No. 20-1538

# 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 Filed: May 4, 2021**
**Pending Ruling**

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FILED

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

2015 DEC -4 AM 8:33

ANGELA DEBOSE,

Plaintiff,

v.

USF BOARD OF TRUSTEES, USF, and ELLUCIAN, L.P.,

Defendants.

CASE NO: 8:15 cv 2787 T 17 AEP

**COMPLAINT**

COMES NOW the Plaintiff, Angela DeBose, and brings this action against the Defendants, University of South Florida Board of Trustees (hereinafter referred to as "USF"), and Ellucian Company or Ellucian, L.P. (hereinafter referred to as "Ellucian") and alleges as follows:

1. This is a personal action for damages arising from deprivations of all of Plaintiff's Civil Rights under 42 U.S.C. §1983, and rights secured by the Civil Rights Act of 1964, as amended and 42 U.S.C. §1981 as amended and other laws of Rights under the Constitution of the United States, and as more fully set forth below for violations of the Fourteenth Amendment and for Rights in Contract that were violated by the Defendant under "color of Law". Angela DeBose (hereinafter referred to as "DeBose" or "Plaintiff") seeks redress for Defendant's discriminatory and retaliatory actions and damages for the personal injuries sustained by the Plaintiff as a direct and proximate result of the wrongful conduct of the Defendants in connection

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with her employment, wrongful separation, wrongful termination, common law breach of express contract, civil conspiracy, and tortious interference with future employment.

## JURISDICTION AND VENUE

2. Plaintiff seeks damages which exceed seventy-five thousand dollars ($75,000.00), excluding fees and costs.

3. Jurisdiction is conferred upon this Court by 42 U.S.C. § 1981 and 28 U.S.C. § 1983 and Florida Statutes 768.28.

4. This Honorable Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) because the amount in controversy exceeds $75,000.00, and because there is complete diversity of citizenship between Plaintiff and Defendant Ellucian. The Court has personal jurisdiction over Ellucian because a substantial part of the events giving rise to Angela DeBose's claims occurred in this judicial district, and/or Ellucian knew or should have known that its acts and omissions as alleged herein would have a substantial effect on parties in this judicial district.

5. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over this and all other state law claims in this action because these claims arise out of the same nucleus of operative facts as do the federal law claims for which this Court has original jurisdiction. Within 180 days of the adverse and discriminatory actions taken against Plaintiff by Defendant, Plaintiff filed charges of discrimination with the United States Equal Employee Opportunity Commission (EEOC), which cross-filed charges with the Florida Commission on Human Rights (FCHR). These administrative proceedings did not reach resolution, with Plaintiff requesting a "Right to Sue" letter following her termination. The "Right to Sue" letter has not yet been issued.

6. Venue is proper in this United States Judicial District pursuant to 13 U.S.C. § 1391 because Angela DeBose resides in this district, USF's main campus is located in this district, and a substantial part of the events giving rise to claims against Ellucian occurred in this judicial district, and/or Ellucian's actions giving rise to this suit have had a substantial effect on parties in this judicial district.

## THE PARTIES AND THEIR RELATIONSHIP

7. At all relevant times herein, plaintiff, Angela DeBose, was and is a citizen of the United States of America and the State of Florida as well as a resident of the City of Tampa, Hillsborough County, Florida. At all relevant times herein, plaintiff was an employee of the Defendant USF as defined by federal and Florida law.

8. Defendant USF Board of Trustees, also known as the University of South Florida Board of Trustees, is the governing body of the University of South Florida System, and public body corporate created by Article IX, Section 7 of the Constitution of the State of Florida. Defendant is based at 4202 E. Fowler Avenue, Tampa, Florida. Defendant USF Board of Trustees is a body corporate authorized to sue and be sued under the laws of the State of Florida on behalf of USF.

9. The University of South Florida is an academic institution and public employer of the State of Florida based at 4202 E. Fowler Avenue, Tampa, Florida. USF is an "employer" in an "industry affecting commerce" as defined by federal and Florida law. USF is part of the State University System with its main campus in Hillsborough County, Florida. At all times material hereto, Defendant USF was and is a public university within the State University System of the State of Florida and a "state agency," pursuant to §216.011(1)(qq), Florida Statutes.

10. Paul Dosal ("Dosal") is Vice Provost for Student Success and was employed at all relevant times by USF.

11. Robert Sullins, a.k.a. "Bob" Sullins ("Sullins") is Dean of Undergraduate Studies and was employed at all relevant times by USF.

12. Travis Thompson ("Thompson") is a Director of Undergraduate Studies Operations, and was employed at all relevant times by USF.

13. Ralph Wilcox ("Wilcox" or "Provost") is Provost and Executive Vice President and was employed at all relevant times by USF.

14. Carrie Garcia ("Garcia") is a Director in Information Technology and was employed at all relevant times by USF.

15. All Defendants collectively referred to hereafter as "USF" or "defendants" conduct significant levels of educational and commercial activity within Hillsborough County, Florida and within the State of Florida in general.

16. Ellucian Company or Ellucian Company, L.P. is a Delaware limited partnership with its principal place of business in Fairfax, Virginia. Ellucian develops and sells computer software used to manage, support and deliver administrative and academic record keeping capabilities to colleges and universities; and computer software for use by colleges and universities, namely, software used by higher education administrators, instructors, students, prospective students, alumni, donors and vendors to access student, financial, financial aid, academic, human resources, educational and personnel records, and instructional tools, course materials and resource materials. Ellucian also does business in Florida and has an office in Maitland, Florida.

17. Andrea Diamond ("Diamond") is a Functional Consultant and was employed at all relevant times by Ellucian and worked as a consultant at USF during a substantial part of the events that occurred and had a substantial effect on parties in this district, giving rise to this suit and claims against Ellucian and USF.

## PLAINTIFF'S ALLEGATIONS

18. DeBose was initially hired by Defendant USF in or about January 1988 as a computer programmer/analyst. In October 1996, after holding several progressively higher level positions, DeBose was hired to the position of University Registrar, pursuant to a written Employment Agreement, renewed annually.

19. DeBose has more than 20 years of Registrar-related experience and information systems experience, including many years as a peer consultant to other higher education institutions, and has served four different presidents and various provosts during her time at USF.

20. During all times relevant pursuant to this action, DeBose's performance was evaluated as better than satisfactory, with DeBose receiving exemplary performance ratings.

21. In 2010, Paul Dosal, a history professor at USF, was appointed by Ralph Wilcox, Provost, to serve initially as interim director over the Division of Enrollment Planning & Management and to lead the USF Student Success initiative.

22. DeBose helped Dosal onboard to his new role and assisted him with his role and responsibilities. Subsequently, Dosal was appointed approximately one year later by Wilcox to the position of Vice Provost for Student Success.

23. In 2010-2011, Dosal added two additional responsibilities to DeBose's range of duties as University System Registrar—to establish a new Transfer Articulation Area and to

implement Degree Works, a degree audit and advising system. For both responsibilities, DeBose met or exceeded expectations and received an exemplary performance rating.

24. In 2012, Dosal assigned DeBose the task of implementing Academic Tracking at USF. DeBose implemented a tracking system in one year and Dosal rated DeBose's performance as exemplary.

25. In 2013, DeBose noticed a marked change in the behavior exhibited by Dosal as her immediate supervisor, but also Bob Sullins, Travis Thompson, and Ralph Wilcox, towards DeBose. The defendants individually and collectively engaged in continuous and unwarranted criticism of DeBose from 2013 forward, including by way of example:

a. Making DeBose's race an issue by seeking to portray or stereotype her as an angry black woman;

b. Creating a work environment that was permeated by threatening behavior, isolation, bullying, and repeated degrading epithets;

c. Making false, harmful derogatory statements about DeBose to others within the USF Community, to raise questions about DeBose's leadership, competence, professionalism, and business acumen or ability; and

d. Giving conflicting directives and messages to frustrate DeBose's purpose in performing her role as University System Registrar.

26. On June 6, 2014, Bob Sullins sent an email to Dosal stating that "Angela's tirades have driven Caurie to resign!" Sullins continued, "We should do everything we can to head that off!" (**Exhibit** – "Email About Caurie Waddell") At the time that Sullins sent the email, Caurie Waddell ("Waddell") was no longer an employee in the unit managed by DeBose but rather working in another USF department.

27. On June 12, 2014, DEBOSE received word that a damaging email sent by Thompson to Dosal copying Bob Sullins had been circulated around campus, stating Waddell was leaving USF to "get away from the tyranny of Angela" and that Thompson was working with Dosal and Sullins to fire DeBose.

28. Waddell, aware of the email, stated to Dosal and a number of USF employees that "Travis [Thompson] sent the email to Dosal". Waddell stated that the contents of the email were "false" as to her reason for leaving USF.

29. On June 20, 2014, an email was sent from webmaster@acad.usf.edu, an email account exclusively controlled by limited staff within the Provost's Office, which referred to DeBose's alleged behavior as "hostile" and "self-serving". The email stated DeBose had "become a cancer" and called for her removal. **(Exhibit** – "Email from Provost's Webmaster Account")

30. Ralph Wilcox, Provost and Executive Vice President, and Thompson, a former web services administrator for the Provost's Office, both had permissions to send and receive emails using the webmaster@acad.usf.edu account, which was unpublished since 2005 and not available for general use. **(Exhibit** – "Reply from Gerard Solis About Webmaster Account")

31. On June 22, 2014, Wilcox forwarded the email from webmaster@acad.usf.edu to Dosal, stating they "need to discuss this". Dosal responded back that he [Dosal] and Sidney Fernandes, Chief Information Officer of Information Technologies, had agreed to "reorganization." Wilcox, asking no questions, thanked Dosal for "getting ahead of this." **(Exhibit** – "Provost Response to Reorganization Plan")

32. On June 23, 2014, Dosal asked DeBose to meet him to discuss a "troubling email" he received, which led him and the Provost to make the decision to move Degree Works to IT.

33. DeBose disclosed to Dosal that she had learned about an email that contained damaging, harmful, and derogatory statements and that Thompson claimed to be working with Dosal and Sullins to "get her fired."

34. Dosal responded only, "you know about the email?" Dosal made no statements to deny or refute DeBose's statements.

35. DeBose asked for a copy of the email.

36. Dosal declined the request, stating he would not provide DeBose a copy.

37. DeBose stated to Dosal that the email was a public record.

38. Dosal became very defensive and cautioned DeBose against "getting legal" with him. Dosal stated that he investigated Thompson's email by personally meeting with Waddell. Dosal said Waddell told him the information he received was false, that she did not make the statements, and DeBose had nothing to do with her leaving USF.

39. Dosal stated he also asked HR to conduct an exit interview with Waddell to "see if she would give them a different account" and that the email was "proven false and didn't pan out."

40. DeBose asked Dosal why he had been treating her so poorly and why Dosal and the Provost [Wilcox] took action against her to decrease her scope or span of authority, predicated on a lie or false, malicious email. DeBose stated that punitive actions against her would give Thompson's false and damaging statements instant credibility and asked that action be taken to address Thompson's conduct. DeBose reminded Dosal of other similar conduct by Thompson.

41. Dosal admitted to the other incidents by Thompson, a planned 360 survey, and his own sudden mistreatment of DeBose, starting in 2013.

42. DeBose then asked Dosal why he was not more supportive.

43. Dosal stated he was "conflicted," "the Provost wants this," and "the Provost has been good to me."

44. On June 25, 2014, after admitting to plans to conduct a 360 feedback survey specifically targeting DeBose and the Registrar's Office, Dosal dispatched emails announcing the change to move Degree Works and attributed the success achieved thus far with the system to DeBose. (**Exhibit** – "Degree Works Moving Announcement") Dosal never disclosed to DeBose that he contacted several USF staff and had already taken action to move Degree Works immediately after receiving the "troubling" email.

45. In late June, following the announcement to move Degree Works, DeBose received a number of reports that Dosal, Sullins, and Thompson were continuing their efforts to have her fired and of degrading intersectional race-gender discriminatory statements made about DeBose by Dosal, Thompson, et al. in emails.

46. On June 30, 2014, Dosal requested that DeBose meet with him again concerning the email that was reported to have been sent by Thompson.

47. DeBose, hearing that this meeting was to terminate her employment, contacted the USF Office of the General Counsel to discuss with Gerard Solis, USF Counsel, possible options, including a non-disparagement agreement. DeBose acknowledged that Solis "represented USF and did not represent her." DeBose disclosed the facts as she knew and understood them, including Dosal's unfair treatment, the email, and Dosal's statement not to get legal with him. DeBose asked Solis if he could tell her why she was "on USF's radar."

48. Solis responded, "You have a J.D., don't you. Understandably, you need to protect yourself." Solis said he thought "three-years pay was not out of range" but that it "cannot be in a lump sum" because of a recent regulatory change. Solis stated that he was not aware that

DeBose was on the radar and that "he had not received any calls or emails" about DeBose. After speaking with Solis, DeBose called the President's Office to inquire if the President was dissatisfied with DeBose's work or office. DeBose was given reassurances by the President's staff that President Genshaft had no criticisms and or desire to remove DeBose from her role as Registrar. Rather, the staff shared that the President tried but her efforts to persuade her Board to "remove Ralph" were unsuccessful.

49. At the meeting, Dosal started with, "Angela, you're not going to be fired today." Dosal commended DeBose for her work in successfully launching Degree Works and implementing 8-semester Academic Tracking plans in a year's time, "exactly as requested."

50. Dosal claimed for the first time that "Travis did not send the false email," contradicting his complete silence on the issue in the June 25, 2014 meeting with DeBose. Dosal said the statements came from someone else who gave Thompson "bad information."

51. Dosal did not disclose that Thompson claimed to have received the bad information from Cynthia Brown Hernandez. Dosal did not at any point disclose or discuss the webmaster@acad.usf.edu email sent on June 22, 2014 in the Provost's exclusive control.

52. DeBose replied to Dosal that she had heard from Waddell and others that Thompson sent the email. DeBose stated this was not a first occurrence by Thompson and his conduct would continue to decline, if not addressed or corrective action taken. DeBose left the meeting without giving Dosal the non-disparagement letter, which originated from the telephone call with Solis. DeBose telephone Solis again and left him a detailed message about the outcome of her meeting with Dosal.

53. In July 2014, Dosal's conduct worsened towards DeBose. Dosal created an even more hostile work environment permeated by bullying and racially-motivated behavior. Dosal

unfairly isolated DeBose from meetings, excluded her from discussions, and otherwise treated her as though she was not a director in the Student Success/Academic Affairs division. On most occasions when Dosal encountered DeBose, he was on edge and hostile in words, body language, and expression. In addition, Dosal, in conjunction with Sullins and Thompson, drew others into their attacks to oust DeBose, including Carrie Garcia and Sarah Thomas.

54. Dosal also began verbally attacking DeBose, exhibiting threatening behavior, making discriminatory remarks or references to marginalize DeBose and her race, to make her feel like an outsider, to frustrate DeBose, in hopes of accelerating her departure. Dosal made it clear to DeBose on several occasions that she would not have any support and seemed determined to develop in DeBose a fear of Wilcox. Dosal stated that:

a. He and the Provost [Wilcox] pushed out Jennifer Meningall, "another hostile black woman" from her position of Vice President of Student Affairs;

b. He and the Provost expressed a plan to maintain diversity by increasing international enrollment to offset anticipated declines in black enrollment from plans to reduce the number of Pell Grant recipients at USF by recruiting students of families with higher incomes by concentrating efforts on certain zip codes;

c. Though plans to put USF in the top 50 by Wilcox had failed, they were committed to significant reductions in black student enrollment and were prepared to explain away public concern by shifting the focus to total enrollment; they would express a commitment to diversity; however, their goal was the Fall Term student profile rather than social expectations for minority student access to college—(i.e. more smarts and less blacks). (**Exhibit** – "Wilcox Response to Drop in Minority Enrollment"). DeBose's

white colleagues who heard these statements called her to see if she was okay or to warn her not to repeat what she heard to anyone;

d. He and the Provost [Wilcox] did not want USF to be viewed as an "HBCU" (that is historically black college or university) "on the same level as FAMU" and demanded changes in any areas that put USF in the bottom tier with FAMU (**Exhibit** – "Baccalaureate degrees awarded without excess hours, 2012-13");

e. Wilcox referred to black students in disparaging ways and used references to infer that blacks were animals and "thugs"; and

f. The Provost was not a person to back down, having taken on "the President, her Jewish contingent led by Momberg, and John Long" and won by "shaking her up" with a no confidence letter from the faculty concerning her "draconian" budgetary tactics and "having the ear of her Board and an influential trustee." (**Exhibit** – "Dosal Email About President's Draconian Approach to Budgets").

55. On July 15, 2014, Paul Dosal sent a note asking again to meet with DeBose early morning at 8:45 a.m.

56. Dosal started by expressing that there were "going to be changes in EPM."

57. DeBose asked Dosal if he meant "Student Success."

58. Dosal replied, "No, EPM." Dosal announced to DeBose that he would be "filling Bob Spatig's old position" of Assistant Vice President of Enrollment Management with Billie Jo Hamilton, without a search. Dosal said, he would be sure to "not create another Bob [Spatig]" by giving Billie Jo "a trial run to learn and serve in the position." Dosal stated, "If Billie Jo was not successful, she will go back to her role as Director of Financial Aid." Dosal said Billie Jo's compensation would be adjusted.

59. DeBose asked Dosal why he would "fail to conduct a search, the recommended and usual practice to fill vacant or new positions, to not deprive qualified applicants the opportunity to vie for positions." DeBose also asked why she was "overlooked."

60. Dosal responded that he and the Provost [Wilcox] want and approved this change and his action had "complete support" from the institution's leadership.

