out a prima facie case on her promotion discrimination claim, USF contends that DeBose has failed to show that USF's decision to promote Hamilton was pretextual. The Court will address each issue in turn below.

1. Written Reprimand

For starters, Counts I and III of the TAC assert claims for employment discrimination based on the adverse employment actions of "failure to promote" and for "termination" of employment. (TAC, at ¶¶ 129, 142). Since the written reprimand that DeBose received in connection with the Alexis Mootoo incident has not been identified as an adverse employment action in either Count I or III of the TAC, DeBose has failed to plead, much less prove, that the written reprimand was issued with discriminatory intent. Moreover, even if the Court were to liberally construe the TAC to include such a claim, "to prove adverse employment action . . . an employee must show a *serious and material* change in the terms, conditions, or privileges of employment." *Anderson v. United Parcel Serv., Inc.*, 248 F. App'x 97, 100 (11th Cir. 2007) (emphasis in original). "[T]he employee's subjective view of the significance and adversity of the employer's action is not controlling; the
14 employment action must be materially adverse as viewed by a *14 reasonable person in the circumstances." *Id.* Here, DeBose has failed to demonstrate that the written reprimand resulted in a serious and material change in the terms, conditions, or privileges of her employment. To the contrary, the record is devoid of any evidence that the written reprimand had *any* adverse effect on DeBose's employment. For that reason alone, USF is entitled to summary judgment on any claim for employment discrimination based on the written reprimand.

2. Less Favorable Treatment than a Similarly Situated Person Outside of DeBose's Protected Class

As part of the Title VII plaintiff's prima facie case, the plaintiff must show that "[s]he was replaced by someone outside of [her] protected class or received less favorable treatment than a similarly situated person outside of [her] protected class." *Flowers*, 2015 WL 6081186, at *6. Importantly, "when a Title VII plaintiff alleges that an employer discriminates against black females, the fact that . . . white females are not subject to discrimination is irrelevant and must not form any part of the basis for a finding that the employer did not discriminate against the black female plaintiff." *Jefferies v. Harris Cty. Community Action Ass'n.*, 615 F.2d 1025, 1034 (5th Cir. 1980).

With respect to the Plaintiff's promotion discrimination claim, it is undisputed that Hamilton is a white female. Thus, while DeBose has failed to establish a prima facie case of gender discrimination with respect to the AVP EPM position, *see Jefferies*, 615 F.2d at 1030 (noting that "where both the person seeking to be promoted and the person achieving that promotion were women, 'because the person selected was a woman, we cannot accept sex discrimination as a plausible explanation for (the promotion) decision.'" (quoting *Adams v. Reed*, 567 F.2d 1283, 1287 (5th Cir. 1978))), the Plaintiff has made a prima facie case of intersectional race *and* gender
15 discrimination with respect to *15 Hamilton's promotion. *See* (A. DeBose Dep. Tr. 127:21-24) (stating that DeBose believes "race/gender" was the reason for her failure to be promoted the AVP EPM position).

As to the Plaintiff's termination claim, the record contains an unverified statement in DeBose's statement of disputed facts that Carrie Garcia, a white female, "was appointed by Wilcox and Dosal as Acting University Registrar following DeBose's termination." (Doc. No. 170, at 33). Since USF does not appear to contest that DeBose's position was filled by someone outside of her protected class as a black female, and it is likely that DeBose would properly support this assertion of fact if "give[n] an opportunity to properly support or address the fact" under Rule 56(e)(1), the Court will presume for purposes of this order that the Acting University Registrar position was filled by a white female. Interestingly, however, at her deposition, DeBose testified that race, and race alone, was the reason for her termination. (A. DeBose Dep. Tr. 128:12-23). Since it is undisputed that the Registrar position was filled by a female, and DeBose appears to have abandoned her claim of intersectional discrimination with respect to her termination claim, USF is entitled to summary judgment on DeBose's termination claim based on gender discrimination. However, because the Registrar position was filled by a white female, DeBose has carried her burden of establishing a prima facie claim for race discrimination on her termination claim.

3. Whether USF's Decisions to Promote Hamilton and Terminate DeBose were Pretextual

USF has proffered a legitimate, non-discriminatory reason for its decision to promote Hamilton, and not DeBose, to the position of AVP EPM, as well as for its decision to terminate DeBose's employment as Registrar. *See* (Doc. No. 77, at ¶ 17) (stating that DeBose was not selected for the AVP EPM position because
16 she was not as qualified for *16 the position as Hamilton); (Doc. No. 78, at ¶ 6) (stating that DeBose was terminated for not acting in a collaborative manner and based on the opinions stated in the Ellucian Report). The question thus becomes whether DeBose has identified sufficient evidence of intentional discrimination to create a triable issue on her claims for employment discrimination. *See Wheatfall v. Bd. of Regents of Univ. System of Ga.*, 9 F.Supp.3d 1342, 1356 (N.D. Ga. 2014) ("[T]he ultimate question in every employment discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination.").

