

No. 20-1140

In The
Supreme Court of the United States

ANGELA DEBOSE,

Petitioner,

v.

UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

RESPONDENT'S APPENDIX

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Petition for Writ of Certiorari: February 6, 2021
Pending Ruling

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R.A.001

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.

**ORDER GRANTING IN PART AND DENYING
IN PART USFBOT'S SECOND MOTION TO DISMISS**

This cause came before the Court pursuant to the *Defendant University of South Florida Board of Trustees' Motion to Dismiss* (Doc. No. 47) (the "**Motion to Dismiss**") filed by Defendant, University of South Florida Board of Trustees (the "**Defendant**" or "**USFBOT**"), and the *Plaintiff's Opposition to Defendant USFBOT's Motion to Dismiss* (Doc. No. 49) (the "**Response**") filed by the Plaintiff, Angela W. DeBose (the "**Plaintiff**"). Upon review, the Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**.

I. Background

The Plaintiff commenced this case by filing a complaint (Doc. No. 1) and an amended complaint (Doc. No. 5) on December 4 and 11, 2015. USFBOT and Defendant, Ellucian Company, L.P. ("**Ellucian**"), filed motions to dismiss (Doc. Nos. 17 & 20) on December 17, 2015 and February 3, 2016, respectively. On April 5, 2016, the Court entered its *Order Granting in Part and Denying in Part Defendants' Motions to Dismiss* (Doc. No. 38) (the "**Order**"). In the Order, the Court dismissed the Plaintiff's claims for breach of contract and promissory estoppel for failure to state a claim. See (Order, at 12-

R.A.002

13). In so doing, the Court granted the Plaintiff leave to amend its claim based on the alleged written contract to extend the Plaintiff's employment through June 30, 2015, but dismissed the Plaintiff's contract and promissory estoppel claims based on the alleged oral agreement to extend the Plaintiff's employment through 2019 with prejudice. (Order, at 13). The Court's ruling was predicated on the case of *Pan-Am Tobacco Corp. v. Dept. of Corrs.*, 471 So.2d 4 (Fla. 1984), which affords state agencies sovereign immunity in contract actions that are not based on express written contracts. (Order, at 12).

On May 3, 2016, the Plaintiff filed a third amended complaint (Doc. No. 45) (the "TAC"). Ellucian filed an answer and affirmative defenses (Doc. No. 46) on May 12, 2016, and USFBOT filed the Motion to Dismiss on May 20, 2016. In its Motion to Dismiss, USFBOT argues that Count VII of the TAC (i) should be dismissed with prejudice to the extent that the Plaintiff is still seeking to recover on the alleged oral contract, and (ii) otherwise fails to state a claim with respect to the alleged written contract. The Plaintiff responds that she has adequately pled her claim for breach of the express contract, and that discovery will reveal that the oral contract is also manifested in writing.

II. Legal Analysis

A. Federal Pleading Standard

Federal Rule of Civil Procedure 12(b)(6) allows a complaint to be dismissed for failure to state a claim upon which relief can be granted. When reviewing a motion to dismiss, a court must "accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Alvarez v. Attorney Gen. for Fla.*, 679 F.3d 1257, 1261 (11th Cir. 2012). Legal conclusions, as opposed to well-pled factual allegations, "are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

R.A.003

Courts apply a two-pronged approach when considering a motion to dismiss. *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010). First, a court must “eliminate any allegations in [a] complaint that are merely legal conclusions.” *Id.* A court must then take any remaining well-pleaded factual allegations, “assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.* (internal quotations omitted). A complaint that does not “contain sufficient factual matter, accepted as true, to state a claim . . . plausible on its face” is subject to dismissal. *Id.* at 1289. Further, dismissal is warranted under Rule 12(b)(6) if, assuming the truth of the complaint’s factual allegations, a dispositive legal issue precludes relief. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989).

B. Sovereign Immunity/State of Frauds

As the Court discussed in its Order, *Pan-Am Tobacco* has been interpreted to stand for the proposition that “[a]bsent a written agreement . . . a vendor cannot sue the state for money damages on a contract theory.” *City of Gainesville v. State Dept. of Transp.*, 778 So.2d 519, 530 (Fla. 1st DCA 2001). Moreover, Florida’s Statute of Frauds provides that “agreements not to be performed within one year of their making” are not “enforceable unless reduced to writing and signed by the parties to be charged.” See *DK Arena, Inc. v. EB Acquisitions I, LLC*, 112 So.3d 85, 92 (Fla. 2013). Importantly, the Florida Supreme Court has “unequivocally rejected a promissory estoppel exception to Florida’s Statute of Frauds.” *Id.* at 94.

Here, the TAC contains allegations that the Plaintiff and USFBOT entered into an oral agreement to extend her employment through 2019. (TAC, at ¶ 163). The Plaintiff further alleges that she acted in reliance on that agreement, and that USFBOT failed to repudiate the agreement when she subsequently attempted to confirm the effectiveness

R.A.004

of the oral contract via email. (TAC, at ¶¶ 169-174). Upon review, these allegations are insufficient to state a claim against USFBOT under *Pan-Am Tobacco* and *DK Arena*. Taken as true, the allegations in the TAC regarding the extension of the Plaintiff's employment agreement through 2019 do not plausibly suggest a breach of an express contract. At best, the Plaintiff is alleging that because (i) she acted to her detriment in reliance on the oral agreement, and (ii) USFBOT failed to repudiate the oral contract in response to her email communications, the oral agreement is not barred by the Statute of Frauds. Even if these allegations were sufficient to overcome the Statute of Frauds, which they are not,¹ the Plaintiff has still not alleged the existence of an express written agreement to extend her employment through 2019, as required by *Pan-Am Tobacco*. Thus, the Motion to Dismiss must be granted as to the alleged oral contract. As for the Plaintiff's express contract claim, however, the Court is satisfied that the TAC contains sufficient well-pled allegations to satisfy the federal pleading standard. Accordingly, the Motion to Dismiss will be denied as to the express contract claim.

III. Conclusion

Accordingly, it is

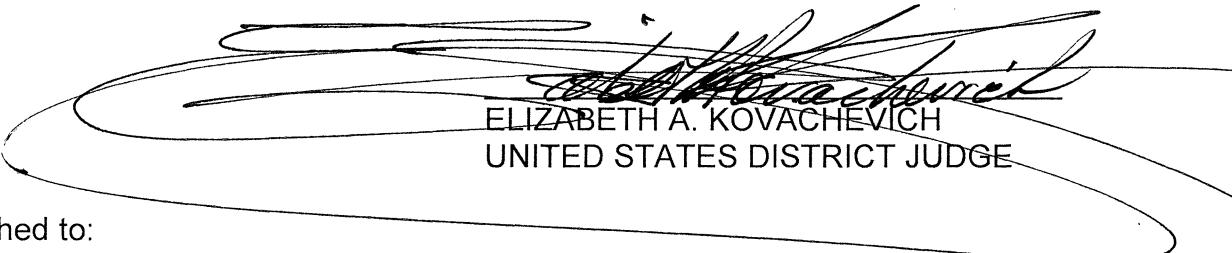
ORDERED that the Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART** as follows: (1) Count VII is **DISMISSED WITH PREJUDICE** as to the alleged agreement to extend the Plaintiff's employment through 2019; (2) USFBOT shall answer

¹ The only authority cited by the Plaintiff in support of this argument is *Miley v. Miley*, 402 So.2d 557, 558 (Fla. 2d DCA 1981). See (Doc. No. 22, at 12). The *Miley* case is distinguishable in that it dealt with the separate issue of whether a land contract could be reformed due to a mutual mistake, and did not otherwise involve a state agency entitled to sovereign immunity under *Pan-Am Tobacco*. See *Id.*

R.A.005

the remainder of the TAC, including all portions of the TAC based on the alleged written contract to extend the Plaintiff's employment through June 30, 2015, within 14 days.

DONE and ORDERED in Chambers, in Tampa, Florida this 6th day of July, 2016.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

R.A.006

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

**MOTION HEARING
BEFORE THE HONORABLE ANTHONY E. PORCELLI
UNITED STATES MAGISTRATE JUDGE**

FEBRUARY 8, 2017
2:05 P.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

DAVID J. COLLIER, RMR, CRR
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R.A.0081 P R O C E E D I N G S
2
3 - - - 000 - - -4 THE COURT: All right. Let's call the case,
5 please.6 THE CLERK: Certainly. DeBose versus USF Board of
7 Trustees, Case 8:15-CV-2787-EAK-AEP.8 THE COURT: May I have Counsel state your
9 appearances for the record, please.10 MR. THOMPSON: James Thompson and Kathryn
11 Hopkinson on behalf of the plaintiff.

12 THE COURT: Good afternoon. Thank you.

13 MR. MCCREA: May it please the Court,
14 Richard McCrea here on behalf of the Defendant University of
15 South Florida Board of Trustees.

16 THE COURT: Thank you. Good afternoon.

17 MS. DOUD: And Kimberly Doud on behalf of
18 Defendant Ellucian Company, L.P.19 THE COURT: All right. Again, thank you all.
20 I appreciate your time.21 I've scheduled this matter based upon two pending
22 motions, one is a request for sanctions, the other is a
23 motion to compel.24 What I would like to do first is to address the
25 motion to compel and then follow up with the motion for

R.A.009

1 sanctions.

2 All right. Mr. Thompson, are you going to be
3 handling the motions?

4 MR. THOMPSON: Yes, Your Honor.

5 THE COURT: All right. Let me just tell the
6 parties, feel free to stay seated, however you're
7 comfortable, so there's no need to stand.

8 All right. Mr. Thompson, I don't know if you had
9 an opportunity to review the response, but the response is,
10 based on my review, correct in a number of ways. The first
11 is it is difficult to ascertain from your motion what
12 specifically you are complaining about in that there is
13 nothing in compliance with the local rule to address what is
14 deficient, that is, what discovery requests are deficient,
15 you just list categorically a number of topical areas that
16 you believe there still may be some discoverable information
17 but do not identify for the Court in any way what should
18 have been responded appropriately to in your discovery
19 requests.

20 So what are you complaining about is really the
21 heart of it. What is at issue here?

22 MR. THOMPSON: Your Honor, we had asked for all
23 documents related to Ellucian and USF's -- Ellucian's,
24 I guess, relationship with USF in their conducting this
25 inquiry and everything related to what was done with respect

R.A.010

1 to the inquiry, and --

2 THE COURT: Again, what discovery requests?

3 Pinpoint to me what we're talking about that you feel wasn't
4 responded to.

5 MR. THOMPSON: It would have been -- it would have
6 been with respect to the motion -- I mean, request for
7 production of documents that was -- that was filed in this
8 case prior to my coming on, and the second request for
9 production of documents that was filed toward the close of
10 discovery where Ellucian claimed that the documents did not
11 exist.

12 THE COURT: All right. So looking at the
13 discovery requests, what number? What is the -- is it a
14 request for production? Which one is it that you're
15 specifically identifying for the Court?

16 MR. THOMPSON: It would be the second request for
17 production of documents to Ellucian.

18 THE COURT: And give me -- what does the actual
19 discovery request state?

20 MR. THOMPSON: Their response was on
21 December 21st. Our second request for production was on
22 November 22nd, 2016. I mean --

23 THE COURT: All right. I'm looking at your
24 motion.

25 MR. THOMPSON: Yes.

R.A.011

1 THE COURT: And your motion just simply says
2 Ellucian is withholding the following, and it enumerates
3 ten items. So in the request for production, does it
4 request, as item number 1 lists, all e-mails between
5 Kirk Beeler and USF?

6 MR. THOMPSON: Yes, Your Honor.

7 THE COURT: Okay. So are these items specifically
8 identified in the request for production then?

9 MR. THOMPSON: Yes, Your Honor, and I'm looking
10 for that right now.

11 We've got in request number 12: Any and all
12 communications, including any electronic e-mail -- or
13 electronic mail between Defendant USF and Defendant Ellucian
14 pertaining to, mentioning and/or referencing in any way,
15 shape or form Plaintiff Angela DeBose from January 1st, 2008
16 to the present.

17 Any and all communications, including e-mail,
18 between any or all of the following: Plaintiff DeBose,
19 Sidney Fernandes, Caurie Waddell, Travis Thompson,
20 Bob Sullins, Ralph Wilcox, Paul Dosal, Bob Spatig, Jennifer
21 Meningall, Alexis Mootoo, Billie Jo Hamilton, Carrie Garcia,
22 Rolanda Lewis, Shruti Kumar, Andrea Diamond, Kofi Glover,
23 Mike Beedy, Tony Embry, Gerard Solis and any other Defendant
24 USF employee.

25 THE COURT: Okay. So I didn't hear Kirk Beeler in

R.A.012

1 there. Did I miss that?

2 MR. THOMPSON: He was not -- I was wrong when I
3 said that he was specifically mentioned. I thought that he
4 was.

5 THE COURT: And this is the very point,
6 Mr. Thompson, that am I to then try to marry up what
7 requests are at issue to try to figure out whether this was,
8 1, requested, and, 2, if there was an appropriate response
9 to the request? It's difficult for the Court to even
10 ascertain what's at issue in your motion given that
11 discovery is closed.

12 MR. THOMPSON: Your Honor, what we've requested is
13 all communications between Ellucian and all of these people
14 listed, who are USF. Kirk Beeler was with Ellucian,
15 Susan Kerr is with Ellucian, Andrea Diamond is with
16 Ellucian.

17 THE COURT: All right. What's the response,
18 Ms. Doud?

19 MS. DOUD: To that specific request, we were not
20 on notice based upon what was requested, the specific
21 requests in the second request for production of documents
22 and the third request. I now understand that he's
23 referencing the second request, but it was unclear from the
24 motion, but these ten categories of documents were not
25 specifically requested in the second request for production

R.A.013

1 of documents. We have produced two of the requests that
2 were actually in the second request for production of
3 documents, all the documents that Ellucian has related to
4 the Ellucian report, which is at the heart of the two causes
5 of action that are left remaining against Ellucian,
6 civil conspiracy and tortious interference.

7 When opposing counsel contacted me on
8 December 29th about a motion to compel, there was one
9 category of documents that was referenced in the perfunctory
10 e-mail, and it was e-mails between Andrea Diamond and USF
11 staff from which she based her opinions that she had in her
12 report.

13 I responded to him that we've already provided
14 those. In fact, those documents were provided twice, once
15 to previous counsel in July of 2016 and then again on
16 September 30th when new counsel made their second request
17 for production of documents. That very same day I provided
18 those documents to him -- to them, excuse me, and there was
19 no indication until December 29th that there was anything
20 wrong with the discovery production, and then it was only
21 identified as one category of documents.

22 So we weren't on notice that they were looking at
23 any of these, but I would say specifically to his response
24 that these were not specifically requested in the second
25 request for production of documents, and so to parse out and

R.A.014

1 be left guessing what he's asking for is not our
2 responsibility. It doesn't comply with Local Rule 3.04
3 which requires him to set forth which requests he has an
4 issue with, what our objections were and the reason the
5 motion should be granted.

6 THE COURT: Well, I agree with you for the very
7 exercise we're going through, but here is my concern, and
8 that's the heart of it, and if I understood your response,
9 and that's what I want to follow up with, is in essence:
10 What he's at least identified here are these categories, are
11 you in a position to say whether, 1, they've been responded
12 to, that is, what has been in the possession, custody and
13 control of your client, that they were provided fully within
14 the second discovery request or request for production?

15 MS. DOUD: My response to that would be the
16 documents that are related to the Ellucian report, which is
17 at the heart of the claims against my client, have been
18 produced. These document requests that are now set forth in
19 the motion to compel are overly broad and unduly burdensome,
20 they're disproportionate to the needs of the case.

21 For example, request number 1, all e-mails between
22 Kirk Beeler and USF during the time Kirk Beeler was
23 Ellucian's primary contact. Kirk Beeler had nothing to do
24 with the Ellucian report. It's looking for documents from
25 2010 to 2015.

R.A.015

1 The Ellucian report -- the interviews that made up
2 the Ellucian report happened in April of 2015. The Ellucian
3 report was drafted and provided to USF in early May, May 9th
4 of 2015. There's absolutely -- it's disproportionate to the
5 needs of the case, and that's just that, I could go through
6 each one.

7 THE COURT: No, I understand.

8 All right. Mr. Thompson, I'm inclined to deny
9 your motion without prejudice because I'm not going to sit
10 here and waste everyone's time to go through to try to marry
11 up what is the discovery request that's been offended or at
12 least that you're indicating has not been fully complied
13 with in compliance with the local rule, and then beyond
14 that, based upon the review of the record, there seems to
15 have been a lack of any discussion with opposing counsel as
16 to whether they're willing to disclose any of the additional
17 information you're indicating needs to be provided.

18 I recognize we're at the close of discovery, but
19 upon the filing of an appropriate motion, I'll consider
20 whether, 1 -- because there is a valid argument that's
21 already been made out, it seems overly broad to me to ask
22 for all e-mails of any kind, and so there will be other
23 arguments or objections I would anticipate relating to if
24 there are, 1, additional discovery requests or, 2, whether
25 it's timely now to seek them if they were appropriately

R.A.016

1 objected to originally.

2 So I'm going to deny document number 64 without
3 prejudice. You may seek leave to refile it, complying with
4 the Rules, so the Court can ascertain exactly what we're
5 discussing here and whether -- the discovery that's been
6 produced and properly objected to, 1, whether it was timely
7 moved as a motion to compel, because there's another
8 argument to be made, and defense has made it, whether you
9 timely moved for it, given when the discovery was produced,
10 and good cause existing in allowing the Court to provide
11 the -- or require the production of discovery beyond the
12 discovery deadline. So there are a lot of issues here that
13 are not identified in the motion itself, and so given that
14 the motion does not addresses any of those issues, I'm going
15 to deny it without prejudice.

16 MS. DOUD: And, Your Honor --

17 THE COURT: Yes.

18 MS. DOUD: Your Honor, I apologize. In our
19 response we asked for reasonable expenses in responding to
20 the motion to compel. Given that it's been denied,
21 I understand that it's without prejudice, but I would be
22 remiss not to ask.

23 THE COURT: And I appreciate that, but I'm going
24 to deny that as well. I will if necessary revisit it
25 depending upon what occurs, but I'm going to deny that

R.A.017

1 request at this time.

2 MS. DOUD: Thank you, Your Honor.

3 THE COURT: Ms. Doud, I know you don't have
4 anything with the other motion, so you're free to go if
5 you'd like to.

6 MS. DOUD: Thank you.

7 THE COURT: All right. Let me note for the record
8 that document number 64 was the motion to compel, and for
9 the record the response was filed at document number 66.

10 All right. That take us to document number 61,
11 which is the motion for sanctions.

12 What I'd like to do first is just have a
13 conversation and hear what both parties have to say about
14 what exactly we're dealing with as far as the standard,
15 because my review indicates that neither has filed or
16 addressed the revised Rule 37.

17 So, Mr. Thompson, I'll start with you. It seems
18 to me when you requested for sanctions based upon these
19 allegations, the Court is directed to look at Rule 37, which
20 has been recently revised as to the failure to preserve some
21 of the information you are seeking, so let me just stop
22 there first.

23 You are arguing as part of the spoliation -- and
24 let me just be clear, it was a hard drive; is that accurate?

25 MR. THOMPSON: No, Your Honor. These were

R.A.018

1 actually --

2 THE COURT: Just the hard copies in the personnel
3 files?

4 MR. THOMPSON: -- copies in a locked filing
5 cabinet in the Registrar's office not only for my client but
6 for other people.

7 THE COURT: As you've listed it in the last
8 paragraph is the telephone records, documents on plaintiff's
9 hard drive. So they would have been printed out, not on the
10 hard drive itself?

11 MR. THOMPSON: No, there would be from the hard
12 drive itself, so that would include the revised 37, but also
13 the documents were printed out.

14 THE COURT: Okay. So that's what I wanted to
15 clarify then. Are we talking about electronic documents
16 then?

17 MR. THOMPSON: Yes, Your Honor.

18 THE COURT: And then that would include e-mails as
19 well electronically, not shredded, as far as the hard copies
20 of them.

21 MR. THOMPSON: Exactly, Your Honor.

22 THE COURT: All right. Well, as I understand, and
23 I've looked at this, the standards may be two different
24 standards, 1, looking at the electronic and then, 2, the
25 hard copies, so we'll need to address that as well as we go

R.A.019

1 through, but more importantly what I'm trying to get an
2 appreciation for, because again, Mr. Thompson, what you've
3 identified is some category of records, there's one
4 specific, which is an exit interview, but as far as e-mails,
5 what e-mails do you think -- and if I've missed it,
6 I apologize, but what e-mails have you had information that
7 were destroyed? I mean, in other words, do you have
8 evidence of any destruction of e-mails?

9 MR. THOMPSON: Yes, Your Honor. If the Court
10 would like, we have -- Ms. DeBose can actually testify to
11 the e-mails that were destroyed.

12 THE COURT: Well, let's just go through, because
13 I want to hear first, then we can talk about how we are
14 going to proceed.

15 So then what's been primarily focused on in the
16 pleadings seems to me to be the personnel file, and so up --
17 and you've addressed that as well, but then in the
18 conclusion there is then, I guess, an allegation of the
19 destruction of other records; am I --

20 MR. THOMPSON: Not only personnel file, but there
21 was a contract between USF and my client that was to have
22 her employment through 2019, that ended up -- USF said it
23 didn't exist, never existed, at the same time they were
24 saying they didn't destroy any kind of documents or shred
25 anything, when they were faced with, I guess, irrefutable

R.A.020

1 evidence that documents were in fact shredded, you know,
2 they never really explained why -- why no protocol was taken
3 to see what documents were in there.

4 My client can testify that this particular
5 contract was -- actually was in that folder, her personnel
6 folder, that it was in the Registrar's office under lock and
7 key along with other documents that the HR Department --

8 THE COURT: Was it an executed contract?

9 MR. THOMPSON: Yes.

10 THE COURT: And who were the signatories on the
11 contract?

12 MR. THOMPSON: Paul Dosal.

13 THE COURT: All right.

14 MR. THOMPSON: And Ms. DeBose.

15 THE COURT: All right.

16 MR. THOMPSON: And there was an allegation early
17 on in the case, before I came on, for a breach of contract
18 related to that particular document. Due to a statute of
19 frauds issue, that was dismissed --

20 THE COURT: Let me interrupt you one moment. Did
21 your client ever obtain a copy of the contract?

22 MR. THOMPSON: No. That was the reason it was
23 dismissed is because she didn't actually have a copy of it.
24 What we're saying is with the destruction or intentional
25 destruction of that type of copy, the only copy that

R.A.021

1 existed, by USF, that one of the sanctions we're looking for
2 is to allow that particular cause of action to go forward.

3 THE COURT: And so if I understand then -- let's
4 just focus on the contract first, and if I understand then
5 your argument, what you're proffering is your client will
6 testify as to the contract existed and you're indicating
7 that the defense has taken the position it never existed.

8 MR. THOMPSON: Exactly, Your Honor.

9 THE COURT: Is there any other evidence that has
10 been uncovered to corroborate either side?

11 MR. THOMPSON: Just my client's testimony,
12 Your Honor, and the fact that her entire file was shredded.

13 THE COURT: All right. And then -- so that's as
14 to the contract, and what about the other records you're
15 asserting?

16 MR. THOMPSON: The others would have to do with
17 e-mails going back and forth related to or pertaining to my
18 client with respect to her work performance, with respect to
19 wanting to get rid of her, find a reason to get rid of her
20 after she put in a charge of discrimination with the EEOC
21 back in December of 2014.

22 THE COURT: Wait. Stop there. What are you
23 saying there?

24 MR. THOMPSON: What I'm saying is there was --
25 after she put in a charge of discrimination -- well, she did

R.A.022

1 the internal complaint --

2 THE COURT: But are you saying there was e-mail
3 communication in finding a pretextual way to discharge your
4 client?

5 MR. THOMPSON: Yeah, it doesn't say -- I'm not
6 saying it says because she filed with the EEOC, we want to
7 get rid of her. What I'm saying is before -- the pretext
8 for discharge had to do with this Ellucian report and what
9 it said. What I'm saying is even prior to that, prior to
10 the Ellucian report, there were e-mails going back and
11 forth, because my client had heard about the e-mails going
12 back and forth, looking for ways to get rid of her, after
13 she filed her charge of discrimination with the EEOC and
14 after she filed her motion for temporary injunction or
15 restraining order with this particular Court back in
16 February of 2015.

17 THE COURT: So then if I understand that, again,
18 the evidence to demonstrate that there was an existence of
19 relevant records, e-mails, that have not been produced,
20 first, we don't even know if they've been destroyed, but
21 just simply not produced, it would be your client's
22 testimony that she heard some e-mail communication regarding
23 these types of services?

24 MR. THOMPSON: And that they would be in the hard
25 drives.

R.A.023

1 THE COURT: Whose hard drive?

2 MR. THOMPSON: Exact comment, I'm going to have to
3 defer to my client on that, Your Honor.

4 THE COURT: All right. That's e-mails. What
5 else?

6 MR. THOMPSON: The draft versions sent back and
7 forth of the Ellucian report.

8 THE COURT: And how many are you aware of?

9 MR. THOMPSON: I don't know, Your Honor. I know
10 that my client has told me that they exist. I'm not sure
11 she knows how many there were.

12 THE COURT: And they would have been sent --
13 electronically sent back and forth?

14 MR. THOMPSON: Electronically.

15 THE COURT: All right. What about this exit
16 interview?

17 MR. THOMPSON: Yeah, the exit interview would
18 be -- I mean, basically she went through an exit interview,
19 they kept notes that had what her opinions were as to
20 everything, about the discrimination, about --

21 THE COURT: Well, what is it? Is it a document,
22 is it --

23 MR. THOMPSON: That's an actual document that was
24 written up and it should have been in her personnel file.

25 THE COURT: And who would have drafted it?

R.A.024

1 MR. THOMPSON: I don't know who would have drafted
2 that, Your Honor. I think that that was Paul Dosal, but I
3 don't know.