61. Dosal stated that the Provost [Wilcox] and his [Dosal's] contracts had been renewed and extended through 2019.

62. Dosal offered to DeBose to serve in her position as University System Registrar through 2019, if she "stopped pressing" him with questions and congratulated Hamilton.

63. DeBose accepted Dosal's offer to extend her employment through 2019 (**Exhibit** – "DeBose Email Referencing Extended Employment Agreement Thru 2019"). DeBose discontinued any further questions and stated that she would congratulate Hamilton, and later did so.

64. DeBose also asked Dosal to review her compensation and title. Dosal anticipated the request and did not take it seriously, having made a bet with Alexis Mootoo that DeBose would request equity or parity with Hamilton (**Exhibit** – "Dosal Email to Mootoo Concerning Bet").

65. On July 28, 2014, DeBose filed an EthicsPoint complaint against Thompson for misconduct, following his efforts to further isolate DeBose by excluding her from Executive Council for Academic Advisor (Exec-CAA) meetings, which her position or office had historically both attended and actively participated.

66. DeBose complained about Sullins and also Dosal for failing to appropriately supervise Thompson.

67. USF Audit & Compliance and Human Resources contacted DeBose concerning her EthicsPoint complaint against Thompson but took no further action to investigate.

68. On August 27, 2014, DeBose filed discrimination charges against Dosal with the USF Office of Diversity, Inclusion and Equal Opportunity (DIEO). As additional support for her claims, DeBose cited Dosal's actions to terminate DeBose's employment and his anticipatory breach of the verbal agreement to extend DeBose's employment through 2019.

69. The work environment became increasingly hostile following DeBose's DIEO complaint by way of the following examples:

a. DeBose was excluded from meeting invitations;

b. For standing scheduled meetings, DeBose was not notified of meeting cancellations or changes in meeting locations and thus was excluded from attending;

c. DeBose was contacted several times about her performance appraisal and self-assessment but each scheduled evaluation meeting was canceled and documents already provided were repeatedly re-requested;

d. DeBose was not evaluated in the 2014 year;

e. DeBose was not privy to emails and other communications distributed or exchanged among Student Success/EPM directors and senior leadership; and

f. DeBose and Registrar's staff were repeatedly subjected to use of the word "nigger" when Dosal's central staff visited the office, as though Dosal, who was aware of Alexis Mootoo's repeated usage of the word, had given her license or permission to use the word in the presence of DeBose and others on her staff, to make them extremely uncomfortable.

70. In late December 2014, DeBose filed a discrimination complaint with the U.S. Equal Employment Opportunity Commission (EEOC), alleging disparate treatment, disparate impact, and hostile retaliatory work environment claims.

71. On February 4, 2015, the situation had degraded; therefore, DeBose filed for a Temporary Restraining Order that was later converted to a Preliminary Injunction with the Middle District Court of Florida (MDF **Case Number 8:15-mc-18-T-EAK-MAP** ) against Dosal for berating, marginalizing, and making DeBose extremely uncomfortable and threatening DeBose's job in individual meetings with her.

72. DeBose requested the preliminary injunction to maintain the status quo pending the resolution of her EEOC complaint to prevent further retaliation by Defendant, including termination.

73. On February 4, 2015, Dosal reprimanded by DeBose for allegedly calling Alexis Mootoo, a member of Dosal's central staff, "little girl." (**Exhibit** –"Dosal Reprimand") Dosal engaged Mootoo and Tonia Suber with USF Human Resources in his invidious plan to retaliate against DeBose for filing the EEOC complaint, though Suber was charged with investigating DeBose's EthicsPoint and DIEO complaints. Suber called upon Dosal to reward Mootoo with a promotion and salary increases for her cooperation, and Dosal readily complied (**Exhibit** – "Suber Request to Reward Mootoo"). Wilcox was aware of these events and Dosal consulted with him before issuing the reprimand.

74. On February 6, 2015, DeBose added a charge of retaliation to her EEOC (and DIEO) complaint. (**Exhibit** – "EEOC Complaint with Retaliation Box Checked")

75. On February 10, 2015, DeBose filed a grievance with USF Human Resources to object to the personnel action of the reprimand and lack of procedural "due process" safeguards,

as provided for under USF and SUS policy and DeBose's employment contract. DeBose provided her own sworn affidavit and affidavits/notarized statements from three witnesses that the alleged action did not occur.

76. On February 18, 2015, a USF St. Petersburg Human Resources staff assigned by USF Human Resources to investigate the complaint, canceled DeBose's grievance. (**Exhibit** – "Cancelled Grievance Related to Dosal's Reprimand")

77. For the remainder of February and in the month of March, Dosal working in conjunction with others, sought to create a for-cause justification to terminate DeBose, including efforts to allege that:

a. DeBose allowed the Registrar's budget to overspend last year's baseline budget into an alleged deficit—knowing that committed funds were expended under an approved "office renovation" budget and that the unit had large cash reserves in its carryforward and auxiliary accounts that were being withheld (**Exhibit** – "Email to Dosal About Releasing Registrar's Carryforward Budget for Renovations");

b. DeBose was inappropriately paying unit staff extra state compensation—knowing the secondary employment to support INTO-USF, Fully Online Vendor Programs, and Study Abroad Home of Record were approved pay-for-services activities authorized by Academic Affairs, Human Resources, and State of Florida/Florida Board of Governors (FLBOG) regulation; and

c. DeBose was uncollaborative by assisting other units and staffs through knowledge transfer and training rather than merely handing over unit work product.

78. On April 10, 2015, Carrie Garcia sent DeBose an email to meet with Ellucian on April 15, 2015 for a one-hour meeting concerning "pain points" with Degree Works—a system

DeBose had not managed since June 2014, when Dosal and the Provost moved it to IT (**Exhibit** - "Garcia Invitation for DeBose to Meet With Ellucian").

79. DeBose accepted Garcia's meeting invitation but was not informed the meeting was pursuant to a contract for consulting services with Ellucian. Garcia, Thompson, Sullins, Fernandes, and other USF staff on the Degree Works Steering Committee convened together immediately following DeBose's acceptance of the Ellucian meeting invitation in furtherance of their common scheme to conspire and plot against DeBose (**Exhibit** – "Steering Committee Ellucian Meeting"). Garcia also had several communications with staff employed by Ellucian.

80. At all times relevant, Garcia did not provide DeBose a meeting agenda or an advance copy of questions.

81. DeBose invited two employees to attend the meeting with her, Rolanda Lewis and Shruti Kumar. Rolanda Lewis ("Lewis") declined, having other meetings. Shruti Kumar ("Kumar") accepted and attended with DeBose.

82. Andrea Diamond, Functional Consultant with Ellucian, conducted the April 15, 2015 meeting.

83. Diamond did not ask DeBose or Kumar questions about Degree Works implementation or "pain points".

84. Diamond asked questions about the Banner Student Information System and Office of the Registrar business processes.

85. DeBose and Kumar answered the questions posed by Diamond for nearly one hour and wrote a detailed response to one of the questions asked.

86. Diamond did not make any recommendations and did not forward any additional questions to DeBose.

87. On May 11, 2015, Dosal emailed DeBose a copy of the "Ellucian DegreeWorks Post-Implementation Assessment Report" and for the first time a meeting agenda was provided to DeBose (**Exhibit** – "Ellucian Report and Agenda").

88. Dosal stated to DeBose that he was giving her the "opportunity to respond" before discussing the report with the Degree Works Steering Committee. Dosal did not state at any point to DeBose that notice of the Ellucian report and/or the opportunity to respond to the Ellucian Report was related to or concerned possible personnel action against DeBose.

89. Dosal forwarded the Ellucian DegreeWorks Post-Implementation Assessment Report to Wilcox and also to the USF General Counsel's Office, specifically Solis. (**Exhibit** – "Dosal Email Involving USF General Counsel in Plan to Terminate DeBose")

90. Diamond's report falsely stated that Lewis was kept from attending the meeting, though DeBose disclosed to Garcia that Lewis would not be attending due to a scheduling conflict.

91. Diamond also alleged that the Registrar's Office was a "high risk" to Student Success, and "the registrar's office is not willing to encompass change," though Diamond did not recommend any changes to DeBose or Kumar.

92. Based on Plaintiff's knowledge, information, and belief, Diamond did not conduct a risk assessment at, prior to, or following the April 15, 2015 meeting.

93. DeBose emailed Kumar and Lewis a copy of the documents sent by Dosal—the Ellucian Report and Agenda.

94. On May 11, 2015, Lewis responded to DeBose that she did not attend because she had other meetings. (**Exhibit** –"Lewis Response to Ellucian Report")

95. On May 11, 2015, Kumar also responded in contradiction to the general accusations made in the report. Kumar also sent a second email contradicting Diamond's report (**Exhibit** – "Kumar Responses to Ellucian Report")

96. On May 11, 2015, DeBose replied to Dosal's inquiry and included the responses from Lewis and Kumar. DeBose also forwarded other relevant emails with her response.

97. DeBose wrote that the report from Diamond contained several functional errors and contained "criticisms all the way around." DeBose stated the report did not appear helpful to move USF forward. DeBose's expectation was that her entire response, including attachments from Lewis and Kumar would be included for the Steering Committee's review. (**Exhibit** – "DeBose's Cumulative Response to Ellucian Report")

98. DeBose received word that Dosal presented to the Steering Committee that DeBose "criticized the report." Dosal asked those in attendance, "Do you think there is anything wrong with the report?" The Steering Committee members responded "no" and Dosal stated, "It's now up to the Provost."

99. Dosal did not provide DeBose's collective written response and the documents forwarded from Lewis and Kumar.

100. On May 19, 2015, Kofi Glover ("Glover") requested to meet with DeBose, through his administrative assistant, about the "Ellucian Report" on behalf of the Provost [Wilcox].

101. DeBose sent Glover an email, inquiring how she might prepare and if others should attend (**Exhibit** – "DeBose Email to Glover Concerning Meeting Request to Discuss Ellucian Report").

102. Glover did not respond to the email.

103. As DeBose arrived at the meeting location, she received a phone call from Tony Embry and was told prior to entering the meeting with Glover that Dosal and Sullins requested to meet with Registrar's Office Managers "about Angela."

104. DeBose walked into the meeting room where Glover and Mike Beedy ("Beedy") were seated. Glover immediately handed DeBose a termination letter from Wilcox. (**Exhibit** – "Wilcox Termination Letter")

105. Glover never brought up the matter of the Ellucian Report or discussed anything with DeBose aside from the termination letter itself.

106. The termination letter from USF Provost, Ralph Wilcox, stated that DeBose was being terminated from her employment not for cause or for disciplinary reasons but at his "prerogative."

107. USF terminated DeBose amid discrimination complaints with DIEO and the EEOC.

108. USF terminated DeBose amidst a court action with the Middle District of Florida for preliminary injunction to maintain the status quo under Section 706(f)(2) of Title VII of the 1964 Civil Rights Act.

109. DeBose was under contract through June 30, 2015.

110. Dosal offered and DeBose accepted an extension of her employment contract through 2019.

111. DeBose was asked to leave the campus of USF immediately and was separated from her employment.

112. DeBose was forced by USF to take professional leave starting May 19, 2015, to exhaust all of her annual (vacation) leave.

113. DeBose was given a termination date of August 19, 2015, after which she would be paid out her sick leave, by USF.

114. When DeBose returned to her office to collect her belongings, Beedy followed DeBose and demanded in the presence of students and staff that DeBose leave all USF property.

115. Beedy followed DeBose as she left the building. Beedy stated that DeBose should contact him with all questions.

116. Several Registrar's staff members objected to Beedy treating DeBose "like a common criminal".

117. DeBose was not terminated in accordance with USF policy or in accordance with the terms and conditions of her employment.

118. DeBose was not permitted to grieve the separation or termination actions because Wilcox's termination letter stated the action was not for cause, while pointing publicly to the media, at large public, and the USF Community that it was due to the "Ellucian Report" and his claim that DeBose was "not collaborative." (**Exhibit** – "Oracle Student Newspaper")

119. DeBose was not afforded due process rights under the Administration Discipline procedure which states the following steps must be taken before dismissal can occur:

a. A written request to dismiss the employee must be submitted to Human Resources, with approval from the dean/director/designee of the employee's college/division. The request must include any pertinent documentation to support the action.

b. Human Resources will review the documentation to determine if there is just cause for dismissal. If so, the dean/director/designee is delegated authority to notify the

employee in writing of the proposed action. The employee is given 10 calendar days from the date of receipt of the notification to respond in writing to the proposed action.

c. The employee is typically placed on administrative leave or annual leave during the 10-day response period.

d. If the employee provides no compelling reason for dismissal not to occur, Human Resources will authorize the dean/director/designee to notify the employee in writing that the dismissal action will be taken and its effective date.

120. Following DeBose's separation, DeBose was offered a job by the University of North Florida (UNF) to implement predictive analytics.

121. UNF contacted USF as a courtesy to inform them of DeBose's hire and their desire to have DeBose in the position before others learned of DeBose's availability.

122. On May 26, 2015, Ralph Wilcox, Provost, called the UNF Provost to interfere with and discourage DeBose's hire. (**Exhibit** – "Wilcox Telephone Log")

123. Wilcox made several false and degrading statements about DeBose, including stating that DeBose was "awful" and "uncollaborative," that he wanted to get rid of DeBose long ago, and that UNF would "regret it" if they were to hire DeBose.

124. On May 27, 2015, the offer of employment with UNF was rescinded.

125. In June 2015, following the SUS Florida Summit meeting, Dosal disclosed that Wilcox "took great pleasure" in ruining DeBose's opportunity and desired to "see her [DeBose] with nothing."

126. On June 15, 2015, DeBose contacted staff at UNF who confirmed Wilcox's involvement in "poisoning the well" to prevent DeBose's hire.

127. Dosal, Sullins, Thompson, and Wilcox made degrading, offensive, and discriminatory statements about DeBose in public records and public meetings, in the course and scope of their employment with USF.

128. The Defendants, USF and Ellucian, are joint tortfeasors, jointly and severally liable to DeBose for her injuries.

**COUNT 1 – Racial Discrimination in the Making and Enforcement of Contracts 42 U.S.C. § 1981**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1 through 128.

129. By committing the actions alleged, USF denied DeBose the same right to make and enforce employment contracts—which includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship—as enjoyed by DeBose's white counterparts, because of DeBose's race.

130. In discriminating against DeBose because of her race, USF acted with malice or callous indifference to DeBose's federally protected rights.

131. DeBose has been injured by USF as a result of the violations as alleged, including pain and suffering, emotional distress, mental anguish, loss of capacity to enjoy life, loss of self-efficacy, and economic damages.

132. Except for reinstatement, DeBose demands all relief that is just and equitable, including compensatory damages, punitive damages, costs, and fees as provided by 42 U.S.C. § 1988.

**COUNT 2 – Retaliation 42 U.S.C. § 1981**

Plaintiff re-alleges Paragraphs 1 through 132 and states additionally or alternatively:

133. On or about December 26, 2014 and March 16, 2015, DeBose opposed and complained to the EEOC and FCHR about unlawful racial discrimination and retaliation by USF against her.

134. DeBose's complaints comprised protected activity under 42 U.S.C. § 1981.

135. At or about the time DeBose engaged in the protected activity, USF was aware of DeBose's protected activity.

136. Dosal et al. attempted to intimidate and harass DeBose for objecting to unlawful discrimination, harassment, and discipline.

137. On May 19, 2015, USF separated DeBose from her employment, forcing her on professional leave and forcing her to exhaust all of her annual leave.

138. On August 19, 2015, USF fired DeBose.

139. USF took adverse employment actions against DeBose in retaliation for engaging in the protected activity and for maintaining the complaints.

140. A reasonable employee would have found USF's retaliatory actions materially adverse, as did DeBose; i.e. that USF's retaliatory actions against DeBose could well dissuade a reasonable employee from protected conduct.

141. By retaliating against DeBose, USF denied DeBose the same right to make and enforce employment contracts—which includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship—as enjoyed by white people.

142. By retaliating against DeBose, USF subjected DeBose to punishment, pains, penalties, and exactions of every kind less than those to which USF subjects similarly situated white people; and USF did so because of DeBose's protected activity.

143. By retaliating against DeBose, USF denied DeBose the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens; and USF did so because of DeBose's protected activity.

144. In retaliating against DeBose, USF acted with malice or callous indifference to DeBose's federally protected rights.

145. DeBose has been injured by USF as a result of the violations as alleged, including pain and suffering, emotional distress, mental anguish, loss of the capacity to enjoy life, loss of sense of self-efficacy, and economic damages.

146. Except for reinstatement, DeBose demands all relief that is just and equitable, including compensatory damages, costs, and fees as provided by 42 U.S.C. § 1988.

**COUNT 3 - Conspiracy to Interfere with Civil Rights Against USF and Ellucian 42 U.S.C. §§ 1985 and 1986**

Plaintiff re-alleges Paragraphs 1 through 146 and states additionally or alternatively:

147. Under 42 U.S.C. § 1985(2), DeBose has the right to be free from intimidation by USF as a party and as a witness, and to be free of obstruction of justice and intimidation by USF in her federal action against USF to maintain the status quo.

148. Managers and agents of USF and Ellucian conspired to deter, by intimidation and threat, DeBose and many of DeBose's witnesses from testifying to matters pending therein, freely, fully, and truthfully, and to injure DeBose and many of her witnesses, in person and property, from providing testimony in deposition and/or otherwise that is favorable to DeBose and unfavorable to USF.

149. More specifically, Managers and agents of USF and Ellucian, including Garcia, Thompson, and Diamond, met with each other on many occasions in person and electronically, whereupon they agreed to intimidate DeBose by defaming her, firing her, and telling USF

employees (many of whom are witnesses favorable to DeBose and unfavorable to USF in this case) not to speak to DeBose and took overt acts in furtherance of the conspiracy, including trying to suggest DeBose was uncollaborative and engaged in wrongdoing, firing DeBose, and telling USF employees/witnesses not to communicate with DeBose.