With respect to the AVP EPM position, DeBose supports her claim that she was subjected to race/gender discrimination on the fact that (1) Dosal gave Hamilton the opportunity to "go back to her position exclusively as director of financial aid" if she didn't do well as AVP EPM; (2) "the [AVP EPM] position was not posted or advertised and that . . . people [including DeBose] were given no knowledge or awareness of the position"; and (3) Dosal attempted to make "concessions" to DeBose regarding her salary and job title if she would "go along" with Hamilton's appointment. (A. DeBose Dep. Tr. 147:2—148:20). Frankly, DeBose's own testimony demonstrates that USF's decision to promote Hamilton over her had nothing to do with the fact that she is a black female. Perhaps Dosal exercised poor judgment by not conducting a nationwide search or hand-picking DeBose for the position. Perhaps he made the right choice. Regardless, whether promoting Hamilton was the right or wrong choice is unimportant because DeBose herself does not cite race or gender as a reason for Hamilton's promotion.

To the contrary, DeBose obfuscates the true reasons for Hamilton's selection by making vague references to a
17 handful of allegedly racial statements uttered by Dosal and *17 Wilcox during her tenure at USF. Most of these statements, including Dosal's statements about "leaving the hood" and not wanting DeBose to be a "token" were remote in time from Hamilton's promotion. Moreover, even if Wilcox is "a nasty son of a bitch" who was never "going to think highly of [DeBose] . . . because . . . [she is] black," it is undisputed that Dosal, not Wilcox, promoted Hamilton to the AVP EPM position. *See* (Doc. No. 76, at 5) (stating that Dosal appointed Hamilton); (Doc. No. 170, at 12) (failing to dispute that Dosal appointed Hamilton). Since the record is devoid

of evidence that race and gender played a role in Dosal's decision to appoint Hamilton to the AVP EPM position, or that Wilcox's alleged racial animus towards DeBose influenced Dosal's hiring decision, DeBose has failed to show that USF's proffered non-discriminatory reason for not promoting DeBose was pretextual.

As for DeBose's claim of race-based termination discrimination, it is undisputed that Wilcox made the decision to terminate DeBose. *See* (Doc. No. 68, at ¶ 6) (stating that Dosal "was not involved in the decision to non-renew DeBose's employment). While Wilcox claims that he made the decision to non-renew DeBose's employment after reviewing the Ellucian Report, USF does not attempt to deal with the so-called evidentiary elephant in the room: DeBose's deposition testimony that Dosal told her that Wilcox was never "going to think highly of [DeBose] . . . because . . . [she is] black." At this stage of the proceedings, the Court is required to draw all reasonable inferences in favor of the non-moving party, DeBose, and given DeBose's testimony that Wilcox harbored racial animus towards her, she is entitled to a reasonable inference that her termination was discriminatory. This is true even though Dosal's alleged statement that Wilcox harbored racist views towards
18 DeBose was remote in time from her termination. Stated simply, *18 DeBose's sworn testimony that Wilcox is a virulent racist cannot be discounted on summary judgment and, as a result, is enough to get her to a jury on her claim for race-based termination discrimination.

B. Retaliation Claims

"Title Vll's retaliation provision makes it unlawful to discriminate against any individual because she has opposed any practice made an unlawful practice by the Act." *Demers v. Adams Homes of Nw. Fla., Inc.*, 321 F. App'x 847, 852 (11th Cir. 2009). "To establish a prima facie case of retaliation, the plaintiff must show: (1) that [s]he engaged in statutorily protect expression; (2) that [s]he suffered an adverse employment action; and (3) that there is some causal relationship between the two events." *Holifield v. Reno*, 115 F.3d 1555, 1566 (11th Cir. 1997). Once the plaintiff establishes her prima facie case, the employer must proffer a legitimate, non-discriminatory reason for the adverse employment action. *Id.* "If the employer offers legitimate reasons for the employment action, the plaintiff must then demonstrate that the employer's proffered explanation is a pretext for retaliation." *Id.*