4 THE COURT: Who is Caurie Waddell?

5 MS. DEBOSE: May I answer?

6 THE COURT: I prefer your attorney, ma'am.

7 MR. THOMPSON: Oh. This was the exit interview
8 for Caurie Waddell. She's the one that they claimed was
9 leaving USF or decided to resign from USF because of actions
10 by Ms. DeBose. Ms. Waddell specifically said in her exit
11 interview that she had no problem with Ms. DeBose.

12 THE COURT: What's the purpose of the telephone
13 records?

14 MR. THOMPSON: To show any kind of communication
15 that was going on between Ellucian and USF leading up to the
16 Ellucian report which was pretext for her discharge.

17 THE COURT: And even if they existed, I don't
18 understand. There's -- somebody is going to contest that
19 there was actual communication between Ellucian and USF?

20 MR. THOMPSON: They -- I don't know, Your Honor.

21 THE COURT: All right. So let's just make sure
22 I have a full picture of what you're claiming is being
23 either not produced and then, more importantly, by your
24 motion, destroyed. That is the contract executed by your
25 client with the defense, e-mails with communications

R.A.025

1 regarding your client with the Ellucian report, draft
2 versions of the Ellucian report, the exit interview with
3 Caurie Waddell and telephone records. Am I missing anything
4 else?

5 MR. THOMPSON: I believe that's it, Your Honor.

6 THE COURT: Well, what would have been in the
7 personnel file that is -- what is at -- in the pleadings
8 seems to be the argument -- that has been addressed in the
9 pleadings. What else would have been in the personnel file?

10 MR. THOMPSON: My client could probably answer
11 that better than I, but I know that the big thing would have
12 been the --

13 THE COURT: Mr. Thompson, this is your motion.
14 Your client is not the attorney here. You filed this motion
15 and you seem to be at a loss as to what we're really going
16 to be arguing today.

17 MR. THOMPSON: Your Honor, it mostly has to do
18 with the contract that would have given her employment
19 through 2019.

20 THE COURT: Mr. McCrea, I know you've responded
21 directly to the personnel file and you filed affidavits
22 addressing that matter, but I want to hear you in response
23 to the other matters as well.

24 MR. MCCREA: Your Honor, this is somewhat a repeat
25 of the last motion in that I'm now hearing sanctions are

R.A.026

1 being sought when no motion to compel was ever filed.
2 I don't know what request they're talking about, and -- so
3 this certainly wasn't anything that was conciliated, and as
4 a matter of fact, I had an e-mail saying I'm assuming you're
5 not going to agree to our motion for sanctions and the next
6 blink of an eye the motion for sanctions was filed.

7 I will tell you that this is the third case that
8 exists between USF and Ms. DeBose, one is in State Court
9 involving the public records law, one was a predecessor
10 lawsuit that was filed in 2015. In that case Judge Pizzo
11 denied a motion for sanctions filed by Ms. DeBose with
12 respect to the phone records, so that has already been
13 raised, and that is document 85 in that case that was filed
14 on October 14 of 2015.

15 With respect to the exit interview, my
16 understanding is --

17 THE COURT: Do you know the case number?

18 MR. MCCREA: Oh, yes. I'm sorry, Judge.
19 8:15-MC-18-T-17-MAP, and the style of the case is
20 Angela DeBose versus USF Board of Trustees, Academic Affairs
21 of USF, Student Success of USF and Paul Dosal.

22 With respect to the exit interview, I'm a little
23 confused by Mr. Thompson, because I've always understood
24 that Ms. DeBose contended that there should be an exit
25 interview of Caurie Waddell, but I will tell you that

R.A.027

1 Ms. Waddell was deposed, I don't remember which case it was,
2 it may have been the public records case, but I will
3 represent to the Court that she testified in deposition that
4 she was represented separately by her own counsel, that she
5 never was subjected to an exit interview, that Paul Dosal
6 was mistaken when he said that, and she wasn't given one.

7 With respect to e-mails, we've produced over
8 10,000 -- I'm sorry, I misspoke, 2,000 pages of documents to
9 Ms. DeBose. I'm not sure what e-mails are being discussed,
10 what request is at issue, and I certainly don't believe any
11 motion to compel was ever filed on that.

12 With respect to the contact which Mr. Thompson
13 says is his primary concern, we have a pending motion for
14 summary judgment, it's supported by affidavits that say that
15 USF has not used employment contracts since 2005. We've
16 also filed Ms. DeBose's deposition where at page 37 she
17 admits she can't remember the last time she filed an
18 employment -- she had an employment contract with USF.

19 I think, lastly, that claim was dismissed by
20 Judge Kovachevich in document 50 in this case, and it was
21 dismissed not because of the absence of a document, it was
22 dismissed because of the allegations in the Third
23 Amended Complaint that there was a verbal agreement that
24 Ms. DeBose's employment would be extended to 2019 and that
25 there are e-mails that show that there was this verbal

R.A.028

1 agreement. Judge Kovachevich ruled that that was not
2 sufficient to get around the sovereign immunity defense
3 under Florida law, that there needs to be an express written
4 employment agreement. So I'm at a loss to understand the
5 stated need at this point in this case for an employment
6 agreement that we believe never existed in the first place.

7 I do recognize, based upon the arguments as well
8 as the affidavits that have been filed, that there I think
9 is a legitimate issue on the motion for sanctions with
10 respect to personnel files, and I'm prepared to address
11 that. The Court has not gotten into that, but --

12 THE COURT: Right. There's one other issue
13 though. If you can address the draft versions of the
14 Ellucian report.

15 MR. MCCREA: My understanding is all drafts were
16 produced by Ellucian in this case. And again, no motion to
17 compel has been filed with respect to USF, no effort to
18 conciliate, no reference to any particular request has been
19 made either to me or to the Court. I don't -- I can't
20 perceive of how that could be somehow violative of Rule 37.

21 THE COURT: All right. Why don't you address then
22 the personnel file.

23 MR. MCCREA: Judge, we have -- both sides have
24 submitted affidavits, and I think the Court is aware of the
25 spoliation -- the spoliation legal standard, which is

R.A.029

1 addressed by Judge Pizzo in the order I referenced earlier,
2 but there has to be, depending on the case you read, either
3 intent or even some cases require bad faith. As I
4 mentioned, we produced over 2,000 pages of documents to
5 Ms. DeBose. USF has provided a good faith reason for
6 shredding the documents that were department personnel
7 files. It was a belief by three individuals that these were
8 duplicative of the official HR file. This was not done
9 selectively as to Ms. DeBose's file, it was done for all of
10 the department files, and the three individuals who are
11 involved, Ms. Palmer, Ms. Bishop and Ms. Johnson, are not in
12 any way implicated in Ms. DeBose's claims. There is
13 absolutely no evidence that the decision makers were
14 involved or even aware of these records.

15 There is no evidence that Ms. Palmer, Ms. Bishop
16 or Ms. Johnson knew that documents in those department files
17 were not in the official USF HR files. I think evidence of
18 intent and bad faith is also negated by the clear evidence
19 that this was not done surreptitiously. Employees at the
20 Registrar's office were informed in a meeting that they
21 could review and retrieve documents from the department
22 files before they were disposed of. Even Ms. Tyson's
23 affidavit filed by Ms. DeBose says that. Lastly, on the
24 issue of intent or bad faith, this was done with the advice
25 and input of USF's HR department.

R.A.030

1 The three -- the other elements that need to be
2 proved have not been established, that the missing evidence
3 existed at one time. Now, I don't want to sound ridiculous.
4 We admit that personnel files in the department existed at
5 one time. My point is that Ms. DeBose has not made any
6 showing or identified even a single personnel file document
7 that was not produced to her because somehow it wasn't in
8 her official HR file. She has not identified any personnel
9 file document relating to her employment that was only
10 maintained in the Registrar's office; and at a minimum,
11 Your Honor, it's unusual from an organizational standpoint,
12 it hardly makes sense that there would be a need for
13 Ms. DeBose's employment records, duplicates or otherwise, to
14 be maintained by her subordinate.

15 Ms. DeBose, as the Registrar, was the head of that
16 department. Unlike the rest of the employees under her, her
17 personnel records would normally have been created by
18 someone above her in the hierarchy at USF or outside the
19 department, and those people certainly would not have sent
20 her official records to one of her subordinates to be placed
21 in the department file.

22 As we cited at page 4 of our memorandum, there is
23 no legal duty to preserve duplicate records.

24 And I think last is the important element that
25 Ms. DeBose has to show that any missing evidence was crucial

R.A.031

1 to her being able to prove a prima facie case. As we cited,
2 it's not an issue of relevance. Relevance is not enough.
3 The evidence has to be crucial to establishing a prima facie
4 case. Ms. DeBose hasn't even attempted to make that
5 showing. She has not identified any document that she is
6 missing that is crucial to her establishing a prima facie
7 case. She's not even attempted to make any showing.
8 In fact, given the nature of the employment actions that are
9 being challenged in this lawsuit, it's difficult to
10 comprehend how any personnel file documents, any of them,
11 official file or not, could be crucial to her claims.

12 She has a non-renewal of her employment, which
13 everyone admits is based upon the Ellucian report, which she
14 has. She claims that she was given negative references in
15 retaliation after she left. That was not in writing.
16 Everyone admits that whatever was said was said over the
17 phone between the University of North Florida and USF,
18 between the provosts of those two institutions.

19 She has a promotion claim. There are no documents
20 that are relevant to that. This was an internal decision.
21 All of the candidates were internal. There are no
22 submissions made by anyone of documents. The qualifications
23 were known to the decision makers.

24 And the last employment action she challenges is
25 an official written reprimand, which she has, and she has

R.A.032

1 copies of all of the documents, the employees' statements
2 that were made to HR that led to that reprimand.

3 Again, importantly, for any sanctions to attach
4 because of the absence of department personnel files there
5 needs to be made some showing that the absence of those
6 documents is crucial to her ability to establish a
7 *prima facie* case, and she hasn't even attempted that, and
8 for that reason alone the motion should be denied.

9 THE COURT: I'm at a little bit of a loss.

10 In your notice of supplement at document number 84 there's
11 an affidavit of Beverly Jerry.

12 MR. MCCREA: Yes.

13 THE COURT: Is that relevant to this matter?

14 MR. MCCREA: Yes, it is. It's relevant because
15 there's an affidavit there from Ms. Glenn, Verna Glenn, who
16 testifies that she went back in April of 2016 and somehow
17 couldn't find some FMLA documents. It's relevant because
18 the HR records that USF has shows that she was never on FMLA
19 in 2016, but more importantly, the destruction of the
20 department files took place in October of 2015 and all of
21 her FMLA records that relate to her FMLA requests prior to
22 the effect -- the significant date here, October of 2015,
23 when these three USF employees decided that they would
24 dispose of these records, still exists in her official
25 HR file.

R.A.033

1 THE COURT: All right. Thank you.

2 All right. Mr. Thompson, let me hear your
3 argument then as to the personnel files. And it would be
4 helpful if you could start off with that one point as to --
5 how I would classify it is what is the prejudice here,
6 that is, what are you asserting that was not provided as far
7 as the duplication of the personnel file with HR that would
8 have been destroyed with the shredding at the Registrar's
9 office?

10 MR. THOMPSON: Can I confer with my client here
11 quickly?

12 THE COURT: Please.

13 MR. THOMPSON: Your Honor, there were a
14 substantial number of e-mails in March, April and May of
15 I believe 2015 that were printed out by Ms. DeBose and put
16 in that particular personnel file, those exist, related to
17 the actual reasons for the discharge related to the --
18 showing that the Ellucian report was not the actual reason
19 for discharge; that because of the nature of them, she
20 printed them up; when she was told that she was being
21 discharged, she was not allowed to take that file, was not
22 allowed to make copies of it, but she knows that they exist.

23 The Waddell exit interview, I believe that
24 Ms. Waddell actually did testify that it did exist and it
25 would have been in her personnel file that was kept at the

R.A.034

1 Registrar's office.

2 THE COURT: In Ms. DeBose's personnel file?

3 MR. THOMPSON: In Ms. Waddell's, and -- yes, in
4 Ms. Waddell's personnel file that was kept at the
5 Registrar's office, one of the things that was destroyed.

6 THE COURT: All right. So Ms. Waddell -- so it's
7 not just Ms. DeBose's personnel file that's at issue but
8 also Ms. Waddell's?

9 MR. THOMPSON: It was the destruction of relevant
10 documents in this case that they went through absolutely no
11 protocol to ensure that they were not duplicates. The
12 affidavits submitted by USF even state that
13 Victoria Johnson, Ms. Bishop and Rose Palmer didn't even
14 know whether Ms. DeBose had a file in there, so how would
15 they know what was duplicate if they couldn't even identify
16 whether it was there? Obviously took no steps, the
17 affidavits show no steps taken to ensure that they were
18 duplicates, and the affidavits show no steps taken to scan
19 them, copy them, do anything to make sure that they weren't
20 getting rid of non-duplicate files.

21 THE COURT: All right. But my question though is:
22 Then the documents that are asserted that have not been
23 produced that would have been -- let's start with
24 Ms. DeBose's personnel file. E-mails that were printed out
25 by your client and put into the personnel file?

R.A.035

MR. THOMPSON: Yes, in March, April and May of 2015.

THE COURT: Anything else from that personnel file?

MR. THOMPSON: The actual agreement for continued employment through 2019 was in there, and the other thing we know was in there would be -- I mean, in the other file would be Ms. Waddell's.

THE COURT: All right. So just e-mails and the contract in Ms. DeBose's file and then independent of that in Ms. Waddell's file the exit interview.

MR. THOMPSON: Those are the things we know of, yes, Your Honor.

THE COURT: Now I have conflicting representations as to whether Ms. Waddell testified as to whether she even had an exit interview, so what are you referring to? Do you have the actual deposition transcript?

MR. MCCREA: I do not.

I just want to say there's one other conflict here, Judge, in that, as I understand the record evidence, Ms. Waddell had transferred away from the Registrar's office by the time she left USF, so I'm at a loss to understand why there would be any exit interview in her department personnel file.

THE COURT: In the Registrar personnel file.

R.A.036

1 MR. MCCREA: Yes.

2 THE COURT: But you're also still, again,
3 indicating that in the testimony -- in the deposition
4 testimony, Ms. Waddell has testified no exit interview ever
5 took place?

6 MR. MCCREA: That's my recollection, Judge. It's
7 been over a year, but I thought that Paul Dosal had
8 testified in the Public Records Act request that he had
9 asked that Ms. Waddell receive an exit interview and that
10 Ms. Waddell testified at deposition that she never was
11 subjected to an exit interview.

12 THE COURT: All right.

13 MR. THOMPSON: And, Your Honor, Paul Dosal
14 actually testified that he did conduct the exit interview.

15 THE COURT: All right. Mr. Thompson, any other
16 argument?

17 MR. THOMPSON: Just the first case was filed in
18 February of 2015, they were put on notice. Ms. DeBose, who
19 was acting pro se then for the temporary injunction or
20 temporary restraining order, made numerous requests for
21 these documents, we had a pending EEOC charge that hadn't
22 been finished yet, USF was clearly on notice that these were
23 going to be documents that are relevant to litigation yet
24 made no real effort by virtue of their own affidavits, made
25 no effort to ensure that they weren't destroying documents

R.A.037

1 that could be relevant in this case.

2 THE COURT: Well, what about the argument about
3 the -- essentially for any personnel files, the central
4 repository was going to be the Human Resources Department,
5 so even if there was a cumulative file at the Registrar's
6 office it was the requirement of the Registrar to provide
7 all those documents to be placed in the personnel file with
8 the HR department.

9 MR. THOMPSON: The HR department had certain
10 things that they wanted in a personnel file, and that was
11 all that would be -- that they would accept, were several
12 classes of documents. These went well beyond those classes
13 of documents and had the other things such as these
14 e-mails --

15 THE COURT: So the contract and e-mails would have
16 never been provided.

17 MR. THOMPSON: Exactly, Your Honor.

18 THE COURT: All right. Anything else,
19 Mr. Thompson?

20 MR. THOMPSON: No, Your Honor.

21 THE COURT: Any response or anything further?

22 MR. MCCREA: Yes, Judge. I would just make the
23 point that there are no supporting affidavits in the record
24 about there being any e-mails in this department file. And
25 secondly, we had no notice until we got here that that was

R.A.038

1 part of their request for sanctions, but I would point out
2 that by the nature of their essence, e-mails are duplicates
3 and should exist somewhere in electronic form.

4 I'm not aware of any motion to compel that has
5 been filed with respect to e-mails relating to Ms. DeBoise
6 during this time period, so we seem to be skipping over
7 that. And I've already addressed the fact that the
8 representations made to Your Honor about the existence of a
9 contract are in direct conflict with allegations made in the
10 Third Amended Complaint, which Ms. DeBoise testified in
11 deposition that she was responsible for drafting and had
12 significant input, because she is a lawyer, and she's not
13 admitted in this state but she's admitted in Wisconsin, but
14 she drafted -- essentially drafted the Third
15 Amended Complaint, which acknowledges that there was no
16 written employment agreement, there was a verbal agreement
17 that may be corroborated by some e-mails.

18 MS. DEBOSE: (Inaudible.)

19 THE COURT: Ms. DeBoise, if you want to confer with
20 your attorney, I'll give you all the time you want, but
21 unfortunately, because you are represented, you must allow
22 your attorney to speak for you, and so please take all the
23 time you want to confer with him.

24 MR. THOMPSON: Yes, Your Honor. With respect to
25 that other case that Judge Pizzo had issued an order in,

R.A.039

1 apparently the actual motion to compel was document 20 and
2 then document 56 in that case was the motion for
3 preservation of electronic evidence. The reason that was
4 denied by Judge Pizzo was that USF at the time claimed that
5 they did not destroy and did not shred any documents, so
6 that was an issue that was before the Court. It turns out
7 now that USF is admitting that they did in fact shred, so
8 stating that Judge Pizzo has already addressed the issue is
9 not -- clearly, you know, not completely accurate because
10 Judge Pizzo was not aware of the shredding.

11 THE COURT: All right. Response?

12 MR. MCCREA: Yes. That is simply not accurate,
13 Judge. Your Honor can read the order, but just to let the
14 Court know, the only issue in that ruling had to do with a
15 voice mail, a phone recording, and Judge Pizzo first said it
16 was unclear whether it ever existed; secondly, he said he
17 was not sure that a duty existed at that time because no
18 claims had been made; third, he said the plaintiff did not
19 show that it was crucial to her case; and fourth, he said
20 there was no evidence of bad faith. So it had nothing at
21 all to do with this issue of shredding personnel files.

22 I would finish by saying it is just
23 incomprehensible to me that somehow an argument is being
24 made that a formal document like an employment contract
25 exists in a shadow department file that is not part of the

R.A.040

1 official HR file, and I would make the same point with
2 respect to an exit interview, which is normally a formal
3 part of a personnel procedure.

4 THE COURT: All right. What I'm going to do is
5 take a brief recess and I want to review that for myself.
6 I'll be back out in ten minutes. We'll be in recess.
7 Thank you.

8 - - - - -

9 (Recess at 2:55 p.m. until 3:07 p.m.)

10 - - - - -

11 THE COURT: All right. Back on.

12 We're back on the record. The Court has taken a
13 brief recess.

14 The issue that we've been discussing is document
15 number 61, which is a motion for sanctions for spoliation,
16 and document number 66 is the response in opposition to the
17 motion.

18 Based upon argument presented by counsel for both
19 plaintiff and defense, the Court has a better understanding
20 of the issue presented beyond what is framed in the motion
21 for sanctions at document number 61.

22 Primarily at issue is what I would identify as a
23 category of records, some electronic, some hard copy, and so
24 I'll address those individually.

25 Let me just note first as to the standard that is

R.A.041

1 required here, it is the burden of the plaintiff to
2 establish a sufficient showing that the lost or destroyed
3 evidence was critical to plaintiff's case, but even beyond a
4 showing of critical, the burden is upon the plaintiff to
5 establish that there is lost or destroyed evidence that is a
6 sufficient showing to demonstrate that.

7 I raise that issue because I think that is
8 problematic. Let me just first note, before I get into that
9 procedurally in this case, in the review of the record at no
10 time was there a motion to compel filed as to any of these
11 items in this instant matter, nor was there, at least based
12 on the record as I've reviewed it, any conferral with
13 opposing party based upon a deficiency in any discovery
14 request.

15 So the Court is even unaware, based upon the
16 pleading in document number 61, whether these items were
17 requested in discovery; and, 2, what was done in an effort
18 to obtain discovery if it was not provided. Rather, we have
19 gone immediately to a motion for sanctions before even
20 pursuing the matter in discovery, which in and of itself is
21 unusual and extraordinary.

22 So procedurally the motion is deficient on its
23 face as the Court sees it; but even beyond that,
24 substantively, the motion for sanctions is lacking in a
25 number of counts. The first, as I stated, there needs to be

R.A.042

1 a sufficient showing that the evidence that was not
2 preserved, that is lost or destroyed, existed at some time.

3 To break down each category, the first is a
4 employment contract that the Court accepts the proffer that
5 the plaintiff would testify existed at some time and that
6 the plaintiff specifically put in the personnel file.

7 Upon questioning, it is the Court's understanding
8 that it is the only evidence that would exist to demonstrate
9 that the contract was in existence at some time, that is
10 it's only the self-serving statement of the plaintiff to
11 demonstrate the existence of the contract.

12 Contrary to the self-serving statement, there is
13 evidence of record to demonstrate that the defendant has not
14 used employment contracts since 2005, and there's no other
15 testimony that indicates some other -- that such contract
16 existed, so substantively the Court is not satisfied that
17 the plaintiff has made a sufficient showing that the
18 contract did ever exist.

19 As to e-mails, there is an assertion just
20 generally of e-mails that were printed out, and these
21 e-mails were referenced in March, April and May but simply
22 just printed out because the plaintiff was concerned at that
23 time and determined it was necessary to preserve the e-mails
24 and put them in her personnel file.

25 Again, it is the plaintiff's burden to establish a

R.A.043

1 sufficient showing that this evidence existed at some time.
2 The Court is even just generally unaware of what specific
3 e-mails we're talking about other than just generally
4 e-mails.

5 This is problematic because it is difficult for
6 the Court to ascertain beyond, again, the self-serving claim
7 of the plaintiff whether such e-mails were in existence at
8 any one time and have thus been failed to be produced, and
9 also destroyed or lost.

10 Notably, there is a question as to the credibility
11 of the existence of such e-mails, based upon the proffer
12 that the plaintiff was concerned about the reason or pretext
13 for her discharge or the allegations that were coming,
14 concerned enough to print out the e-mails and place them
15 into the personnel file. The argument was made that the
16 plaintiff was not able to take the personnel file home or a
17 copy of it, but certainly it does beg the question that if
18 the plaintiff was concerned enough to print out the e-mails,
19 which were not required to be put in the personnel file, yet
20 the plaintiff determined to do so, it does beg the question
21 as to why the plaintiff did not preserve the e-mails
22 herself, that is maintain them independent of the personnel
23 file and maintain a copy for herself. So that does call
24 upon the credibility as to whether such e-mails did ever
25 exist.

R.A.044

1 Notably, I will go back as to the contract, it
2 does also call for question regarding the existence of the
3 contract that the actual employment contract itself would
4 not exist in the personnel file maintained by
5 Human Resources and, coupled with that, that the plaintiff
6 would not have a copy of the contract, if such contract did
7 exist.

8 As to this argument regarding -- independent of
9 the plaintiff's personnel file, because those are the only
10 items that were claimed to be in the personnel file that
11 would have been allegedly destroyed -- and that is
12 significant because the only evidence of record before the
13 Court is that without argument there was a destruction of
14 documents, and what has been asserted is the duplicative
15 copy at the Registrar file of the personnel file that was
16 maintained by Human Resources.

17 So there is no doubt for the Court -- I'll note
18 for the record there was a duty to preserve, the defendant
19 was on notice, and there was a destruction of documents that
20 may have been relevant to the litigation, but beyond that
21 what is again required is to demonstrate a sufficient
22 showing that there was the existence of relevant documents,
23 and depending on what type of documents, the case law would
24 also require that it would be critical to the *prima facie*
25 case.

R.A.045

1 Then the next step would be what is the level of
2 culpability, that is, was there bad faith; but again, as to
3 those two items, the e-mails and the contract, the Court is
4 simply focusing on that plaintiff has not made a sufficient
5 showing.

6 I will note though, beyond that, as to the
7 destruction of the personnel file, the Court is also
8 satisfied that there is at this time, based upon the record,
9 no showing of bad faith; that is, based upon the affidavits
10 of Palmer, Bishop and Johnson, it clearly is demonstrated
11 that there was a destruction of records independent of the
12 plaintiff's personnel file, that is, the plaintiff's
13 personnel file was not singled out with an intent to destroy
14 what may be relevant records for the case.

15 That is significant to the Court because that
16 highlights notably that there was not an express intent to
17 single out any records that may be relevant to this case to
18 ensure that plaintiff would not have access to those
19 records, so not an intent to prejudice the defendant by not
20 preserving relevant documents.

21 As to the accusation of telephone records as well,
22 again, there is no specific identity of what records we're
23 talking about, but as the Court has highlighted during
24 argument, it's unclear what these records were, why they
25 could not have been available from alternative sources if

R.A.046

1 they're telephone records, no demonstration as to whether
2 they could have been available from another -- for example,
3 the provider, but more importantly, I'm focusing on what is
4 even the relevance, as to whether there was even a duty to
5 preserve such records, because the plaintiff has not made a
6 sufficient showing to establish that the records would be
7 critical to the case.

8 Lastly, although not specifically identified in
9 the motion, there was an assertion of also prior versions of
10 the Ellucian report. As to that matter, that would be a
11 matter that would -- as I understood the argument, would
12 have been a lack of preservation for e-discovery, that is
13 electronically-stored information, that the Ellucian report
14 was being e-mailed back and forth.