150. USF acted with malice or callous indifference to DeBose's federally protected rights as alleged in this Count.

151. Under 42 U.S.C. § 1986 and under the circumstances of DeBose's employment (and termination thereof) with USF, USF and Ellucian had a duty to prevent Section 1985 conspiracies against DeBose.

152. DeBose has been injured by USF and Ellucian as a result of the violations as alleged in this Count, including pain and suffering, emotional distress, mental anguish, loss of the capacity to enjoy life, loss of sense of self-efficacy, and economic damages.

153. Except for reinstatement, DeBose demands from both Defendants, jointly and severally, all relief that is just and equitable, including compensatory damages, punitive damages, costs, and fees as provided by 42 U.S.C. § 1988.

**COUNT 4 - Defamation of Character, Slander, and Libel by Travis Thompson By Defendant USF**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1 through 128.

154. Plaintiff and Defendant Thompson worked together at USF for the approximate period of time from July 2011 through August 2014.

155. While employed at USF in Undergraduate Studies, Thompson on multiple occasions spread a false and malicious rumor, telling Sullins, Dosal, the Directors of Advising, and others in the USF Community that Caurie Waddell was "leaving USF to escape the tyranny of Angela."

156. Thompson met with Waddell for coffee prior to her departure and heard specifically from her that his suspicions about her leaving were untrue.

157. However, Thompson, with complete and utter disregard for the truth, nonetheless told others that DeBose was an *angry black woman* who was driving Waddell, a white female away, because of DeBose's alleged "tirades".

158. Thompson knew that his statements concerning Waddell and DeBose were false. Thompson knew that his statements had spread throughout the USF Community.

159. Thompson escalated the rumor to Sullins, and in turn Dosal, with the intention of causing harm to DeBose's business reputation. Thompson also used his security permissions as former webmaster for academic affairs to send an email to Wilcox, stating that DeBose was hostile, self-serving, and "a cancer"—calling for her termination as University System Registrar.

160. Defendant Thompson made the false statements to Sullins, Dosal, and others in the USF Community for his own gain and without reasonable care as to the truth or falsity of those statements.

161. As a proximate result of Defendant Thompson's false statements, Angela DeBose was professionally damaged.

162. Though knowing the statements made concerning Waddell and DeBose were false, Dosal and Wilcox removed Degree Works from the scope of DeBose's authority.

163. Though knowing the statements were false, Dosal and Wilcox took overt action to treat DeBose differently, as the "angry black woman" stereotype perpetuated by Thompson and Sullins.

164. Knowing Thompson's statements were false, Dosal and Wilcox used Thompson's false accusations as justification to work in concert with Thompson and Sullins "to get [AD] fired."

165. Defendant Thompson's false and malicious accusation caused Plaintiff to suffer damages in the form of, inter alia, loss of reputation and estimation; the statements and email(s) prompted other torts and civil wrongs against Plaintiff, causing her to complain in response to the conduct and actions taken against Plaintiff to which she was subjected; it led to perceptions that implementation of Degree Works was a failure despite Plaintiff's success which was lauded by all constituents in the USF Community years prior; it led to Plaintiff's loss of opportunity for promotion and pay; it put Plaintiff's employment at issue and opened the door to Plaintiff's termination and loss of employment, salary and benefits.

**COUNT 5 – Defamation and Libel by Bob Sullins Against Defendant USF**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1-128.

166. Plaintiff and Defendant Sullins worked together at USF for the approximate period of time from October 1996 through May 19, 2015.

167. While Plaintiff was employed at USF in May 2014, Defendant Sullins wrote to Paul Dosal and falsely told Paul Dosal, inter alia, that Plaintiff's "tirades have driven Caurie [Waddell] to resign." Sullins wrote concerning DeBose, "We should do everything we can to head that off!"

168. Defendant Sullins made these false accusations without conducting any investigation to ascertain or determine the truth.

169. Defendant Sullins wrote the allegations and publicized the contents to Dosal and others in the USF Community, without reasonable care as to the truth or falsity of those statements.

170. As a proximate result of Defendant Sullins' false and libelous statements, Angela DeBose was professionally damaged.

171. Knowing the email Sullins sent concerning Waddell and DeBose was false, Dosal and Wilcox removed Degree Works from the scope of DeBose's authority, to give Sullins' false email instant credibility.

172. Knowing the email Sullins sent was false, Dosal and Wilcox took overt action to treat DeBose differently, as the tyrant Sullins perpetuated her to be.

173. Dosal and Wilcox conspired with Sullins, Thompson, and others to use Sullins' false and libelous email as an opportunity "to get [AD] fired."

174. As a proximate result of Defendant Sullins' false libelous statements, Plaintiff was portrayed in a false light and subjected to the USF rumor mill, public gossip, and speculation about her continued employment at USF.

175. Defendant Sullins' false and malicious accusation caused Plaintiff to suffer damages in the form of, inter alia, loss of reputation and estimation; it resulted in others accusing her of being uncollaborative, uncooperative, difficult to work with, and tyrannical.

176. Defendant Sullins wrote the fairy-tale-like email to amuse himself, making it an urgent imperative for Dosal to take action to protect *the fair white maiden* Waddell from the *angry black tyrant* DeBose by any means necessary.

177. The falsity and undertones of Sullins' email imperative caused Plaintiff to suffer damages in the form of, inter alia, loss of reputation and estimation; it caused Plaintiff to be

subjected to other torts and civil wrongs; it led to perceptions that implementation of Degree Works was a failure despite Plaintiff's success which was lauded by all constituents in the USF Community in years prior; it led to Plaintiff's loss of opportunity for promotion and pay; it put Plaintiff's employment at issue by summoning USF leadership to "do everything necessary" to Plaintiff, including Plaintiff's termination and loss of employment, salary and benefits.

**COUNT 6 – Negligent Hire, Supervision, and Retention of Travis Thompson by Defendant USF**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1 through 128 and 154 through 177 above.

178. Prior to his hire to the Director of Academic Tracking position, Defendant Thompson stated to DeBose that the process to Search for qualified candidates for the position was a "ruse."

179. Thompson stated that though he did not have any advising experience or practical hands-on knowledge of Degree Works or Academic Tracking systems, Dosal and Sullins had guaranteed him that the Director of Academic Tracking position would be his.

180. When asked about the strength of the candidate pool of applicants, Thompson stated it did not matter if others were better qualified; Dosal and Sullins had assured him that he would be selected for the job.

181. When Plaintiff informed Dosal of Thompson's statements, Dosal became upset that Thompson did not conceal these facts.

182. USF was required under its own policies and procedures and State University System (SUS) and/or Florida Board of Governor (FLBOG) policy and procedure to make an appropriate determination of the qualifications of each applicant.

183. USF was required under its own policies and procedures and State University System (SUS) and/or Florida Board of Governor (FLBOG) policy and procedure to make an appropriate investigation of Thompson to determine his suitability for the position and failed to do so.

184. An appropriate investigation would have revealed the unsuitability of Travis Thompson for the Director of Academic Tracking position; an appropriate investigation would have revealed Thompson's prior behavior and inability to maintain appropriate professional conduct.

185. It was unreasonable for USF to hire Thompson to the Director of Academic Tracking position in light of the information it knew or should have known or could have ascertained by reasonable due diligence. As a result of Defendant's negligent hire, DeBose was harmed.

186. Plaintiff complained to management, specifically Dosal and Sullins, about Thompson's professional misconduct, certain of which is described in this complaint, and Thompson's attempts to involve and/or implicate Plaintiff in his expressions of professional misconduct. Plaintiff also complained about Thompson's lack of job knowledge and performance.

187. When the conduct of Thompson continued to decline, Plaintiff filed an EthicsPoint complaint against Thompson, which was referred to USF Audit & Compliance and assigned to Human Resources for investigation.

188. Defendant USF, specifically Dosal, Sullins, and Tonia Suber in Human Resources, were required to properly investigate Plaintiff's complaints against Thompson.

189. Defendant USF failed to properly investigate Plaintiff's complaints against Thompson.

190. An appropriate investigation would have revealed Thompson's professional misconduct and unfitness to continue working in the position of Director of Academic Tracking. An appropriate investigation would have revealed Thompson's lack of job knowledge and strong need for training.

191. Neither Dosal nor Sullins took any remedial or corrective action against Thompson when both knew or had reason to know that Plaintiff's professional reputation had been damaged. Neither Dosal nor Sullins took any remedial or corrective action to intervene when Thompson's conduct continued to decline. Neither Dosal nor Sullins questioned the reliability of information received from Thompson about Degree Works or advising, though his lack of knowledge was well-known. Neither Dosal nor Sullins provided DeBose reasonable notice of Thompson's verbal or written statements nor gave DeBose opportunity to defend herself against Thompson's baseless accusations. Instead, Dosal and Sullins sought to conceal and defend Thompson's misconduct to continue his use as an instrument against DeBose.

192. It was unreasonable for Defendant USF to not investigate Thompson based on the information it knew or should have known from Plaintiff's complaints. It was unreasonable for Defendant USF to not have taken corrective or remedial action against Defendant Thompson.

193. It was unreasonable for Defendant USF to have allowed Thompson to continue to harm Plaintiff's business reputation. It was unreasonable that Thompson was not held accountable for his actions.

194. Subsequent to the decision to hire Thompson, Defendant USF became aware, or in the exercise of reasonable care should have become aware, that Thompson engaged in

inappropriate and unprofessional conduct concerning Plaintiff, Angela DeBose, which indicated Thompson's unfitness to work in the position of Director of Academic Tracking.

195. Defendant USF had a duty to take reasonable and appropriate action to ensure that its employee, Thompson, did not commit, allow or encourage inappropriate and unprofessional conduct against DeBose in her position as USF System Registrar.

196. Defendant USF knew or in the exercise of reasonable care should have known that, Thompson was committing, allowing or encouraging inappropriate and unprofessional conduct of lying, defaming, slandering, and libeling DeBose's business/professional reputation while in the course and scope of his duties for USF, as shown by the following:

a. Thompson stated to the directors of advising that he was working with Paul Dosal to "get [Angela DeBose] fired," putting Plaintiff's employment at issue;

b. Thompson, in conjunction with Dosal and Sullins, made statements to portray or stereotype Plaintiff as an "angry black woman," making her race an issue in terms of Plaintiff's work and worth;

c. Thompson, with falsity and malice, stated that DeBose was the reason Waddell, a former employee, left USF—stating that DeBose had driven Waddell away;

d. Thompson caused Waddell's departure to be escalated to Sullins, Dosal, and USF leadership such that Waddell's departure caused certain adverse actions to be taken against DeBose to reduce the scope and breadth of her professional authority at USF and not consider Plaintiff for promotion and pay opportunities;

e. Thompson sought to conceal his malice against DeBose by using his permissions to webmaster@acad.usf.edu to send a destructive and particularly damaging email to Wilcox, calling for DeBose's termination—which by exercise of reasonable due diligence, USF, Wilcox specifically, could have discovered.

197. Defendant USF breached its duty when it failed to investigate, discharge and/or reassign its employee, Defendant Thompson upon the aforementioned knowledge.

198. Defendant USF is liable for negligently retaining Defendant Thompson as an employee.

199. Defendant USF negligently failed to have any policies or procedures governing, monitoring, or disciplining Thompson for facilitation, participation or encouragement of harmful, disruptive, and unprofessional conduct, while in the course and scope of his duties for USF;

a. Defendant USF did in fact have policies or procedures governing, monitoring, or disciplining its employees for facilitation, participation or encouragement of harmful, disruptive, unprofessional conduct, in the first or third person, while in the course and scope of his duties for USF. However, the Defendant negligently and carelessly failed to employ said procedures; or in the alternative,

b. Defendant USF did have policies and procedures governing, monitoring, or disciplining its employees for facilitation, participation or encouragement of harmful, disruptive, unprofessional conduct, in the first or third person, while in the course and scope of his duties for USF but implemented the same in a careless and negligent manner.

200. As a direct and proximate consequence of Defendant USF's negligent retention of its employee, Thompson, the Plaintiff suffered harm to her reputation and estimation in the Community and caused Plaintiff to experience an adverse employment action.

201. But for USF retaining and assigning Defendant Thompson to the Director of Academic Tracking position without proper supervision and guidance, the unprofessional conduct would not have occurred, as Thompson would have been held to professional accountability standards for his actions and/or and omissions.

202. As a further direct and proximate result of the negligence of said Defendant USF, which caused the harm to Plaintiff, the Defendant is liable to the Plaintiff for all damages she has suffered.

**COUNT 7 – Negligence and Gross Negligence by Bob Sullins Against Defendant USF**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1 through 128 and 166 through 177.

203. Defendant Sullins wrote and publicized the email about Angela DeBose "driving" Caurie Waddell away from USF, without any concern for the truth or falsity of his statements. (**Exhibit** – "Sullins Deposition")

204. Sullins did not have any knowledge of Waddell's qualification for the Tracking position she previously held under DeBose.

205. Sullins did not have any knowledge about the supervisor-employee relationship between DeBose and Waddell, once Waddell was hired.

206. Sullins did not have any knowledge about the training Waddell received as a result of her hire by DeBose.

207. Sullins had only anecdotal knowledge of Waddell's performance and was not aware of how efficiently or effectively Waddell carried out her assignments and had no specific knowledge of Waddell's performance ratings.

208. Sullins did not have any knowledge about Waddell's continued involvement with DegreeWorks/Tracking at DeBose's request, after Waddell's move to the Office of Decision Support at USF.

209. Sullins did not have any knowledge about Waddell's participation on the selection committee to help hire and train her successor at DeBose's request.

210. Sullins had no specific knowledge of problems with Degree Works or Tracking that would occur as a result of Waddell's departure; nor did Sullins have specific knowledge that continuity was at risk or that disruptions would occur as a result of Waddell leaving USF.

211. Nevertheless, Sullins wrote the allegations negligently, recklessly, and maliciously and publicized it to Dosal and others in the USF Community, without investigation and without reasonable care as to the truth or falsity of those statements.

212. As a proximate result of Sullins' false and libelous statements, Angela DeBose was professionally damaged.

213. Sullins, Dosal, Wilcox, and Thompson used Sullins' false and libelous email as an opportunity to work in concert "to get [AD] fired."

214. As a proximate result of Defendant Sullins' false and malicious accusation and his actions in concert with others, Plaintiff suffered damages in the form of, inter alia, loss of reputation and estimation; instigation of other torts and civil wrongs against Plaintiff; loss of opportunity for promotion and pay; it put Plaintiff's employment at issue and called for Plaintiff's termination and loss of employment, salary and benefits.

**COUNT 8 – Tortious Interference with a Business Relationship by Defendant Ellucian**

Plaintiff incorporates by reference the allegations of paragraphs 82 through 128 and 148-149 and 151-152, as if fully set forth in this paragraph.

215. On April 10, 2015, DeBose received an email from Carrie Garcia, inviting her to meet with Ellucian on April 15th for one-hour concerning "pain points" with Degree Works.

216. DeBose led the implementation of Degree Works in 2011and also led the implementation of Academic Tracking in 2012; however, responsibility for the system was moved to Information Technologies (IT) under Garcia mid-year in 2014 by Dosal and Wilcox.

217. DeBose accepted the meeting invitation, though she did not have any "pain points" or responsibility for Degree Works at that time.

218. On April 15, 2015, Tony Embry warned Plaintiff that he heard that the meeting was "a setup" and offered to attend the meeting.

219. DeBose informed Embry that Rolanda Lewis and Shruti Kumar had been invited and that Kumar would accompany her to the meeting but that Lewis declined due to a conflict.

220. Though DeBose gave prior notice that Lewis was not available, Garcia recommended delaying the meeting to see if Lewis could join.

221. After approximately 15 minutes of waiting and attempting to contact Lewis, the meeting proceeded with DeBose and Kumar answering all questions asked of them by Andrea Diamond, Ellucian Functional Consultant.

222. Diamond made no mention of "pain points." Diamond asked no questions about Degree Works other than how or if the Registrar's Office used the system.

223. DeBose received no feedback concerning the April 15, 2015 meeting until May 11, 2015 when Dosal emailed DeBose, providing her a copy of the "Ellucian DegreeWorks Post-

Implementation Assessment Report" and for the first time shared the April 14, 2015 meeting agenda.

224. Andrea Diamond, Ellucian Functional Consultant, falsely wrote that Lewis was kept from attending the meeting. Diamond also alleged that the Registrar's Office was a "high risk" to Student Success, and stated "the registrar's office is not willing to encompass change."

225. Diamond did not have knowledge or information to reasonably believe that Rolanda Lewis was kept from attending the meeting.

226. In the 45 minutes to one-hour meeting, Diamond did not have knowledge or information to reasonably conclude that the Registrar's Office was a high risk to student success.

227. Diamond did not have knowledge or information to reasonably state that the Registrar's Office was resistant to change.

228. Diamond did not ask, initiate, discuss, or recommend any changes reasonably related to the conclusions drawn in the Ellucian Report concerning the Registrar's Office.

229. Rather, Diamond was prepared, predisposed, or influenced to write those statements in the "Ellucian Report" in concert with Dosal, Sullins, Thompson, Garcia, and others as pretext or justification to terminate Plaintiff.

230. Diamond, an Ellucian Employee, knew of the business relationship Plaintiff had with USF in her position as University System Registrar.

231. Diamond wrote the Ellucian Report negligently, recklessly, and wantonly. Though Diamond either knew or had reason to know that DeBose had not been responsible for the Degree Works system for approximately one-year since June 2014, she wrote the report in such a way to assign blame and cause specific harm to DeBose and her employment at USF for the failures that occurred with subsequent efforts to redesign Academic Tracking and implement 3-

semester tracking plans by Garcia versus the 8-semester tracking plans DeBose had successfully deployed.