In Counts Il and IV of the TAC, the Plaintiff asserts claims for retaliation based on her gender and race, respectively. Specifically, the Plaintiff alleges that she was retaliated against for filing internal complaints with USF, charges of discrimination with the EEOC, and an action seeking a preliminary injunction before this Court. *See* (Doc. No. 45, at ¶ 147). DeBose claims that because she engaged in the foregoing protected activities, she was denied a promotion to the AVP EPM position, terminated from her position as Registrar, and
19 given a poor reference to the Provost of UNF. (Doc. No. 45,a t ¶ 148). *19

For starters, the Plaintiff's claims that she was denied the AVP EPM promotion due to unlawful retaliation are without merit. It is undisputed that DeBose did not engage in any statutorily protected activity until *after* she learned that Hamilton had been appointed to the AVP EPM position. *Compare* (Doc. No. 79-8) (demonstrating that DeBose's first ethics point complaint was submitted on July 28, 2014), *with* (Doc. No. 77, at ¶ 19) (stating that Dosal notified DeBose of Hamilton's appointment to the AVP EPM position on July 15, 2014). Thus, Counts II and IV, to the extent they are based on Hamilton's promotion to AVP EPM, fail as a matter of law due to a lack of causation. *See Univ. of Tex. Sw. Med. Center v. Nassar*, 133 S.Ct. 2517, 2534 (2013) (stating that to satisfy the causation element, the plaintiff "must establish that his or her protected activity was a but for cause of the alleged adverse action by the employer.").

The Plaintiff's claims that she was terminated and given a poor reference in retaliation for engaging in statutorily protected activities, however, require a more thorough analysis. USF does not dispute that the Plaintiff engaged in statutorily protected activity, or that she suffered an adverse employment action when she was terminated and given a negative reference to the Provost of UNF. To the contrary, USF attacks the Plaintiff's ability to establish the causation element of her prima facie case and, to the extent she can make out a prima facie case, USF contends that DeBose cannot show that her termination and any poor review were pretext for retaliation.

Prior to the Supreme Court's *Nassar* decision, a plaintiff could satisfy this requirement by showing, among other things, "close temporal proximity" between the protected activity and the adverse employment action. *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). Following *Nassar*, however, a plaintiff must show
20 more than *20 temporal proximity between the protected activity and their termination. *Cf. Smith v. City of New Smyrna Beach*, 588 F. App'x 965, 981-82 (11th Cir. 2014). Instead, to establish a claim for retaliation, the plaintiff must present evidence "that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Nassar*, 133 S.Ct. at 2533.

Here, the record contains testimonial evidence that after DeBose filed her EEOC complaint on January 15, 2015, (Doc. No. 76, at 6), she was "asked into meetings with no agenda." (A. DeBose Dep. Tr. 230:6-20). Shortly thereafter, the Alexis Mootoo incident occurred, which DeBose claims was part of a deal in which Dosal promised Mootoo more favorable "pay and position." (A. Dep. Tr. 84:2—86:24). Approximately one month later, in February of 2015, USF engaged Ellucian to review and assess its implementation of Degree Works. (Doc. No. 76, at 8). This, as we now know, ultimately culminated in the Ellucian Report, which USF cited as its basis for its decision not to renew DeBose's employment. Shortly thereafter, Ralph Wilcox acknowledges that he told UNF Provost Earle Traynham that DeBose was "not collaborative and that she was resistant to change." (Doc. No. 78, at ¶ 9). DeBose's version of the negative reference is far more colorful, with DeBose claiming that people at USF and elsewhere told her Ralph Wilcox told Traynham he wanted DeBose "to have nothing . . . not even a shirt . . . . bare, exposed with nothing." (A. DeBose Dep. Tr. 290:1-11).

Clearly, things between DeBose and USF went sideways between 2014 and 2015, and during that period of time, DeBose filed multiple internal and external complaints alleging discrimination. DeBose's version of the facts, i.e. that she was the victim of a massive conspiracy because she filed complaints of discrimination, may
21 not ultimately be *21 accepted by a jury, but there is certainly enough circumstantial evidence of retaliation to afford DeBose her day in Court. Specifically, given the close temporal proximity between DeBose's EEOC complaint and USF's decision to engage Ellucian, DeBose's testimony that the Registrar's Office was included in the scope of Ellucian's engagement at the request of USF, DeBose's testimony that she was treated differently following her complaints of discrimination, and the timing and circumstances surrounding the Traynham conversation, a reasonable jury could find that USF's actions were retaliatory. Thus, USF's motion for summary judgment is denied as to DeBose's claims that her termination and poor reference were retaliatory.