15 This is deficient because, 1, there has been
16 absolutely no showing -- and, more importantly, there is not
17 even before the Court -- there has been no notice to the
18 defense that this was at issue, but there's been no showing
19 in the motion that the Ellucian report was requested in
20 discovery, or drafts of the Ellucian report was requested in
21 discovery, it was not provided, and there is no evidence of
22 record to demonstrate that such prior draft reports would
23 have existed at any point.

24 So, simply stated, the motion is lacking, as I've
25 articulated, both procedurally, but even beyond procedurally

R.A.047

1 the Court has considered it substantively, and as I see it,
2 it is woefully lacking substantively as to all of the
3 matters that have been raised, and so I'm going to deny the
4 motion for sanctions at document number 61 for the reasons
5 stated on the record.

6 All right. Mr. Thompson, do you feel that I've
7 not identified any of the specific items that you were
8 requesting in the motion for sanctions?

9 MR. THOMPSON: Yeah, with the -- yes, Your Honor.

10 With the e-discovery as well, I believe that we
11 had said that there were also E versions of the same e-mails
12 that Ms. DeBose had said she printed out, and that would
13 have been from her computer where that -- her hard drive was
14 pretty much --

15 THE COURT: Thank you. And I failed to also
16 mention the exit interview for Caurie Waddell, so let me
17 address that first.

18 As to the Caurie Waddell exit interview, there is
19 conflicting representation, and so I am ruling just based
20 upon that, again, it is the plaintiff's burden to establish
21 a sufficient showing that such an interview even took place.
22 If you believe the record establishes that, you can raise
23 the matter again, but based upon what's been represented,
24 at least as what's in the record before the Court, I'm
25 finding there is not a sufficient showing to demonstrate

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1 that the exit interview had either -- even existed.

2 As to any accusation regarding electronic e-mails
3 that are these March, April, May e-mails regarding the
4 reason for Ms. DeBose's discharge, for that same reason I am
5 articulating for the record there's not a sufficient showing
6 to show that the e-mails did exist.

7 All right. Mr. McCrea, any other matters you want
8 to address that you feel the Court has neglected to state on
9 the record?

10 MR. MCCREA: No, Your Honor. I think I would
11 follow up after the hearing to get a copy of the Court's
12 ruling, because it may pertain to the pending Public Records
13 Act.

14 THE COURT: All right. It's not my intent to
15 issue a written order on it, which is why I've articulated
16 my findings on the record. All I will do is just, for the
17 reasons stated at the hearing, I'm going to deny the motion
18 at document number 61.

19 All right. Anything else we need to take up at
20 this time?

21 MR. THOMPSON: No, Your Honor.

22 THE COURT: All right. Anythings else?

23 MR. MCCREA: No, Your Honor.

24 THE COURT: All right. We'll be in recess.

25 (Hearing concluded at 3:21 p.m.)

R.A.0491 C E R T I F I C A T E
23 This is to certify that the foregoing transcript
4 of proceedings taken in a motion hearing in the United
5 States District Court is a true and accurate transcript of
6 the proceedings taken by me in machine shorthand and
7 transcribed by computer under my supervision, this the 26th
8 day of February, 2017.9
10
11 /S/ DAVID J. COLLIER
12
13 DAVID J. COLLIER
14 OFFICIAL COURT REPORTER
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R.A.050
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v.

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

USF BOARD OF TRUSTEES,
et al.,

Defendants.

ORDER

This cause is before the Court upon Plaintiff's Motion for Sanctions against Defendant University of South Florida Board of Trustees ("USFBOT") for Spoliation and Nondisclosure ("Motion") (Doc. 123), in which Plaintiff requests that (1) she be permitted to submit evidence at the trial pertaining to Defendant's destruction of the discoverable documents; (2) that the Court instruct the jury that it should determine that the shredded evidence was highly adverse to Defendant; (3) that the Court strike certain denials by Defendant; and (4) that the Court grant Plaintiff a default judgment on her retaliation claim. In support of her Motion, Plaintiff has filed numerous affidavits and exhibits. (*See* Docs. 124 & 125). In response, Defendant filed a Memorandum of Law in Opposition to Plaintiff's Motion for Sanctions (Doc. 128), and Plaintiff filed a Reply (Doc. 135) in response to Defendant's memorandum. The Court held a hearing on the matter on May 23, 2017. Upon due consideration and being otherwise fully advised, the Court finds, for the reasons that follow, that Plaintiff's Motion is without merit and due to be denied.

R.A.051**I. Background**

Plaintiff is before the Court requesting severe sanctions against Defendant for alleged spoliation. Notably, in a separate matter, Plaintiff sought similar sanctions for spoliation of an alleged voicemail, and the Court denied the Plaintiff's request by concluding that Plaintiff failed to meet her burden. (See Case No. 8:15-mc-18-T-17MAP, Doc. 85 (stating that it is doubtful Plaintiff has satisfied any of the elements necessary for the Court to award spoliation sanctions)). The sanctions requested in the instant Motion were originally pursued in Plaintiff's Motion for Sanctions against Defendant for Intentional Shredding of Discoverable Documents ("Original Motion") (Doc. 61), filed on December 30, 2016. The Court conducted a hearing on the Original Motion on February 8, 2017, during which the Court announced on the record that Plaintiff's Original Motion was deficient on a number of fronts, including: (1) the failure to identify with specificity the categories of records at issue; (2) the failure to demonstrate that the records at issue were requested in discovery and Defendant failed to produce the requested discovery; and (3) the failure to meet the requisite burden regarding prejudice and culpability. (See Hearing Transcript, Doc. 103 at 35-42). Significantly, the extended discovery period in this case ran from March 1, 2016, through December 31, 2016, and at no time did Plaintiff file a motion seeking to compel Defendant to produce documents that Defendant allegedly failed to produce. Rather, Plaintiff filed her Original Motion (Doc. 61).

As the Court noted during the February 8, 2017 hearing, Plaintiff established that Defendant shredded documents out of her departmental personnel file after it was obligated to preserve all relevant information for the instant litigation. However, Defendant asserted that the documents that were shredded were duplicates of documents maintained in Plaintiff's personnel file maintained by Defendant's human resources office. Thus, the issues framed during the February 8, 2017 hearing were (1) whether Plaintiff could establish what types of

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documents were lost as a result of the shredding of her departmental personnel file; (2) did Defendant act in bad faith in shredding the departmental personnel file; and (3) how was Plaintiff prejudiced as a result of the shredding of the departmental personnel file. Notably, Plaintiff failed to articulate in the Original Motion what types of documents were at issue. Thus, the Court asked Plaintiff's attorney¹ to specifically articulate what types of documents were allegedly lost as a result of the shredding of the departmental personnel file, and Plaintiff's attorney identified during the February 8, 2017 hearing, an employment "contract . . . , e-mails . . . , draft versions of the Ellucian report, the exit interview with Caurie Waddell and telephone records." (Doc. 103 at 19-20; 37-42.) The Court denied Plaintiff's Original Motion by finding that Plaintiff failed to meet her burden in establishing the requisite bad faith culpability on behalf of Defendant and the requisite prejudice resulting to Plaintiff. (See Doc. 103 at 37-42.) Subsequently, Plaintiff, proceeding *pro se*, filed a Motion for Clarification and Limited Reconsideration of this Court's Order Denying Plaintiff's Motion for Sanctions (Doc. 98), and a Motion to Allow Oral Testimony at Hearing (Doc. 111), seeking leave of Court to allow live testimony. The Court denied Plaintiff's request to present live testimony (see Doc. 113) and Plaintiff's request for clarification (see Doc. 122) but gave Plaintiff ten days to file a renewed motion for sanctions given Plaintiff's assertion of new evidence pertaining to her spoliation arguments made in the Original Motion for sanctions (*Id.*)

Beyond the categories of documents identified by Plaintiff during the February 8, 2017 hearing, Plaintiff now asserts six additional categories of documents are at issue. Specifically, Plaintiff asserts for the first time in this action that the following documents were lost as a result of the shredding of her departmental personnel file: (1) documents containing proof that she

¹ Notably, Plaintiff was represented by counsel in pursuit of the Original Motion and is now proceeding *pro se* in pursuit of the instant Motion.

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had experience with financial aid leveraging systems, fee waivers, and the National Student Loan Data Service, which would have qualified her for promotion to the position of Assistant Vice President of Enrollment Planning and Management (Doc. 124, ¶ 6(a)); (2) certificates, awards, correspondence, and projects attesting to Plaintiff's history of collaboration and achievement, as well as Plaintiff's many contributions to student success (Doc. 124, ¶ 6(b)); (3) documents containing information about her actions with respect to Transfer Articulation, Degree Works and Tracking, and information about white male counterparts and their failures with respect to the degree auditing program (Doc. 124, ¶ 6(c)); (4) documents that allegedly may corroborate that there was an alleged agreement to extend Plaintiff's employment through 2019 (Doc. 124, ¶ 6(d)); (5) e-mails that would prove Defendants conspired to terminate Plaintiff (Doc. 124, ¶ 6(e)); and (6) documents that contained information about Dr. Ralph Wilcox giving a bad reference for other employees, Dr. Wilcox's "Jekyll-Hyde treatment" of Plaintiff, and his use of racially-charged, offensive language (Doc. 124, ¶ 6(f).)

II. Discussion

District courts maintain broad discretion to impose sanctions, a power which "derives from the court's inherent power to manage its own affairs and to achieve the orderly and expeditious disposition of cases." *Flury v. Daimler Chrysler Corp.*, 427 F.3d 939, 944 (11th Cir. 2005) (citation omitted). In imposing sanctions for discovery abuses, such as spoliation, district courts seek both to prevent unfair prejudice to litigants and to ensure the integrity of the discovery process. *Id.* (citation omitted). "Spoliation is the intentional destruction, mutilation, alteration, or concealment of evidence." *Arthrex, Inc. v. Parcus Med., LLC*, No. 2:10-cv-151-FtM-38DNF, 2014 WL 2742813, at *1 (M.D. Fla. June 10, 2014) (citation and quotation marks omitted). "To determine whether and what sanctions are warranted for spoliation of evidence, courts should primarily consider the extent of prejudice caused by the spoliation (based on the

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importance of the evidence to the case), whether that prejudice can be cured, and the culpability of the spoliator.” *Oil Equip. Co. Inc. v. Modern Welding Co. Inc.*, 661 F. App’x 646, 652 (11th Cir. 2016). In making such determination, “[d]ismissal represents the most severe sanction available to a federal court, and therefore should only be exercised where there is a showing of bad faith and where lesser sanctions will not suffice.” *Flury*, 427 F.3d at 944 (citation omitted).

The party seeking spoliation establishes its burden by proving (1) the missing evidence existed at one time; (2) the alleged spoliator had a duty to preserve the evidence; and (3) the evidence was crucial to the movant being able to prove its *prima facie* case or defense. *Peeler v. KVH Indus., Inc.*, Co. 8:12-cv-1584-T-33TGW, 2013 WL 3871420, at *4 (M.D. Fla. July 25, 2013) (citation omitted); *see also Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292, 1308 (11th Cir. 2003) (finding that the plaintiff must demonstrate it was unable to prove his cause of action due to the unavailability of the destroyed evidence). Courts do not hold the “prejudiced party to too strict a standard of proof regarding the likely contents of the destroyed evidence because doing so allows the spoliators to profit from the destruction of evidence.” *S.E. Mechanical Servs., Inc. v. Brody*, 657 F. Supp. 2d 1293, 1300 (M.D. Fla. 2009). However, courts do not “treat missing evidence with an adverse inference unless the circumstances surrounding the missing evidence indicates bad faith such as tampering with evidence.” *Arthrex, Inc.*, 2014 WL 2742813, at *1 (citation omitted).

Here, it is uncontested that in the summer of 2015 Plaintiff’s departmental personnel file was shredded. And, as the Court has previously stated (*see* Doc. 103 at 39), Defendant had a duty to preserve all relevant information pertaining to Plaintiff’s claims in the summer of 2015, when the departmental personnel file was shredded. This duty was, at a minimum, triggered by Plaintiff’s claims of spoliation of a voice message filed in Case No. 15-mc-18-T-17MAP, which was initiated in February, 2015. Thus, given that a duty to preserve existed

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when the Plaintiff's departmental personnel file was shredded, what remains at issue are: (1) whether Defendant acted with bad faith in the shredding of documents in Plaintiff's departmental personnel file; (2) whether relevant documents were lost as a result of the shredding; and, if so, (3) to what extent the information was important to the case and could the information be available from other sources. In other words, what was the level of culpability of Defendant when the departmental personnel file was shredded, and what was the resulting prejudice to Plaintiff?

As to the level of culpability, the Court previously concluded that Plaintiff failed to establish that Defendant acted in bad faith. (*See* Doc. 103 at 40.) Specifically, the Court concluded that:

the Court is also satisfied that there is at this time, based upon the record, no showing of bad faith; that is, based upon the affidavits of Palmer, Bishop and Johnson, it clearly is demonstrated that there was a destruction of records independent of the plaintiff's personnel file, that is, the plaintiff's personnel file was not singled out with an intent to destroy what may be relevant records for the case.

That is significant to the Court because that highlights notably that there was not an express intent to single out any records that may be relevant to this case to ensure that plaintiff would not have access to those records, so not an intent to prejudice the defendant by not preserving relevant documents.

(*Id.*; *see also* Doc. 66, Exs. 1-3.) Plaintiff has not submitted any new or additional evidence to establish her burden of demonstrating that Defendant acted in bad faith. Plaintiff submitted an affidavit by Kimberly Bushe-Whiteman, in which Ms. Bushe-Whiteman attests that: “[e]veryone believed it had something to do with Angela. They got rid of everyone else's file because they wanted to get rid of hers.” (Doc. 125 at 6, ¶ 16.) As Defendant correctly argues, Ms. Bushe-Whiteman's statement is clear hearsay, conjecture, and an unsubstantiated opinion.

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Plaintiff simply has failed to produce any sound and credible evidence that Defendant acted with bad faith in the shredding of her departmental personnel file.

In turn, the Court finds entirely credible the sworn statements by Bishop, Palmer and Johnson. (See Doc. 66-1; 66-2; and 66-3.) Specifically, the Court accepts that the Plaintiff's department personnel file was shredded because it, along with other departmental files were deemed to be primarily duplicates of the official USF personnel files maintained by human resources at USF.² The fact that all departmental files were shredded at the same time is more indicative of a routine retention policy decision, as compared to an intent to deprive Plaintiff of relevant information to the instant litigation. Significantly, all department employees were notified in advance that the files were going to be shredded. Certainly, Plaintiff's Motion would be moot had Defendant also notified Plaintiff in advance, but the fact that all active employees were notified demonstrates that the Defendant did not covertly destroy the personnel files in an attempt to conceal the shredding of the files from Plaintiff. Last, there is no credible evidence that the decision makers in Plaintiff's case were aware of or involved in the shredding of the department personnel files. Plaintiff relies upon Ms. Bushe-Whiteman's sworn statement that she "was also told that, 'Suzanne said that Alexis told her to get rid of her files and said you're not supposed to have them.'" (Doc. 125 at 5 ¶ 15.) However, this statement is unreliable, as it is hearsay that is un-attributable to any source.

In essence, Plaintiff, based upon unsupported hearsay statements and conjecture, requests that the Court conclude that numerous individuals, including, amongst others, Lois Palmer, Victoria Johnson and Susan McCloskey Bishop, all agreed to lie under oath and agreed to execute elaborate steps to shred information directly relevant to Plaintiff's claims in this case.

² Notably, USF Regulation 10.209 states that: "[t]he department where the employee is assigned may retain *duplicate copies* of documents contained in the official personnel files." (Doc. 66-4.)

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The Court is unpersuaded by Plaintiff's renewed Motion. Rather, yet again, Plaintiff has simply failed to provide any competent evidence to demonstrate that Defendant acted with bad faith in the shredding of her departmental personnel file.

Additionally, beyond Plaintiff's inability to establish the requisite culpability of Defendant, Plaintiff has also failed to establish the requisite prejudice as a result of the allegedly spoliated documents. Plaintiff's burden, at a minimum, is a threshold showing that the allegedly destroyed documents were relevant to Plaintiff's claim, but in order to obtain Plaintiff's requested sanctions, as Defendant correctly notes, Plaintiff is required to demonstrate that the allegedly spoliated evidence was *crucial* to prove her *prima facie* case. *Keen v. Bovie Medical Corp.*, No. 8:12-cv-305-T-24EAJ, 2013 WL 3832382 (M.D. Fla. July 23, 2013); *United States ex. rel King v. DSE, Inc.*, 8:08-cv-2426-T-23EAJ, 2013 WL 610531 (M.D. Fla. Jan. 7, 2013). At the February 8, 2017 hearing, the Court specifically requested that Plaintiff articulate the categories of documents she asserted were destroyed by Defendant when her departmental personnel file was shredded, and an employment "contract . . . e-mails . . . , draft versions of the Ellucian report, the exit interview with Caurie Waddell and telephone records" were the only categories identified by Plaintiff. (Doc. 103 at 19-20; 37-42.) Now, for the first time, Plaintiff asserts that also lost as a result of the shredding of her departmental personnel file were: (1) documents containing proof that she had experience with financial aid leveraging systems, fee waivers, the National Student Loan Data Service, which would have qualified her for promotion to the position of Assistant Vice President of Enrollment Planning and Management (Doc. 124, ¶ 6(a)); (2) certificates, awards, correspondence, and projects attesting to Plaintiff's history of collaboration and achievement, as well as Plaintiff's many contributions to student success (Doc. 124, ¶ 6(b)); (3) documents containing information about her actions with respect to Transfer Articulation, Degree Works and Tracking, and information about white

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male counterparts and their failures with respect to the degree auditing program (Doc. 124, ¶ 6(c)); (4) documents that allegedly may corroborate that there was an alleged agreement to extend Plaintiff's employment through 2019 (Doc. 124, ¶ 6(d)); (5) e-mails that would prove Defendants conspired to terminate Plaintiff (Doc. 124, ¶ 6(e)); and (6) documents that contained information about Dr. Ralph Wilcox giving a bad reference for other employees, Dr. Wilcox's "Jekyll-Hyde treatment" of Plaintiff, and his use of racially-charged, offensive language (Doc. 124, ¶ 6(f).)

Significantly, Plaintiff offers no explanation to reconcile how she is now suddenly able to identify these additional specific categories of documents that were allegedly in her departmental personnel file, when she was unable to articulate these documents previously in any communication to Defendant during either the discovery process, in the Original Motion (Doc. 61), or to the Court upon a specific request on February 8, 2017. Thus, given that this is the first time Plaintiff has alleged spoliation of these categories of documents, the Court is compelled to question the credibility of this new assertion that these categories of documents were destroyed as a result of Defendant's shredding of the departmental personnel file. Although the ultimate burden to establish prejudice rests with a requesting party, at times that burden can be difficult to meet given that the requesting party may not know what documents were destroyed by a producing party's alleged spoliation. However, that is not the circumstance in this matter. Notably, Plaintiff asserted that non-duplicative documents that were destroyed when her departmental personnel file was shredded are documents she specifically ensured were placed in her departmental personnel file. Thus, Plaintiff was in a position to know exactly what documents were in her departmental personnel file that should have been produced during discovery, but yet the first time Plaintiff alleges spoliation of these new six categories of documents is in the pending Motion (Doc. 123). Significantly, Plaintiff relies predominately

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upon her own self-serving statements as evidence that the new categories of documents were spoliated when her departmental personnel file was shredded. Given the timing of Plaintiff's allegations regarding the new categories of documents, and the fact that Plaintiff provided no other competent evidence to establish that the new categories of documents were in Plaintiff's departmental personnel file, the Court finds that Plaintiff has failed to meet her burden in establishing prejudice because the Court concludes Plaintiff has failed to sufficiently establish that the new documents were in fact spoliated. Additionally, even if Plaintiff was able to establish that the new categories of documents were spoliated when her departmental personnel file was shredded, the Court also finds, as Defendant has argued, that Plaintiff failed to establish how any of the new categories of documents were *crucial* to her case. *See QBE Ins. Corp. v. Jordan Enterprises*, 286 F.R.D. 694, 698 (S.D. Fla. 2012) (“[d]efendant’s failure to establish that the allegedly spoliated evidence was ‘crucial’ to its defense is alone reason to deny the motion”); *Socas v. NW Mut. Life Ins., Co.*, No. 07-20336-CIV, 2010 WL 3894142, at *4 (S.D. Fla. Sept. 30, 2010) (“the burden of proof of spoliation rests upon the [moving party]”).

III. Conclusion

For the reasons stated herein, Plaintiff's requested sanctions that (1) she be permitted to submit evidence at the trial pertaining to Defendant's destruction of the discoverable documents; (2) the Court instruct the jury that it should determine that the shredded evidence was highly adverse to Defendant; (3) the Court strike certain denials by Defendant; and (4) the Court grant Plaintiff a default judgment on her retaliation claim are unwarranted given that Plaintiff has failed to establish that Defendant acted with bad faith and that Plaintiff was prejudiced by Defendant's destruction of her departmental personnel file.

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Accordingly, upon careful consideration it is **ORDERED** that Plaintiff's renewed Motion for Sanctions against Defendant University of South Florida Board of Trustees for Spoliation and Nondisclosure (Doc. 123) is **DENIED**.

DONE AND ORDERED in Tampa, Florida, on this 7th day of August, 2017.



ANTHONY E. PORCELLI
United States Magistrate Judge

cc: Counsel of Record
Plaintiff, *pro se*

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UNITED STATES DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 TAMPA DIVISION

ANGELA DEBOSE,

Plaintiff,

v.

CASE NO. 8:15-cv-02787-EAK-AEP

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

Defendants.

/

DEFENDANT'S (CORRECTED) TRIAL EXHIBIT LIST

Exhibit Number	Date Identified	Date Admitted	Witness	Description OF Exhibit
1	9-24-18	9-24-18		03/21/2005 Memo to Angela Debose from Ralph Wilcox re: A follow-up to Friday's meeting
2				07/28/2011 Memo to Angela Debose from Paul Dosal re: Exclusion from Bonus (USFBOT001230)
3	9-13-18	9-13-18		09/17/2012 Email string ending with Email to Paul Dosal from Angela Debose re: RE: Proposal to present at EPI Conference (USFBOT000927)
4	9-13-18	9-13-18		09/17/2013 Email string ending with Email to Paul Dosal from Robert Sullins re: RE: Student Success funding opportunity
5				01/23/2014 Email string ending with Email from Travis Thompson re: RE: online Grad App and grad cert processes

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6	9-13-18	9-13-18		04/04/2014 Email to Paul Dosal from Sarah Thomas re: Tracking Steering Committee Agenda
7	9-13-18	9-20-18		04/11/2014 Email string ending with Email to Travis Thomson and Robert Sullins from Sarah Thomas re: CONFIDENTIAL: DegreeWorks Project Stakeholders
8	9-13-18	9-13-18		04/13/2014 Email string ending with Email to Sarah Thomas from Paul Dosal re: Re: DegreeWorks Project Stakeholders
9				05/14/2014 Email to Paul Dosal from Angela Debose re: Miscellaneous Notes
10	9-13-18	9-13-18		05/21/2014 Email string ending with Email to Paul Dosal from Angela Debose re: FW: DegreeWorks Tech Team Meeting
11	9-13-18	9-13-18		05/22/2014 Email string ending with Email to Angela Debose from Paul Dosal re: Re: DegreeWorks Tech Team Meeting
12	9-24-18	9-24-18		05/22/2014 Email string ending with Email to Paul Dosal from Angela Debose re: RE: DegreeWorks Tech Team Meeting
13	9-13-18	9-13-18		05/27/2014 Email string ending with Email to Sidney Fernandes from Paul Dosal re: RE: Tracking implementation options
14	9-20-18	9-20-18		05/27/2014 Email string ending with Email to Angela Debose, Carrie Garcia and Travis Thompson from Sarah Thomas re: Details of Rollout Option for Tracking
15	9-13-18	9-13-18		05/27/2014 Email to Paul Dosal from Sarah Thomas re: Tracking Option Meeting Invitees
16	9-13-18			05/27/2014 Email string ending with Email to Paul Dosal from

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			Sidney Fernandes re: RE: Tracking implementation options
17	9-13-18	9-13-18	05/28/2014 Email string ending with Email to Paul Dosal from Sarah Thomas re: RE: Tracking Option Meeting Invitees
18	9-13-18	9-13-18	05/29/2014 Email string ending with Email to Paul Dosal from Sarah Thomas re: Tracking Project
19	9-13-18	9-13-18	06/01/2014 Email string ending with Email to Angela Debose, Carrie Garcia and Travis Thompson from Sarah Thomas re: Details of Rollout Option for Tracking
20	9-21-18	9-24-18	06/12/2014 Email string ending with Email to Paul Dosal from Valeria Garcia re: Re: meeting on Monday about retaining?
21	9-13-18	9-20-18	06/20/2014 Email to Paul Dosal from Sarah Thomas re: High Risk for Tracking System Implementation
22			06/22/2014 Email to Paul Dosal from Ralph Wilcox re: FW: Message to the Provost
23			06/22/2014 Email string ending with Email to Ralph Wilcox from Paul Dosal re: Re: Message to the Provost
24			06/22/2014 Email string ending with Email to Paul Dosal from Ralph Wilcox re: Re: Message to the Provost
25	9-13-18	9-13-18	06/27/2014 Email to Paul Dosal from Angela Debose re: FW: DgW Strategy meeting
26	9-13-18	9-13-18	07/17/2014 Email to Paul Dosal from Angela Debose re: Assistant Vice President of Enrollment Planning Position

