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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-EAK-AEP

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

Defendants.

ORDER

With machine-like regularity, Plaintiff Angela DeBose – now for the twelfth time[1] – again asks the Court to reconsider a prior order. (Doc. 553). This time, Plaintiff asks the Court to reconsider its Order, (Doc. 550), denying her request for front pay. Id. In the interests of judicial efficiency, the Court writes for the parties, whom the Court assumes are innately familiar with the happenings of this action, and foregoes a recitation of the underlying facts and procedural history.

Courts in the Middle District recognize three, limited grounds for reconsideration of a prior order: "(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." Church of Our Savior v. City of Jacksonville Beach, 108 F.Supp.3d 1259, 1265 (M.D. Fla. 2015) (Corrigan, J.) (citation omitted). Plaintiff contends the Court

[1] See (Docs. 98, 217, 254, 262, 266, 294, 314, 317, 338, 376, 501).

committed clear error in denying her motion for front pay. (Doc. 553). The Court disagrees.

A prevailing Title VII plaintiff cannot recover amounts for front pay where the defendant-employer proves that it would have made the same decision even in the absence of discriminatory intent. See 42 U.S.C. § 2000e-5(g)(2)(B). Section 2000e-5(g)(2)(B) explicitly states:

> On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court . . . (i) *may* grant *declaratory relief, injunctive relief* (except as provided in clause (ii)), and *attorney's fees and costs* demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and (ii) *shall not award damages* or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

Id. (emphasis added). See also Quigg v. Thomas City. Sch. Dist., 814 F.3d 1227, 1239 n.9 (11th Cir. 2016) ("[T]he 'same decision' defense . . . allow[s] an employer to avoid damages and certain forms of equitable relief in a Title VII case.") (citation omitted); Edwards v. Jewish Hospital of St. Louis, 855 F.2d 1345, 1349 (8th Cir. 1988) ("An employer may avoid reinstatement[2] or an award of backpay or both by demonstrating by a preponderance of the evidence that the employee would have been discharged even if race had not been a motivating factor in the decision."); Weightman v. Bank

[2] The remedy of front pay is simply an alternative to reinstatement. See U.S. E.E.O.C. v. W&O, Inc., 213 F.3d 600, 619 (11th Cir. 2000) ("[P]revailing Title VII plaintiffs are presumptively entitled to either reinstatement or front pay.") (citation omitted); Reiner v. Family Ford, Inc., 146 F.Supp.2d 1279, 1284 (M.D. Fla. 2001) (McCurn, J.) ("[C]ourts regard front pay as an alternative to reinstatement[.]") (citations omitted).

of New York Mellon Corp., 772 F.Supp.2d 693, 708 n.9 (W.D. Pa. 2011) (Lancaster, J.) (finding that the plaintiff was not entitled "to damages, reinstatement or other such relief because" the defendant proved its "same decision" affirmative defense) (citing 42 U.S.C. § 2000e5(g)(2)(B)); Reddy v. Espy, No. 4:92-cv-297-CW, 1995 WL 374282, at *6 (N.D. Cal. June 8, 1995) (Wilken, J.), aff'd, 99 F.3d 1146 (9th Cir. 1996) ("[T]he Court may grant Plaintiff certain equitable relief and attorney's fees in a mixed motive case, but not reinstatement or monetary relief.") (citing 42 U.S.C. § 2000e5(g)(2)(B)); Massey v. Trump's Castle Hotel & Casino, 828 F. Supp. 314, 324 (D.N.J. 1993) (Gerry, J.) ("If the defendant proves that it would have made the same decision, the remedies of front-pay and reinstatement will be barred."). See also Pattern Civ. Jury Instr. 11th Cir. 4.5, Ann.§ II(F) (2018) ("[I]n cases where the employer prevails on the 'same decision' defense, the court may grant declaratory relief, *limited* injunctive relief and *limited* attorney's fees and costs; this is an issue for the court, not the jury.") (citing 42 U.S.C. § 2000e5(g)(2)(B)) (emphasis in original).