232. On May 19, 2015, Kofi Glover, Associate Provost, requested to meet with Angela DeBose to "discuss the Ellucian Report," on behalf of the Provost [Wilcox], who was allegedly away from the campus.

233. When Plaintiff arrived for the May 19, 2015 meeting, Plaintiff was handed a termination letter from Glover, signed by Wilcox.

234. On or about May 28, 2015, the Ellucian Report was stated in the USF Oracle and other media as being the specific reason for DeBose's termination.

235. Upon information and belief, the interference by Diamond, Ellucian Employee, whether acting alone or in concert with others, did induce USF to terminate Plaintiff's employment as University System Registrar.

236. Further upon information and belief, Defendant Ellucian improperly, intentionally, and unjustifiably through its employee, agent, or assign interfered by having an improper reason, as well as, utilizing improper methods.

237. Upon information and belief, Defendant Ellucian persisted in this course of action, despite the knowledge that their conduct would result in damage to Plaintiff, or at least was highly likely to result in damage to Plaintiff.

238. The termination of employment relationship by USF as a result has damaged Plaintiff.

**COUNT 9 – Negligent Supervision of Andrea Diamond by Defendants USF and Ellucian**

Plaintiff incorporates by reference the allegations of paragraphs 82 through 128, 148-149, 150-151, and 215-238, inclusive, as if fully set forth in this paragraph.

239. On May 11, 2015, Plaintiff complained to Dosal about the false statements made in the Ellucian Report written by Andrea Diamond, Ellucian Functional Consultant, and also provided Dosal the responses from Lewis and Kumar to the Ellucian Report, which also contradicted Diamond's findings and conclusions.

240. Defendants USF and Ellucian were engaged in a contractual relationship.

241. Defendants USF and Ellucian were in privity of contract together.

242. Defendant USF had certain rights under the agreement to control the manner in which Andrea Diamond performed the work.

243. Defendant Ellucian had certain rights to control the manner in which Andrea Diamond, an Ellucian employee, performed her work.

244. Defendant USF owed DeBose a duty of reasonable care.

245. Defendant USF had a non-delegable duty to properly investigate DeBose's complaints concerning Diamond's findings and take into account the responses of Lewis and Kumar about the Ellucian Report.

246. Defendant USF breached that duty and failed to properly investigate Plaintiff's complaint, including the responses of Lewis and Kumar about the Ellucian Report.

247. An appropriate investigation would have revealed Diamond's false and negligent conclusions concerning the Registrar's Office, used to implicate DeBose.

248. It was unreasonable for Defendant USF to report or publish statements and take action on information Defendant USF knew or should have known to be false based on the responses from DeBose, Lewis, and Kumar as well as DeBose's employment history at USF.

249. Defendant USF is vicariously liable for the negligent supervision of Andrea Diamond.

250. Defendant Ellucian had a duty to exercise certain control over its employee, Andrea Diamond, in the discrete work she performed for USF in a pre-determined period.

251. Defendant Ellucian failed to properly supervise, train, or control Andrea Diamond, allowing her to become embedded or embroiled in the politics of USF; write a false, negligent, and unreasonably subjective report; and be used by USF as an instrument against DeBose.

252. Defendant Ellucian is corporately liable for the harm that Plaintiff has sustained as a result of their negligent supervision.

253. The negligent supervision of Andrea Diamond in the contractual relationship between USF and Ellucian has damaged Plaintiff.

**COUNT 10 – Breach of Common Law Contract by Defendant USF**

Plaintiff incorporates by reference the allegations of paragraphs 1 through 128, inclusive, as if fully set forth in this paragraph.

254. On July 15, 2014, Plaintiff was performing her job as University Registrar under an annual contract that was set to renew on July 1, 2015.

255. On July 15, 2014, Defendant Dosal executed a verbal agreement to extend her employment contract to 2019. A true and accurate copy of a writing to support or codify the existence of the verbal Employment Agreement is attached hereto as Proof of Plaintiff's Offer and Acceptance.

256. Dosal disclosed to Angela DeBose on July 15, 2014 at a meeting [Starbucks] that the employment contract of Ralph Wilcox, Provost and Executive Vice President, had been extended to 2019.

257. In turn, Dosal disclosed that Ralph Wilcox extended Dosal's contract to 2019.

258. Dosal said to DeBose, "I am offering to continue your contract through 2019."

259. Dosal stated to DeBose not to press him any further with her questions at the July 15th meeting at Starbucks about the unfairness of his action to directly appoint Billie Jo Hamilton. Dosal asked Plaintiff to "congratulate Billie Jo." Dosal stated to DeBose that he would also review her present compensation package, as DeBose requested.

260. DeBose then stated to Dosal that she would not press him further for answers at the meeting and would congratulate Hamilton; thereafter, DeBose immediately accepted Dosal's offer.

261. Later, following the meeting, DeBose congratulated Hamilton, who disclosed to DeBose, "I had been negotiating with Paul for a while."

262. As a follow-up to the July 15, 2014 meeting, DeBose sent an email to Dosal on July 17, 2014 that restated her disappointment about his use of direct appointments to advance her white counterparts. DeBose also affirmed Dosal's offer and her acceptance to extend DeBose's employment through 2019. DeBose reminded Dosal about his promise to review her compensation and title.

263. Dosal stated that he would more carefully review DeBose's reply and get back to her.

264. On August 1, 2014, Dosal replied to DeBose that he had consulted with Human Resources and "was advised" that DeBose's salary was appropriate. Therefore, Dosal stated that he planned no changes.

265. On August 3, 2014, DeBose asked Dosal to conduct a salary equity study with DIEO.

266. On August 22, 2014, Dosal said that he concluded his review with DIEO and planned no changes to DeBose's salary. In responding about DeBose's salary, Dosal did not on

August 1, 2014, August 22, 2014, or any other occasion deny that he offered to extend DeBose's employment at USF through 2019 or deny that DeBose accepted his offer.

267. This verbal agreement between Dosal and DeBose was binding and enforceable, with DeBose performing all of her obligations under the contract.

268. DeBose had a legal right to inquire about Hamilton's appointment at the meeting. DeBose had a legal right to withhold her congratulations to Hamilton. Her forbearance or restraint from exercising her legal rights was in consideration of Dosal's offer and her acceptance.

269. On March 5, 2015, prior to DeBose being terminated from her position as University Registrar at the University of South Florida, Jose Hernandez ("Hernandez"), Chief Diversity Officer, sent DeBose the findings of DIEO concerning DeBose's allegations of discrimination against Paul Dosal.

270. Hernandez alleged that Dosal's offer to continue DeBose's employment with him through 2019 showed that he had not discriminated against DeBose (**Exhibit**, "Hernandez Determination Letter Concerning Dosal's Offer to Extend DeBose's Employment Through 2019").

271. On March 10, 2015, DeBose responded to Hernandez et al. that she had accepted Dosal's offer but also stated Dosal's continued discrimination, creation of a hostile work environment, retaliation, and threatened termination put Dosal in breach of the Extended Employment Agreement and that Dosal failed to give her any assurances, following his actions of repudiation.

272. Hernandez unseasonably attempted to retract his statement and suggest that the verbal contract was not valid.

273. The writings referenced above provided clear notice to Dosal and Defendant USF of the obligation under the aforementioned verbal agreement to extend DeBose's employment through 2019.

274. Upon information and belief, on and before May 19, 2015, before the end of DeBose's annual employment contract on June 30, 2015, and before the end of the extended employment agreement on June 30, 2019, Defendant USF took action to terminate DeBose's employment.

275. On May 19, 2015, Plaintiff was separated from her employment and given notice of her termination, effective August 19, 2015. On May 19, 2015, Plaintiff was forced to go on professional leave and exhaust her annual (vacation) leave. On August 19, 2015, Plaintiff was terminated, losing her employment, salary, and benefits.

276. Therefore, Defendant USF materially breached both the annual employment agreement and the verbal agreement to extend Plaintiff's employment through 2019.

277. As a result of the foregoing breaches, Plaintiff has been damaged.

278. At all times material hereto, Plaintiff has performed her obligations under the annual employment agreement and the extended employment agreement.

279. The breaches of contract by Defendant resulted in injury to the Plaintiff. As a result, Plaintiff seeks all amounts owed by Defendant pursuant to the agreements. Further, the Plaintiff seeks all actual, consequential, and incidental damages that have resulted from the Defendant's breaches of the agreement, plus exemplary damages and costs, expenses, and pre- and post-judgment interest as allowed by law.

**COUNT 11 – Promissory Estoppel Against Defendant USF**

Plaintiff incorporates all allegations in Paragraphs 1 through 128 and 254 through 279.

280. For the purposes of this Count, Plaintiff Angela DeBose alleges in the alternative that there was no applicable contract or contractual provision or that the promises made were outside of and for actions by the parties that were not covered by any existing contract otherwise referred to herein.

281. Defendant Dosal made misrepresentations of material facts.

282. Defendant Dosal should reasonably have expected to induce action or forbearance on the part of DeBose.

283. Defendant Dosal's misrepresentations induced such action or forbearance by DeBose.

284. Plaintiff Angela DeBose suffered detriment caused by reliance on Dosal's misrepresentations.

285. As a result, DeBose suffered damages.

286. Plaintiff seeks all amounts owed by Defendant USF, including all actual, consequential, and incidental damages that have resulted from the Defendant's breaches of the agreement, plus exemplary damages and costs, expenses, and pre- and post- judgment interest as allowed by law.

**COUNT 12 – Equitable Estoppel Against Defendant USF**

Plaintiff incorporates all allegations in Paragraphs 1 through 128 and 254 through 279, above.

287. For the purpose of this Count, Plaintiff Angela DeBose alleges in the alternative that there was no applicable contract or contractual provision or that the promises made were outside of and for actions by the parties that were not covered by any existing contract otherwise referred to herein.

288. The representations by Defendant USF, specifically employee and agent, Paul Dosal to Plaintiff Angela DeBose were as to material facts.

289. The representations made by USF were contrary to the condition of affairs later asserted by Dosal.

290. Plaintiff Angela DeBose relied on the representations.

291. Plaintiff Angela DeBose suffered detriment by a change in position as a result of the representations and reliance thereon.

292. Angela DeBose continued to perform her duties and functions at USF professionally at USF until USF unexpectedly and without provocation, separated her from her employment on May 19, 2015 and terminated her effective August 19, 2015.

293. As a result, DeBose suffered damages.

294. Plaintiff seeks all amounts owed by Defendant USF, including all actual, consequential, and incidental damages that have resulted from the Defendant's breaches of the agreement, plus exemplary damages and costs, expenses, and pre- and post- judgment interest as allowed by law.

**COUNT 13 – Negligent Misrepresentation, Concealment, Fraud, Fraud by Non-Disclosure, and Fraud in the Inducement by Defendant USF**

Plaintiff incorporates by reference all allegations above, inclusive, as if fully set forth in this paragraph.

295. Defendant Carrie Garcia provided information in the course of USF business, or in a transaction in which USF has a pecuniary interest. Garcia supplied false information to lure DeBose to the Ellucian meeting on April 15, 2015.

296. Defendant Paul Dosal provided information in the course of USF business, or in a transaction in which USF has a pecuniary interest. Dosal supplied false information to DeBose

repeatedly, to lure her to meetings for purposes of berating, marginalizing, bullying, and reprimanding her at work at all relevant times stated herein.

297. Defendant Kofi Glover provided information in the course of USF business, or in a transaction in which USF has a pecuniary interest. Defendant Ralph Wilcox provided information in the course of USF business, or in a transaction in which USF has a pecuniary interest. Glover supplied false information on behalf of Wilcox to lure DeBose to the meeting to discuss the Ellucian report on May 19, 2015.

298. In each case, the information supplied by the above-named Defendants to Plaintiff was false.

299. The above named Defendants did not exercise reasonable care or competence in obtaining or communicating the information.

300. Each participated in setting up and walking Plaintiff into an "ambush."

301. Plaintiff justifiably relied on the information provided by the Defendants, and suffered damages proximately caused by its reliance on the false information.

302. On information and belief, the wrongful acts of the Defendants set forth in this Count were done maliciously, oppressively, and with the intent to mislead and defraud Plaintiff, and Plaintiff is entitled to punitive and exemplary damages to be ascertained according to proof, which is appropriate to punish and set an example of the Defendant.

303. Defendant USF, its employees, agents, and assigns, provided information in the course of its business, or in a transaction in which it has a pecuniary interest.

304. The information supplied by Defendant USF to Plaintiff was false.

305. Defendant USF did not exercise reasonable care or competence in obtaining or communicating the information.

306. Plaintiff justifiably relied on the information provided by Defendant USF, and suffered damages proximately caused by its reliance on the false information.

307. By reason of Plaintiff's reliance on the representations and fraudulent concealment of material facts by Defendant, Plaintiff has been damaged in an amount within the jurisdictional limits of this Honorable Court.

308. Defendant USF employed a scheme and common course of conduct to defraud the Plaintiff. The misrepresentations and concealment of facts by Defendant USF were material.

309. On information and belief, Defendant USF knew the misrepresentations and concealment of facts were false. Alternatively, Defendant USF acted with reckless disregard whether the representations to Plaintiff were true.

310. The Plaintiff relied upon the misrepresentations and concealment of facts by Defendant USF. The Plaintiff's reliance on these representations and concealment of facts by Defendant USF was reasonable and justifiable.

311. Plaintiff has suffered, and continues to suffer, economic and non-economic losses because of the wrongful conduct of the Defendant.

312. On information and belief, the wrongful acts of Defendant were done maliciously, oppressively, and with the intent to mislead and defraud the Plaintiff, and the Plaintiff is entitled to punitive and exemplary damages to be ascertained according to proof, which is appropriate to punish and set an example of the Defendants.

**COUNT 14 – Negligence and Gross Negligence by Defendants USF and Ellucian**

Plaintiff incorporates 82 through 128, 148-149, 150-151, 215-253, and 295-312, as though set forth in full in this cause of action.

313. Defendants USF and Ellucian, directly or indirectly, negligently, recklessly, wantonly, and/or pretextually, wrote, developed, published, supplied, and/or distributed the Ellucian Report.

314. Defendant USF owed a duty to employees of USF, including the Plaintiff, to use reasonable care in writing, developing, publishing, supplying, and/or distributing the Ellucian Report, including a duty to ensure that the Ellucian Report did not cause employees to suffer from unreasonable, unknown, or ill-founded consequences from its effects.

315. Defendant Ellucian had a duty to supervise and control its employee, to use reasonable care in writing and developing the Ellucian Report.

316. Defendant Ellucian failed to exercise reasonable care in writing and developing the Ellucian Report.

317. Defendant USF failed to exercise reasonable care in writing, developing, publishing, supplying, and/or distributing the Ellucian Report and breached its duties to the Plaintiff in that, and not by way of limitation, they did not investigate or warn of the known errors associated with the report, and did not exercise an acceptable standard of care, i.e., what a reasonably prudent consultant would have known and warned about. Moreover, the report failed to provide cautions, caveats, or safeguards to prevent the injuries sustained by Plaintiff.

318. Defendant USF failed to properly investigate Andrea Diamond's findings and/or conclusions in the Ellucian Report, and as a result subjected Plaintiff to an unreasonable risk of injury when its report was released and published.

319. Defendants knew, or should have known, that the Ellucian Report contained unreasonable, unsupported conjecture and conclusions subject to misinterpretation and potentially harmful to Plaintiff.

320. Defendants USF and Ellucian nevertheless wrote, developed, published, supplied, and/or distributed the Ellucian Report, knowing of its unreasonable risk of injury to Plaintiff.

321. Defendants knew or should have known that Plaintiff would suffer injury as a result of their failure to exercise reasonable care.

322. Upon information and belief, Defendants knew or should have known of the harmful nature of the Ellucian Report, as set forth herein, but continued to write, develop, publish, supply, and/or distribute the Ellucian Report at the expense of the Plaintiff, in conscious and/or negligent disregard of the foreseeable harm caused by the Ellucian Report.

323. Defendant USF failed to disclose to the Plaintiff and the general public facts known or available to them, as alleged herein, in order to ensure Plaintiff's termination. This failure to disclose deprived the Plaintiff of the benefit of information necessary for her retention or continued employment.

324. In addition, Plaintiff will show that the Defendant USF's acts and omissions, when viewed objectively from the named Defendants' viewpoint, involved an extreme degree of risk, considering the magnitude and potential harm to the Plaintiff.

325. Defendants had actual, subjective awareness of the risk, but still proceeded with their scheme with a conscious indifference to the rights or welfare of the Plaintiff.

326. As a proximate result of the Defendants' negligence and gross negligence, the Plaintiff has been damaged and it seeks to recover all actual, consequential, incidental, and exemplary damages.

327. By virtue of the Defendants' negligence, the Defendants have directly, foreseeably and proximately caused the Plaintiff to suffer harm, including separation from her employment,

termination, pain and suffering, loss of estimation in the community, and economic loss. As a result, the imposition of punitive damages against the Defendant is also warranted.

328. As a direct and proximate result of the Defendants' negligence, the Plaintiff suffered injury and harm as previously alleged herein, ascertainable economic loss and damages, arising from the harm done to Plaintiff as a result of the Ellucian report.

**COUNT 15 – Civil Conspiracy – All Defendants**

Plaintiff incorporates by reference the allegations of all paragraphs, as if fully set forth in this paragraph.

329. Defendant USF, namely its employees, agents, assigns, including Dosal, Thompson, Sullins, Wilcox, Garcia, and Thomas and Defendant Ellucian and Diamond, namely its employees, agents, assigns, conspired together in a scheme to defame, discredit, and terminate Plaintiff.