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27	9-13-18	9-13-18	07/18/2014 Email string ending with Email to Paul Dosal from Angela Debose re: RE: Assistant Vice President of Enrollment Planning Position
28	9-13-18		08/2014 Ethics-Point Issue and Event Manager (USFBOT000195-204)
29	9-13-18	9-13-18	08/01/2014 Email string ending with Email to Angela Debose from Paul Dosal re: Assistant Vice President of Enrollment Planning Position
30			08/03/2014 Email string ending with Email to Paul Dosal from Angela Debose re: RE: Assistant Vice President of Enrollment Planning Position
31	9-24-18	9-24-18	08/14/2014 Email string ending with Email to Paul Dosal from Angela Debose re: RE: Assistant Vice President of Enrollment Planning Position
32			08/16/2014 Email string ending with Email to Jose Hernandez from Paul Dosal re: RE: Your advice requested
33			08/24/2014 Email string ending with Email to Camille Blake from Angela Debose re: FW: Formal Discrimination Complaint
34	9-24-18	9-24-18	08/24/2014 Email string ending with Email to Paul Dosal from Angela Debose re: RE: Assistant Vice President of Enrollment Planning Position
35			08/28/2014 Email to Camille Blake and Rhonda Ferrell-Pierce from Angela Debose re: Complaint (USFBOT000168-194)

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36			University of South Florida Diversity, Inclusion and Equal Opportunity Office EEO Complaint Form (USFBOT000163-167)
37	9-24-18	9-24-18	09/15/2014 Email string ending with Email to Angela Debose from Angela Debose re: Note to File
38	9-13-18	9-13-18	09/19/2014 Email string ending with Email to Paul Dosal from Alexis Mootoo re: Re: Registrar's Office Renovations
39	9-13-18	9-24-18	10/11/2014 Email string ending with Email to Alexis Mootoo from Paul Dosal re: Funding for DegreeWorks Ellucian Engagement
40			01/30/2017 Affidavit of Andrea Diamond In Support Of Defendant Ellucian Company L.P.'s Motion For Summary Judgment
41			11/05/2014 Memo to Camille Blake from Angela Debose re: Discrimination (DIEO #2014-342 and #2014-363) Cases and HR Ethics Complaint
42	9-13-18	9-13-18	11/12/2014 Email string ending with Email to Carrie Garcia, Jenny Paulsen and Richard Debow from Travis Thompson re: RE: Funding for DegreeWorks Ellucian Engagement
43	9-24-18	9-24-18	11/19/2014 Email string ending with Email to Angela Debose, Valeria Garcia and Rolanda Lewis from Paul Dosal re: Re: USF Table 4B Comparison for the 2013-2014 AAR
44	9-24-18		11/26/2014 Memo to Blake Camille from Paul Dosal re: Notice of Complaint of Discrimination and Request for a Response DEO Cases #2014-363

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45				01/02/2015 Email to Camille Blake from Angela Debose re: Diversity, Inclusion and Equal Opportunity Office
46				01/15/2015 Charge of Discrimination
47	9-13-18	9-13-18		01/28/2015 Email to Paul Dosal from Angela Debose re: Meeting (USFBOT000300)
48				01/28/2015 Email string ending with Paul Dosal re: Meeting with the Registrar
49	9-19-18	9-24-18		01/28/2015 Email string ending with Email to Ralph Wilcox from Paul Dosal re: Meeting with Angela Debose
50	9-13-18	9-13-18		01/29/2015 Email to Paul Dosal from Alexis Mootoo re: RE: Registrar's Office – Angela Debose
51	9-13-18	9-13-18		01/29/2015 Email string ending with Email to Alexis Mootoo from Paul Dosal re: RE: Registrar's Office – Angela Debose
52	9-13-18	9-13-18		01/30/2015 Email string ending with Email to Paul Dosal from Tonia Suber re: RE: Registrar's Office – Angela Debose
53	9-20-18	9-20-18		1/31/2015 Email string ending with Email to Ralph Wilcox from Paul Dosal re: Meeting with the Registrar
54	9-13-18	9-13-18		01/30/2015 Email string ending with Email to Angela Debose from Paul Dosal re: Re: Meeting
55	9-24-18	9-24-18		02/01/2015 Email to Tonia Suber from Alexis Mootoo re: Meeting synopsis for assistance (USFBOT000314-316)

R.A.067

56	9-24-18			02/02/2015 Email string ending with Email to Tonia Suber from Taja Sumpter re: RE: Confirmation
57	9-13-18	9-13-18		02/04/2015 Email string ending with Email to Paul Dosal from Angela Debose re: RE: Quick meeting tomorrow
58	9-20-18	9-20-18		02/04/2015 Letter to Angela Debose from USF RE: Written Reprimand (USFOT000308-309)
59				02/10/2015 USF System Grievance Form
60				02/18/2015 Memo to Angela Debose from Denalta Adderley-Henry, Associate Director re: Grievance
61				02/24/2015 Plaintiff's Notarized Statement of Key Facts
62				02/19/2015 University of South Florida Diversity, Inclusion and Equal Opportunity Office EEO Complaint Form
63	9-20-18	9-20-18		03/05/2015 Memo to Angela Debose from Dr. Jose Hernandez re: Determination Letter
64	9-20-18	9-20-18		03/05/2015 Diversity Inclusion and Equal Opportunity Office Final Investigative Report (USFBOT000003-6)
65				03/10/2015 Memo to Dr. Jose Hernandez from Angela DeBose re: Determination Letter-DEO Case Number 2014-342
66				03/12/2015 Email string ending with Email to Jose Hernandez from Angela Debose re: RE: Response to your letter dated March 10, 2015
67				05/16/2015 Charge of Discrimination (USFBOT000115-116)

R.A.068

68	9-20-18	9-20-18		04/03/2015 Memo to Angela Debose from Dr. Jose Hernandez re: Determination Letter
69				04/03/2015 Email to Billie Jo Hamilton and Angela Debose from Paul Dosal re: Cultural Survey
70	9-24-18	9-24-18		04/03/2015 Email string ending with Email to Andrea Diamond and Carrie Garcia from Travis Thompson re: Re: Degree Works Training- 04/14-04/16 (ELLUCIAN000102-105)
71	9-24-18	9-24-18		04/10/2015 Email string ending with Email to Andrea Diamond from Carrie Garcia re: RE: URGENT PIA Engagement with Ellucian (ELLUCIAN000057)
72	9-24-18	9-24-18		04/10/2015 Email to David Lee Henry and Angela Debose from Carrie Garcia re: Ellucian – Post Implementation Assessment - DegreeWorks
73				COMPOSITE EXHIBIT
73A	9-24-18	9-24-18		04/15/2015 Calendar Invite from Carrie Garcia
73B	9-24-18	9-24-18		04/14/2015 Email string ending with Email to Carrie Garcia from Angela Debose re: RE: Ellucian tomorrow
73C				04/16/2015 Email string ending with Email to Sidney Fernandez; Robert Sullins; Travis Thompson; Brooke Deen; Carrie Garcia; Paul Dosal and Rosie Lopez from Jenny Paulsen re: RE: debrief with Ellucian consultant
74				04/10/2015 Email string ending with Email to David Lee Henry and Angela Debose from Carrie Garcia re: RE: Ellucian – Post Implementation Assessment –

R.A.069

			DegreeWorks (DEBOSE0001584-1585)
75	9-24-18	9-24-18	04/10/2015 Email string ending with Email to Carrie Garcia from Travis Thompson re: RE: URGENT: PIA Engagement with Ellucian
76			04/16/2015 Email string ending with Email to Sidney Fernandes, Robert Sullins, Travis Thompson, Brooke Deen, Carrie Garcia, Paul Dosal and Rosie Lopez from Jenny Paulsen re: RE: debrief with Ellucian consultant
77	9-13-18	9-13-18	Ellucian Services Engagement Report
78	9-13-18	9-24-18	05/11/2015 Email string ending with Email to Paul Dosal from Angela Debose re: FW: Ellucian DegreeWorks Post-Implementation Assessment Report (DEBOSE0000982-987)
79	9-24-18	9-24-18	05/19/2015 Letter to Angela Debose from USF re: Notice of Non-reappointment
80			05/27/2015 Text Message
81			05/28/2015 Charge of Discrimination (USFBOT000997-999)
82			05/29/2015 Email string ending with Email to Susan Johnson from Andrea Diamond re: RE: USF-DW project. Engagement report. (ELLUCIAN000221-224)
83			06/01/2015 Email Trudle Frecker from AWdebose@aol.com re: Grievance (USFBOT000219-224)
84			06/26/2015 Letter to Carrie Garcia from USF (DEBOSE0002216-2217)

R.A.070

85			07/17/2015 Equal Employment Opportunity Commission Transmittal To Department of Justice of Request For Notice of Right to Sue
86			07/17/2015 Letter confirming request for Notice of Right to Sue
87	9-24-18	9-24-18	05/11/2015 Email to Angela Depose from Paul Dosal re: FW: Ellucian DegreeWorks Post-Implementation Assessment Report
88	9-20-18	9-20-18	Organization of Tracking and Degree Audit Systems within the SUS: Summary
89	9-20-18	9-20-18	Recommendations on Appropriate Organization of USF's Degree Audit and Tracking System
90	9-20-18	9-20-18	Considerations for Shift of Rules and Responsibilities
91	9-20-18	9-20-18	Options for Phase 2 Implementation of Tracking
92			Email string ending with Email from Travis Thompson re: RE: online Grad App and grad cert processes
93			01/23/2014 Questions from grad certifiers regarding the new Graduation Application system
94			Online Graduation Application Student View
95			Organization of Tracking and Degree Audit Systems within the SUS: Detailed Table
96			ATLAS Tracking Functional Gaps
97			USF Policy 0-007 Diversity and Equal Opportunity: Discrimination and Harassment (USFBOT001602-1609)

R.A.071

98				USF Policy 0-020 Retaliation, Retribution or Reprisals Prohibited (USFBOT001610-1612)
99				USF Policy 10.211 Separations from Employment and Layoff (USFBOT001643-1646)
100	9-20-18	9-20-18		USF Policy 10.210 Non-reappointment (Staff)
101				USF Policy 10.213 Administration, Staff, and Temporary Employee Grievances
102				Plaintiff's Answers to Defendant Ellucian Company, LLC's First Set of Interrogatories
103				Plaintiff's Rule 26 Disclosure
104				08/28/2017 Affidavit of Angela Debose (Doc. # 174)
105				03/20/2017 Affidavit of Angela Debose
106				08/28/2017 Affidavit of Angela Debose (Doc. #164)
107				Plaintiff's Answers To Defendant University Of South Florida Board of Trustees' First Set Of Interrogatories
108	9-24-18	9-24-18		05/12/2015 Email string ending with Email to Ralph Wilcox from Paul Dosal re: Fwd: Ellucian DegreeWorks Post-Implementation Assessment Report
109	9-24-18	9-24-18		12/11/2006 Email string ending with Email to Angela Debose from Ralph Wilcox re: RE: Spring 2007 HC & SCH – Week Ending December 8th
110	9-13-18	9-20-18		01/28/2015 Email from Alexis Mootoo to Paul Dosal, Subject: Registrar's Office – Angela Debose

R.A.072

111	9-13-18		01/28/2015 Email from Paul Dosal to Alexis Mootoo, Subject: Re: Registrar's Office – Angela Debose
112	9-24-18	9-24-18	07/06/2015 USF Appointment Status Form, Angela DeBose 08/19/2015
113			09/01/2015 Florida Polytechnic University Application for Employment
114			Angela W. DeBose Resume
115			09/27/2015 Project Coordinator Interview Questions
116			09/28/2015 UNF Reference Questions
117			09/30/2015 Florida Polytechnic Offer Letter
118			02/05/2017 Predictive Index and Behavioral Report
119	9-19-18	9-19-18	08/06/2014 Email Correspondence from Ralph Wilcox to Paul Dosal Subject: Re: Assistant Vice President of Enrollment Planning Position
120	9-24-18		Letter dated 9-30-15 from Polytech to Plaintiff. All documents produced in response to subpoena. All exhibits listed by plaintiff. Impeachment Exhibits.

Respectfully submitted,

/s/ Richard C. McCrea, Jr.
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 Florida Bar No. 351539
 Email: mccrear@gtlaw.com
 Cayla McCrea Page
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R.A.073

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Attorneys for Defendant
University of South Florida Board of
Trustees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 4, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to:

Angela DeBose, Pro Se
1107 W. Kirby Street
Tampa, FL 33604

Jeffrey B. Jones, Esquire
Kimberly J. Doud, Esquire
Nancy A. Byer, Esquire
Littler Mendelson, P.C.
111 North Magnolia Avenue, Suite 1250
Orlando, FL 32801

/s/ Richard C. McCrea, Jr.

Attorney

R.A.074

<p>U.S. District Court Middle District of Florida <u>DEFENDANT'S EXHIBIT</u></p>	
<p>Exhibit Number: 39</p>	
<p>Case Number: <u>Case: 8:15-cv-02787-EAK-AEP</u></p>	
<p>Case Style: <u>ANGELA DEBOSE</u></p>	
<p>v.</p>	
<p><u>UNIVERSITY OF SOUTH FLORIDA et al.</u></p>	
<p>Date Identified:</p>	
<p>Date Admitted:</p>	

Case 8:15-cv-02787-EAK-AEP Document 2014-1 Filed 06/25/18 Page 4 of 15 PageID 4453
R.A.075

Attached Message

From Dosal, Paul <pdosal@usf.edu>
To Mootoo, Alexis <amootoo@usf.edu>
Subject Funding for DegreeWorks Ellucian Engagement
Date Sat, 11 Oct 2014 13:47:47 +0000

Alexis,

I want to request authority to spend my 2013-14 carry forward to pay for Ellucian training and visits to campus. The total cost is about \$20K. How should I make this request?

I have a number of projects that I would like to advance using carry forward funds. Should I put them all together in one long list totaling \$97.8K? Or should I do them one by one, through you or directly to Nick S., copying the provost?

Paul Dosal, Ph.D.
Vice Provost for Student Success
Office of Student Success
Academic Affairs

University of South Florida
4202 East Fowler Avenue, ALN 185/CGS 401.
Tampa, Florida 33620-4401
Tel: 813.974.5118 • Fax 813.905.9881
pdosal@usf.edu
www.acad.usf.edu/office/Student-Success/

*Student success is everyone's responsibility.
Follow me on twitter*

From: , Carrie <cagarcia@usf.edu>
To: Paul Dosal <pdosal@usf.edu>
Cc: "Paulsen, Jenny" <jpaulsen@usf.edu>, "Sullins, Robert" <rsullins@usf.edu>, "Thompson, Travis" <tthompson@usf.edu>, "Molleti, Sridevi" <smolleti@usf.edu>
Subject: RE: Funding for DegreeWorks Ellucian Engagement

Thank you for the reminder.

- Attached is the statement of work for the Post Implementation Assessment of all of DegreeWorks. The cost as quoted from Ellucian is \$10,990.
- The second is a consulting engagement for 40 hours to cover the questions specific to tracking that we outlined in the attached document. The cost for that is \$10,600.

I have supporting emails with our vendor contacts if you need those as well since the documents do not contain the specific dollar figures.

Carrie Garcia

Director | USF Information Technology
cagarcia@usf.edu | Tel: (813) 974-8375

R.A.076

U.S. District Court
Middle District of Florida
DEFENDANT'S EXHIBIT

Exhibit Number: **71**

Case Number:

Case: 8:15-cv-02787-EAK-AEP

Case Style:

ANGELA DEBOSE

v.

UNIVERSITY OF SOUTH FLORIDA et al.

Date Identified:

Date Admitted:

CONFIDENTIAL
R.A.077

Mack, Kevin O.

 **From:** Garcia, Carrie <Cagarcia@usf.edu>
Sent: Friday, April 10, 2015 11:40 AM
To: Diamond, Andrea
Cc: Hanner, Steve; English, Jim; Molleti, Sridevi; Carpenter, Mark
Subject: RE: URGENT: PIA Engagement with Ellucian

Thank you for the follow up, this sounds good. Let me touch base with Travis and some other folks and make sure we have everyone lined up as appropriate.

We will see you on Tuesday – I'll follow up separately to make sure you have everything you need information wise for your arrival.

Carrie Garcia
Director | USF Information Technology
cagarcia@usf.edu | Tel: (813) 974-8375

From: Diamond, Andrea [mailto:Andrea.Diamond@ellucian.com]
Sent: Friday, April 10, 2015 11:37 AM
To: Garcia, Carrie
Cc: Hanner, Steve; English, Jim; Molleti, Sridevi; Carpenter, Mark
Subject: Re: URGENT: PIA Engagement with Ellucian

 Carrie!

After my discussion with Mark, here is my proposed new agenda. I'd still like to do a discovery session in the morning on Tuesday with you, Travis and Sridevi. This will allow me to get familiar with your system and how you are using it. Starting Tuesday afternoon, I'd like to start bringing in the high end users for assessment. These would be any members of the core team, Scribes and possibly the registrars office. Starting on Wednesday, I'd like to pull in the advisors (professional and faculty), other staff and students (if possible) for assessment. Thursday, I'd like to set aside time to go through some of the pain points that Travis has identified. Thursday afternoon we can keep open for additional users who weren't available earlier in the week. We will also use this time to investigate the Tracking issue before your technical training with Jim.

How does that sound? If you have any suggested changes or concerns please let me know!

Thanks,

Andrea

Sent from my iPhone

On Apr 10, 2015, at 10:28 AM, Garcia, Carrie <Cagarcia@usf.edu> wrote:

Yes, I was in touch with him as well after that conversation.



I still need additional feedback on the actual plan – what will the revised schedule/agenda be – who do I need to have available and when?

From: Dosal, Paul (Provost Office)
Sent: Friday, October 10, 2014 3:13 PM
To: Garcia, Carrie
Cc: Paulsen, Jenny; Sullins, Robert; Thompson, Travis; Molleti, Sridevi
Subject: Re: Funding for DegreeWorks Ellucian Engagement

R.A.078

Carrie,

Just a gentle reminder that I need an estimate, invoice, or a proposal to move this forward. I need something showing a price for services to be delivered, and I think I can get it funded.

Best,

Paul Dosal, Ph.D.

Vice Provost for Student Success
Office of Student Success
Academic Affairs

University of South Florida

4202 East Fowler Avenue, ALN 185/CGS 401

Tampa, Florida 33620-4401

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Student success is everyone's responsibility

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R.A.079

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURY TRIAL - DAY 3
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

SEPTEMBER 12, 2018
10:16 A.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

DAVID J. COLLIER, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER
801 NORTH FLORIDA AVENUE, 7TH FLOOR
TAMPA, FLORIDA 33602

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11 FOR THE DEFENDANT UNIVERSITY OF SOUTH FLORIDA:

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14 *Cayla McCrea Page*

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16 101 E. Kennedy Boulevard

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18 Tampa, Florida 33602-5148

19 (813) 318-5700

R.A.081

I N D E X

PLAINTIFF'S WITNESSES:

PAUL DOSAL

PAGE

Direct examination by Ms. DeBose (continued)

7

R.A.082

1 BY MS. DEBOSE:

2 Q I'm going to ask you, Dr. Dosal --

3 THE COURT: Just ask him the question. If you
4 want to, repeat what is there.

5 BY MS. DEBOSE:

6 Q Dr. Dosal, did you disclose the Caurie Waddell e-mail
7 to Angela DeBose?

8 A Yes, at some point.

9 Q Do you remember what point that was?

10 A Sometime in 2015.

11 Q Was that -- Angela DeBose was employed in 2015. Her
12 last day was May 19th, 2015. Did you provide it before her
13 termination?

14 A I don't recall that.

15 Q Did you provide the webmaster e-mail to Angela DeBose?

16 A No.

17 Q Did you provide the Sarah Thomas e-mail to Ms. DeBose?

18 MR. MCCRAE: Objection, Your Honor.

19 THE COURT: Overruled. Answer the question.

20 A No.

21 Q Did you provide any of these e-mails to Diversity,
22 Inclusion & Equal Opportunity?

23 A I don't think so.

24 Q Were you angry that Angela DeBose charged you with
25 discrimination?

R.A.083

1 A I was upset by it.

2 Q When you say "upset," does that mean you were mildly
3 agitated? Would you describe what you mean by "upset."

4 A I felt that it was an unfair, unfounded allegation.

5 I'm used to -- or I've developed a thick skin, I think, so
6 I can take criticism, and I try to temper my emotions in the
7 performance of my job duties, and so I don't think I get
8 angry.

9 Q When Angela DeBose went to you in June of 2014 and
10 talked to you about her feelings of discrimination, did you
11 have a dialogue of any sort with her?

12 A Yes.

13 Q Would you describe what that dialogue was like.

14 A The dialogue I recall in June of 2014 with Ms. DeBose
15 was focused very much on and took place in the context of
16 the serious challenges in the implementation process, and so
17 we were talking a lot about collaboration, we also talked
18 about that e-mail that she had heard about allegedly from
19 Travis Thompson to me that didn't turn out to be from
20 Travis Thompson to me, it was from Bob Sullins to me, and in
21 all that context my focus was on the project, seeing it
22 successfully through and doing what was required to keep the
23 team focused on the implementation process.

24 Q Let's go back to that e-mail that you say was from
25 Bob Sullins. Does it make a difference as to who the sender

R.A.084

1 was if it was untrue, in your estimation?

2 A Not much, no.

3 Q I'm sorry?

4 A Not much, no.

5 Q So is there a reason that you are offering the
6 distinction that the e-mail came from Bob Sullins and not
7 Travis Thompson?

8 A Just to make a point of clarification that has lingered
9 for a while. Bob Sullins sent it to me, he subsequently
10 talked to me about it, and he also realized that it was
11 wrong.

12 Q Isn't it true that on February 4th, when you issued the
13 reprimand to Angela DeBose, you were angry?

14 A No.

15 Q Were you upset about the discrimination charge on the
16 heels of her reminding you in an e-mail that she had filed a
17 charge of illegal discrimination?

18 A I was aware of that context, but putting my emotions
19 aside, as I usually try to do, I wanted to focus on doing
20 the right thing for the University.

21 Q When it became public knowledge that Ms. DeBose filed a
22 complaint with the Middle District for a temporary
23 restraining order, were you angry?

24 A No.

25 Q Was Ms. DeBose still employed then?

R.A.085

1 A I think she was.

2 Q Did your reprimand which happened on the same day have
3 any relationship to Ms. DeBose's charge of discrimination?

4 A No.

5 Q Did you ever state that you were upset or angry in
6 prior testimony or prior times that you have discussed this
7 matter?

8 A I think previously I have used "upset" to characterize
9 some of my feelings.

10 Q So the decision to move DegreeWorks had nothing to do
11 with Angela DeBose's charge of discrimination; is that your
12 testimony?

13 A The decision to move DegreeWorks in 2014?

14 Q Yes.

15 A Had nothing to do with that.

16 Q That she had a conversation with you in June about her
17 feelings of discrimination.

18 A The decision to move DegreeWorks had nothing to do
19 with --

20 Q The decision to reprimand Angela DeBose on
21 February 4th, the same day that Angela DeBose filed a
22 temporary restraining order after a meeting where you --
23 your memory was refreshed became contentious, did you issue
24 the reprimand because Angela DeBose engaged in a protected
25 activity?

R.A.086

1 A No.

2 Q Were you angry that Angela DeBose filed discrimination
3 charges against you?

4 A No.

5 Q Did you ever say to anyone you were angry about that?

6 A No.

7 Q You told others that you were -- that Angela DeBose
8 filed a charge of discrimination. Were they angry?

9 A I don't know.

10 Q Did they express upset on your behalf?

11 A Some might have, sure.

12 Q Did you ask for them to help you in the situation?

13 A No.

14 Q Did you testify earlier today that Alexis Mootoo helped
15 you?

16 A I believe I testified that I sought her assistance in
17 gathering some of the data I needed to respond to
18 Camille Blake, and earlier about salary issues, I needed her
19 help on all of those matters.

20 Q Did you testify earlier today that Alexis Mootoo --
21 that you told her and forwarded the e-mail about the Shared
22 Services meeting and the discrimination statements?

23 A Are you referring to your e-mail to me --

24 Q Yes.

25 A -- after the meeting of January something? Yes.

R.A.087

1 her staff, between Alexis Mootoo's staff and Ms. DeBose's
2 staff, you've already testified that that was to your
3 urging; is that correct?

4 A Yes.

5 Q Moving on to the Ellucian meeting on April 4th --
6 I mean, April 14th, the week of April 14th, 2015, that visit
7 was requested by you, correct?

8 A Yes.

9 Q You initiated discussions about that visit at least as
10 early as October the prior year; is that correct?

11 A Yes.

12 Q You testified earlier that you didn't specifically tell
13 Carrie Garcia to state that it was an urgent PIA.

14 A I think I testified that I would recommend that they
15 schedule it at the earliest opportunity.

16 Q Was there any connecting of the dots or any
17 relationship to Angela DeBose filing an EEOC complaint and
18 the reprimand? Was there any connection between those two
19 events?

20 A No.

21 Q Was there any connection between Angela DeBose filing
22 a -- filing a motion for a temporary restraining order
23 against the University of South Florida Board of Trustees in
24 the Middle District Court with your asking for an urgent PIA
25 or giving that reprimand, which happened on the same day?

R.A.088

1 A No.

2 Q So you would have the jury to believe that all of these
3 things that happened on February 4th, 2015 were independent
4 of the EEOC complaint?

5 MR. MCCRAE: Your Honor, no foundation.

6 THE COURT: Do you understand the question?

7 THE WITNESS: I think so.

8 THE COURT: Overruled. Take the answer.

9 A I'm describing it, explaining it as it happened.

10 Q Dr. Dosal, were you angry on February 4th, 2015?

11 A No.

12 Q Was there a purpose for having Alexis Mootoo schedule
13 another meeting with Angela DeBose and her team?

14 A Yes.

15 Q Did you ask Alexis Mootoo to help you again, like she
16 did with the performance evaluation, when she asked that you
17 add her to --

18 MR. MCCRAE: Objection. Counsel is testifying.

19 THE COURT: I think that could be true on that
20 question. Sustained. Back up. Reframe it.

21 BY MS. DEBOSE:

22 Q Did you ask Alexis Mootoo to help you again?

23 A No.

24 Q Did she help you prior to this with other matters
25 concerning the discrimination complaint? Did she gather

R.A.089

1 having a conversation with Tonia Suber over the phone,
2 I asked her about the circumstances, I asked her about the
3 process, I asked if there was supposed to be an
4 investigation and if HR was going to do that. I was told
5 that, no, HR was not going to investigate it and based on
6 the information at hand, that I could and should issue a
7 written reprimand.