C. Disparate Impact Claims

A disparate impact theory of discrimination "prohibits *neutral* employment practices which, while non-discriminatory on their face, visit an adverse, disproportionate impact on a statutorily-protected group." *E.E.O.C. v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1274 (11th Cir. 2000) (emphasis in original). To prove a disparate impact claim, the plaintiff must show: (1) there is a significant statistical disparity between the proportion of minorities available in the labor pool and the proportion of minorities hired by the employer; (2) there is a specific, facially-neutral employment practice causing the disparity; and (3) that a causal nexus exists

between the identified employment practice and the statistical disparity. *Id.* Importantly, to prevail on a claim for disparate impact, "the plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group." *Id.* At 1274-75.

Here, the only statistical evidence offered in support of the Plaintiff's disparate impact claims is an "Affidavit of
22 Expert Opinion" offered by Saba Baptiste-Alkebu-Lan, a *22 purported subject matter expert on employment discrimination, (Doc. No. 177), and an unauthenticated spreadsheet attached to Doc. No. 188. *See* (Doc. No. 188, at 179). Since Ms. Baptiste-Alkebu-Lan's report is dated September 5, 2017, well after the deadline to disclose expert reports and the close of discovery, the affidavit is untimely and inadmissible in response to USF's motion for summary judgment. The same holds true for the spreadsheets submitted by the Plaintiff, which have not been authenticated and, as a result, are not admissible in response to summary judgment Given, the Plaintiff's failure to support her disparate impact claims with admissible evidence in response to summary judgment, USF is entitled to summary judgment on Counts V and VI of the TAC.

D. Breach of Contract

To recover damages for breach of contract, the plaintiff must prove: (1) the plaintiff and defendant entered into a contract, (2) the plaintiff did what the contract required, (3) all conditions required by the contract for defendant's performance occurred, (4) the defendant failed to perform under the contract, and (5) the plaintiff was harmed by that failure. *Atlantica One, LLC v. Adragna*, 177 So. 3d 89, 91 (Fla. 5th DCA 2015). The Court previously dismissed DeBose's claims for breach of contract not based on an express contract. (Doc. No. 50, at 3-4). While DeBose previously represented that USF withheld a copy of her written employment agreement, (Doc. No. 49, at 6), discovery is now complete, and no written employment agreement has been shown to exist. For this reason alone, DeBose's breach of contract claim fails as a matter of law.

Moreover, it appears that in actuality DeBose was employed pursuant to USF Regulation 10.210, which states that "employment is at will and . . . employees may be non-reappointed upon written notice from the CAO."
23 (Doc. No. 206-1, at 2). Under *23 Regulation 10.201, "the [required] period of notification prior to the effective date of non-reappointment is . . . [t]hree (3) months' . . . for employees with two (2) or more years of continuous employment." (Doc. No. 206-1, at 2). "Following receipt of the notice of non-reappointment, the CAO has the option to assign the employee other duties and responsibilities and/or to require the employee to use accrued annual leave." (Doc. No. 206-1, at 3). It is undisputed that this is exactly what happened here: DeBose was given three months' notice of her non-renewal, and was required to use accrued annual leave during the three month period following receipt of the notice of non-reappointment. As a result, DeBose has failed to prove that USF breached any of its non-reappointment procedures.

E. Tortious Interference

Under Florida law, the elements of a claim for tortious interference are: "(1) the existence of a business relationship that affords the plaintiff existing or prospective rights; (2) the defendant's knowledge of the business relationship; (3) the defendant's intentional and unjustified interference with the relationship; and (4) damage to the plaintiff." *Int'l Sales & Serv., Inc. v. Austral Insulated Products, Inc.*, 262 F.3d 1152, 1154 (11th Cir. 2001). In the TAC, the Plaintiff asserts claims for tortious interference against USF and Ellucian, claiming that Ralph Wilcox's negative review of her performance cost her a prospective employment opportunity at UNF, and that Ellucian's statements criticizing the Registrar's Office in its report caused her termination from

USF. Neither claim holds water for one very simple reason: despite DeBose's plethora of allegations concerning USF and Ellucian's improper behavior, the record is devoid of evidence that either entity *intentionally* interfered with her existing or prospective rights of employment. *24