330. All of the above-named Defendants acted in concert and at the behest of one another to terminate Plaintiff.

331. In pursuance of the conspiracy, each of the above-named Defendants promised either individually or through their respective agents, USF and Ellucian, to perform consulting services in order to induce Angela DeBose to the April 15, 2015 meeting as a "set-up" for the purpose of writing a false report as pretext for her termination.

332. All of the Defendants have received compensation under the Consulting Agreement or at a minimum, an indirect benefit (e.g. keeping their jobs, additional pay, title, etc.) from having their invidious scheme carried out, as a result of Plaintiff's termination.

333. All of the above-named Defendants knew the expected outcome of the Consulting Agreement, but conspired together and signed the agreement in order to induce Angela DeBose

to the April 15, 2015 meeting under false pretenses for the purpose of writing a false report as pretext for her termination.

334. As a direct and proximate result of the civil conspiracy committed by all of the above-named Defendants, Plaintiff has been damaged.

**COUNT 16 – Tortious Interference with a Business Relationship by Defendant USF**

Plaintiff incorporates by reference the allegations of paragraphs 1 through 128, as if fully set forth in this paragraph.

335. After receiving her May 19, 2015 separation/termination notice, DeBose was offered a job by the University of North Florida (UNF) to implement predictive analytics once news of Plaintiff's termination became public.

336. UNF contacted USF as a courtesy to inform them of the hire and their hopes "to get Angela DeBose in the position before others became aware of her availability."

337. On May 26, 2015, Ralph Wilcox, USF Provost, called Earle C. Traynham, UNF Provost, to "poison the well" and discourage UNF from going through with hiring DeBose.

338. Wilcox stated DeBose was "awful," "toxic," and that he "wanted to get rid of her for years." Wilcox also stated that UNF "would regret" its decision if it proceeded to hire DeBose.

339. On May 27, 2015, following Wilcox's phone call, the offer from UNF was rescinded.

340. Subsequently, in June 2015, at the SUS Florida Summit meeting, Wilcox's role in undoing the UNF offer of employment was discussed following Dosal's disclosure to certain USF employees that Wilcox wanted the Plaintiff to be left with "nothing"—not "even a shirt" on her back. Wilcox stated he wanted DeBose "bare," "exposed," and "thrashed."

341. UNF's employment relationship with Plaintiff was the subject of a valid, oral contract as well as a continuing business expectancy.

342. Defendant Wilcox had knowledge of the employment offer between UNF and Plaintiff.

343. Upon information and belief, the interference by Defendant Wilcox did induce Earle C. Traynham, UNF Provost, to rescind the UNF employment offer with Plaintiff. This was not the first time Wilcox has tortiously interfered with future employment following a termination. Plaintiff has verifiable proof of other such interference by Wilcox against others.

344. Further upon information and belief, Defendant Wilcox improperly, intentionally, and unjustifiably interfered by having an improper reason, as well as, utilizing improper methods.

345. To wit, upon information and belief, Defendant Wilcox contacted and induced Earle C. Traynham, UNF Provost, to terminate the offer with Plaintiff, solely to see her with no immediate prospect for a professional job in higher education in hopes of humiliating and degrading DeBose, *leaving her with not even a shirt, her back bare and exposed, so that the thrashing she received* at his hands was plainly visible.

346. The termination of the employment offer with UNF by Defendant Wilcox has damaged Plaintiff.

347. Upon information and belief, Defendant Wilcox persisted in his course of action, despite the knowledge that his conduct would result in damage to Plaintiff, or at least was highly likely to result in damage to Plaintiff.

**COUNT 17 – Defamation of Character by Ralph Wilcox**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1 through 128 and 335 through 347.

348. Plaintiff and Defendant Wilcox have worked at USF together for the approximate period of time from July 2001 through May 19, 2015.

349. Defendant Wilcox made false, derogatory, and degrading statements to Earle C. Traynham, UNF Provost, regarding Plaintiff to harm her business reputation and business opportunity, without reasonable care as to the truth or falsity of those statements.

350. Defendant Wilcox also made false, derogatory, and degrading statements in meetings with members of the USF Community attended by Registrar's Office personnel when his action to terminate Plaintiff was questioned.

351. Defendant Wilcox falsely claimed that he "could not get any work out of DeBose." Defendant Wilcox falsely stated that DeBose was "resistant to change." Defendant Wilcox further accused DeBose of being "difficult," "uncollaborative," and "toxic." Defendant Wilcox stated that he had wanted to "get rid of her [DeBose] for years." Defendant Wilcox made public statements in public meetings and in public records where he "trashed" DeBose's reputation.

352. As a proximate result of Defendant Wilcox's false, derogatory, and degrading statements, Plaintiff has suffered damages in the form of, inter alia, loss of prospective employment, salary and benefits.

**COUNT 18 - Intentional Infliction of Emotional Distress by Defendant USF**

Plaintiff re-alleges and incorporates herein the factual allegations contained in paragraphs 1 through 128.

353. From 2014 to 2015, Defendant USF subjected Plaintiff to an invidious scheme to terminate her following over 27 years of employment and exemplary performance.

354. USF knew or had reason to know that DeBose would be eligible to receive full retirement benefits at 30 years or age 55, estimated at $1.2 million.

355. USF took action to end DeBose's employment only months after celebrating and recognizing DeBose for 25 years at a Years of Service Awards ceremony.

356. Plaintiff was neither offered nor asked to resign or retire. Plaintiff was not offered a severance package. Rather, Plaintiff was subjected to false and disparaging statements, abused and maligned, overlooked for promotion and pay, threatened, separated, and terminated.

357. Plaintiff's access to USF employee services were cut-off. Plaintiff was publicly humiliated and told to return all USF property and leave the campus by Beedy in the presence of staff and students, as though she were a common criminal.

358. The total sum of Defendant's actions to publicly terminate Plaintiff was intentional and willful and calculated to humiliate and degrade DeBose.

359. The actions of Defendant resulted in direct and significant injury to Plaintiff.

360. As a direct result and proximate result of the intentional and willful acts of Defendant USF, the Plaintiff was injured and suffered damages to include, but not limited to, pain and suffering, mental anguish, and loss of enjoyment of life.

**COUNT 19 - Vicarious Liability of Defendant USF for the Intentional Acts of Defendants Dosal, Sullins, Thompson, Wilcox, Garcia, and Diamond and of Ellucian for the Intentional Acts of Defendant Diamond**

Plaintiff re-alleges and incorporates herein any and all factual allegations contained in this complaint.

361. The conduct of defendants Dosal, Sullins, Thompson, Wilcox, Thomas, Garcia, and Diamond were done in furtherance of the agency relationship that existed between the defendants and USF; therefore, USF is liable for the intentional acts of the defendants by virtue of their Agency relationship.

362. Additionally, the defendants' conduct was in furtherance of USF's invidious plan to terminate Plaintiff. Accordingly, USF is vicariously liable for the defendants' intentional acts due to their employee relationship.

363. As a direct and proximate result of the defendants' intentional acts, Plaintiff suffered injury, pain and suffering, mental anguish, loss of estimation, and loss of capacity for the enjoyment of life. These losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

**COUNT 20 - Intentional Spoliation Against Defendant USF**

Plaintiff realleges and incorporates all sections of paragraphs 1 through 128 above and further alleges that:

364. Defendant USF had the non-delegable duty to exercise reasonable care to maintain, preserve and make available to the Plaintiff true and correct copies of all public records pertaining to her and her employment at USF. In July 2015, DeBose filed a petition for Writ of Mandamus against USF with the Thirteenth Judicial Circuit Court (13CIR **Case Number 15-CA-005663**) to obtain and preserve public records previously denied her.

365. Notwithstanding this duty, Defendant, USF, breached this duty by:

a. Negligently and carelessly failing to maintain proper custody of public records pertaining to Angela DeBose's employment. Solis deleted and/or failed to preserve all re-

lated evidence, though he was specifically informed by Dosal in an August 2014 email that DeBose accused him of discrimination—in advance of DeBose filing DIEO and EEOC complaints. (**Exhibit** – "Dosal Email to Solis About Discrimination")

b. Negligently and carelessly failing to maintain proper custody of electronic and hardcopy records pertaining to Angela DeBose's employment. Solis was specifically copied on an email from Ralph Wilcox, indicating that an adverse employment action against DeBose was imminent yet Solis did not take action with Human Resources, Information Technology, or Student Success et al. to preserve public records. (**Exhibit** – "Solis Email About Waddell's Personnel Records")

c. Negligently discarding, deleting, or otherwise destroying non-transitory records that should have been kept as "personnel-related" or as "records estimated for potential lawsuit," given that USF was on notice since 2014 of its own invidious plan as well as DeBose's expressed concern to Dosal, et al. (**Exhibit** – "Solis Email About Destruction of Telephone Records")

d. Negligently and carelessly failing to maintain records concerning all communications, documents, etc. about or concerning Angela DeBose from 2014 through 2015. Though Paul Dosal was asked to produce his emails, he intentionally withheld email damaging to USF including the email concerning Caurie Waddell; the webmaster@acad.usf.edu email; and emails in his possession about or concerning Angela DeBose in his possession that were sent in the months of April and May 2015, etc.

366. As a direct and proximate cause of Defendant USF's failure to maintain and make available these records, Plaintiff is damaged in her ability to prove up a prima facie case of race-

gender discrimination on the part of Paul Dosal, Ralph Wilcox, et al. for their intentional discrimination in both treatment and impact in hire, promotion, compensation, and severance of Plaintiff compared to her similarly situated white counterparts at USF, through DeBose's separation on May 19, 2015 and resultant termination on August 19, 2015.

367. Therefore, the Plaintiff is entitled to judgment against USF for its negligent failure to maintain and make available the foregoing records and to damages more specifically set forth hereinafter.

**DAMAGES**

368. As a direct result of the Defendants acts and omissions, Plaintiff suffered damages for which the Defendants are jointly and severally liable. The damages sought are within the jurisdictional limits of this court.

369. Plaintiff prays that she recover from the Defendants actual damages, statutory damages, general damages, special damages, nominal damages, punitive damages, expenses, costs of court and all other relief, either general or special, at law or in equity, to which she is entitled.

370. In addition, Plaintiff seeks fees, expert witness fees, pre-judgment and post judgment interest, and costs of court as allowed by law.

**JURY DEMAND**

371. Plaintiff hereby demands a jury trial on all issues that can be submitted to a jury.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants for the following: (1) actual damages; (2) fees; (3) exemplary damages; (4) punitive damages, as

applicable; (5) pre-judgment and post-judgment interest; (6) court costs; and (7) such other and further relief in law and in equity as this Court may deem just and proper.

Respectfully submitted this 4th day of December, 2015.

Angela W. DeBose
1107 W. Kirby Street
Tampa, FL 33604
(813) 932-6959

**VERIFICATION**

Personally appeared before the undersigned, ANGELA DEBOSE, who first being duly sworn, deposes and says that the allegations of this Verified Complaint for damages and Demand for Jury Trial, consisting of paragraphs 1 through 371, inclusive, are true and correct to the best *of her knowledge, information, and belief.*

Angela DeBose

ANGELA DEBOSE

STATE OF FLORIDA )
COUNTY OF HILLSBOROUGH )

The foregoing instrument was acknowledged before me this 4th day of December, 2015 by ANGELA DEBOSE, who is either personally known to me or who produced ___ as identification, and who did take an oath.

Wilmaris Filomeno Velazquez
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF011691
Expires 4/24/2017

Notary Public - State of Florida

My Commission Expires: 4-24-17

**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.

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**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-

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).

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

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.*

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

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

ANGELA DEBOSE,

Plaintiff,

v.

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, and ELUCIAN, L.P.,

Defendants.

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

**PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANT USFBOT FOR INTENTIONAL SHREDDING OF DISCOVERABLE DOCUMENTS & INCORPORATED MEMORANDUM OF LAW**

COMES NOW, Plaintiff Angela DeBose (hereinafter "Plaintiff" or "DeBose"), by and through the undersigned counsel and pursuant to Rules 30(d), 37(a) and 37(c) of the Federal Rules of Civil Procedure, and Local Rule 3.01, hereby files this Motion for Sanctions against Defendant USFBOT due to non-disclosure and destruction of discoverable evidence. In support of this Motion, Plaintiff states as follows:

## I. INTRODUCTION.

1. On December 4, 2015, Plaintiff filed her original complaint alleging discrimination and other civil claims including breach of contract and intentional spoliation that Defendant destroyed documents and records to obstruct Plaintiff from proving allegations against them.

2. On April 5, 2016 in response to Defendant USFBOT's motion, the Court issued an Order dismissing several of Plaintiff claims, including the above-referenced Breach of Contract and Intentional Spoliation claims. The Court granted Plaintiff leave to amend to plead

allegations regarding the contract (e.g. Plaintiff rights, provisions breached, and how breached). With regard to the intentional spoliation, the Court relied on *Martino v. Wal-Mart Stories, Inc.* in holding that there is no independent cause of action against a first-party defendant for spoliation of evidence and stating Plaintiff's remedy was to seek sanctions for any spoliation of evidence caused by USFBOT.

3. On May 3, 2016, Plaintiff's counsel filed her Third Amended Complaint, which stated with specificity and particularity how the Defendant was in breach of Plaintiff's annual employment contract that was set to renew on July 1, 2015 and the agreement to extend Plaintiff's employment through 2019. The Third Amended Complaint included Plaintiff's written employment contracts and writings to evince the contract extension agreement. Additionally, the complaint included a footnote explaining Plaintiff's efforts to obtain records from USFBOT in a Petition for Writ of Mandamus (Case No. 15-CA-5663) filed with the Thirteenth Judicial Circuit Court, Hillsborough County, Florida.

4. On May 20, 2016, USFBOT filed a Motion to Dismiss Plaintiff's breach of contract claim (i.e. Count VII of Plaintiff's Third Amended Complaint). Defendant argued that the Court had dismissed the claim with prejudice as to the 2019 contract extension and additionally that Plaintiff's Third Amended Complaint failed to attach a copy of the contract as required by law.

5. On June 6, 2016, Plaintiff through counsel filed her opposition to the Motion to Dismiss Count VII of the Third Amended Complaint on the ground that USFBOT destroyed documents and records sought that would support Plaintiff's extended contract claim with writings sufficient to satisfy the Statute of Frauds. Plaintiff specifically alleged that she was informed that the documents she sought were shredded on the order of Paul Dosal and Alexis

Mootoo. Two staff, Suzanne McCoskey and a student worker ("Vanessa"), shredded Plaintiff's records and all the records of current and former USF Registrar's Office employees.

6. On June 6, 2016, the Court reviewed the respective pleadings and granted the Defendant's motion in part and denied it in part. The express contract claim through June 2015 survived while the extended contract claim was dismissed with prejudice. The Court ultimately concluded that Plaintiff did not provide sufficient evidence to overcome the Statute of Frauds requirement for an express written agreement.

7. On June 28, 2016, Plaintiff received a redacted email in which Lori Mohn, USFBOT General Counsel's Office employee, knowing that many of the Plaintiff's documents were not available to be produced, solicited any documents that could be had in order to provide responses to Plaintiff's First Production Request. **Exhibit A – Email**.

8. Additionally, on June 29, 2016, Plaintiff received a text message from a USFBOT employee, who confirmed in writing what Plaintiff had previously been told about the shredding of the files. **Exhibit B – Text Message**.

9. On November 18, 2016, Plaintiff had occasion to speak with Delonjie Tyson, a student worker employed by the USF Registrar's Office at the time the Plaintiff's documents were shredded. Plaintiff asked Ms. Tyson for "Vanessa's" last name and contact information—the student who assisted Suzanne McCoskey in shredding Plaintiff's files.

10. Plaintiff later contacted "Vanessa Centelles," who admitted to shredding the documents at the request of Suzanne McCoskey, the person who supervised her work, and provided a sworn statement. **Exhibit C – Affidavit of Vanessa Centelles**.

11. Additionally, Delonjie Tyson stated that she had first-hand knowledge and witness the shredding provided a sworn statement. **Exhibit D – Affidavit of Delonjie Tyson**.

12. On these facts, Plaintiff now files a Motion for Sanctions against Defendant USFBOT on the ground that USFBOT's conduct in destroying discoverable evidence is prejudicial to Plaintiff and the administration of justice.

13. USFBOT has repeatedly denied that records at issue that Plaintiff sought to have preserved, were at risk of being destroyed or that the records were in fact destroyed.

14. In response to Plaintiff's preservation motions, and without advising the Court of the destruction, the Defendant has barred Plaintiff from the requested discovery in Plaintiff's First, Second, and Third Requests for Production. A Motion to Compel Production will not cure Defendant's destruction of discoverable evidence.

## II. MEMORANDUM OF LAW

USFBOT, has engaged in a pattern of conduct designed to, first, conceal the existence of discoverable documents and, second, to conceal his destruction of the discoverable documents. In so doing, USFBOT has made a mockery of the discovery process and compelled this Court and the Plaintiff to expend valuable resources in motion practice and hearings related to documents which USFBOT knew or had reason to know, no longer existed. USFBOT and its counsel thought so little of USFBOT's discovery obligations that Defendant chose to fight Plaintiff rather than preserve discoverable evidence that Defendant had a legal obligated to preserve. Worst case, USFBOT intentionally sought to destroy evidence and conceal its destruction.

**A. This Court Should Sanction USFBOT For Failure to Preserve Documents Knowing that Litigation was Very Likely and Already Underway.**

By Defendant's destruction of Plaintiff's departmental personnel files, USFBOT effectively concealed the documents' contents from this Court and the Plaintiff. When asked at deposition about the alleged destruction, USFBOT employees Paul Dosal, Alexis Mootoo, and Carrie Garcia who supervised the Registrar's Office at the time, all testified falsely that Plaintiff's records were not destroyed. Additionally, Paul Dosal, Alexis Mootoo, and Carrie Garcia testified falsely that the Registrar's Office departmental personnel files were not destroyed.