8 Q Did you do it because of advice or did you do it
9 because you wanted to reprimand Angela DeBose?

10 A I was advised to do so, and it seemed like a wise
11 course of action.

12 Q Did you want to reprimand Angela DeBose? Yes or no.

13 A I don't think there's a yes or no answer, but if I had
14 to pick one, I would say yes, because I issued it.

15 Q Did you want to do so because you were angry?

16 A No.

17 Q Did you want to issue the reprimand because you were
18 upset that Angela DeBose filed a charge of discrimination?

19 A No.

20 Q Did you become angry and agitated, irate, at the
21 meeting with Angela DeBose when Alexis Mootoo departed?

22 A No.

23 Q Did you demand to meet with Angela DeBose without
24 indicating an agenda or purpose for the meeting?

25 A No, I indicated the topic that I wanted to discuss.

R.A.090

1 C E R T I F I C A T E

2

3 This is to certify that the foregoing transcript

4 of proceedings taken in a jury trial in the United States

5 District Court is a true and accurate transcript of the

6 proceedings taken by me in machine shorthand and transcribed

7 by computer under my supervision, this the 15th day of

8 October, 2018.

9

10

11 /S/ DAVID J. COLLIER

12

13 DAVID J. COLLIER

14 OFFICIAL COURT REPORTER

15

16

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18

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23

24

25

R.A.091

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURY TRIAL - DAY 4
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

SEPTEMBER 13, 2018
10:20 A.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

DAVID J. COLLIER, RMR, CRR
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R.A.093

I N D E X

PLAINTIFF'S WITNESSES:

<u>PAUL DOSAL</u>	<u>PAGE</u>
Direct examination by Ms. DeBose (continued)	6
Cross-examination by Mr. McCrae	130

R.A.094

1 Q Did you state to Angela DeBose that you were concerned
2 about his volatility if he was terminated?

3 A I may have.

4 Q Did Angela DeBose advise you to allow Bob Spatig to
5 exit with dignity and tender his resignation?

6 A I'm sorry, I don't recall that advice.

7 Q Did Bob Spatig tender his resignation rather than you
8 terminate him?

9 A Yes, he did.

10 Q Did you enter into a non-disparagement agreement with
11 Bob Spatig?

12 A I did not.

13 Q Did the University of South Florida enter into a
14 non-disparagement agreement with Bob Spatig?

15 A I believe the University did.

16 Q In terms of those type of agreements, did Bob Spatig
17 receive such allowance to leave like that because he was a
18 white male?

19 A No.

20 Q Have you exercised or ever allowed -- we talked about a
21 person of color who worked for you who was a black male that
22 you let go early after starting as Vice Provost. Did you
23 allow him to tender a resignation?

24 A I'm sorry, I can't recall the way in which he left.

25 Q Since the reasons weren't the real reasons, were you

R.A.095

1 and Provost Ralph Wilcox motivated by race on all of these
2 other decisions?

3 A No.

4 Q Had nothing to do with the DIEO complaint? Had nothing
5 to do with the EEOC complaint? Had nothing to do with
6 Ms. DeBose coming to you in June 2014 indicating that she
7 believed she was being discriminated against? Had nothing
8 to do with the August 14th, 2015 e-mail to you -- I mean,
9 August 2014 e-mail to you saying that you were
10 discriminating against her in terms of pay and compensation?
11 Did it have anything to do with Ms. DeBose filing a
12 complaint with the Middle District?

13 I'm asking were all of these decisions that
14 weren't the real reason -- was your -- was the real reason
15 motivated by race?

16 A No.

17 Q Explain that.

18 A I evaluated and assessed the situation in terms of
19 performance, and there were two critical issues among the
20 many questions asked of me. I was particularly concerned
21 with advancing two strategic initiatives of my unit, one,
22 the Tracking implementation project, and two, the Shared
23 Services Model, and the inability to cooperate and work with
24 others in order to get the job done were the primary factors
25 in my decision making process.

R.A.096

1 Q When the DegreeWorks system was moved to IT, did you
2 testify that it was to change from an eight semester plan to
3 a three semester plan? Was that your prior testimony?

4 MR. MCCRAE: Improper impeachment, Your Honor.

5 MS. DEBOSE: No, I'm not talking -- I'm talking
6 just in terms of his prior testimony, not today.

7 THE COURT: Whoa. Whoa. Whoa. Whoa. You have
8 him read it and then you ask him a question, and if his
9 question -- excuse me, if his answer is inconsistent with
10 what is in the deposition, then the deposition comes into
11 play. But you must pose a question to him, let him answer
12 it, and let's see if the depo is inconsistent.

13 Go ahead.

14 BY MS. DEBOSE:

15 Q What was the reason -- what was one of your motivating
16 reasons to change DegreeWorks? You had some changes in
17 mind. What were they?

18 A The implementation team had reached a consensus that we
19 should move from an eight semester plan to a three semester
20 plan.

21 Q Was Ms. DeBose a part of that decision?

22 A I recall that she objected to moving to a
23 three semester plan.

24 Q Did Ms. DeBose object or did she express concerns?

25 A A little bit of both.

R.A.097

1 Q Okay. Could -- in terms of letting Ms. DeBose go, in
2 terms of terminating her, was that your decision?

3 A No.

4 Q Who made the decision?

5 A It was beyond me.

6 Q Would you identify the name of the party and the
7 person's role who made the decision to terminate
8 Angela DeBose.

9 A I believe it was the Provost, Ralph Wilcox.

10 Q Now, you were closest to Mrs. DeBose's work, correct?

11 A Yes.

12 Q Did you influence the Provost's decision?

13 Did you testify -- let me stop. Did you influence
14 the Provost's decision?

15 A No.

16 Q Did you testify yesterday that you wanted Ms. DeBose to
17 be terminated no matter what?

18 MR. MCCRAE: Objection. Misstates the testimony
19 from yesterday.

20 THE COURT: Wait. Wait. Wait. Overruled. It's
21 for the jury to recall the testimony.

22 Go ahead. Go forward.

23 A I don't recall testifying to that.

24 Q Did you testify that you wanted Ms. DeBose to be
25 terminated?

R.A.098

1 A I was.

2 Q Did you in part make the decision to terminate
3 Ms. DeBose?

4 A No.

5 Q You had no say whatsoever in terms of Ms. DeBose's --
6 Ms. DeBose being terminated?

7 A That's correct.

8 Q Did you agree with the decision to terminate
9 Ms. DeBose?

10 A It's not my place to agree or disagree. I just manage
11 my unit.

12 Q Would you answer the question in terms of yes or no.
13 Did you agree or -- did you agree with the decision to
14 terminate Ms. DeBose?

15 A After it was decided, I saw an opportunity to advance
16 our strategic initiatives.

17 Q I'm going to ask again, did you agree with the decision
18 to terminate Angela DeBose, the plaintiff?

19 A Yes.

20 Q So you agreed with the decision. Yesterday you -- did
21 you testify that you wanted Ms. DeBose to be terminated?

22 MR. MCCRAE: Objection. Misstates the testimony.

23 MS. DEBOSE: I --

24 THE COURT: Whoa. Whoa. Whoa. Now we're going
25 to have to get into the recollection of the jury, because

R.A.099

1 BY MS. DEBOSE:

2 Q Did you testify yesterday that you wanted Ms. DeBose to
3 be terminated?

4 A Given my options, I would answer no.

5 Q You didn't want Ms. DeBose to be terminated?

6 A I didn't advance a recommendation.

7 Q Did you want Ms. DeBose to be retained?

8 A Again, I didn't advance a recommendation.

9 Q Did you -- did you speak with the person who made the
10 decision to persuade him in any way that that should not
11 occur?

12 A I did not. I was out of the decision making process.

13 Q Can you share who the decision makers were.

14 A Ultimately it went to the Provost.

15 Q So you used a plural term. Was there one decision
16 maker or multiple decision makers?

17 A I don't know. I was left out of the process.

18 Q Why would you want Ms. DeBose to be retained if you say
19 she was uncollaborative, aggressive or whatever the terms
20 you used? Why would you want that to be the case?

21 A I didn't advance a recommendation. I was trying to
22 manage the Registrar and remain as neutral as possible.

23 Q Yesterday did you testify that you didn't believe
24 Angela DeBose merited due process?

25 A I recall testifying in regards to the reprimand that I

R.A.100

1 was advised that I did not have to investigate and no
2 hearings had to be held.

3 Q Would you answer the question either affirmatively or
4 negatively.

5 Did you testify yesterday that you did not believe
6 Angela DeBose deserved due process?

7 A Yes.

8 Q Considering that, what I'm trying to get from you is
9 why under all of the circumstances of your testimony, why
10 didn't you make the decision? If you say you didn't make
11 the decision, why didn't you make the decision as
12 Angela Debose's immediate supervisor?

13 A In the context of the complaints and legal activity, it
14 was felt that I should focus on supervising the Registrar
15 and stay out of the decision making process.

16 Q I'm going to have to stick a pin in that last sentence.

17 In the context of complaints, are we talking about
18 complaints filed by Angela DeBose?

19 A Yes.

20 Q In the context of legal activities, are we talking
21 about the action filed by Angela DeBose with the Middle
22 District Court for a preliminary injunction?

23 A Yes.

24 Q Did those activities have an impact or an influence on
25 the decision to terminate Angela DeBose?

R.A.101

1 MR. MCCRAE: Objection. Asked and answered.

2 THE COURT: Overruled. State the answer.

3 A I was not involved in the decision making process.

4 Q I would ask that you answer the question.

5 THE COURT: Well, your question maybe needs to be
6 a little bit more pointed towards this witness.

7 Sir?

8 MR. MCCRAE: Your Honor, objection, no foundation.

9 THE COURT: Well, she needs to pose her question
10 based upon the trail that she's establishing in the
11 questions.

12 Form your question. I'll allow you to proceed.
13 Overruled. Go ahead.

14 BY MS. DEBOSE:

15 Q Did you testify just minutes ago that the complaints
16 and the legal activities were part of the reason for the
17 decision to terminate Angela DeBose?

18 MR. MCCRAE: Objection. Misstates his testimony.

19 Q Did you --

20 THE COURT: Wait. Whoa up. Whoa up. Have a
21 seat. Overruled.

22 Do you understand the question, Mr. Witness?
23 Either you do or you don't.

24 THE WITNESS: Yes.

25 THE COURT: You understand it? You may respond.

R.A.102

1 THE WITNESS: Could she repeat it?

2 BY MS. DEBOSE:

3 Q Did you testify just minutes ago that the complaints
4 and the legal activities were part of the reason to
5 terminate Angela DeBose?

6 A No.

7 Q You did not testify that?

8 A No.

9 Q Would you explain what you meant by the complaints and
10 the legal activities influencing or impacting.

11 A Those circumstances were part of the process by which I
12 was excluded from the decision making process.

13 Q You're saying you were excluded from influencing the
14 decision whether to retain or terminate Angela DeBose?

15 A Correct.

16 Q Because of the complaints, the discrimination
17 complaints?

18 A The entire context, my reprimand of her, all that led
19 into it.

20 Q You said legal activities. Would you expand on that.

21 A The cases you mentioned.

22 Q Did those -- did the complaint have an influence on
23 looking at Angela DeBose for termination?

24 MR. MCCRAE: Objection, Your Honor. We've been
25 through this. Cumulative.

R.A.103

1 THE COURT: Sustained. Back up.

2 BY MS. DEBOSE:

3 Q How would you characterize the termination of
4 Angela DeBose?

5 A I don't feel qualified to answer that. I wasn't
6 involved.

7 Q As her -- as Angela DeBose's immediate supervisor, you
8 cannot characterize how a subordinate of yours was
9 terminated? You can't make any statements; is that your
10 testimony?

11 A What do you mean by "characterize"? What do you mean?

12 Q Was Angela DeBose terminated because she filed a
13 complaint?

14 A No.

15 Q Did you want to retain Angela DeBose because she filed
16 a complaint?

17 A Again, I did not advance a recommendation one way or
18 the other.

19 Q Did the Provost terminate Angela DeBose because she
20 filed a complaint?

21 A I don't know. I was not involved in the decision
22 making process.

23 Q If you had to make an estimation based on your
24 knowledge, belief and other circumstances at USF, what would
25 you say were the reasons given to you why you as her

R.A.104

1 immediate supervisor was not a part of that decision?

2 MR. MCCRAE: Objection, Your Honor. We've covered
3 this.

4 THE COURT: Sustained.

5 BY MS. DEBOSE:

6 Q Was Angela DeBose fired with cause or without cause?

7 A Without cause, I believe. Again, I'm not -- I wasn't
8 involved in the process.

9 Q If it was without cause, what does that mean?

10 A That question I would ask advice from the General
11 Counsel about what's the difference.

12 Q Did you -- did you agree with the decision to terminate
13 Angela DeBose? We'll go back to that.

14 MR. MCCRAE: Your Honor, we've covered this over
15 and over.

16 THE COURT: We've covered that an awful lot.
17 Sustained.

18 MS. DEBOSE: Okay. I'll move on.

19 BY MS. DEBOSE:

20 Q How well-known was it that Angela DeBose filed
21 complaints? You discussed yesterday that you disclosed
22 those complaints to several people. How well-known was it?

23 MR. MCCRAE: Objection. Lack of foundation.

24 THE COURT: Well, that's true. Sustained. That's
25 a pretty broad question.

R.A.105

1 C E R T I F I C A T E

2

3 This is to certify that the foregoing transcript

4 of proceedings taken in a jury trial in the United States

5 District Court is a true and accurate transcript of the

6 proceedings taken by me in machine shorthand and transcribed

7 by computer under my supervision, this the 15th day of

8 October, 2018.

9

10

11 /S/ DAVID J. COLLIER

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13 DAVID J. COLLIER

14 OFFICIAL COURT REPORTER

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R.A.106

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURY TRIAL - DAY 6
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

SEPTEMBER 18, 2018
10:13 A.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

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R.A.108

I N D E X

PLAINTIFF'S WITNESSES:

RALPH WILCOX

PAGE

Direct examination by Ms. DeBose (continued)

8

R.A.109

1 and implemented.

2 Q Isn't it true this was Andrea Diamond's first
3 consulting job?

4 A I don't know that.

5 Q Are you aware if she had any prior experience with USF?

6 A I don't know.

7 Q Are you aware of with whom she consulted prior to USF?

8 A No.

9 Q When you hire consultants, do you normally -- do you
10 ask for a customer list?

11 A I didn't hire Ms. Diamond.

12 Q What was Ellucian hired to do? What was Ellucian and
13 Diamond hired to do? You said they were hired to optimize
14 the system; is that correct?

15 A Not to optimize the system but to provide the
16 University of South Florida an assessment of why we were
17 unable to fully optimize and therefore serve the best
18 interests of our students.

19 Q So is it your testimony you operated off of a report
20 not knowing the qualifications of the consultant?

21 A I read the report, yes.

22 Q Is that -- did the Ellucian report influence your
23 decision to discharge Ms. DeBose? Is that your testimony?

24 A It was -- it was part of a multitude of considerations
25 that I made in taking that action.

R.A.110

1 Q CAP?

2 A No.

3 Q DegreeWorks?

4 A No.

5 Q Was Ms. DeBose responsible for DegreeWorks at the time
6 of the Ellucian report?

7 A I believe so, yes.

8 Q So in 2015, April 2015, your testimony is that
9 Ms. DeBose was responsible for DegreeWorks?

10 A I think, as I have indicated throughout, shared
11 responsibility with other units, yes.

12 Q What was Ms. DeBose's responsibility?

13 A Well, clearly as custodian of student records, which is
14 the primary responsibility of the Registrar's Office, no
15 student tracking or degree audit program would be possible
16 without appropriate input or data feeds from student records
17 from the Registrar's Office.

18 Q Do you recall in June of 2014 transferring DegreeWorks
19 from the Registrar's Office to Information Technology?

20 A I don't recall making that shift, but it may well have
21 happened, yes.

22 Q Do you recall receiving an anonymous -- an e-mail
23 characterized as anonymous from webmaster@acad.usf.edu?

24 A I do.

25 Q Do you recall days following that e-mail that you

R.A.111

1 transferred DegreeWorks -- you transferred DegreeWorks from
2 the Registrar's Office to IT?

3 A Again, that's not a decision I made. I understand that
4 was a decision that was made jointly by Dr. Dosal and
5 Mr. Fernandes.

6 Q Do you recall as a corporate representative sitting in
7 and hearing testimony concerning your e-mail here?

8 A I recall this e-mail, yes, as a witness.

9 Q Do you recall this e-mail here?

10 A I do indeed.

11 Q Do you recall that the decision was made to transfer
12 DegreeWorks from the Registrar's Office to IT?

13 A Yes.

14 Q Do you recall Paul Dosal's testimony that Angela DeBose
15 no longer attended the DegreeWorks Steering Committee
16 meetings?

17 A I don't recall that, I'm afraid.

18 Q Do you recall Paul Dosal stating that the system was
19 changed by IT from 8 semester plans to 3 semester plans?

20 A I heard reference to that although had little
21 understanding.

22 Q Did you have a role in the transfer of DegreeWorks from
23 the Registrar's Office?

24 A No.

25 Q Did you hear testimony from Paul Dosal that said that

R.A.112

1 you were a part of the decision to move DegreeWorks?

2 A No, I -- the testimony I heard was that Dr. Dosal and
3 Sidney Fernandes came together and recommended that as a
4 solution in an attempt to advance progress to meet our
5 students' needs.

6 Q Do you recall telling Paul Dosal that you would have to
7 discuss the anonymous e-mail with him in the not too distant
8 future?

9 A Yes.

10 Q Do you recall Paul Dosal testifying that he responded
11 to you and talked about a reorganization?

12 A Yes.

13 Q Do you recall saying thank you for getting ahead of
14 this?

15 A I do.

16 Q Were you communicating an expectation that something
17 was to be done akin to a move or reorganization?

18 A I was communicating an expectation of progress toward
19 achieving the University's strategic priorities.

20 Q Would you say that the decision makers made the
21 decision to move the system based on hearsay?

22 MR. MCCRAE: Objection, Your Honor. No
23 foundation.

24 THE COURT: Sustained, the way you formed the
25 question. Yes.

R.A.113

1 A If you could show me one more time, I can verify one
2 way or the other.

3 Q Who is Lara Wade?

4 A Lara Wade is a former employee of the University of
5 South Florida in University Communications and Marketing.

6 Q And Thomas Hoof or Hoeff -- Who is Thomas Hoof?

7 A Thomas Hoof?

8 Q Yes.

9 A Former Chief Marketing Officer, I believe, of the
10 University of South Florida.

11 Q In looking at this e-mail, do you see anything that
12 says "Biz Journals"?

13 A I do.

14 Q Did you happen to be copied in an e-mail with
15 Adam Freeman, Paul Dosal, Gerard Solis and Thomas Hoof and
16 Lara Wade with a subject: "Tampa Bay Business Journal" on
17 February 12th, 2015?

18 A I don't recall.

19 Q Now, did you fire Ms. DeBose in retaliation for the
20 complaints?

21 A No.

22 Q Did you fire Ms. DeBose in retaliation for the legal
23 action with the Middle District Court?

24 A No.

25 Q When Paul Dosal testified that the decision was taken

R.A.114

1 Q Is it a negative, a positive, or does it mean anything
2 to you?

3 A I certainly wouldn't consider it a negative where
4 students are concerned.

5 Q She writes: "This session was not as informative as I
6 would like considering the data that is used in DegreeWorks
7 is maintained by the office." Does she say why it wasn't as
8 informative?

9 A I think she moves on perhaps into the next sentence
10 addressing that lack of cooperation during the session.

11 Q What lack of -- does she describe what the lack of
12 cooperation was? Did you follow up with the consultant at
13 any point to find out what that would be?

14 A I didn't. I relied on the Vice President that
15 sponsored this consultancy to verify in his estimation or
16 not whether the report was valid and reliable.

17 Q Did you meet with Andrea Diamond?

18 A No.

19 Q You did not debrief with Andrea Diamond and Paul Dosal
20 and Sidney Fernandes?

21 A No. I met on a separate occasion with Sidney
22 Fernandes.

23 Q Did you see where it says there is a disconnect with
24 the Registrar's and other offices on campuses? Have you
25 observed that?

R.A.115

1 C E R T I F I C A T E

2

3 This is to certify that the foregoing transcript

4 of proceedings taken in a jury trial in the United States

5 District Court is a true and accurate transcript of the

6 proceedings taken by me in machine shorthand and transcribed

7 by computer under my supervision, this the 15th day of

8 October, 2018.

9

10

11 /S/ DAVID J. COLLIER

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13 DAVID J. COLLIER

14 OFFICIAL COURT REPORTER

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R.A.116

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURY TRIAL - DAY 7
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

SEPTEMBER 19, 2018
10:10 A.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

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R.A.118

I N D E X

PLAINTIFF'S WITNESSES:

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R.A.119

1 THE WITNESS: I have, Your Honor.

2 THE COURT: All right. Now, pose your question,
3 and if it differs from what's in the deposition transcript
4 then I won't allow the question.

5 Question.

6 BY MS. DEBOSE:

7 Q In what way did the Ellucian report influence your
8 decision to discharge Ms. DeBose?

9 A One of the risk factors that we discussed yesterday,
10 that being the third risk factor that we read in the -- in
11 the Ellucian report, referenced the lack of collaborative
12 culture in the Registrar's Office, and my testimony in prior
13 deposition suggested that that helped inform the decision to
14 non-reappoint but wasn't the sole reason.

15 Q Is it your testimony that the Ellucian report, risk
16 factor number 3, was part of a reason?

17 A Yes.

18 Q Did you state in your termination letter it's not for
19 cause or disciplinary reasons?

20 A Yes.

21 Q Did you just moments ago testify that the Ellucian
22 report was part of the cause?

23 A No, I -- I believe I indicated that the Ellucian report
24 and one of the three risks I identified helped inform my
25 decision to exercise the right for non-reappointment, with a

R.A.120

1 mind to finding a better fit within the University to
2 advance -- advance our strategic priorities.

3 MS. DEBOSE: Your Honor?

4 THE COURT: Yes.

5 MS. DEBOSE: May I have the Clerk read back his
6 prior response to the question. Not the last question, but
7 the one before.

8 THE COURT: The prior question, prior Q and A,
9 Mr. Reporter, do you have it?

10 - - - - -

11 (Record read as follows:)

12 Question: Did you state in your termination
13 letter it's not for cause or disciplinary reasons?

14 Answer: Yes.

15 - - - - -

16 THE COURT: Now, that's been read back. Next
17 question.

18 BY MS. DEBOSE:

19 Q In terms of the termination letter, if it was in part
20 related to the Ellucian report, should you -- should
21 Ms. DeBose have been allowed to grieve the termination?

22 A No. As I've stated earlier, for the record,
23 non-reappointment decisions by policy are not grievable.

24 Q Could you go to page 20 of the deposition and look at
25 line 25 and then go to 21, 1 through 9.

R.A.121

1 Angela DeBose's request to hear her grievance?

2 A I don't know.

3 Q Okay. I'm going to move on to -- did you testify that
4 Earle C. Traynham was or is the UNF -- University of North
5 Florida Provost?

6 A Yes.

7 Q Do you know Earle C. Traynham in any other capacity
8 other than as Provost?

9 A No.

10 Q Did you have a prior relationship with Earle Traynham
11 prior to his tenure at the University of North Florida?

12 A No.

13 Q Did you call UNF in May 2015 after you terminated
14 Angela DeBose?

15 A I returned a call from Provost Traynham, yes.

16 Q Was your telephone -- how would you characterize your
17 telephone discussion with him? Was it brief, lengthy? How
18 would you characterize your call?

19 A Relatively brief, to my best recollection.

20 Q I request that you look at page 49, 19 through 22, of
21 your deposition.

22 How would you -- upon reading that, how would you
23 characterize your phone call with Earle Traynham?

24 A How would I characterize it? Well, as I characterized
25 it in deposition, I returned a request -- a call for request

R.A.122

1 THE COURT: That question is the one I want you to
2 answer.

3 THE WITNESS: The answer is no.

4 MS. DEBOSE: Thank you.

5 BY MS. DEBOSE:

6 Q Did you testify that you did not simply provide the
7 information recommended under USF policy but rather talked
8 about Angela DeBose and stated that she was uncollaborative?

9 A No.

10 Q No, you didn't testify to that, or no, you didn't state
11 that?

12 A I didn't state that.

13 Q You did not state Angela DeBose was uncollaborative?

14 A Well, I stated much more than that in response to
15 direct questions from Provost Traynham at the time.

16 Q I'm going to ask this question again.

17 Did you state to Earle Traynham that Angela DeBose
18 was uncollaborative?

19 THE COURT: Yes or no.

20 A That was a part of my response, yes.

21 Q Did you, in addition to a deposition, twice give
22 testimony concerning Angela DeBose and stating that you told
23 Earle Traynham that Angela DeBose has a history of not
24 acting in a collaborative manner and had spoken to it -- to
25 her about it before DeBose began reporting to Dosal?

R.A.123

1 A Yes.

2 Q Did you testify at deposition you talked to him at
3 length?

4 A We talked about Ms. DeBose at length within that
5 conversation, yes.

6 Q Did you testify that you did not volunteer this
7 assessment?

8 A Correct.

9 Q Did you testify moments ago that Earle Traynham simply
10 wanted to know about Ms. DeBose's availability?

11 A That was the first -- first question, but as I also
12 testified, there were follow-up questions from him.

13 Q What follow-up questions did Earle Traynham ask?

14 A He asked about generally her -- my assessment of her
15 performance as Registrar.

16 Q And what did you state?

17 A I said for a long, long time I had had great respect
18 for Ms. DeBose's technical skills and her knowledge of
19 regulatory -- regulatory matters in higher education across
20 the State of Florida and at the University of South Florida;
21 however, I had on a continuing basis been presented with
22 concerns, some of which I witnessed firsthand, about her
23 lack of collegiality, her inability to collaborate with
24 critical, key partners, her tendency toward silo --
25 perpetuating a silo mentality and the territoriality that

R.A.124

1 went along with that, and I said that I, frankly, was
2 disappointed because that was impacting negatively on
3 Ms. DeBose's effectiveness as a leader at the University,
4 and beyond that the experience -- the poor limited
5 experience that our students were realizing from a pretty
6 significant investment intended to advance their success,
7 so --

8 | Q Would that be DegreeWorks?