With respect to USF, the only person who could have intentionally interfered with DeBose's prospective rights of employment at UNF is Wilcox. While DeBose claims Wilcox told Traynham he wanted DeBose "to have nothing . . . not even a shirt . . . . bare, exposed with nothing," (A. DeBose Dep. Tr. 290:1-11), during her deposition DeBose was unable to clearly articulate who informed her of Wilcox's alleged "not even a shirt" statement. (A. DeBose Dep. Tr. 290:12-20). The best DeBose could do was to identify "a guy named Lance . . . who works at USF." (A. DeBose Dep. Tr. 290:18-20). Given the lack of information regarding the proponent of the "not even a shirt" comment, DeBose has failed to demonstrate that the testimony can be reduced to an admissible form. The same holds true for any statements regarding Wilcox's conversation with Traynham that were relayed to her by her friend Albert Colom. Mr. Colom is not a USF employee and, as a result, anything he told DeBose in May of 2015 is hearsay, and does not qualify as an admission of a party opponent or under any other exception to the rule against hearsay. Thus, DeBose's recitation of Colom's alleged version of the Traynham conversation is inadmissible in opposition to USF's summary judgment motion. Since DeBose lacks any firsthand knowledge regarding Wilcox's intentions pertaining to the Traynham conversation, and Wilcox unequivocally denies interfering with DeBose's prospective rights of employment, USF is entitled to summary judgment on Count V of the TAC.

As for Ellucian, DeBose similarly lacks any firsthand knowledge regarding why Ellucian was critical of the Registrar's Office in its report. DeBose claims that Diamond's body language, face, and demeanor was "angry," (A. DeBose Dep. Tr. 97:16-23), that she "went out of her way . . . to cast a negative light on the registrar's office," and she that *25 did not sincerely or honestly believe the opinions she expressed regarding the Registrar's Office. (A. DeBose Dep. Tr. 98:3—99:24). However, having an "angry" demeanor does not equate to tortious interference, and DeBose's beliefs regarding Diamond's alleged targeting of her office and lack of sincerity are pure conjecture. As a result, Ellucian is entitled to summary judgment on Count VI of the TAC.

F. Civil Conspiracy

To prove a claim for civil conspiracy, the plaintiff must show: (1) the existence of an agreement between two or more parties, (2) to do an unlawful act, (3) the doing of some overt act in furtherance of the conspiracy, and (4) damages. *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1271 (11th Cir. 2009). In the TAC, DeBose accuses USF and Ellucian of conspiring "to terminate Plaintiff's employment for pretextual reasons by knowingly including inaccurate and improper information in the Ellucian Report with the intent of damaging Plaintiff." (Doc. No. 45, at ¶ 230). The problem for DeBose, however, is that there is absolutely no record evidence of any agreement between USF and Ellucian to include information critical of the Registrar's Office in the Ellucian Report. There are no emails, letters, or alleged oral statements that show any anti-DeBose collusion between USF and Ellucian. Any belief by DeBose that such collusion occurred is pure conjecture and has not been properly supported for purposes of opposing the Defendants' summary judgment motions. As a result, DeBose's civil conspiracy claims fail as a matter of law.

V. Conclusion

Accordingly, it is

ORDERED that the Summary Judgment Motions are **GRANTED IN PART AND DENIED IN PART AS FOLLOWS**: *26

(1) USF's motion for summary judgment is **GRANTED** with respect to DeBose's claims of gender discrimination (Count I);

(2) USF's motion for summary judgment is **GRANTED** with respect to DeBose's claims of race *and* gender discrimination based on Hamilton's promotion to AVP EPM (Count I and III);

(3) USF's motion for summary judgment is **DENIED** with respect to DeBose's claims of race discrimination based on DeBose's non-reappointment as Registrar (Counts I and III);

(4) USF's motion for summary judgment is **GRANTED** with respect to DeBose's claims of retaliation based on Hamilton's promotion to AVP EPM (Counts II and IV);

(5) USF's motion for summary judgment is **DENIED** as to DeBose's claims of retaliation based on her non-reappointment as Registrar and Wilcox's poor reference to UNF (Counts II and IV);

(6) USF's motion for summary judgment is **GRANTED** as to DeBose's claims for disparate impact, breach of contract, tortious interference, and civil conspiracy (Counts V, VI, VII, IX, X);

(7) Ellucian's motion for summary judgment is **GRANTED** as to DeBose's claims for tortious interference and civil conspiracy (Counts VIII and X).

It is further **ORDERED** that DeBose and USF are directed to confer and file a status report within 30 days that contains the following information:

(1) The status or result of any previously or currently scheduled mediation and, if already concluded, the result of such mediation;

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(2) Proposed dates for the mediation (if not already conducted) and trial of the remaining claims in this matter; and

(3) Any remaining issues to be addressed by the Court.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 29th day of September, 2017.

/s/

ELIZABETH A. KOVACHEVICH

UNITED STATES DISTRICT JUDGE Copies furnished to: Counsel of Record
Unrepresented Parties