At the time of the destruction, Defendant USFBOT knew or had reason to know that Plaintiff had already filed an internal discrimination complaint with the USF Diversity, Inclusion, and Equal Opportunity (DIEO) office in August 2014. At the time of the destruction, USFBOT knew or had reason to know that Plaintiff had filed an external discrimination complaint with the U.S. Equal Employment Opportunity Commission ("EEOC") in December 2014. Also, Defendant knew or had reason to know that Plaintiff had filed a Motion for Temporary Restraining Order (TRO) and Preliminary Injunction in February 2015 with the Middle District Court of Florida. A short time prior to the destruction, Defendant knew or had reason to know that Plaintiff had filed a Petition for Writ of Mandamus with the Thirteenth Judicial Circuit of Hillsborough County to obtain public records under Chapter 119, F.S., given that she was denied discovery and a preservation order in MDF Case No.8:15-mc-00018-EAK-MAP. Defendant USFBOT knew or had reason to know that more litigation and a lawsuit was imminent. USFBOT simply shredded the documents related thereto. After all of this, USFBOT shredded documents prior to Plaintiff's Complaint, amendments, and dismissal of claims. USFBOT answered falsely and testified falsely in deposition that Plaintiff's records were not

destroyed. USFBOT has not provided complete responses to Plaintiff's Requests for Production, knowing the shredded documents were not and cannot be provided. Such scenarios warrant the imposition of sanctions.

Rule 26(e) places upon a party the obligation to supplement disclosures and discovery "whenever a party learns that its prior disclosures or responses are in some material respect incomplete or incorrect." See Fed.R.Civ. P. 26 Advisory Comm. Notes (1993). This Court has recognized that sanctions pursuant to Rule 37 of the Federal Rules of Civil Procedure are appropriately applied where a party fails to comply with Rule 26(e). See e.g., *Bray & Gillespie Management LLC v. Lexington Insurance Co.*, 2009 U.S. Dist. LEXIS 122196, *58-59 (M.D. Fla. Aug. 3, 2009). Accordingly, this Court should exercise its power pursuant to Rule 37 of the Federal Rules of Civil Procedure to sanction USFBOT for either the failure to provide good faith, truthful discovery responses.

**B. This Court Should Sanction USFBOT Pursuant to Rule 37 for Spoliation of Evidence.**

"Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *Graff v. Baja Marine Corp.*, 2009 U.S. App. LEXIS 1986 (11th Cir. Feb. 2, 2009) (quoting *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999)). Because spoliation undermines the integrity of the judicial process, it is strictly prohibited. In diversity suits within the Eleventh Circuit, federal law governs the imposition of spoliation sanctions. *See, Flury v. Daimler Chrysler Corp.*, 427 F.3d 939, 944 (11th Cir. 2005). However, the Eleventh Circuit does not set forth specific guidelines for dealing with spoliation of evidence. Therefore, spoliation of evidence analysis is informed by the forum state's spoliation law. *Id.* ("Federal law in this circuit

does not set forth specific guidelines, therefore, we will examine the factors enumerated in [the forum state's] law.")

"Under Florida law, the remedy for a party failing to produce crucial but unfavorable evidence that is destroyed or inexplicably disappears is an adverse inference or discovery sanctions." *Optowave Co.*, 2006 U.S. Dist. LEXIS 81345 at *24. Nevertheless, a federal district court retains broad discretion to sanction those who intentionally destroy relevant evidence. *Flury*, 427 F.3d at 944 ("We have long acknowledged the broad discretion of the district court to impose sanctions. This power derives from the court's inherent power to manage its own affairs and to achieve the orderly and expeditious disposition of cases."). This Court should use its discretion, under both federal and Florida law, to impose the strictest of sanctions against USFBOT for spoliation of key evidence in this action. USFBOT has unquestionably engaged in spoliation as set forth under relevant case law: (1) the now-missing evidence existed at one time; (2) USFBOT had a duty to preserve the evidence; (3) the evidence was critical to Plaintiff's case; and (4) USFBOT acted in bad faith. *Optowave Co.*, 2006 U.S. Dist. LEXIS 81345 at *25; see also, *Kimbrough v. City of Cocoa*, 2006 U.S. Dist. LEXIS 87572, *14-15 (M.D. Fla. Dec. 4, 2006). USFBOT" misconduct, as shown by the evidence, satisfies these factors. USFBOT likely shredded the documents in Plaintiff's departmental file to hinder Plaintiff's ability to prove the extended contract and other related claims. The loss of this evidence hinders Plaintiff's ability to determine the full measure of USFBOT" misconduct related to the discrimination against her and her other related civil claims.

The Court has broad discretion to sanction USFBOT for spoliation, which has caused unfair prejudice to Plaintiff and undermined the integrity of the discovery process. *Flury*, 427

F.3d at 944 (noting that "sanctions for discovery abuses are intended to prevent unfair prejudice to litigants and to insure the integrity of the discovery process").

District courts in the Eleventh Circuit have a variety of sanctions in their arsenal, ranging from default judgments to exclusion of evidence to adverse inference jury instructions to attorney fees and costs. *Id.* at 945. Additionally, the Court may exercise its authority under Rule 37 to sanction discovery abuses such as USFBOT's spoliation. *Optowave Co.*, 2006 U.S. Dist. LEXIS 81345 at *23 ("Federal Rule of Civil Procedure 37 also authorizes a panoply of sanctions for a party's failure to comply with the rules of discovery. ... Although Rule 37(b) applies when a party fails to comply with a court order, Rule 37(d)"s requirement that a party participate in discovery that is not regulated by the court expressly adopts most of the sanctions in Rule 37(b)(2), including the power to grant a default judgment."). Given the variety of sanctions available, the Court must choose the appropriate level of sanctions necessary to punish USFBOT for its conduct.

This Court may consider three factors when determining the type of sanctions to issue for spoliation of evidence: (1) the willfulness or bad faith of USFBOT; (2) the degree of prejudice sustained by the Plaintiff; and (3) what is required to cure the prejudice. *St. Cyr*, 2007 U.S. Dist. LEXIS 42502 at *12-13. First, USFBOT" willfulness and bad faith, or "culpability," far outweighs any culpability by Plaintiff. See *id.* at *13 ("In addressing the bad faith factor in *Flury*, the Eleventh Circuit „weigh[ed] the degree of the spoliator's culpability (quoting *Flury* 427 F.3d at 946)). In this instance, USFBOT is not only the more culpable party, it is the only culpable party. Second, Plaintiff has suffered significant prejudice as a result of the destruction of these discoverable documents. Additional evidence that may have further proved Plaintiff's claims was disposed of by USFBOT, resulting in prejudice of the highest degree.

Furthermore, it is impossible for this Court or the parties to know the extent of shredding done by USFBOT related to this action. Plaintiff has argued and provided evidence that USFBOT destroyed other documents that were employment related or anticipated for litigation. It is reasonable for this Court to infer that USFBOT not only failed to disclose the existence of these documents as well as the intentional destruction thereof, but also might have failed to disclose other documents or actions. Third, only a significant sanction can cure the prejudice caused by USFBOT. USFBOT, through its own wrongdoing, has denied Plaintiff the opportunity to explore the discoverable documents and other discovery that she might have pointed to had USFBOT not shredded them. The Court should allow Plaintiff to submit evidence pertaining to USFBOT's destruction of the discoverable documents and instruct the jury that it should determine that the spoliated evidence was highly adverse to USFBOT. This Court should also deem the dismissed breach of contract claim and spoliation claim in Plaintiff's original and/or amended complaints as admitted to by USFBOT and that such admissions be set forth in the parties' Pretrial Statement. In addition to the other available sanctions the Court may and should enter against USFBOT, Plaintiff requests that the Court grant their fees and costs incurred in (1) determining that the evidence at issue had been spoliated and (2) bringing this Motion. These sanctions are authorized by Rule 37 of the Federal Rules of Civil Procedure. Finally, this Court should exact the "ultimate sanction" of Default Judgment on USFBOT by awarding Plaintiff the full statutory amount for her discrimination claim of $300,000 and the estimated damages for her civil claims in excess of $500,000. USFBOT's bad faith actions warrant severe sanctions.

**Notice of Conferral**

Pursuant to local rules, Plaintiff counsel conferred via email with counsel for USFBOT who does not consent to the relief sought.

## III. CONCLUSION

USFBOT shredded critical evidence, namely the Plaintiff's departmental file as well as other records (i.e. non-transitory telephone records, documents on Plaintiff's hard-drive, Caurie Waddell's exit interview, emails, etc.) USFBOT's destruction was intentional and for no reason other than to obstruct the Plaintiff's ability to prove her case. Accordingly, Plaintiff has been prejudiced by the loss of this evidence, and sanctions are appropriate to cure the prejudice. Likewise, Plaintiff has been harmed by USFBOT's denials and motions to dismiss Plaintiff's claims, knowing all the while that they had "unclean hands."

**WHEREFORE**, Plaintiff requests that this Court enter an Order sanctioning Defendant, USFBOT, as follows:

1. Allow Plaintiffs to submit evidence at the trial of this action pertaining to USFBOT destruction of the discoverable documents;

2. Instruct the jury that it should determine that the shredded evidence was highly adverse to USFBOT;

3. Strike certain denials by USFBOT of Plaintiff's Third Amended Complaint allegations related to USFBOT's destruction and spoliation;

4. Award Plaintiff attorney fees and costs associated with the Motion for Sanctions;

5. Award Plaintiff her full damages; and

6. Grant such other and further relief as this Court deems just and proper, including reinstatement of the dismissed contract and intentional spoliation claims.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail delivery to the following: Richard C. McCrea, Jr., Esq., and Sara Sanfilippos, Esq. Greenberg Traurig, P.A., 101 E. Kennedy Blvd., Suite 1900, Tampa, Florida 33602, and Kimberly Doud, Littler, 111 N. Magnolia Avenue, Suite 1250, Orlando, Florida, 32801-2366 on this 30th day of December, 2016.

Respectfully Submitted,

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**From:** cmecf_flmd_notification@flmd.uscourts.gov
**To:** cmecf_flmd_notices@flmd.uscourts.gov
**Subject:** Activity in Case 8:15-cv-02787-EAK-AEP DeBose v. USF Board of Trustees et al Order on Motion for Sanctions
**Date:** Wednesday, February 08, 2017 3:28:34 PM

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**U.S. District Court**

**Middle District of Florida**

## Notice of Electronic Filing

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**Case Number:** 8:15-cv-02787-EAK-AEP
**Filer:**
**Document Number:** 86(No document attached)

**Docket Text:**
**ENDORSED ORDER denying [61] Motion for Sanctions; denying without prejudice [64] Motion to Compel, for the reasons stated at the hearing. Signed by Magistrate Judge Anthony E. Porcelli on 2/8/2017. (JMF)**

**8:15-cv-02787-EAK-AEP Notice has been electronically mailed to:**

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R.A. 078



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

**CIVIL ACTION NO. 8:15-cv-02787-EAK-AEP**

**ANGELA DEBOSE,**
**Plaintiff,**

**v.**

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

**PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANT USFBOT FOR SPOLIATION AND NONDISCLOSURE & INCORPORATED MEMORANDUM OF LAW**

Plaintiff Angela DeBose ("DeBose") files a renewed motion for sanctions for spoliation of evidence against Defendant University of South Florida Board of Trustees ("USF"), on the basis of new evidence. Sanctions are warranted because of USF's *willful* destruction. Following approximately 15 months of denials and nondisclosure, USF finally *admitted* to the destruction—untruthfully explaining, in bad faith, that the destroyed records were only duplicates. USF should be sanctioned because it knowingly destroyed records that it was required to retain in the normal or usual course of business but did so to deprive the Plaintiff of critical evidence in this lawsuit, in violation of multiple preservation duties. The destruction of the documents is highly prejudicial to DeBose. The Court issued an Order, permitting Plaintiff to file a new motion for spoliation in ten (10) days (**Docket No. 122**). In support of this new Motion, Plaintiff submits the Affidavit of Angela DeBose, as if incorporated herein, and states as follows in her Memorandum of Law:

## MEMORANDUM OF LAW

### BACKGROUND

Angela DeBose served as University Registrar for the USF System. In August 2014, after suffering from repeated acts of discrimination based on her race-gender, DeBose filed an internal eeoc charge against USF. A short time after, DeBose's supervisor, Paul Dosal, Vice Provost for Student Success, personally and through others implemented adverse actions against her. As a result, in December 2014, DeBose filed an external EEOC complaint based on race-gender discrimination. In February 2015, after being subjected to an increasingly hostile retaliatory work environment, DeBose sought an injunction under Section 706(f)(2) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(f)(2) to maintain the status quo during the pendency of the EEOC investigation. Several months later, with the injunction action still underway, DeBose was separated from her employment on May 19, 2015 and officially terminated on August 19, 2015.

Sometime in late summer 2015, only months after DeBose's termination, USF destroyed enormous quantities of evidence from the department personnel files of the USF Office of the Registrar. DeBose worked at USF for approximately 27 years and was hired in the position of University Registrar following a national search, in October 1996. The documents of her work and history of the work of others in the office were destroyed.

DeBose discovered USF's impermissible destruction to shred relevant, discoverable documents at a time when litigation was already underway. On May 3, 2016, Plaintiff's counsel included allegations of the destruction in Plaintiff's Third Amended Complaint (**Docket No. 45**). On May 12, 2016, USF filed its Answer to Plaintiff's complaint; USF vehemently denied and failed to disclose to Plaintiff's counsel and the Court that any destruction of the records alleged

by Plaintiff had occurred (**Docket No. 46**). On May 20, 2016, USF filed a Motion to Dismiss claims that it knew or had reason to know were truthful but prejudiced by their destruction (**Docket No. 47**). On June 6, 2016, when Plaintiff's counsel opposed dismissal of the claims in part due to the destruction (**Docket No. 49**), USF again concealed from Plaintiff's counsel and the Court that the destruction actually happened, as Plaintiff had alleged. In all instances, despite having the opportunity and a duty to disclose, USF did not admit to the destruction of the Registrar's personnel files or offer any explanation.

On June 28, 2016, DeBose received a text message from Kimberly Bushe-Whiteman ("Bushe-Whiteman") informing her again about the shredding but for the first time in a writing (**Docket No. 61, Attachment # 2**). On June 29, Lori Mohn ("Mohn"), an employee with the USF General Counsel's Office, contacted USF employees pursuant to Plaintiff's First Production Request for records (**Exhibit A**). Mohn's note included a prior email that copied Victoria Johnson ("Johnson"), Beverly Jerry ("Jerry"), Mike Beedy ("Beedy"), and Lois Palmer ("Palmer") and arguably went to those same copied recipients, whose names were either redacted or blind-copied by the sender—though DeBose also surmised the email from Mohn was also sent to administrative assistants who supported her. Based on statements in their affidavits, Palmer and Johnson knew the files had been shredded back in October 2015 (**Docket No. 66, Attachment #2 and #3**). Understanding the records sought did not exist at all in Human Resources ("HR"), Palmer and Johnson knew or should have known that the destroyed records could not be reproduced. Jerry, an employee with Human Resources, also knew the files had been destroyed (**Plaintiff's Affidavit, p. 9 ¶ 18**). Thus, one can reasonably conclude that Mohn also knew. However, Defendant still did not admit to the destruction to Plaintiff's Counsel or to

the Court. Instead, USF continued to hide and conceal the destruction, in bad faith, knowing that the failure to produce documents was prejudicial to the Plaintiff.

On July 10, 2016, DeBose contacted the Florida Attorney General Office ("AGO") to report that her records had been shredded. On July 11, 2016, based on the referral from Pat Gleason with the AGO, DeBose contacted the State Attorney's Office ("SAO"). Based on the information received, reports were filed with the USF Police Department so that the case could be assigned to the Tampa Police Department ("TPD"). On October 20, 2016, DeBose filed a report with TPD Detective Talley Cooks ("Detective Cooks"), where the case remains as an active police investigation.

On November 10, 2016, Plaintiff attended the deposition of Carrie Garcia, who served as Acting Registrar from May 2015 through August 2015. At deposition, Carrie Garcia denied the Registrar's personnel files were shredded. On November 16, 2016, Plaintiff attended the depositions of Paul Dosal and Alexis Mootoo. Paul Dosal, who stated the Registrar's Office "should not have [the files]", also denied the departmental files were shredded or that anyone ordered the department personnel files to be shredded (**Excerpt from 11-16-16 P. Dosal, 55:11-21**). Alexis Mootoo, who gave the order to Suzanne McCoskey Bishop to "get rid of the files," also denied knowledge of the shredding **(Excerpt from 11-16-16 A. Mootoo, 15:21-24).**

Defendant may argue that Garcia, Dosal, and Mootoo did not know about the shredding. However, Plaintiff's witnesses will testify that Garcia visited Palmer almost daily since she was helping Palmer acclimate and onboard; therefore, Garcia would have known or had reason to know the files were shredded. As Lois Palmer's supervisor, Dosal would have been required to authorize the massive disposition of those files. It is unreasonable to believe that Palmer, the new interim registrar, would have made such an important decision—knowing her superior was

charged with discrimination and a party to a lawsuit. Furthermore, good faith compliance would have required an appropriate university official to affirmatively attest to the following statement on the disposition form, "*I hereby certify that the records to be disposed of are correctly represented below, that any audit requirements for the records have been fully justified, and that FURTHER RETENTION IS NOT REQUIRED FOR ANY LITIGATION PENDING OR IMMINENT.*" (**emphasis added**). This did not happen since the shredding was done for illegitimate purposes, in bad faith. In following up with McCoskey Bishop to make certain Dosal's order was carried out, Mootoo would also have known or had reason to know that the files were shredded. Garcia, Dosal, and Mootoo had the opportunity and obligation to testify truthfully; however, not one of them disclosed that DeBose's and the other employees' department personnel files had been shredded. None of them disclosed that the records were thought to be duplicates. No doubt, the three were concerned about what it would mean to testify truthfully. While the destruction had been discovered, Defendant believed Plaintiff did not have probative evidence or the wherewithal to prove it.