9 A That would be DegreeWorks.

10 Q In terms of all of what you said, did you refer to
11 performance evaluations?

12 A No, I didn't.

13 Q Would you say you were close to Ms. DeBose's work?
14 Did you interact with her on a daily basis or as regularly
15 as Paul Dosal?

16 A Certainly in my early years at the University of South
17 Florida, yes, but not -- not in later years.

18 Q Did you share with Earle Traynham your efforts to
19 install or have installed a tracking system?

20 A We didn't get into that great a detail, no.

21 O Did you --

22 A Again, it was a relatively -- at least in my
23 characterization, a relatively brief telephone call

24 Q In this sense you said it's brief. Did you previously
25 testify you discussed Ms. DeRose at length?

R.A.125

1 A Yes.

2 Q Did you discuss SASS and your attempt to get it up and
3 running?

4 A No, we didn't get into that level of technical detail.

5 Q Did you -- did you discuss the contamination of SASS at
6 your request to have Ms. DeBose step aside and allow
7 precodes to be implemented by Glen Besterfield?

8 A We didn't get into that level of detail.

9 Q Did you discuss TAPS or CAP and the failures
10 of Glen Besterfield to implement that tool?

11 A No.

12 Q Did you discuss DegreeWorks and all the times it
13 changed hands and it did not get successfully implemented?

14 A Again, we didn't get into that level of detail.

15 Q Did you discuss -- in context of Ms. DeBose's technical
16 ability, did you discuss that she successfully launched
17 DegreeWorks in 2010?

18 A I believed that the complimentary remarks I made and
19 the positive assessment of Ms. DeBose's technical skills
20 was -- was sufficient at that time.

21 Q Did you discuss that Ms. DeBose in one year, with a
22 brand new product, implemented Tracking in 2012?

23 A Again, we didn't get into that level of detail.

24 Q Isn't it true that it wasn't enough that you terminated
25 Ms. DeBose, you wanted to leave her with nothing?

R.A.126

1 A I had no reason to feel that way whatsoever. I must
2 tell you that I take no pleasure in non-renewing or
3 terminating employees. By virtue of my position I'm faced
4 with such difficult decisions on an occasional basis. It's
5 not easy.

6 Q Who is my --

7 A At the end of the day, I am charged with putting first
8 and foremost the best interests of the University of South
9 Florida and the students, the families of those students,
10 foremost in my decision making, and on this occasion it was
11 that commitment that I found to be most compelling.

12 Q Did you state in this, with the underscores, that
13 "I did not inquire if he was considering Ms. DeBose for any
14 position and I had no knowledge that Ms. DeBose was seeking
15 a position at UNF"? Did you state that?

16 A Yes. Yes, I did.

17 Q Did you testify in your deposition that you understood
18 that it was about employment or potential employment?

19 A Not in so few words, no. I had no reason to inquire
20 because Provost Traynham indicated that he had no particular
21 vacant position in mind.

22 Q Did Provost Traynham discuss a software called
23 Predictive Analytics?

24 A Not that I am aware of, no.

25 Q Did Provost Traynham indicate that Albert Colom was the

R.A.127

1 employee that offered Ms. DeBose a position at the
2 University of North Florida?

3 MR. MCCRAE: Objection, Your Honor. Counsel is
4 testifying.

5 MS. DEBOSE: I asked a question.

6 THE COURT: Well, it's a question. Overruled.

7 Do you understand the question?

8 THE WITNESS: I do, Your Honor.

9 THE COURT: You may respond.

10 A I don't recall the name Albert Colom being raised in
11 our telephone call, no.

12 BY MS. DEBOSE:

13 Q Do you recall the position being offered to implement
14 Predictive Analytics?

15 A Absolutely not. No mention of that.

16 Q Did you offer about Ms. DeBose's technical ability or
17 did Mr. Traynham ask about it?

18 A I offered it in response to questions about
19 Ms. DeBose's performance, general performance.

20 Q But you don't recall the job, the specific job?

21 A Absolutely not, no.

22 Q And you don't recall the employee who was -- the
23 employee that made the offer?

24 A I had no knowledge of an offer. At the time I had no
25 knowledge of the particular employee. I've since learned

R.A.128

1 through testimony that Mr. Colom was a former employee at
2 USF and had moved to the University of North Florida.

3 Q Who is Mike Beedy?

4 A A Human Resources officer manager at the University of
5 South Florida.

6 Q In terms of Ms. DeBose, is it true that when you gave
7 this reference she was no longer at the University of
8 South Florida?

9 A Well, again, I think as I testified before, there's a
10 technicality because Ms. DeBose upon non-reappointment was
11 entitled to 90 days of --

12 Q Was --

13 A -- compensation.

14 Q Was Ms. DeBose on the campus of the University of South
15 Florida?

16 A No, I don't believe so.

17 Q Would she have knowledge or would she have reason to
18 know your schedule?

19 A I see no reason why she would.

20 Q Would she have knowledge or have reason to know your
21 phone calls?

22 A No.

23 Q So if Ms. DeBose represents that she learned from
24 Albert Colom about your conversation with Earle Traynham,
25 would that seem reasonable?

R.A.129

1 THE COURT: Yes. Objection?

2 MR. MCCRAE: No foundation. Counsel is
3 testifying. Asks for opinion and speculation.

4 THE COURT: Yes. Sustained on three bases.

5 Please, Ms. DeBose, don't do that.

6 BY MS. DEBOSE:

7 Q Did Earle Traynham disclose to you at any point that he
8 made the inquiry after an offer of employment by
9 Albert Colom?

10 A My response is no.

11 Q An offer of employment by the Vice President of
12 Enrollment Planning & Management at the University of North
13 Florida.

14 THE COURT: Is that another question?

15 MS. DEBOSE: Yes.

16 A Can you posit the question then? I heard that as a
17 statement.

18 Q Did you hear from Earle Traynham that he was following
19 up with you as a result of an offer of employment to
20 Angela DeBose by the Assistant or Associate Vice President
21 at the University of North Florida?

22 A No, he made no reference to a particular position.

23 Q After discussing that Earle Traynham was simply
24 inquiring about Angela DeBose's availability, was your
25 purpose for the call vengeful, vindictive, and to limit an

R.A.130

1 employment opportunity for Ms. DeBose?

2 A No, I had no reason to behave in that way.

3 Q Did you have animosity towards Angela DeBose?

4 A No.

5 Q Did you say in the phone call to Earle Traynham that
6 she was toxic?

7 A Absolutely not, no.

8 Q Did you warn Earle Traynham that he would regret hiring
9 Angela DeBose?

10 A No.

11 Q Did you stay on the phone call with Earle Traynham for
12 more than six minutes?

13 A Oh, I -- I don't know. I'm quite sure you have a
14 record of that. I don't recall how long the phone call was,
15 whether it was five minutes, six minutes, seven minutes or
16 whatever the duration. Again, I characterized it as a brief
17 telephone call in the life -- daily life of a university
18 Provost.

19 Q So is it in your typical day to do a reference for an
20 employee that you terminated?

21 A Not typical, thank goodness.

22 Q Is it typical in your day to do a reference for someone
23 who didn't list you as a reference?

24 A Not on a daily basis, no.

25 Q Is it typical that you would give a reference for

R.A.131

1 Norine Noonan when you have no direct knowledge of her work?

2 A When requested by appropriately placed supervisors and
3 hiring authorities, and if I feel as if I'm suitably
4 qualified, I will provide an honest and candid independent
5 assessment.

6 Q Is it honest and candid when you don't have direct
7 knowledge of the person's performance, or is it vengeful and
8 vindictive?

9 A It's not vengeful. I was not vengeful or vindictive,
10 and I had knowledge of -- in this case, of Ms. DeBose's
11 performance.

12 Q What recent or historical knowledge did you have of
13 Angela Debose's performance? Can you cite to any
14 achievements of Ms. DeBose's?

15 A Well, I think during testimony yesterday we identified
16 one or two documented accomplishments in distributing
17 letters from Governor Scott to graduates of the University
18 of South Florida and the commendation that I provided to
19 Ms. DeBose relative to assisting the University of South
20 Florida St. Petersburg on the path to separate
21 accreditation, but my knowledge of Ms. DeBose, as
22 I testified, began shortly after my arrival at the
23 University of South Florida Tampa Campus in 2003 and
24 continued throughout the following years.

25 Q In Angela Debose's 27 year history, what

R.A.132

1 accomplishments can you cite?

2 A Well, I think I've cited a couple of them for the
3 record.

4 Q Did Angela DeBose -- did she stay at the University of
5 South Florida for 27.5 years without being collaborative?
6 Is that your testimony?

7 A I cannot speak for the years prior to my employment at
8 the University of South Florida, but as I've testified,
9 throughout my time, unfortunately, and in spite of repeated
10 efforts at mentoring and counseling, the pattern of lack of
11 collegiality and collaboration continued, and in a -- in a
12 university that has high performance expectations, which
13 requires high performing teams to work cross-functionally
14 throughout a complex organization, that became a barrier to
15 progress.

16 Q Was your statement to Earle Traynham consistent with
17 Paul Dosal's performance evaluations?

18 A I had no knowledge of Paul Dosal's employment
19 evaluations or assessments at the time, so --

20 Q Did you have opportunity to access those evaluations?

21 A I might have had I known of the nature of the telephone
22 call that I was making.

23 Q Did you have opportunity to access 360 Feedback surveys
24 done about Ms. DeBose, which would involve other employees
25 other than Paul Dosal?

R.A.133

1 A I don't know about those.

2 Q Did you talk to anybody on Ms. DeBose's staff to see
3 how she was as a manager?

4 A I had earlier on in my tenure at the University, yes.

5 Q Did you do that with regard to Earle Traynham?

6 A No, I didn't. I felt I had no need.

7 Q Did you consult with Paul Dosal before speaking with
8 Earle Traynham?

9 A Absolutely not, no.

10 Q Did you hear Paul Dosal testify that he recalls a
11 conversation with you about your call to Earle Traynham at
12 the University of North Florida?

13 A As I testified, when I returned the call to
14 Provost Traynham I had no understanding of what the subject
15 was, and I provided a one-time, independent and honest
16 assessment from my position as Provost of Ms. DeBose's
17 performance over the period of time I was at the University.

18 Q And please answer yes or no to these next questions,
19 for interests of time.

20 Did you consult with Ms. DeBose's peers?

21 A With regard to --

22 Q Earle Traynham and your reference. Did you --

23 A No.

24 Q Did you con -- you've already testified you did not
25 consult with her subordinates; is that correct?

R.A.134

1 A I consulted with no one.

2 Q So you did it independently.

3 MS. DEBOSE: I'd like to introduce Exhibit 277.

4 THE COURT: 277. Show it to Mr. McCrea.

5 MR. MCCRAE: No objection.

6 THE COURT: All right. It's in evidence.

7 Go ahead.

8 BY MS. DEBOSE:

9 Q This is a phone log of calls that were made between
10 May 20 and June 30th, 2015; do you see that?

11 A I do.

12 Q And if you were to look at this exhibit, can you
13 identify the line number that -- of a call to Earle Traynham
14 with a 904 area code?

15 A If that's Jacksonville, yes.

16 Q Under the duration, can you identify how much time was
17 spent on that call?

18 A It appears to be 6 minutes and 30 seconds.

19 Q And in 6 minutes and 30 seconds did it take you to tell
20 Earle Traynham whether or not Angela DeBose was simply
21 available and uncollaborative?

22 A In that 6 minutes and 30 seconds, which, again, I would
23 characterize as a brief call, I responded to Provost
24 Traynham's questions.

25 Q In context of Mike Beedy, you said you know who he is.

R.A.135

1 On the day that Angela DeBose met with Kofi Glover and
2 received the termination letter, was Mike Beedy also present
3 at your request?

4 A That's my understanding.

5 Q Was it at your request?

6 A No.

7 Q Did Mike Beedy escort Angela DeBose back to her office
8 and away from her office?

9 A I don't have full knowledge of that, but again, I will
10 say that's probably customary, customary behavior for an
11 employee who is either terminated for cause or
12 non-reappointed.

13 Q Did you testify in your deposition in the injunction
14 case, which has been admitted as I think 238A, that you at
15 no time told anyone or stated to Ms. DeBose that you wanted
16 to see her without a shirt on her back? Did you testify to
17 that?

18 A I absolutely have never uttered such words.

19 Q Did you testify or did you state that you did not want
20 to -- you wanted to see her bare?

21 A No.

22 Q Exposed?

23 A Never.

24 Q Thrashed?

25 A Never.

R.A.136

1 Q You say you know Mike Beedy; is that correct?

2 A Yes. Well, I recognize the name. I don't know him
3 personally, no.

4 Q Did you tell Mike Beedy you wanted to see Angela DeBose
5 with nothing?

6 A I've never spoken to Mike Beedy relative to
7 Angela DeBose.

8 Q Did you tell him, even though -- did you have
9 discretion to have Angela DeBose paid during her separation?

10 MR. MCCRAE: Your Honor --

11 Q Did you have discretion?

12 THE COURT: Whoa. Whoa. Whoa. We got one
13 question pending. Are you withdrawing that question?

14 MS. DEBOSE: No.

15 THE COURT: No. All right. Just wait.

16 What's your objection?

17 MR. MCCRAE: I'd like to come to sidebar, Judge.

18 THE COURT: Let's come to sidebar, folks.

19 You may stand, ladies and gentlemen of the jury.

20 You may stand in the courtroom.

21 *(The following bench conference was held.)*

22 THE COURT: Yes, Mr. McCrea.

23 MR. MCCRAE: Judge, we've been right here before
24 on the issue of the contract claim that was partly dismissed
25 on a motion to dismiss and the rest of it went out on

R.A.137

1 summary judgment, and the issue of pay following nonrenewal
2 is not an issue in this case.

3 THE COURT: No, it's not.

4 MS. DEBOSE: It's not about that. It's about his
5 statements and the fact that he indicated he wanted to see
6 the plaintiff with nothing.

7 THE COURT: Right.

8 MS. DEBOSE: And that he made the decision, even
9 though having discretion and knowing that --

10 THE COURT: Keep your voice down.

11 MS. DEBOSE: Even though having discretion and
12 knowing that the plaintiff was grandfathered in under a
13 prior clause that allowed her to be paid the entire time
14 while she was separated and receive her full balance of
15 leave, he made the statement to HR to leave her with
nothing.

17 MR. MCCRAE: That claim has gone out of the case.

18 THE COURT: All right. It's out of the case.
19 And I know we're dealing with a lot of emotion here and
20 I understand that and I respect that, but you're
21 representing yourself as opposed to having a lawyer, or you
22 representing somebody who is the plaintiff at counsel table,
23 and you've got to conduct yourself appropriately, and you've
24 got to remember that this type of testimony that I think
25 you're trying to get in from the podium belongs in the

R.A.138

1 witness box from you.

2 Now, you can ask the questions, you're -- he's an
3 adverse party, and I'm not trying to stop you from doing
4 that, but the emotions are getting heightened here, okay?
5 So let's pose the questions, all right, and get the answers,
6 and let's go from there, okay?

7 MS. DEBOSE: All right.

8 THE COURT: All right. Back to work.

9 Excuse me. Ms. DeBose, don't go.

10 How long are you wanting this one o'clock -- he's
11 supposed to be in a meeting at one o'clock, where?
12 Back there?

13 MR. MCCRAE: No, CAMLS is the medical facility --
14 medical building that's downtown.

15 THE COURT: Downtown?

16 MR. MCCRAE: Yes.

17 THE COURT: So when do you have to leave her?

18 MR. MCCRAE: He has to be there at 1:00.

19 THE COURT: I know that. When do you have to
20 leave here?

21 MR. MCCRAE: I don't have to leave.

22 THE COURT: He does. When does he have to leave?

23 MR. MCCRAE: Before 1:00.

24 THE COURT: How long before 1:00?

25 MR. MCCRAE: Ten minutes, I would say.

R.A.139

1 THE COURT: So if we recessed from 12:45 to 1:45,
2 that will cover his needs?

3 MR. MCCRAE: No. He's got a meeting from 1:00
4 until 3:30.

5 THE COURT: Oh, my golly. It's on your nickel.

6 MR. MCCRAE: Judge, I --

7 THE COURT: It's on your nickel.

8 MR. MCCRAE: I understand.

9 THE COURT: From 1:00 until 3:30.

10 MR. MCCRAE: I understand, and there's no way
11 around it because --

12 THE COURT: Okay. It's on your nickel, it's on
13 your charged time, and I'll explain that to the jury.
14 So when we break, we're going to break at 12:45 so he can
15 get down there, and then we're coming back here at 3:45?
16 That's two hours you're being charged. Let's see. 1:45,
17 2:45 -- no, 3:45, you're getting charged three hours.

18 MR. MCCRAE: Yeah. Your Honor, if I may,
19 President Genshaft, because she's resigned --

20 THE COURT: I know that.

21 MR. MCCRAE: -- is taking a lengthy vacation.
22 He is effectively the President of the University.

23 THE COURT: I understand that.

24 MR. MCCRAE: I just want to give the --

25 MS. DEBOSE: I believe that's --

R.A.140

1 MR. MCCRAE: I just want to let the Court have
2 some context here.

3 THE COURT: I understand you're just putting it on
4 the record. That's fine.

5 MR. MCCRAE: Right. And at CAMLS there's a highly
6 controversial meeting this afternoon about -- affecting
7 other branches of USF --

8 THE COURT: Okay.

9 MR. MCCRAE: -- that he has to be at.

10 THE COURT: I understand.

11 MR. MCCRAE: And so I don't want the jury to think
12 that somehow I'm being obstructionist.

13 THE COURT: I'll take care of it, but it's charged
14 on your clock.

15 MR. MCCRAE: I understand that. I understand
16 that.

17 THE COURT: Okay. I'll take care of it
18 appropriately.

19 MS. DEBOSE: I don't -- I don't think I have to
20 say this, Your Honor, but I'm just saying it on the record,
21 I am no less important than that witness, and his newfound
22 position as Interim President is -- should not color the
23 fact he's still a witness in these proceedings.

24 THE COURT: Well, let me say to you, you're being
25 allowed to proceed forward with your case and he's being

R.A.141

1 charged for this time.

2 MS. DEBOSE: Okay. I just want --

3 THE COURT: You're not being charged for this
4 time.

5 MS. DEBOSE: I understand. I'm just --

6 THE COURT: So I'm trying to accommodate
7 everybody, all right?

8 MS. DEBOSE: I appreciate that, Your Honor.

9 THE COURT: Okay?

10 MS. DEBOSE: I just thought I had to express that.

11 THE COURT: And let me remind everybody, I've
12 canceled things this week and next week to accommodate this
13 case.

14 MS. DEBOSE: I understand.

15 THE COURT: And I've got to reset those people.

16 MS. DEBOSE: Yeah, and I wanted to share with you,
17 I did speak to Counsel here about the fact that I with this
18 case thought that I would have access to question a
19 corporate official, and he has represented several times
20 during his testimony that he is not the corporate
21 representative, but yet he was allowed to stay in here
22 during all others' testimony, so I asked if I could bring in
23 Brian Lamb to -- as the corporate representative, since none
24 is present to ask for testimony in this case. So I can
25 reserve that now and when he's done --

R.A.142

1 MR. MCCRAE: I can address that, Judge, if you'd
2 like.

3 THE COURT: All right. Go ahead. It's charged on
4 your time.

5 MR. MCCRAE: I know. All of this is charged on my
6 time. I know what the issues are.

7 THE COURT: Right.

8 MR. MCCRAE: But Brian Lamb has not been listed by
9 either side in this trial on the witness list, as Your Honor
10 knows.

11 THE COURT: Noted.

12 MR. MCCRAE: There is no such thing as a corporate
13 representative for purpose of testimony at trial unless
14 previously under 30(b)(6) they were designated as a
15 corporate representative and their answers are deemed to be
16 that of the corporation.

17 THE COURT: And there hasn't been --

18 MR. MCCRAE: That did not occur here.

19 THE COURT: That didn't occur.

20 MR. MCCRAE: He is simply a corporate
21 representative in the lower case sense that each
22 institutional defendant is entitled to have one person sit
23 in during trial.

24 THE COURT: Right.

25 MR. MCCRAE: It says nothing about the capacity in

R.A.143

1 which he's testifying.

2 THE COURT: Noted for the record.

3 MS. DEBOSE: Did you list Brian Lamb on your
4 Rule 26 disclosure?

5 MR. MCCRAE: Yes.

6 MS. DEBOSE: Okay. Did you list him as a
7 corporate representative?

8 MR. MCCRAE: No.

9 MS. DEBOSE: He has no knowledge in this case?

10 MR. MCCRAE: I didn't list anybody as a corporate
11 representative. I'm not obligated to.

12 MS. DEBOSE: You listed Mr. Lamb and implied that
13 under that Rule 26 disclosure that he would be as a
14 corporate representative, because he has no direct knowledge
15 of this case, but I'll leave it at that. I need to get back
16 and I'm sure the Court would like us to get back.

17 THE COURT: Well, I'd like to get back. I just
18 wanted you all to know that the Court is trying diligently
19 to try to give each side a fair trial in this case and to
20 proceed forward so that this jury of six people, who are
21 willing to be here, can decide this case on an informed
22 basis. The trier of fact is looking for believability of
23 witnesses.

24 MS. DEBOSE: I understand that.

25 THE COURT: And you'll hear that in the jury

R.A.144

1 instruction.

2 MS. DEBOSE: Um-hum.

3 THE COURT: That's what we're relying upon.

4 MS. DEBOSE: Um-hum.

5 THE COURT: And we got to make sure that we're
6 keeping them involved.

7 MS. DEBOSE: I understand.

8 THE COURT: All right. Now, we're going to back
9 to work, it's about five -- four minutes after 12:00,
10 I guess. We're going to work until 12:45, okay?

11 MR. MCCRAE: Thank you, Judge.

12 THE COURT: All right. Thank you.

13 MR. MCCRAE: And my objection is sustained?

14 THE COURT: Your objection is sustained at this
15 point in time. At this point in time it's sustained.

16 Go back to the podium.

17 MS. DEBOSE: And it's my understanding, I'm sorry,
18 Your Honor, that I could question --

19 THE COURT: Not at -- go on.

20 MS. DEBOSE: It was my understanding that you said
21 the questioning could continue but you did caution me about
22 a motion; that is my understanding.

23 THE COURT: That is correct.

24 MS. DEBOSE: I did not hear that it was overruled
25 in terms of me.

R.A.145

1 THE COURT: I'm trying to make sure that you
2 people are not getting into areas in which I have already
3 ruled.

4 MR. MCCRAE: That was the basis for my objection,
5 Your Honor.

6 THE COURT: And I understand that, but he is here
7 as the representative of the University of South Florida and
8 he has been an active participant in her termination,
9 correct?

10 MR. MCCRAE: Yes.

11 THE COURT: All right.

12 MS. DEBOSE: And the document you said could be
13 admitted, his affidavit contains that --

14 MR. MCCRAE: Wait a minute. Let me address one or
15 the other.

16 My objection has to do with the questions about
17 his ability to authorize payment during the post -- which is
18 not an issue in the case.

19 THE COURT: That's not an issue in this case.

20 You're absolutely correct. That contract issue is gone.

21 Okay.

22 *(End of bench conference; proceedings resume in open court.)*

23 THE COURT: All right. Consistent with sidebar,
24 let's go forward.

25

R.A.146

1 BY MS. DEBOSE:

2 Q Did you tell Earle Traynham that you wanted to get rid
3 of Ms. DeBose for years?

4 A No.

5 Q Were your statements to Mr. Traynham about Ms. DeBose,
6 who does not list you as a reference, who had no idea that
7 you contacted Earle Traynham -- did you -- were your
8 statements hostile, vengeful, vindictive, fueled by racism?

9 A To be clear, I didn't contact Dr. Traynham, he reached
10 out to me, and certainly my -- none of my comments, remarks,
11 could be characterized in the way that you suggested.

12 Q Were they fueled by retaliation?

13 A No.

14 Q In contacting Earle Traynham, did you testify that you
15 called him?

16 A In response to a request from him.

17 Q Did you testify that he contacted you to simply know
18 about Ms. DeBose's availability?

19 A Initially, yes.

20 Q Isn't it true that you constantly went behind
21 Ms. DeBose's back?

22 A No.

23 Q Did you see exhibits or comments yesterday where you
24 sent misdirected e-mail to her supervisors?

25 A Yes, to her supervisor in that case, absolutely.

R.A.147

1 Q Did you send messages to those who supervised her
2 making disparaging comments about Ms. DeBose?

3 A I don't believe so.

4 Q Did you see exhibits or evidence yesterday where you
5 contacted Ms. DeBose's supervisor, James Malek, trying to
6 encourage him, urge him, or insist that he gave Ms. DeBose a
7 reprimand?

8 A No.

9 Q You didn't see that?

10 I'm going to put up the exhibit that was already
11 admitted from yesterday, and it's the e-mail to --
12 James Malek to Ralph Wilcox. Could you read to the jury
13 that second paragraph.

14 A Here are the facts: The Registrars Chronical (Cindy
15 might at least try to get the title right before launching
16 her attack, to say nothing of the grammatical errors in her
17 e-mail) is not a marketing piece. It is a wholly internal
18 document; it is not distributed externally. Angela,
19 capitalized, did in fact submit it to University Relations
20 in advance of publication for feedback. She incorporated
21 all of UR's comment/suggestions, and asked if there was
22 anything else she needed to do. No one mentioned the need
23 to include the logo on an internal document; had anyone done
24 so, Angela would have added it.

25 Q Can you go further to the next paragraph.

R.A.148

1 A So, to summarize, we have someone who has observed the
2 process to a "T", done all that she was supposed to have
3 done, and produced a highly successful internal document
4 that has achieved all of the objectives that it was designed
5 to achieve - only to be reprimanded and forced to waste time
6 providing explanations that she thought -- she ought not to
7 have to make.

8 Q Could you read that part again more clearly? Providing
9 explanations that she --

10 A She ought not to have to make.

11 Q Did you want to disrupt Ms. DeBose's employment
12 opportunity because you wanted to see her with nothing, not
13 even a shirt?

14 A No.

15 Q Did you tell Mike Beedy to strip Ms. DeBose of her
16 leave?

17 A No.

18 Q Was Ms. DeBose forced --

19 MR. MCCRAE: Your Honor --

20 THE COURT: Sustained. Your objection was dealt
21 with at sidebar.

22 Ms. DeBose, stay away from it.

23 BY MS. DEBOSE:

24 Q Did you run USF like a plantation?

25 A No.

R.A.149

1 Q Did you seek to make an example of Angela DeBose?

2 A No.

3 Q How many blacks have you been responsible for
4 terminating?

5 MR. MCCRAE: Your Honor, I would like to --

6 THE COURT: Overruled.

7 Do you understand the question?

8 THE WITNESS: I think so.

9 THE COURT: To the best of your knowledge, respond
10 to the question.

11 A I recall that I've probably -- I've signed off on only
12 one non-reappointment or termination letter addressed to an
13 African American employee at the University of South
14 Florida.

15 Q How many African Americans or minorities have you been
16 involved with terminating?

17 THE COURT: Where?

18 MS. DEBOSE: At the University of South Florida.

19 A I -- I don't know.

20 Q Did Angela Debose's termination get charged to you or
21 Paul Dosal?

22 MR. MCCRAE: Objection, Your Honor. I'm not sure
23 what that means.

24 MS. DEBOSE: Did --

25 THE COURT: Do you understand the question?

R.A.150

1 THE WITNESS: I think I do, Your Honor. I can
2 try.

3 THE COURT: Well, the question is, under the
4 responsibilities at the University of South Florida, since
5 you were the person that issued the nonrenewal, would you be
6 the person who would have the official listing for the
7 nonrenewal?

8 THE WITNESS: I think it's fair to say,
9 Your Honor, we don't at the University of South Florida
10 charge such actions to officers.

11 THE COURT: You don't keep those statistics?

12 THE WITNESS: No, but -- no, we don't, but
13 I acknowledge full responsibility for having signed that
14 letter of non-reappointment.

15 THE COURT: And it wasn't done by --

16 MS. DEBOSE: Paul Dosal.

17 THE COURT: -- Dr. Dosal?

18 THE WITNESS: No, Your Honor.

19 THE COURT: Okay. Go ahead.

20 BY MS. DEBOSE:

21 Q Did you, Paul Dosal, Bob Sullins and Travis Thompson
22 start with an e-mail campaign to discredit Ms. DeBose?

23 A No.

24 Q Did you hear Paul Dosal testify about his knowledge of
25 an e-mail campaign?

R.A.151

1 MR. MCCRAE: Your Honor, mischaracterizes.

2 There's been no testimony about a campaign.

3 MS. DEBOSE: About e-mails.

4 THE COURT: Okay. You've got to rechange your
5 question. What if any e-mails?

6 MS. DEBOSE: Yes.

7 THE COURT: Go ahead. What if any e-mails were
8 circulated?

9 THE WITNESS: I was aware of just one anonymous
10 e-mail that was -- as testified yesterday, that was sent to
11 the Provost's office, but I had no knowledge of a campaign
12 and no conversation of such.

13 BY MS. DEBOSE:

14 Q Did you all, Paul Dosal, Bob Sullins, Travis Thompson
15 and Ralph Wilcox, move on to the Sullins accusation that
16 Angela's tirades had driven Caurie Waddell away from USF?

17 A No.

18 Q Did you hear testimony from Paul Dosal or state the
19 same yourself that Angela did not deserve due process?

20 A No.

21 Q You did not hear Paul Dosal state that?

22 A I don't recall that, no.

23 Q And you didn't -- are you representing that you did not
24 say the same?

25 A I haven't said the same.

R.A.152

1 Q Is the EEOC complaint a public record?

2 A I would imagine so.

3 Q You as the University of South Florida Board of
4 Trustees representative here today, you believe an EEOC
5 complaint is a public record?

6 A As a witness here, but not as corporate representative,
7 I would ordinarily seek understanding from counsel on such
8 matters, but I --

9 Q Can an EE -- I'm sorry. Are you --

10 A In my experience -- and admittedly experience is based
11 on Florida's public records laws, I can't speak for the
12 Federal Government, but --

13 Q Can an EEOC complaint be disclosed in a background
14 check?

15 A I don't know.

16 Q Can it be disclosed in the workplace?

17 A I don't know.

18 Q Is an EEOC charge considered a protected activity?

19 A I don't know.

20 Q Isn't it true that an EEOC charge is considered highly
21 confidential?

22 A I don't know.

23 Q Did you testify that USF has an anti-discrimination
24 policy?

25 A Yes.

R.A.153

1 Q Does that anti-discrimination policy follow EEOC
2 guidelines?

3 A I would -- it's my understanding that University
4 policies and regulations are consistent with both State and
5 Federal law.

6 Q As a corporate representative or as a witness, did you
7 consider it a breach of confidentiality that Paul Dosal
8 disclosed Angela Debose's discrimination complaint?

9 A Well, I'll respond as a witness. I really have no --
10 no opinion on that.

11 Q Was it a breach of confidentiality to disclose it to
12 Alexis Mootoo?

13 A To disclose what? I'm sorry.

14 Q The EEOC charge, Ms. DeBose's EEOC charge, to
15 Alexis Mootoo.

16 THE COURT: Objection?

17 MR. MCCRAE: Yes, Your Honor. Misstates the
18 evidence. It was a DIESO complaint.

19 THE COURT: Well, let's make sure that we've got a
20 clear question. Reframe it.

21 BY MS. DEBOSE:

22 Q The EEOC charge -- Paul Dosal testified that he
23 disclosed Ms. DeBose's discrimination charge to
24 Alexis Mootoo, Bob Sullins, Travis Thompson, Sarah Thomas
25 and Carrie Garcia.

R.A.154

1 MR. MCCRAE: Your Honor, I think that misstates
2 the record.

3 THE COURT: Well, let's assume that it is an
4 accurate statement, because I can't look at the record right
5 now. If it is a valid question, what are you posing to him?

6 MS. DEBOSE: I'm asking was that a breach of
7 confidentiality.

8 THE WITNESS: I -- I have no basis upon which to
9 make an assessment or to respond.

10 BY MS. DEBOSE:

11 Q Was it an adverse employment action?

12 A Again, I really have no basis. I lack sufficient --

13 Q Was it retaliatory?

14 A I lack sufficient understanding to respond to your
15 question.

16 Q Did you, Paul Dosal or Sidney Fernandes do anything to
17 find out who sent the webmaster e-mail or other derogatory
18 e-mail about Ms. DeBose?

19 A I didn't. I can't speak for our Chief Information
20 Officer or Dr. DeBose -- Dr. Dosal. Excuse me.

21 Q If DIEO follows Federal law, like you -- did you
22 testify moments ago that --

23 A I testified that it's my understanding that University
24 policies and regulations align with Federal and State law,
25 yes.

R.A.155

1 Q So if the Federal law and the State law indicate an
2 EEOC charge is highly confidential, would it make sense that
3 DIEO would also consider it highly confidential?

4 MR. MCCRAE: I'm going to object to the form of
5 the question. There's no foundation and it's not a correct
6 statement of the law.

7 THE COURT: No foundation for the comparison.

8 Yes. Sustained. Back up.

9 BY MS. DEBOSE:

10 Q Is DIEO the University of South Florida's mini-EEOC
11 office?

12 A Is it, excuse me, the --

13 Q Is it the University of South Florida's mini-EEOC
14 office?

15 A Oh, I wouldn't want to characterize it as such, no.

16 Q Is it responsible for monitoring, managing
17 discrimination complaints?

18 A Yes.

19 Q Does it perform similar functions of -- like the EEOC
20 but on a lesser scale and at a local scale?

21 A Again, I don't have a full understanding of Federal
22 agencies that suggests that I could provide an honest
23 response to your question, so --

24 Q Did you testify yesterday that as Provost you have
25 authority to bind the corporation, the University of South

R.A.156

1 Florida?

2 A In certain cases, yes.

3 Q Did you testify that as Provost there is certain
4 knowledge, skills and ability that you have to possess to be
5 able to execute and perform your functions, your job duties?

6 A Yes.

7 Q Did you testify yesterday that you could step in at a
8 moment's notice and act on behalf of the University in
9 Judy Genshaft's absence or in her stead?

10 A With appropriate consultation, yes.

11 Q Is it your testimony then as Provost you have no
12 awareness of the scope or function or authority of the DIEO
13 at the University of South Florida?

14 A I don't believe I testified to that effect.

15 Q Is the DIEO, Diversity Inclusion & Equal Opportunity
16 office -- does it perform similar functions to that of the
17 EEOC?

18 A I can speak to the functions of the DIEO office at the
19 University of South Florida, but I don't have a full
20 appreciation of what the EEOC office provides.

21 Q Did -- in all instances, beginning with the e-mails,
22 going over to the Bob Sullins accusation, with the anonymous
23 webmaster e-mail, with the "little girl" accusation in the
24 reprimand, with the statements by Andrea Diamond in the
25 Ellucian report, and in the EEOC charge to both DIEO and the

R.A.157

1 Equal Employment Opportunity Commission, and the temporary
2 restraining order/preliminary injunction that Ms. DeBose
3 sought, is it safe to say that in all instances
4 Ralph Wilcox, Paul Dosal, Bob Sullins and Travis Thompson
5 did not do any sort of investigation or look into those
6 matters?

7 THE COURT: What's your objection?

8 MR. MCCRAE: My objection is there's no
9 foundation, particularly with respect to the Sullins e-mail.
10 He's not copied on it. He had no knowledge of it.

11 MS. DEBOSE: I'll break that up, Your Honor.

12 THE COURT: Break it up. Sustained.

13 BY MS. DEBOSE:

14 Q With regard to the e-mails, did you conduct any
15 investigation?

16 A Which e-mails?

17 Q The e-mails you heard Paul Dosal testify about. Did
18 you do any investigation into e-mails that spoke about
19 Ms. DeBose in a derogatory manner?

20 A No.

21 Q Did you investigate the Bob Sullins e-mail about
22 Caurie Waddell's departure and saying Angela DeBose had
23 driven Caurie Waddell away?

24 A I have no knowledge of that e-mail.

25 Q Did you hear Paul Dosal testify that he spoke with you

R.A.158

1 about Caurie Waddell?

2 A I don't recall that, and as I testified, I had no
3 knowledge of who Caurie Waddell was and have no recollection
4 of ever having met her.

5 Q Did you investigate the anonymous webmaster e-mail?

6 A No, because, quite frankly, I put no weight in
7 anonymous communications of that kind.

8 Q Did you testify yesterday that following receipt of
9 that e-mail, right on the heels of it, there was an effort
10 to reorganize and move DegreeWorks?

11 A I testified that Dr. Dosal and Mr. Fernandes were
12 already seeking a solution to the underperformance in the
13 area of DegreeWorks and were moving forward at the time.

14 Q Did you testify that you had not heard Ms. DeBose
15 previously use a statement "little girl" to anyone during
16 your professional career?

17 A Yes.

18 Q Did you investigate the reprimand or investigate the
19 accusation by Alexis Mootoo?

20 A I put my trust and confidence in the University's
21 due process, which was initially managed by the Office of
22 Human Resources.

23 Q Did you entrust -- while entrusting this to HR or
24 Tonia Suber, did you investigate by discussing the
25 accusation with Angela DeBose, Tony Embry, Suzanne McCoskey

R.A.159

1 or Kim Bushe?

2 A No. I had no reason to.

3 Q Did you, as Provost, seek to ensure during any of these
4 processes that Ms. DeBose was afforded due process?

5 A Again, I have to say I have confidence in action being
6 taken consistent with University policy, State and Federal
7 law --

8 Q Did --

9 A -- that would assure that.

10 Q Did USF follow its policy when it had Tonia Suber, who
11 was supposed to be a neutral arbiter, actively participating
12 with Paul Dosal in matters against Angela DeBose?

13 MR. MCCRAE: Your Honor, that misstates the
14 evidence.

15 THE COURT: Well, there is no question about the
16 fact that the question -- excuse me, that the inquiry is
17 addressed towards due process and whether or not the people
18 charged with due process were acting in a hostile manner.
19 That's the purpose of the question. Overruled. I'll take
20 the answer.

21 A I have no reason to believe that any action was being
22 taken in direct conflict with University policy.

23 BY MS. DEBOSE:

24 Q There was an action taken against Angela DeBose for
25 allegedly calling Alexis Mootoo a little girl; is that

R.A.160

1 correct?

2 A That is correct.

3 Q Did you seek to do anything about the fact that you
4 personally received an e-mail referring to Angela DeBose as
5 a cancer?

6 A I had no reason to do so. As I indicated earlier,
7 I place no weight in anonymous claims.

8 Q Were you at all concerned about Ms. DeBose's welfare in
9 any of these issues, any of these?

10 A I'm always concerned about students, faculty and staff
11 at the University of South Florida, that they be -- that
12 they are provided the rights and responsibilities that
13 University policy and State and Federal law allow them.

14 Q In what ways did you as Provost show that you were
15 concerned about Angela DeBose's welfare and her rights, her
16 employee rights, throughout all of these processes?

17 A Well, again, I do so by putting my trust and confidence
18 in the professionals that we charge with executing action
19 consistent with University policy, State and Federal law.

20 Q Do you -- did you hear the testimony of Paul Dosal
21 concerning the alleged "little girl" comment? Did you hear
22 his testimony?

23 A I believe I've responded to that question on numerous
24 occasions in the affirmative.

25 Q Did you see where an exhibit was showed to him of

R.A.161

1 University policy on progressive discipline?

2 A I don't recall that.

3 Q Do you recall seeing a document that gives examples of
4 language that would be considered unprofessional conduct?

5 A Yes. Yes.

6 Q Did you hear Paul Dosal testify that "little girl" was
7 egregious and severe?

8 MR. MCCRAE: Your Honor, I think that misstates
9 the evidence.

10 THE COURT: Well, let's ask the question. Do you
11 understand her question? If you do, respond to it, and if
12 you disagree with some of the content in it, let us know
13 that. Go ahead.

14 A I didn't hear those specific words used.

15 BY MS. DEBOSE:

16 Q Do you recall the rating he gave "little girl" from
17 looking at that document?

18 A No, but I would be happy -- if you would share that
19 document in evidence, I would be -- I would be happy to
20 remind myself.

21 Q How would you consider or rate the word -- the words
22 "a cancer"?

23 A Personally I find that to represent a strong and
24 offensive term.

25 Q Does this document look familiar?

R.A.162

1 A It does.

2 Q Do these categories below look familiar?

3 A They do.

4 Q Do you recall where Paul Dosal testified that he
5 considered the term "little girl" in this category,
6 threatening or abusive language, where language is
7 threatening, profane, vulgar or abusive towards others?

8 A He may -- may have assigned it to threatening or
9 abusive language, but in my estimation it could fit into any
10 of the three categories, threatening or abusive language,
11 aggressive or destructive behavior, or indeed fighting or
12 violent behavior, because I find such directed language as
13 alleged to be, frankly, offensive and demeaning.

14 Q Did you testify you have never heard Angela DeBose use
15 such language in your presence?

16 A I have not heard.

17 Q "Cancer," where does that fall? If someone is called a
18 cancer, can you identify what category that would be.

19 A I would -- I would consider that to be -- to fall into
20 those -- one or other of those three categories as well.

21 Q Did you do anything -- you, Sidney Fernandes or
22 Paul Dosal do anything to investigate who sent the alleged
23 anonymous e-mail, knowing that it was a discreet list?

24 THE COURT: What's your objection?

25 MR. MCCRAE: We've covered this over and over

R.A.163

1 again.

2 THE COURT: I know we have. Overruled. Go
3 forward.

4 A I saw no reason, simply because I put no basis in
5 anonymous assertions.

6 BY MS. DEBOSE:

7 Q Do you concede or admit that Paul Dosal talked about
8 the reorganization of DegreeWorks, reorganization of the
9 Registrar's Office following that e-mail?

10 MR. MCCRAE: Same objection. We covered this
11 yesterday.

12 THE COURT: Ms. DeBose --

13 MS. DEBOSE: I'm going to move on.

14 THE COURT: -- you really need to move on your
15 line of inquiry.

16 MS. DEBOSE: All right.

17 THE COURT: I think the jury is entitled to that.

18 Sustained. Move on.

19 BY MS. DEBOSE:

20 Q Did you hear from Paul Dosal about any issues involving
21 Ms. DeBose's car?

22 MR. MCCRAE: Your Honor, may we approach?

23 THE COURT: All right. You get credit for the
24 time.

25 Ladies and gentlemen of the jury, when we break

R.A.164

1 it's going to be 12:45, so don't think I've forgotten the
2 clock, okay?

3 Come to sidebar.

4 *(The following bench conference was held.)*

5 MR. MCCRAE: Your Honor, we had moved in limine
6 and that motion was granted. There was some vandalism that
7 occurred to Ms. DeBose's car while she was at USF, there's
8 no indication who was involved, and so it has no relevance
9 to the termination issue or the reference issue and it's
10 unduly prejudicial.

11 THE COURT: What's your response?

12 MR. MCCRAE: The vandalism to the plaintiff's car
13 occurred in the period after the reprimand and between the
14 Ellucian report, and her car was daily vandalized.

15 THE COURT: Daily?

16 MS. DEBOSE: On -- excuse me. With writings.

17 THE COURT: With writings on it?

18 MS. DEBOSE: Black bitch and black witch.

19 THE COURT: Okay. On the vehicle?

20 MS. DEBOSE: Yes.

21 THE COURT: All right. Now, attributing that to
22 this witness or the representative capacity for which he is
23 here --

24 MS. DEBOSE: I'm just asking about his knowledge.

25 THE COURT: I know that, I know that, but we've

R.A.165

1 already dealt with that in the motion in limine, and --

2 MS. DEBOSE: Paul Dosal was aware. Paul Dosal
3 shares everything with that witness.

4 THE COURT: Well, let me ask you, did you ask him
5 about the vehicle? I'm trying to recall.

6 MS. DEBOSE: No, on -- I just simply ran out of
7 time.

8 THE COURT: All right. Okay.

9 Now, the vehicle had -- over what period of time
10 was this occurring, because -- refresh my recollection.

11 MS. DEBOSE: From February 2015 until April, after
12 the termination.

13 THE COURT: Okay. So for a period of about
14 two months. About two months.

15 MS. DEBOSE: Right.

16 THE COURT: The vehicle was on campus or
17 off campus?

18 MS. DEBOSE: On campus, in the parking garage.

19 THE COURT: On campus, in the parking garage.
20 And there was -- how many times did this occur?

21 MS. DEBOSE: It was periodic. I'd say at least
22 seven. And it was, I think, hit or dinged twice.

23 THE COURT: Now, we can't attribute that to
24 anybody in particular, can we?

25 MS. DEBOSE: I'm just asking his knowledge. No.

R.A.166

1 THE COURT: All right.

2 MS. DEBOSE: It was along the lines of what did he
3 do to ensure the plaintiff's rights.

4 THE COURT: Okay. What is your additional
5 objection, on the record?

6 MR. MCCRAE: Your Honor, I think this is
7 proverbially poisoning the well, and I have no desire to
8 short circuit this after being here for seven days, but
9 I think this is way beyond the pale in terms of the effect
10 on the jury.

11 MS. DEBOSE: I'll move on, Your Honor.

12 THE COURT: If you cannot attribute it
13 specifically to any person that is involved in
14 representative capacities here, who may have done it and at
15 what direction, if you don't have any information on that,
16 I can't allow it.

17 MS. DEBOSE: I could establish that Dr. Dosal, who
18 will be here to testify if I re-call him, he will testify
19 that he was aware of that.

20 THE COURT: He was aware of it?

21 MS. DEBOSE: He absolutely was, and he took no
22 steps to remediate it or to investigate it. There were no
23 police reports, University police reports.

24 MR. MCCRAE: Judge.

25 THE COURT: Yes.

R.A.167

1 MR. MCCRAE: We're on day 7.

2 THE COURT: I know that.

3 MR. MCCRAE: I have had one hour --

4 THE COURT: I know that.

5 MR. MCCRAE: -- in six and a half days of trial to
6 question witness. To sit here and say, I didn't -- I ran
7 out of time, after he was on the stand for the better part
8 of four trial days --

9 THE COURT: Okay.

10 MS. DEBOSE: And in response to that, you may have
11 had that much time to question, but you certainly have had
12 a lot of time here at the bench.

13 MR. MCCRAE: Not four days up here.

14 THE COURT: Whoa. Whoa. Whoa. Whoa. Whoa.
15 Whoa. Whoa. Whoa.

16 I'll allow you to ask this question this way of
17 this witness: Are you aware of any other retaliatory
18 behavior towards the plaintiff involving her personal
19 property or defacing of her personal property, and get a yes
20 or a no from him and we'll see what it is. That's it.

21 MR. MCCRAE: Your Honor --

22 THE COURT: Overruled. Let's go back and ask him
23 if he's --

24 MR. MCCRAE: I would like to make a motion for
25 mistrial.

R.A.168

1 THE COURT: Make a motion. Mistrial? Okay.
2 MR. MCCRAE: Yes. At this point I feel I have to
3 make a motion for mistrial, because putting the word
4 "retaliatory" in there without any evidence in the record of
5 who did it or what knowledge they had of any protected
6 activity implies that it was somebody who had that
7 knowledge.

8 THE COURT: Okay.

9 MS. DEBOSE: Then I'll remove the word
10 "retaliatory," Mr. McCrea, if that would --

11 THE COURT: Take the word "retaliatory" out.
12 Motion for mistrial is denied. Let's find out if he has any
13 knowledge and go from there.

14 *(End of bench conference; proceedings resume in open court.)*

15 THE COURT: All right. Consistent with sidebar,
16 Ms. DeBose.

17 BY MS. DEBOSE:

18 Q Dr. Wilcox, are you aware or do you have knowledge of
19 any actions taken at the University of South Florida to
20 deface Ms. DeBose's property or involving Ms. DeBose's
21 property?

22 A I'm not.

23 Q Did you testify previously that you forwarded the
24 webmaster e-mail to Paul Dosal because you thought he had
25 not seen it before?

R.A.169

1 A I forwarded it to his attention as supervisor of the
2 subject identified in the e-mail, out of courtesy.

3 Q Would you go to page 38, lines 11 through 15, of your
4 deposition.

5 Have you found it?

6 A Yes.

7 Q And when you look at lines 11 through 15, can you share
8 what that means. Right above it is where you will see that
9 you talked about forwarding it because you weren't sure he
10 had seen it.

11 A I was referencing to essentially the -- what was
12 included -- the substance of what was included in that
13 e-mail was not going to be new to Dr. Dosal. He had heard
14 on numerous occasions, as had I, that Ms. DeBose's lack of
15 partnership, collaboration, represented a real barrier to
16 progress.

17 Q When you -- when you spoke of stronger words,
18 stronger -- well -- I have heard concerns that perhaps are
19 represented in stronger fashion than these words, you're
20 talking about collaboration? Is that your testimony?

21 MR. MCCRAE: Objection, Your Honor. Misstates the
22 deposition.

23 THE COURT: Well, we're going to deal with that
24 when we come back from our luncheon break, so make note of
25 it and the deposition time, et cetera.

R.A.170

1 Okay. Ladies and gentlemen of the jury, listen to
2 me very carefully. For reasons I do not -- cannot go into
3 with you, 12:45 it is by the courtroom clock, you're going
4 to have a three hour recess. It is 12:45. I need you back
5 in your jury room 3:45 by the courtroom clock. Your
6 standard instruction.

7 All rise for the jury.

8 The first row. 3:45. That's a three hour break.
9 Back into the jury room.

10 *(Jury exits proceedings.)*

11 BAILIFF: The jury is out of the courtroom,
12 Your Honor.

13 THE COURT: All right. Fine.

14 Mr. Witness, you cannot discuss your testimony
15 with anybody. I need you back 3:45 by the courtroom clock.
16 Watch your step going down. You may leave the courtroom at
17 this time.

18 Thank you, Mr. Bailiff.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Escort the gentleman out.

21 COURT SECURITY OFFICER: Yes, Your Honor.

22 MS. DEBOSE: Your Honor, initially --

23 THE COURT: Wait. Wait. Wait. He's got to be
24 out.

25 *(Ralph Wilcox exits proceedings.)*

R.A.171

1 THE COURT: All right. He's out of the courtroom.

2 COURT SECURITY OFFICER: The witness is out of the
3 courtroom, Your Honor.

4 THE COURT: Yes, Ms. DeBose.

5 MS. DEBOSE: Initially I was informed this morning
6 about this break, but I believe counsel indicated he planned
7 to continue because he was going to stay present and I could
8 read the depositions of Andrea Diamond and Shruti Kumar into
9 evidence during this break, but apparently that plan has
10 changed?

11 THE COURT: No one discussed that with me.

12 MR. MCCRAE: She asked me and I said I had no
13 objection, Your Honor, but the jury --

14 THE COURT: But no one told me you wanted to do
15 that during this time period.

16 MS. DEBOSE: I discussed it --

17 THE COURT: No one discussed it with me.

18 MS. DEBOSE: I understand, Your Honor, but I did
19 want to just bring that to your attention, but it's on his
20 clock, but I just thought it would allow --

21 THE COURT: Yes, it could have been a good
22 utilization of the time.

23 MS. DEBOSE: Yes.

24 THE COURT: Well, they've already gone, and no one
25 has mentioned it to the Court, and we could have done that,

R.A.172

1 especially since Mr. --

2 MS. DEBOSE: Wilcox.

3 THE COURT: -- McCrea has not objected to doing
4 that with the representative from the University of
5 South Florida being absent. Now it's too late, the jury is
6 gone.