On November 22-23, 2016, Plaintiff obtained the affidavits of student workers, Vanessa Cellentes and Delonjie Tyson, who were involved with and had direct knowledge of the shredding of the department files, including DeBose's, and forwarded the statements to her counsel and Detective Cooks. Shortly thereafter, Plaintiff's counsel noticed USF's counsel that a motion for sanctions would be forthcoming.

On December 29, 2016, DeBose learned from Bushe-Whiteman that McCoskey Bishop was summoned to the USF Office of the General Counsel by Gerard Solis ("Solis") about the departmental files (**Plaintiff's Affidavit, p. 11, ¶ 29**). It is worth noting again that on May 3, 2016, Plaintiff's Third Amended Complaint alleged that Paul Dosal ordered the destruction of

the files (**Docket 45, p. 40, ¶ 183**). Nevertheless, Defendant waited until after notice of the motion for sanctions to make an inquiry and summon McCoskey Bishop to meet with Solis the week of December 19th, before the winter break (**Id.**) McCoskey Bishop returned to the Registrar's Office angry that she was "being blamed" for the destruction of the files (**Id.**). Immediately after receiving this information, the Plaintiff notified her counsel and emailed Detective Cooks (**Id., p. 11, ¶ 29**).

On December 30, 2016, Plaintiff's counsel filed evidence of USF's destruction—including Affidavits from two student workers, Vanessa Cellentes and Delonjie Tyson; a text message to DeBose from USF employee, Kim Bushe-Whiteman; and the email from Lori Mohn requesting DeBose's records to respond to Plaintiff's First Production Request (**Docket No. 61**). USF requested and was granted an extension of time to respond (**Docket Nos. 62 & 63**).

On January 20, 2016, DeBose learned from Bushe-Whiteman that McCoskey Bishop would be changing her story; instead of naming Mootoo and Dosal as ordering the shredding of the files, USF concocted a litigation scheme to have McCoskey Bishop state that "Victoria [Johnson]" in HR told her that it was okay to shred the records (**Plaintiff's Affidavit, p. 11, ¶ 30**). Again, Plaintiff notified her counsel and emailed Detective Cooks this latest development (**Id., p. 11, ¶¶ 29-30**).

On January 23, 2017, USF filed their opposition to the motion for Sanctions (**Docket No. 66**). After months of hiding the destruction of the files from the Plaintiff and the Court, USF made an *untruthful* disclosure in finally admitting for the first time that they destroyed Plaintiff's and the other employees' files. Specifically, USF employees, McCoskey Bishop and Palmer, falsely claimed the records in the files were "duplicative" of records in HR and therefore thought it was okay to destroy the files because Victoria Johnson with Human Resources said so (**Id.,**

**Attachments #1, #2, and #3**). The above sequence of events confirms that the information Bushe-Whiteman provided to DeBose in 2015 about the destruction of the department files was true and the details Bushe-Whiteman reported to DeBose on January 20, 2017, *three days before* USF filed their opposition (**Docket No. 66**), about McCoskey Bishop changing her story was also true.

On February 3, 2017, Plaintiff received information yet again from Bushe-Whiteman that USF's lawyer was going to attack Verna Glenn's ("Glenn") credibility, if she testified at the February 8th hearing (**Plaintiff's Affidavit, p. 12, ¶ 32**). The plan to discredit Glenn would also discredit Plaintiff's averments in her Motion for Sanctions. Apparently, Glenn requested FMLA but it was not approved (**Id.**). Therefore, when she was out of the office, Glenn was on regular medical leave—not FMLA as stated in her affidavit (**Id.**). Plaintiff emailed her counsel, who specifically requested Verna Glenn to appear from among the witnesses providing affidavits, that USF planned to exploit this technicality (**Exhibit B**).

On February 7, 2017, four days later, USF filed the affidavit of Beverly Jerry to discredit Verna Glenn's affidavit and planned testimony (**Docket No. 84, Attachment #4**). At the February 8th hearing, USF's counsel presented Glenn's statement and Jerry's affidavit in contradiction, just as Plaintiff had been told. Again, the information Plaintiff received from Bushe-Whiteman was spot on.

Plaintiff urges the Court to consider the sequence of events, the accuracy, precision, and exactness of the information DeBose received from Bushe-Whiteman. Plaintiff also urges the Court to consider Plaintiff's emails to Detective Cooks that document these events as clear evidence to show that the duplication story was created, contrived, and fabricated as part of a litigation strategy not only to avoid sanctions but to continue to deprive the Plaintiff of crucial

evidence in this case. Defendant concealed in bad faith, the fact that USF spoliated documents that were critical to the Plaintiff's case in chief, in clear violation of the duty to preserve relevant evidence to the litigation. Defendant also violated the Rule 37 duty to disclose and admit, **making various false statements and omissions "on matters central to the issues in Plaintiff's lawsuit,"** and contravened the State of Florida records retention and disposition policy. The Defendant's recent admission should not be regarded, as it does not constitute a "truthful disclosure." USF's concealing and hiding the destruction was not in any way a "truthful disclosure" but rather an *intent to deceive*. Under Florida law, USF's destruction, nondisclosure, and dishonest disclosure is indicative of conduct tantamount to *fraud* on the Plaintiff and on this Court. See Destafano v. State Farm Mutual Automobile Insurance Co., 28 Fla. L. Weekly D1077 (Fla. 1st DCA April 28, 2003).

## STANDARD OF REVIEW

The Plaintiff seeks sanctions under Rule 37 of the Federal Rules of Civil Procedure and the Court's inherent power. Spoliation has been defined as the "intentional destruction of evidence or the significant and meaningful alteration of a document or instrument." Southeastern Mechanical Services, Inc. v. Brody, 657 F. Supp.2d 1293, 1299 (M.D. Fla. 2009) (citing Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1308 (11th Cir. 2005)). Spoliation also includes the intentional concealment of evidence. See Walter v. Carnival Corp., No. 09- 20962-CIV, 2010 WL 2927962 at *2 (S.D. Fla. July 23, 2010) (citing St. Cyr v. Flying J Inc., No. 3:06-cv-13-33TEM, 2007 WL 1716365 at *3 (M.D. Fla. June 12, 2007)). The plaintiff, as the moving party, has the burden of proof. "[T]he party seeking [spoliation] sanctions must prove . . . first, that the missing evidence existed at one time; second, that the alleged spoliator had a duty to preserve the evidence; and third, that the evidence was crucial to the movant being

able to prove its prima facie case or defense." Walter, 2010 WL 2927962, at *2 (citing Floeter v. City of Orlando, 6:05-cv- 400-Orl-22KRS, 2007 WL 486633, at *5 (M.D. Fla. Feb.9, 2007)). Even if all three elements are met, "[a] party's failure to preserve evidence rises to the level of sanctionable spoliation 'only where the absences of that evidence is predicated on bad faith," such as where a party purposely loses or destroys relevant evidence." Id. at *2 (citing Bashir v. Amtrak, 119 F.3d 929, 931 (11th Cir. 1997)). If direct evidence of bad faith is unavailable, the moving party may establish bad faith through circumstantial evidence. Id.; see also Atlantic Sea Company, S.A. v. Anais Worldwide Shipping, Inc., No. 08-23079-CIV, 2010 WL 2346665, at *2 (S.D. Fla. June 9, 2010) (noting that where the movant "offer[s] no direct evidence of bad faith, . . . this Court must assess the circumstantial evidence of bad faith under the standard set forth in Calixto."). The following constitutes circumstantial evidence of bad faith:

> (1) evidence once existed that could fairly be supposed to have been material to the proof or defense of a claim at issue in the case; (2) the spoliating party engaged in an affirmative act causing the evidence to be lost; (3) the spoliating party did so while it knew or should have known of its duty to preserve the evidence; and (4) the affirmative act causing the loss cannot be credibly explained as not involving bad faith by the reason proffered by the spoliator.

Walter, 2010 WL 2927962, at *2 (citing Calixto v. Watson Bowman Acme Corp., No. 07-60077-CIV, 2009 WL 3823390, at *16 (S.D. Fla. Nov. 16, 2009)). The party seeking the sanctions must establish all four of these factors where there is no direct evidence of bad faith. Calixto, 2009 WL 3823390, at *16 (stating that "in this Circuit, bad faith may be found on circumstantial evidence where all of the [aforementioned] hallmarks are present").

## ARGUMENT

Plaintiff contends that USF intentionally destroyed documents that it knew or should have known were relevant to reasonably foreseeable litigation. Paul Dosal, Vice Provost for

Student Success, knew and understood that there was an obligation to retain or keep certain records (**Excerpt 08-14-15 Dosal 10:1-23**). Dosal, Plaintiff's former supervisor, knew and was *upset* that DeBose filed discrimination charges against him in 2014 and initiated legal action with the Middle District of Florida in February 2015 (**11-16-2016 Dosal Deposition 23:5**), prior to the wholesale shredding of the department's personnel records. Dosal admitted that he directly informed Alexis Mootoo, his fiscal assistant, of DeBose's discrimination charges (**Id., 52:25; 53:1-3**). Dosal said Mootoo "helped" him in that regard (**Id.**). Though Mootoo denied any knowledge of the discrimination charge in her deposition testimony (**11-11-16 Alexis Mootoo Deposition 9:16-25; 10:1-5**), it was Mootoo who delivered Dosal's order to McCoskey Bishop to "get rid of the files." (**Affidavit of Kimberly Bushe-Whiteman, p. 2, ¶ 15**). McCoskey Bishop was also personally aware of the potential for further litigation, having been a witness for DeBose, in contradicting Mootoo's allegation that DeBose called Mootoo, a "little girl." (**Exhibit C**). Palmer, Johnson, and Jerry were also aware of the employment dispute and the potential for litigation, having been included on an email from Beedy in August 2015 and Mohn in June 2016 concerning DeBose's payout and First Production Request respectively. Therefore, these employees had personal knowledge as well as incidental knowledge from local/USF newspaper coverage of the discrimination charge and litigation, prior to the shredding. Despite knowing or having reason to know, the following bad acts were undertaken by Defendant:

> (1) the Defendant, though on notice, failed to place an effective litigation hold on documents about or concerning Angela DeBose in this case; (2) the Defendant impermissibly shredded documents crucial to Plaintiff's claims in this case. (3) the Defendant cannot reproduce critical documents that it destroyed; and (4) the Defendant failed to produce other directly relevant, responsive evidence during discovery.

To establish that spoliation occurred, Plaintiff must show: (1) that the missing evidence existed at one time; (2) that the alleged spoliator had a duty to preserve the evidence; and (3) that the

evidence was crucial to the movant being able to prove its prima facie case or defense. Walter, 2010 WL 2927962, at *2 (citing Floeter v. City of Orlando, 6:05-cv-400-Orl-22KRS, 2007 WL 486633, at *5 (M.D. Fla. Feb.9, 2007)).

**A. The Missing Evidence Existed**

DeBose has stated there were several categories of documents that she maintained **(Plaintiff's Affidavit, p. 2-6)**. These documents are crucial to Plaintiff's existing claims and were also critical to the claims that were dismissed. Plaintiff elaborates in her affidavit how and why these documents were relevant and crucial to her claims and how she has been harmed **(Id.)** While some of the focus was on proving the existence of the contract extension through 2019, the most relevant pieces of evidence for DeBose was to prove that USF's shifting stated reasons for her termination were merely pretext, that retaliation and race-gender animus was the but-for cause for her termination, that Plaintiff was treated differently in employment and promotional opportunities than other similarly situated employees. In light of the destruction, it is impossible to cure the prejudice that DeBose faces at summary judgment and before a jury, without sanctions.

While it has been stated that Plaintiff's contentions are self-serving to say that the types of records actually existed, it is perhaps more self-serving for USF to belabor that point since by the Defendant's unclean hands, DeBose's records were actually destroyed. It is undisputed that the USF Office of the Registrar maintained department personnel records based on the following employees' statements: "As part of my job duties, I assisted Kim Bushe with filing personnel documents into file folders maintained in the USF Office of the Registrar" **(Affidavit of Vanessa Cellentes, p. 1, ¶ 3)**. "Ms. Palmer was concerned about a number of personnel files maintained in the Registrar's Office..." **(Docket No. 66, Affidavit of S. McCoskey Bishop, p. 1, ¶ 2)**.

While Defendant's counsel would have the Court to believe in opposing Plaintiff's prior Motion for Sanctions that such files are to only be maintained by Human Resources (**Docket No. 66, p. 1, ¶ 1**), this is not true of the practice at USF. "The Registrar's Office was not unique in maintaining department personnel records; it was common and a well-known practice…" (**Affidavit of A. B. Lamphere, ¶ 8**). Here, there is no question that USF destroyed DeBose's department files and other employee files that it had a duty to preserve. "All of the personnel folders and files were shredded" (**Cellentes, p. 1, ¶ 6**). Furthermore, it is undisputed that USF did not inventory the records or document their disposal of the records on a disposition form, as provided for under the State's Record Retention and Disposition Policy (**Exhibit D**). Therefore, it is dishonest on the part of USF to claim that the records described by DeBose did not exist since USF did not inventory the records and have absolutely no idea what was destroyed!

It is dishonest for Defendant to claim that only duplicates were shredded and that the HR files contain the best evidence. As an employee for 27 years, it was Plaintiff's HR file that was outdated—not her departmental files. In hiring for the AVP EPM position, Dosal never asked DeBose for a resume or even let her know the position was available. Defendant's counsel stated at deposition that HR had DeBose's 25-year old resume (**07-11-16 DeBose 225:25**). If asked, DeBose could have easily produced a current, up-to-date resume from her departmental file. However, DeBose's resume was not requested by the USF eeoc until after Billie Jo Hamilton was hired by Dosal in the AVP EPM position. Additionally, Dosal was not motivated to shred the records in HR because HR only kept certain documents. If HR had more of Plaintiff's documents, USF did not provide them. If HR was the repository of all personnel-related documents, Mohn would not have solicited additional documents. Dosal did not want

Plaintiff to prove the existence of the contract extension or any aspect of her discrimination claims; therefore, Dosal asked for Mootoo's help to specifically get rid of "Angela's files."

USF employees McCoskey Bishop, Palmer, and Johnson are the only ones to claim that the files were duplicates. However, this is contested not only by the Plaintiff but several witnesses. Verna Glenn stated, "I had documents in my file that were not maintained or available in my Human Resources file..." (**Affidavit of V. Glenn, ¶ 5**). Ana Barbara Lamphere, who previously maintained the files, stated, "While some of the documents were the same, the department maintained *more* records..." (**Lamphere, ¶ 7**). It is more probable than not that the records existed and were not only duplicates or records in HR, given the credible testimony of current and former USF employees like Vanessa Cellentes, who was remorseful for her part in the destruction, or other similar employees who had no part in it at all. The specifically identified documents that Plaintiff named in her affidavit and above were either destroyed or concealed by the Defendant, in bad faith.

**B. USF had a Duty to Preserve the Evidence**

A party has an obligation to retain relevant documents, including emails, where litigation is reasonably anticipated. See Wilson v. Wal-Mart Stores, Inc., No. 5:07-cv- 394-Oc-10GRJ, 2008 WL 4642596, at * 2 (M.D. Fla. Oct. 17, 2008) (footnote omitted) (stating that "the law imposes a duty upon litigants to keep documents that they know, or reasonably should know, are relevant to the matter."). See also Southeastern Mechanical Services, Inc. v. Brody, No. 8:08-CV-1151-T-30EAJ, 2009 WL 2242395, at *2 (M.D. Fla. Jul. 24, 2009).

USF also had a clear duty to preserve the records under the State of Florida Retention and Disposition guidelines as well as its own policy (**Attachment D**). Some of the key guiding principles are as follows:

> Litigation - When a public agency has been notified that a potential cause of action is pending or underway, that agency should *immediately* place a hold on disposition of *any and all* records related to that cause (**State of Florida GENERAL RECORDS SCHEDULE GS1-SL FOR STATE AND LOCAL GOVERNMENT AGENCIES, p. 7**).
>
> "... in the event that an agency is involved in, or can reasonably anticipate litigation on, a particular issue, the agency must maintain in native format any and all related and legally discoverable electronic files." (**Id.**).

In the instant case, it is clear from Defendant's destruction that Defendant's attorney did not place a litigation hold on documents, though DeBose put Defendant on notice to preserve records about or concerning her in March 2015 (**Exhibit E**). While the Plaintiff sought a preservation order in 2015, she was unsuccessful. Understandably, it may have appeared to the Court that the Defendant's document retention policy should have provided an adequate safeguard since it applies strict standards concerning the disposition of records.