7 MS. DEBOSE: I understand.

8 THE COURT: They've gone. Come on, everybody,
9 let's try to work -- I've already assessed the time when we
10 talked about it this morning, and nobody mentioned to me
11 that we could have done something else with which people
12 would have consented, and it seems kind of useless for me to
13 ask a question if we're going to run into this tomorrow,
14 because I'm having real trouble with a case that was set for
15 tomorrow afternoon, I wish it was set for this afternoon,
16 with experts coming in and all of that that I've had to
17 cancel, and now they've got trouble trying to get it reset
18 with me, now at this point maybe three months down the road.

19 I'm not happy. I'm not happy because I got
20 problems in here and I got problems back in the office, and
21 we could have used the time. So, Mr. McCrea, I wish you
22 would have spoken up and told me, we could have done that,
23 but that's history.

24 See you back in here at 3:45 by the courtroom
25 clock.

R.A.173

1 (Recess at 12:47 p.m. until 3:43 p.m.)

2 - - - -

3 (Ralph Wilcox re-enters proceedings.)

4 THE COURT: Ladies and gentlemen, are we ready for
5 the jury? Yes? Yes?

6 All rise for the jury.

7 Mr. Bailiff, let's go get them.

8 (Jury re-enters proceedings.)

9 THE COURT: You may be seated, ladies and
10 gentlemen of the jury. You may be seated in the courtroom.

11 Mr. Witness, you may be seated. You're under the
12 same oath, and the Bailiff will get up there and try to help
13 you with that microphone.

14 Ms. DeBose, if you can pick up where you left off.

15 MS. DEBOSE: Yes.

16 THE COURT: All right. You may be seated, sir.
17 You're still under the same oath.

18 State your name again for the record.

19 THE WITNESS: Ralph Wilcox.

20 THE COURT: Thank you. You may proceed.

21 MS. DEBOSE: Thank you.

22 BY MS. DEBOSE:

23 Q Dr. Wilcox, before the break we were looking at your
24 deposition, specifically at page 38, lines 11 through 15,
25 and we were discussing what you intended by a statement that

R.A.174

1 you made prior to this -- prior to today, concerns
2 represented in stronger fashion than these words.

3 Can you explain to the jury what you meant by that
4 statement?

5 A I meant that Dr. Dosal had on a number of occasions
6 heard concerns about Ms. DeBose's lack of collaboration and
7 collegiality.

8 Q Would you agree that you're describing something in
9 this statement -- "perhaps represented in stronger fashion
10 than these words"?

11 A In a cumulative sense over time he had -- he had
12 developed, I think, if you will, a repository of concerns
13 from multiple sources that seem to reinforce one or the
14 other, so I interpret that as being a strong or more
15 compelling case.

16 Q Let's parse the words that you were responding to.

17 "Angela Debose's continued pattern of hostility
18 and self-serving behavior has become a cancer for USF."

19 So in terms of that statement, what had you heard
20 before that was expressed in stronger fashion than these
21 words, and which specific word would you have been talking
22 about?

23 MR. MCCRAE: Your Honor, improper impeachment.
24 The statement isn't what -- the words he heard. He's
25 referring to Dr. Dosal in that testimony.

R.A.175

1 C E R T I F I C A T E

2

3 This is to certify that the foregoing transcript

4 of proceedings taken in a jury trial in the United States

5 District Court is a true and accurate transcript of the

6 proceedings taken by me in machine shorthand and transcribed

7 by computer under my supervision, this the 15th day of

8 October, 2018.

9

10

11 /S/ DAVID J. COLLIER

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13 DAVID J. COLLIER

14 OFFICIAL COURT REPORTER

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R.A.176

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURY TRIAL - DAY 8
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

SEPTEMBER 20, 2018
10:37 A.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

DAVID J. COLLIER, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER
801 NORTH FLORIDA AVENUE, 7TH FLOOR
TAMPA, FLORIDA 33602

R.A.177

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9 10 11 **FOR THE DEFENDANT UNIVERSITY OF SOUTH FLORIDA:**

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1 first page of the report reflects that the consultant spoke
2 with 15 or 20 employees, I don't -- I'm not counting them,
3 but over the course of three days, correct?

4 A Correct. They were the participants, yes.

5 Q And when did you first receive the Ellucian report?

6 A When it was sent to me by Dr. Dosal following his
7 receipt of it.

8 Q All right. And before you received it, did you have
9 any awareness that it might contain criticism of the
10 Registrar's Office or Ms. DeBose individually?

11 A No.

12 Q At the time that you read it, did you have any
13 information or understanding whatsoever about Ms. Diamond's
14 qualifications or her methodology?

15 A No. She was represented as a consultant from the
16 company that served as a vendor for DegreeWorks to USF.

17 Q When you read the report, did that give you any reason
18 to question or research Ms. Diamond's qualifications, her
19 education or her methodology?

20 A I -- she was an independent consultant hired -- hired
21 by the University. I had no reason to question her
22 qualifications.

23 Q All right. You've already testified here that after
24 you received and reviewed the Ellucian report you made the
25 decision to not reappoint Ms. DeBose, correct?

R.A.180

1 A I did, yes.

2 Q All right. And did you make that decision because you
3 blamed her for the failure of DegreeWorks or for some other
4 reason?

5 A Certainly no blame was ascribed to Ms. DeBose for the
6 underperformance of DegreeWorks, no.

7 Q Okay. So if it wasn't the failure of DegreeWorks, what
8 was it that came to you from the Ellucian report that lent
9 itself to your decision?

10 A Well, again, as I think I testified before, there were
11 three risk factors identified in that report, and as chief
12 academic officer it was my responsibility to find solutions
13 to mitigate, mitigate those risks, which led me to consult
14 with the Director of Auditing Compliance at the University,
15 who was charged with overseeing and communicating directly
16 to the Board of Trustees areas of risk to the University.

17 I met with -- at the same time with the
18 Vice President for Information Technology, Mr. Fernandes,
19 because quite clearly the first two risk factors, the fact
20 that the consultant identified too many people, in her
21 estimation, had access to changing critical components to
22 best serve the needs of our students; and the second risk
23 factor, if you'll recall my testimony was that she had
24 identified a high risk area being that essentially the
25 responsibility for DegreeWorks was falling on the shoulders

R.A.181

1 of one person and, of course, if that person left, if that
2 person got sick, that represented a risk, a pretty
3 significant risk to the University. So Sidney Fernandes,
4 the Vice President for Information Technology, gave me great
5 confidence that he could fix those two -- first two risk
6 factors in short order.

7 The third risk factor was this continuing trend or
8 theme that now I had heard, as I've testified, and witnessed
9 firsthand for any number of years, that the lack of
10 collaboration and collegial partnership exhibited by the
11 Registrar's Office, custodian of student records,
12 represented a continuing risk as well and needed to be
13 addressed.

14 Q I'm sorry. I didn't --

15 A Needed to be addressed.

16 So in essence, in my assessment, it really was a
17 culmination of years of disappointing leadership to
18 facilitate collaborative solutions to important -- important
19 problems, and that had to be fixed somehow.

20 Q Did the other two areas of risk have anything to do
21 with lack of collaboration?

22 A No, not at all.

23 Q And the other two areas had to do, in my -- these are
24 my words, technical issues involving IT?

25 A Technical structural issues, yes.

R.A.182

1 Q And based upon your experience as University Provost,
2 is there any reason that you can conceive of why the Provost
3 of UNF would have called you about Ms. DeBose after she had
4 already been offered a job by University of North Florida?

5 A That would make no sense whatsoever, if she had already
6 been offered the job.

7 Q Based upon your experience, is there any reason why you
8 could conceive of Provost Traynham asking you if Ms. DeBose
9 was available if she had already been offered a job there?

10 A If she'd been already offered a job it would make no
11 sense to seek clarification on her availability.

12 Q In your role as Provost have you had occasion to reach
13 out to members of senior management at other State
14 Universities for employment references?

15 A I have.

16 Q And when you did that, did you expect or at least hope
17 for candor?

18 A Honest and candid assessments of candidates that we may
19 be -- may have been considering for employment at the
20 University of South Florida, yes.

21 Q And you were asked on your direct examination about
22 employment references you provided for Norine Noonan and
23 Julie Ashcroft. Do you remember those names coming up?

24 A I recall being asked about references for Dr. Noonan,
25 but not for Dr. Ashcroft. Judy Ashcroft I think is --

R.A.183

1 Q I'm sorry?

2 A -- the name. She was an employee that came from
3 outside the University of South Florida. I don't recall
4 having received requests for reference subsequent to her
5 departure.

6 Q Okay. My apologies. I misunderstood.

7 So talking about Norine Noonan, you did provide an
8 employment reference for her that you were asked about?

9 A I did.

10 Q And what is her race?

11 A White.

12 Q And did she ever make any complaint of discrimination
13 against University of South Florida?

14 A Not that I'm aware of.

15 Q Dr. Wilcox, was your decision to non-reappoint
16 Ms. DeBose based upon her race?

17 A No.

18 Q Did you decide to non-renew her appointment because she
19 had made a complaint of discrimination?

20 A No.

21 Q And did you say anything when you had your call with
22 Dr. Traynham about Ms. DeBose in retaliation because she had
23 filed a complaint of discrimination?

24 A No.

25 MR. MCCRAE: May I have a moment, Your Honor?

R.A.184

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4 of proceedings taken in a jury trial in the United States

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8 October, 2018.

9

10

11 /S/ DAVID J. COLLIER

12

13 DAVID J. COLLIER

14 OFFICIAL COURT REPORTER

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R.A.185

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURY TRIAL - DAY 9
BEFORE THE HONORABLE ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

SEPTEMBER 24, 2018
10:46 A.M.
TAMPA, FLORIDA

Proceedings transcribed via courtroom digital audio recording by transcriptionist using computer-aided transcription.

DAVID J. COLLIER, RMR, CRR
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801 NORTH FLORIDA AVENUE, 7TH FLOOR
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R.A.186**1 APPEARANCES :****3 FOR THE PLAINTIFF :**

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1 steering committee who is supposed to be making important
2 decisions, they have to have facts that they're working off
3 of.

4 Q At some point did you inherit responsibility for
5 DegreeWorks?

6 A I did.

7 Q And was that about a month after this, in June --

8 A Yes.

9 Q -- of 2014?

10 And was that a responsibility that you sought out?

11 A No.

12 Q And how did you become aware of the fact that you were
13 now responsible for DegreeWorks as opposed to Ms. DeBose?

14 A My CIO told me that Dr. Dosal had reached out to him
15 and it would be moving to IT, in my unit.

16 Q All right. And how long before you actually started
17 managing DegreeWorks in your unit were you informed that
18 that would be your responsibility?

19 A I don't remember specifically, but it happened quickly.

20 Q All right. Now, moving to Ellucian, were you involved
21 in the post-implementation assessment that was performed by
22 Ellucian?

23 A I was.

24 Q And who suggested or requested that Ellucian perform a
25 post-implementation assessment?

R.A.189

1 A So when I first took responsibility for the system,
2 I met with the vendor, who is Ellucian, to talk with them
3 about some of the problems that we were having, and we had
4 worked out that this would be a possible way that they could
5 come in and do an assessment of where we were with the
6 entire system. So it was in July that we had those
7 conversations.

8 Q Okay. July of what year?

9 A 2014.

10 Q So this would be shortly after you took over.

11 A Yes.

12 Q Okay. And --

13 THE COURT: Was that a yes?

14 THE WITNESS: Yes.

15 MR. MCCRAE: Sorry, Your Honor.

16 BY MR. MCCRAE:

17 Q Was that post-implementation assessment suggested or
18 performed because of Ms. DeBose?

19 A No, it was more of a status of the system and how are
20 we using it and giving us a roadmap of things that we needed
21 to address to be able to move forward.

22 Q All right. Based upon your IT experience, is it common
23 or uncommon to do something like a post-implementation
24 assessment?

25 A It's common.

R.A.190

1 Q And were there any discussions that the Tracking
2 Steering Committee had about whether or not to do a
3 post-implementation assessment?

4 A Yes. The first step was to do an estimate, and then
5 the estimate was presented to the Tracking Committee,
6 I think that August, as part of the charter for the three
7 semester pilot that we were doing.

8 Q All right. If you could turn to tab 39.

9 MR. MCCRAE: Your Honor, this is one of the
10 documents that I just moved in.

11 THE COURT: Okay.

12 MR. MCCRAE: I believe they're all in except for
13 the two that we discussed.

14 THE COURT: Okay.

15 BY MR. MCCRAE:

16 Q Directing your attention to the document on the bottom,
17 that's an e-mail from you to Dr. Dosal?

18 A Yes.

19 Q Okay. And you said that the suggestion came in August
20 of 2014, and was there then some effort to obtain funding?

21 A There was.

22 Q All right. And did you have any responsibility for
23 that?

24 A No. The funding was not coming from my unit.

25 Q All right. Well, did you have any responsibility for

R.A.191

1 getting an estimate?

2 A Yes.

3 Q So that somebody else could request funding?

4 A Yes, I did.

5 Q All right. And who was it who prepared the estimate?

6 A It was our -- our representative from Ellucian.

7 I believe it was Steve Hanner, we worked with his folks --
8 oh, it was a previous one. I can't remember her name right
9 off the top of my head, but it was our account rep.

10 Q Okay. The account rep with Ellucian?

11 A Yes.

12 Q And in response to your e-mail there's an e-mail above
13 from Dr. Dosal to Dr. Mootoo that has a date of October 11
14 of 2014. Do you know how long that e-mail occurred after
15 your e-mail talking about the statement of work and the
16 quoted cost?

17 A I don't know when I sent that e-mail. I know that we
18 talked about it in the steering committee and it was
19 probably a follow-up from that, but I don't know the date.

20 THE COURT: You're dropping your voice a little
21 bit. You were doing fine for a while, but you're dropping
22 it. Pick it up. Volume.

23 THE WITNESS: Okay.

24 BY MR. MCCRAE:

25 Q All right. And was there some reason why the committee

R.A.192

1 thought it was important to do the post-implementation
2 assessment even though DegreeWorks had been up and running?

3 A I think it was clear from talking with advisors that
4 there were still challenges with the system. We were also
5 in IT new with administering the system, and what we wanted
6 to do was have the experts, the people who had developed the
7 system and knew best practices, come in and look at it and
8 tell us what we needed to do to use it better, so that
9 students could have it as a valuable tool.

10 Q And did you agree that there were problems with the
11 tool?

12 A Yes.

13 Q All right. And what did you base that on?

14 A Conversations with advisors, the fact that we had so
15 many struggles with the Tracking tool, the way that we --
16 the way that we had to scribe, which is -- which is the way
17 that you translate requirements for a degree, was kind of
18 convoluted, and we suspected that there were some things
19 going on that we could be doing better as an institution.

20 Q All right. Could you turn to Defendant's Exhibit
21 Number 71.

22 All right. And do you see that this is an e-mail
23 on April 10 of 2015 from Ms. Diamond to you?

24 A Yes.

25 Q All right. And do you know why the subject says

R.A.193

1 "URGENT: PIA Engagement with Ellucian"?

2 A Yes. I had actually urgently contacted Ellucian.
3 There had been a staffing change in Ellucian between when we
4 did the initial statement of work and when the consultant
5 was lined up, and when she first sent the agenda it was not
6 for an implementation assessment, it was just for 40 hours
7 of functional consulting, and so I had reached back out and
8 said we need to get this straightened out because we wanted
9 to look at it from a technical perspective and a functional
10 perspective to make sure we had the right -- the right thing
11 planned.

12 Q All right. And in Ms. Diamond's e-mail to you,
13 starting a couple lines down, it says: "Starting Tuesday
14 afternoon, I would like to start bringing in the high end
15 users for assessment. These would be any members of the
16 core team, Scribes and possibly the Registrar's Office."

17 Was it you or was it Ms. Diamond who first
18 suggested that she meet with members of the Registrar's
19 Office?

20 A It was Ms. Diamond.

21 Q And did you or anyone else suggest or insist that
22 Ms. DeBose personally attend the meeting with Ms. Diamond?

23 A No.

24 Q And do you have any understanding of the reason why a
25 representative or representatives of the Registrar's Office

R.A.194

1 C E R T I F I C A T E

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4 of proceedings taken in a jury trial in the United States

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11 /S/ DAVID J. COLLIER

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R.A.195

**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

This cause is before the Court *sua sponte*.

On Thursday, September 20, 2018, Defendant University of South Florida Board of Trustees (“USFBOT”) orally moved for judgement as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure. *See* (Doc. 456). That motion remains pending. By its motion, USFBOT argued, *inter alia*, that Plaintiff failed, during the presentation of her case-in-chief, to put forth evidence and argument regarding her compensatory damages – both for lost wages and benefits, as well as for pain and suffering. In her written opposition, Plaintiff counters that “[t]he Court has several options to allow the Plaintiff Pro Se to submit her damages to the jury.” *See* (Doc. 461, at 12). According to Plaintiff, one of those options is for the Court to re-open the evidence as to her damages. *Id.*

District judges “must meet situations as they arise” and “must have broad power to cope with the complexities and contingencies inherent in the adversary process.” *Geders v. United States*, 425 U.S. 80, 86–87 (1976). To that end, district courts may determine the order in which parties will adduce proof at trial and whether any party should be permitted to reopen the evidence. *Id.*; *United States v. Bolt*, 776 F.2d 1463, 1471–72 (10th Cir. 1985). “The question of the order of

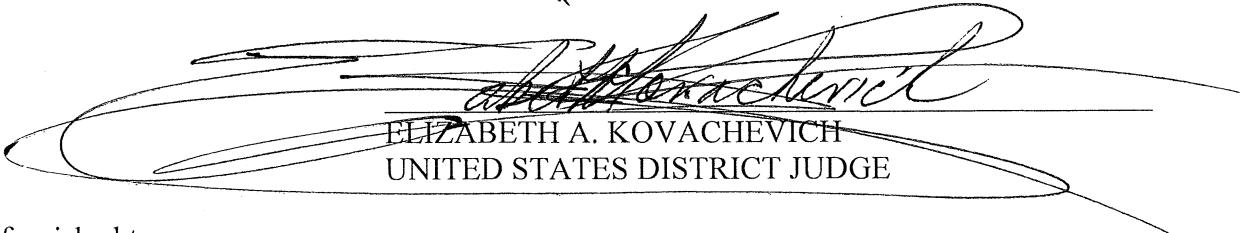
R.A.196

proof and permission to reopen the evidence rests within the discretion of the trial court.” *Bolt*, 776 F.2d at 1471–72; *See also United States v. Byrd*, 403 F.3d 1278, 1283 (11th Cir. 2005) (“The decision whether to reopen a case to introduce additional evidence is reviewed only for abuse of discretion.”) (citing *United States v. Cohen*, 888 F.2d 770, 775 (11th Cir. 1989)).

Upon consideration, in the interests of justice and grounded in principles of fundamental fairness, the Court will allow Plaintiff the opportunity, if she chooses, to re-open her case-in-chief for the limited purpose of introducing argument and evidence related to her compensatory damages. Any time Plaintiff uses in re-opening the evidence will be charged to the time the Court has allotted for her closing arguments. USFBOT, of course, will be permitted the opportunity to rebut Plaintiff’s evidence.

IT IS SO ORDERED AND ADJUDGED.

DONE and ORDERED in Chambers, in Tampa, Florida this 24th day of September, 2018.


ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

R.A.197
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, *et al.*,

Defendants.

ORDER

This cause comes before the Court upon Plaintiff's Motion to Compel Compliance to Issue Subpoenas (Doc. 353) and Defendant's Motion to Strike Plaintiff's Expert Witnesses and Previously Undisclosed Witnesses (Doc. 354). By her motion, Plaintiff seeks to compel Defendant to provide its directory to Plaintiff so that she can call witnesses at trial. Plaintiff admits that Defendant may have no obligation to provide the information, but she contends that the information is contained in their databases, the information is public record,¹ and the information is needed for trial, so she seeks to compel Defendant to provide the information to her to enable her to subpoena witnesses on her behalf.

By its motion, Defendant seeks to strike Plaintiff's two expert witnesses and thirty-three previously undisclosed witnesses. With regard to the first expert witness, Dr. Kimberly Nguyen, Defendant argues that the expert disclosure, which was provided on September 3, 2016, a day after the expert disclosure deadline, should be stricken because it does not comply with Rule 26, Federal Rules of Civil Procedure. Namely, Defendant contends that the

¹ If, as Plaintiff contends, the information is public record, that begs the question why Plaintiff cannot obtain this information on her own.

R.A.198

disclosure failed to provide the subject matter on which the witness is expected to present evidence or the summary of the facts and opinions to which the witness is expected to testify. Fed. R. Civ. P. 26(a)(2)(C). Despite the disclosure occurring two years ago, this issue has never been brought up by Defendant or addressed by the Court. As the Pretrial Order indicated, no objections to evidence based upon discovery issues would be considered (Doc. 313). This issue should have been addressed by Defendant prior to the conclusion of discovery, but it was not. Instead, Defendant seeks to strike the expert witness a little more than a week before trial, a move that would severely prejudice Plaintiff, despite never addressing the issue during discovery or otherwise during the two years after the expert disclosure. As such, the motion is denied as to Dr. Nguyen.

With respect to Plaintiff's other purported expert, Saba Baptiste, the motion is granted, however. As Defendant asserts, Plaintiff sought to rely upon the affidavit of Ms. Baptiste in response to Defendant's Motion for Summary Judgment (Docs. 75, 169, 177). Defendant then sought to strike Ms. Baptiste's expert testimony as untimely, since it was provided a year after the lapse of the deadline for expert disclosures, and to preclude Plaintiff from using such testimony either at trial or in response to Defendant's summary judgment (Doc. 201). Upon consideration of Defendant's Motion for Summary Judgment and Motion to Strike, the district judge granted the Motion to Strike (Docs. 210, 211). In doing so, the district judge determined that Ms. Baptiste's expert report was untimely and therefore concluded that the affidavit was inadmissible in response to Defendant's Motion for Summary Judgment (Doc. 210, at 21-22). For the same reason, the testimony of Ms. Baptiste is inadmissible at trial. As the Federal Rules indicate, a party must make expert disclosures at the times and in the sequence that the court orders. Fed. R. Civ. P. 26(a)(2)(D). Where a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or

R.A.199

witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless. Fed. R. Civ. P. 37(c)(1). As the district judge already determined that Plaintiff failed to timely disclose Ms. Baptiste, and thus concluded that Plaintiff's failure was neither substantially justified nor harmless, Plaintiff is precluded from calling Ms. Baptiste to testify as an expert at trial.

Finally, as to the thirty-three undisclosed witnesses, Defendant seeks to exclude all their testimony at trial because Plaintiff's disclosure is untimely and highly prejudicial. Under Rule 26, a party must provide to the other party the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment. Fed. R. Civ. P. 26(a)(1). Such disclosures must be made at or within fourteen days of the parties' Rule 26(f) case management conference, unless a different time is set by stipulation or court order, with a continuing obligation to supplement such disclosures. Fed. R. Civ. P. 26(a)(1)(C) & (e). Again, where a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless. Fed. R. Civ. P. 37(c)(1). In this instance, Plaintiff failed to properly disclose the following individuals and, as such, is precluded from calling them as witnesses at trial: Bea Smith, Billie Jo Hamilton, Bob Davis, Bob Spatig, Caurie Waddell, Cindy Visot, David Lee Henry, Delonjie Tyson, Denelta Adderly Henry, Gerard Solis, Harold Nixon, Jeff Muir, Jennifer Derushia, Jennifer Meningall, Joan Holmes, Kimberly Bushe Whiteman, Lance Arney, Laurie Meggesin, Leonard Gude, Les Miller, Lois Palmer, Lori Mohn, Norine Noonan, Rick DeBow, Rolanda Lewis, Saba Baptiste, Sam Wright, Sidney

R.A.200

Fernandes, Sridevi Moletti, Suzanne McCoskey Bishop, Sylvia Salter, Tony Embry, and Vanessa Centelles. Accordingly, it is hereby

ORDERED:

1. Plaintiff's Motion to Compel Compliance to Issue Subpoenas (Doc. 353) is GRANTED IN PART AND DENIED IN PART. To the extent Defendant maintains such information, Defendant shall provide to Plaintiff the contact information for the witnesses who were properly identified in Plaintiff's disclosures and during discovery and who were not otherwise excluded by this Order.

2. Defendant's Motion to Strike Plaintiff's Expert Witnesses and Previously Undisclosed Witnesses (Doc. 354) is GRANTED IN PART AND DENIED IN PART:

a. The motion is denied as to Dr. Kimberly Nguyen. At trial, Plaintiff shall not be precluded from presenting the testimony of Dr. Kimberly Nguyen on the basis that such testimony was untimely or failed to comply with the Federal Rules of Civil Procedure.²

b. In all other respects, the motion is granted. At trial, Plaintiff shall be precluded from presenting the testimony of the following individuals: Bea Smith, Billie Jo Hamilton, Bob Davis, Bob Spatig, Caurie Waddell, Cindy Visot, David Lee Henry, Delonjie Tyson, Denelta Adderly Henry, Gerard Solis, Harold Nixon, Jeff Muir, Jennifer Derushia, Jennifer Meningall, Joan Holmes, Kimberly Bushe Whiteman, Lance Arney, Laurie Meggesin, Leonard Gude, Les Miller, Lois Palmer, Lori Mohn, Norine Noonan, Rick DeBow, Rolanda Lewis, Saba Baptiste, Sam Wright, Sidney Fernandes, Sridevi Moletti, Suzanne McCoskey Bishop, Sylvia Salter, Tony Embry, and Vanessa Centelles.

² This finding does not preclude objections to or preclusion of the testimony on any other basis, including but not limited to a relevancy objection.

R.A.201

DONE AND ORDERED in Tampa, Florida, on this 31st day of August, 2018.



ANTHONY E. PORCELLI
United States Magistrate Judge

cc: Counsel of Record
Plaintiff, *pro se*