> Final Disposition of Public Records - Section 257.36(6), *Florida Statutes*, states that, **"A public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division."** This means that all records, regardless of access provisions, must be scheduled before disposition can occur (see Sections 119.07-119.0714, *Florida Statutes*, regarding access provisions). **(Id. p. 6)**.
>
> Records Disposition Documentation - Agencies must maintain internal documentation of records disposition including retention schedule number, retention schedule item number, records series title, inclusive dates, volume (in cubic feet) of paper records destroyed, and disposition action (manner of disposition) and date. **A form titled *Records Disposition Document*, which is recommended for use in documenting records disposition, is available on the Records Management website. (Id., Table of Contents v. and p. 42).**

Additionally, a preservation order may have appeared unnecessary in this instance since the USF Registrar's Office had maintained its own set of personnel files in the department since the first fall class in the 1960s (**Plaintiff's Affidavit, p. 12, ¶ 35**). There was no business routine demanding that the files be destroyed just months following DeBose's termination. Unlike the plaintiff in Wilson v. Wal-Mart Stores, Inc., there was no document retention policy that required

the shredding as a long-standing practice. See Wilson v. Wal-Mart Stores, Inc., No. 5:07-cv-394-Oc-10GRJ, 2008 WL 4642596, at * 2 (M.D. Fla. Oct. 17, 2008) (footnote omitted) (citing Matya v. Dexter Corp., No. 97-cv- 763C, 2006 WL 931870, at *11 (W.D. N.Y. Apr. 11, 2006) (stating that "[a] party is not guilty of spoliation when it destroys documents as part of its regular business practices and is unaware of their potential relevance to litigation.") Here, the shredding was not scheduled. It is also perplexing why files that existed since the 1960s suddenly became the highest priority for a new registrar, at a time when the office was purportedly in transition following DeBose's departure (**See Exhibit F - 09/24/2015 AACRAO Consulting Report Commissioned by USF, p. 46).**

Even in the absence of a preservation order, it is undisputed that the employees of the USF Office of the General Counsel knew or had reason to know of the duty to preserve evidence. Solis, Mohn's supervisor, has been very much involved in DeBose's litigation against USF. On August 14, 2015, Solis was deposed in DeBose's Thirteenth Judicial Circuit Court Case No. 15-CA-005663. Solis filed affidavits pursuant to Plaintiff's motions for sanctions for the destruction of evidence and public records in related cases 8:15-mc-00018-EAK-MAP and 15-CA-005663 (**Exhibit - G. Solis March 21, 2016 Affidavit** *generally*). It is undisputed that Solis is an experienced attorney familiar with Florida and federal law, and thus Rule 37 (**Id., p. 1, ¶ 2**). It is undisputed that Solis is familiar with the State of Florida Retention and Disposition regulations and the USF Retention policy (**Id., p. 3, ¶ 7**). It is also undisputed that Solis and Mohn received DeBose's public records requests (**Id., p. 2, ¶ 3**) and either knew or had reason to know of DeBose's interest in preserving and obtaining her records for litigation. Though Solis stated in his affidavit that "*In June 2014, I did not anticipate litigation from Ms. DeBose*" (**Id.,** ¶ 9), Solis knew with certainty of the employment dispute involving DeBose as early as June 23, 2014 and

the illegal discrimination DeBose complained of as early as August 14, 2014 **(Exhibit F)**. Litigation was reasonably foreseeable at this point and the Defendant's duty to preserve should have been triggered. Several months later when litigation was underway, and not merely anticipated, Defendant willfully and egregiously disregarded its own retention policy and destroyed DeBose's relevant documents—prejudicing Plaintiff by the loss.

It is not enough for the Defendant to claim the files were "duplicative" of files maintained in HR. It is not enough for Defendant to craft a story of Bishop McCoskey, Palmer, and Johnson carefully and methodically disposing of department files, when in fact USF hastily and abruptly had the records destroyed with urgency or immediacy. Delonjie Tyson's affidavit recalls, "*There was communication to the office that these folders were soon to be disposed of and/or removed from the office and any employee could retrieve any information they want from their file otherwise they would be shredded*" **(Affidavit of Delonnie Tyson, p. 1, ¶ 7)**. This call to "come and get your records!" was not communicated to DeBose, whom Defendant knew had initiated public records, discovery, and preservation requests in hopes of obtaining her files. As noted by Tyson, this communication was only delivered to those that remained employed and were in the office **(Id., ¶ 8)**. There was no plan or attempt made to contact DeBose.

After 15 months of Defendant's non-disclosure, it is clear that the tale spun by the Defendant is a recent fabrication. The Defendant was reasonably on notice of impending litigation in 2014. The Defendant was aware of actual litigation in February 2015. If the destruction was justified, Defendant could have raised it as early as May 2016 and certainly by June 28, 2016, the First Production Request. If the destruction was inadvertent, negligent, or harmless to Plaintiff as Defendant has claimed, the Defendant would not have waited for its destruction to be proven to disclose it. USF had a duty to preserve and materially breached that

duty. USF's contrived "duplicates" story also offends the State's Records Retention and Disposition policy, which treats duplicates like originals and no longer distinguishes them:

> **The retention period for duplicates – copies of records that are not the official record of an agency – is always "Retain until obsolete, superseded, or administrative value is lost" ("OSA") unless otherwise specified. Therefore, we are no longer including the OSA retention statement for duplicates in each retention item. (iv.)**

In sum, Plaintiff is not aware of any prior time in the department's history that an unscheduled destruction of records has taken place on such a large scale. The destruction alarmed the staff, the custodians or keepers of student academic records, who expected close adherence to records retention and disposition policies, perhaps motivating them to "blow the whistle." As noted by Bushe-Whiteman, "*They did not follow the procedures*" (**Bushe-Whiteman, p. 3, ¶ 16**).

**C. The Spoliated Evidence was Crucial to the Plaintiff to Prove her Prima Facie Case**

The law in this Circuit requires that the movant show that the spoliated evidence was crucial to its claim or defense. Walter, 2010 WL 2927962, at *2 (citation omitted) (requiring movant to show "that the evidence was crucial to the movant being able to prove its prima facie case or defense."). It is not enough that the spoliated evidence would have been relevant to a claim or defense. See Floeter v. City of Orlando, No. 6:05-CV-400-Orl-22KRS, 2007 WL 486633, at *6 (M.D. Fla. Feb. 9, 2007) (finding that although relevant, spoliated evidence was not crucial).

It would follow that DeBose lost valuable information in the destruction if the other employees did too. Verna Glenn stated, "As a result of the shredding, the documents are no longer available to me" (**Glenn, ¶ 6**). Since USF did not inventory or complete the disposition

form, there is no way the Defendant can state with any certainty that DeBose was not harmed. DeBose is sympathetic to Glenn who was out on leave when the shredding occurred, in stating, "No one could tell me what specific documents were shredded" **(Id., ¶ 7)**. It is undisputed that less extreme measures were available like scanning the files. **(Tyson, p. 1, ¶ 4)**. It is also undisputed unless otherwise created by the Defendant's own negligence, the files were kept in locked file cabinets in a locked office. **(Bushe-Whiteman, p. 2, ¶ 13)**. If the records were unsecured, it would have posed a lesser hardship to Plaintiff and others to simply secure the files again, under lock and key. Instead, USF shred the files that existed during a time when litigation was already underway and further litigation was foreseeable, to intentionally deprive DeBose of the evidence needed to prove her case.

Plaintiff's Affidavit, pages 2-6, explains why the spoliated evidence was crucial to her claims. Because of the destruction, DeBose is left with no other alternative than to rely on lesser quality evidence, if at all admissible, to prove her case. DeBose also has to rely on deposition testimony (i.e. from memory or recollection), which is no substitute for documented facts that are recorded at occurrence. Such lesser evidence and testimony cannot cure the extreme prejudice DeBose has experienced as a result of the destruction of her files. See Brown v. Chertoff, 563 F. Supp. 2d 1378 (S.D. Ga. 2008), (finding that an employee suffered prejudice in proving a discrimination claim where his employer destroyed notes from an internal investigation into the employee's discrimination claims because the notes would have "shed light on the decision-making process that led to [the employee's] termination" and may have been useful to undermine the employer's proffered legitimate reason for termination). Additionally, DeBose has experienced other willful destruction in the case, including the Defendant's deletion of ESI from her hard-drive and the Defendant deliberately withholding emails (**See Motion for**

**Sanctions at Docket No. 61; see also Affidavit of C. Harris, Trinity Consulting**). USF's destruction has also damaged DeBose's case against Ellucian, the other Defendant in this action. As stated by Plaintiff at the March 8, 2017 hearing, Ellucian is a beneficiary of USF's destruction.

**D. The Defendant had a Culpable Mind**

In order to obtain spoliation sanctions against the defendant, the plaintiff must show, through direct or circumstantial evidence, that the defendant acted in bad faith. In the Eleventh Circuit, something less than malice, Flury, 427 F.3d at 946, but more than mere negligence, Bashir, 119 F.3d at 931, will suffice to show bad faith warranting spoliation sanctions. In determining bad faith, "[t]he court should weigh the degree of the spoliator's culpability against the prejudice to the opposing party." Flury, 427 F.3d at 946. In Flury, the Eleventh Circuit stated that: In determining whether dismissal is warranted, the court must consider: (1) whether the defendant was prejudiced as a result of the destruction of evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the plaintiff acted in good or bad faith; and (5) the potential for abuse if expert testimony about the evidence was not excluded. Id. at 945. With respect to the fourth factor, whether the [party] acted in good or bad faith, the Eleventh Circuit stated that "[t]he court should weigh the degree of the spoliator's culpability against the prejudice to the opposing party." Id. at 946 (citing Bridgestone/Firestone North American Tire, LLC v. Campbell, 574 S.E.2d 923, 927 (Ga. Ct. App. 2003)).

USF engaged in a pattern of conduct designed, first to conceal the existence of discoverable documents and, second to conceal its destruction of the discoverable documents. In so doing, USF made a mockery of the discovery process, the Plaintiff, and the Court in hiding documents it destroyed, which no longer exist. USF thought so little of USF's discovery

obligations that Defendant chose to fight Plaintiff unfairly and underhandedly, rather than engage Plaintiff in this adversarial process on a level playing field. USF willfully destroyed evidence and concealed its destruction to significantly impair Plaintiff's case.

The destruction was unusual and not at all ordinary. USF's conduct was extreme. In what could be easily cast as the "Herodian factor," USF destroyed all of the personnel files in the department just to destroy DeBose's. **(Bushe-Whiteman, p. 3, ¶ 16)**. USF believed that widespread shredding would withstand the appearance of retaliation since it "wasn't just Angela's" files that were destroyed. **(Id.)** Dosal and Mootoo had already planted the seed that DeBose was wrong to maintain the files. "*You're not supposed to have them*" **(Cellentes, p. 1, ¶ 4; Bushe-Whiteman, p. 2, ¶ 15)**. The timing was right—DeBose was terminated and Bushe-Whiteman was forced to transfer. Marquisha Wilson summarized the Defendant's culpable mind, *"Y'all feet were barely out the door when they started shredding the files."* **(Plaintiff's Affidavit, p. 9, ¶ 19); Bushe-Whiteman paraphrased, p. 2, ¶ 15)**. As a result of this unusual occurrence, Bushe-Whiteman states, *"Several employees came to me to ask about their personnel file. I told the employees who asked that all the files were there when I left the Office"* **(Bushe-Whiteman, p. 2, ¶ 15)**.

**1. Direct Evidence of Bad Faith**

The Defendant engaged in an intentional affirmative act causing Plaintiff's evidence to be destroyed. Favors v. Fisher, 13 F.3d 1235, 1239 (8th Cir. 1994) and Hicks v. Gates Rubber Company, 833 F. 2d 1406, 1418-19 (10th Cir. 1987). While both those cases state that because the defendant violated a record keeping regulation, the plaintiff was "entitled to the benefit of a presumption that the destroyed documents would have bolstered her case," in both those cases the record keeping regulation that was violated was directly related to the plaintiff's claims. See

Favors, 13 F.3d at 1239 (the plaintiff asserted a claim for race discrimination against her employer and the employer violated a regulation that required it to maintain employment records); Hicks, 833 F.2d at 1419 (plaintiff asserted claims for sexual and racial harassment against her former employer and the regulation violated by the employer required that personnel and employment records be kept by the employer).

Bushe-Whiteman states in her affidavit that Mootoo told McCoskey Bishop to get rid of the files (**Bushe-Whiteman, p. 2, ¶ 15**). By their own account, McCoskey Bishop and Cellentes complied with the order and arranged to have the files destroyed. Plaintiff has consistently stated what was reported to her by Bushe-Whiteman, a reliable witness. The information received has been credible each time and supported by documented proof.

USF willfully shred the files, concealed the destruction, denied that it occurred when discovered, failed to truthfully admit to the act in responding to pleadings, and fabricated a story to avoid sanctions when the destruction was proven. USF's intentional affirmative acts to deprive Plaintiff of evidence to prove her claims is direct evidence of their bad faith and spoliation warranting sanctions.

**2. Circumstantial Evidence of Bad Faith**

Where direct evidence of bad faith is unavailable, bad faith may be established through circumstantial evidence if the following criteria are met: (1) evidence once existed that could fairly be supposed to have been material to the proof or defense of a claim at issue in the case; (2) the spoliating party engaged in an affirmative act causing the evidence to be lost; (3) the spoliating party did so while it knew or should have known of its duty to preserve the evidence; and (4) the affirmative act causing the loss cannot be credibly explained as not involving bad faith by the reason proffered by the spoliator. Calixto v. Watson Bowman Acme Corp., No. 07-

60077-CIV, 2009 WL 3823390, at *16 (S.D. Fla. Nov.16, 2009). The plaintiff argues that all four factors in Calixto are present in the instant case.

> 1) Plaintiff has discussed that the evidence existed in the above and foregoing and in her affidavit. The materiality of the evidence is obvious in light of the fact that it goes to the crux of the complaint (DeBose's discrimination and dismissed contract claims) and proof that the files and documents claimed by DeBose once existed. Others have stated in affidavits that a variety of documents existed in the department personnel files. It is reasonable to believe that DeBose would have amassed a great number of documents, including the types of documents described, during her tenure at USF to support her claims. The documents that should have been provided by the Defendant (but have not been provided since the documents have been destroyed, concealed or omitted) and from the Defendant's own admissions that it destroyed evidence;
>
> 2) The next factor is whether the Defendant "engaged in an affirmative act causing the evidence to be lost." The Defendant undoubtedly engaged in an affirmative act causing the evidence to be lost when its own counsel submitted affidavits, admitting to the destruction of evidence (See Affidavits of McCoskey Bishop, Palmer, and Johnson at Docket No. 66);
>
> 3) The third factor is whether "the spoliating party [engaged in an affirmative act] while it knew or should have known of its duty to preserve the evidence." The Court does not need to reach this factor where there is no affirmative act by the spoliator. See Atlantic Sea Company, 2010 WL 2346665, at *2. The Defendant had a duty to preserve the evidence pursuant to its and the State of Florida Records Retention Policy but failed to do so; and
>
> 4) The fourth factor is whether "the affirmative act causing the loss cannot be credibly explained as not involving bad faith by the reason proffered by the spoliator." The Defendant's affirmative act in destroying the documents cannot be credibly explained by any reason whatsoever, but for the bad faith of the Defendant, particularly given not only the willful destruction of relevant documents but also Defendant's effort to conceal its own clear violations of federal and Florida law from the Plaintiff and the Court. . .

The truth of the matter is that USF would have never admitted to destroying Plaintiff's records or the department personnel files. USF destroyed the documents in bad faith, to continue denying Plaintiff the use of those documents. USF made a dishonest admission because they got caught.

## III. CONCLUSION.

The Court is entitled to infer that the destroyed documents would have shown that USF's reasons for terminating Plaintiff was pretext and that Plaintiff 's evidence would have proven but-for causation. If the Court is inclined to consider Plaintiff's dismissed claims, the Court can infer that USF had some form of a written extended contract with Plaintiff. There is no question that Defendant admittedly destroyed critical evidence relevant to the Plaintiff's claims of discrimination and retaliation. The prejudice suffered by Plaintiff as she prepares to meet the high burdens to overcome summary judgment and to show pretext and but-for causation in her employment discrimination suit at trial, is immeasurable and incurable without action by the Court.

**WHEREFORE**, Plaintiff requests that this Court enter an Order sanctioning Defendant, USF, as follows:

1. allow Plaintiff to submit evidence at the trial of this action pertaining to USF's destruction of the discoverable documents;

2. instruct the jury that it should determine that the shredded evidence was highly adverse to USF in Defendant's pretext for termination, Plaintiff's but for termination, and disparate treatment claims;

3. strike certain denials by USF of Plaintiff's Third Amended Complaint allegations concerning the Defendant's pretext for terminating DeBose and related to USFs destruction and spoliation;

4. grant Plaintiff default judgment on her retaliation claim, as Defendant's shredding is clear and convincing evidence of further retaliation against DeBose;

5. grant such other and further relief as this Court deems just and proper.

Dated: March 29, 2017

Respectfully submitted,

Angela DeBose,
Plaintiff

1107 W. Kirby St.
Tampa, FL 33604
Telephone: (813) 923-6959

**PLAINTIFF'S CERTIFICATION**

I HEREBY CERTIFY that the above and foregoing is true and submitted in good faith.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March **29th**, 2017, a true and correct copy of the above and foregoing was served electronically via the CM/ECF system to:

Richard C. McCrea, Jr.
Greenberg Traurig, P.A.
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Tampa, FL 33602

Kimberly J. Doud, Esquire
Littler Mendelson, P.C.
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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.

## 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

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 attorney[1] 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.

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

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

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.

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.

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[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.)

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

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

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.

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*

**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.

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**ORDER**

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

## I. Introduction

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

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

## II. Background

### A. Plaintiff's employment history at USF

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

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

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

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

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

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

### C. The AVP EPM position

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

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

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

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

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

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

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

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

**E. The Alexis Mootoo incident and subsequent written reprimand**

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

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

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

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

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

**G. The Ellucian audit and report**

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

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

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

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

**H. DeBose's non-reappointment as Registrar**

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

**I. USF's negative review of DeBose**

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

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

**J. DeBose is not selected for employment at UNF**

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

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

## III. Standard of Review

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

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

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

## IV. Discussion

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

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

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

**A. Employment Discrimination Claims**

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

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

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

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

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

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

*1. Written Reprimand*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**B. Retaliation Claims**

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

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