In light of the Second Amended Judgment, (Doc. 549), Plaintiff is no longer the prevailing party on her retaliation claim.[3] And although Plaintiff prevailed on her disparate treatment race discrimination claim, see (Doc. 471); Harris v. Shelby Cnty. Bd. Of Educ., 99 F.3d 1078, 1084 (11th Cir. 1996), the jury found that Defendant University of South Florida Board of Trustees would have terminated Plaintiff's

[3] Plaintiff has moved to amend the Second Amended Judgment, or, in the alternative, for a new trial. See (Doc. 551).

employment even it hadn't taken Plaintiff's race into account, see (Doc. 471). Therefore, Plaintiff is barred from recovering amounts for front pay. Plaintiff provides no legal bases in her motion to refute the statutory mandate or caselaw cited above, and she otherwise fails to establish how the Court may have "clearly erred" in its decision to deny her request for an award front pay.

The Court takes this opportunity to note that meritless motions to reconsider a prior order are judicial nuisances, wasting both the Court's and the parties' already scarce time and resources. Plaintiff is thus reminded that motions for reconsideration premised on grounds that the district court committed "clear error" are appropriate "when the Court has patently misunderstood a party . . . or has made a mistake, not of reasoning, but of apprehension." Wendy's Int'l, Inc. v. Nu–Cape Constr., Inc., 169 F.R.D. 680, 684 (M.D. Fla. 1996). Here, the Court made no such mistake; the statutory mandate prohibiting awards of front pay and other damages in mixed motive cases where the defendant-employer proves its "same decision" affirmative defense is crystal clear. Plaintiff may dislike the result reached by the Court. But to simply argue against that result, without justification or support, through a motion for reconsideration is improper. While the Court can appreciate Plaintiff's zealous advocacy on her own behalf, the Court's decisions are "not intended as mere first drafts, subject to revision and reconsideration" at Plaintiff's pleasure, and "motions for reconsideration should not be filed as a matter of routine practice." Douglas Cnty. Chamber of Commerce, Inc. v. Philadelphia Indem. Ins. Co., No. 1:05-cv-1155-RWS,

2006 WL 8432209, at *2 (N.D. Ga. Sept. 13, 2006) (Story, J.) (quoting Quaker Alloy Casting Co. v. Gulfco Indus., Inc., 123 F.R.D. 282, 287 (N.D. Ill. 1988) (Shadue, J.)). Rather, a motion to reconsider a prior order must be supported by due diligence on the part of the movant, a showing of extraordinary circumstances which justify the relief sought, and, of course, some minimal factual foundation in addition to the relevant legal bases for such a request. Plaintiff's motion misses that mark and, notably, violates the prescriptions of Rule 11. See Fed. R. Civ. P. 11(b) (requiring that motions filed by both attorneys and unrepresented parties alike be well grounded in fact, warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law, and not interposed for any improper purpose).

Accordingly, it is

ORDERED that Plaintiff's Motion for Reconsideration of Order Denying Front Pay, (Doc. 551), is **DENIED**.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 5th day of March, 2019.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

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

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

Defendants.

ORDER

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

I. Background

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

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

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

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

At trial, DeBose introduced evidence that (1) in July and August of 2014, respectively, she filed internal EthicsPoint and DIEO[1] complaints with USF alleging that she had been subjected to unlawful discrimination, (2) in December of 2014, she filed a charge of discrimination with the EEOC, and (3) on February 4, 2015, she filed

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

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

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

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

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

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

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

II. Legal Standard

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

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

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

III. Discussion

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

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

A. Motion to Alter or Amend the Judgment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Motion for New Trial

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

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

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

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

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

IV. Conclusion

Accordingly, it is

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

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

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel/Parties of Record

R.A. 284

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

ANGELA DEBOSE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO.** 8:19-cv-1132-T-30AEP
	)	
UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, GREENBERG TRAURIG, P.A.,	)	**JURY TRIAL DEMANDED**
	)	
Defendants.	)	

/

INDEPENDENT ACTION FOR RELIEF FROM JUDGMENT TO REMEDY FRAUD ON THE COURT

Plaintiff, ANGELA DEBOSE ("DEBOSE"), sues Defendants, the UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and GREENBERG TRAURIG, P.A., and files this independent action for relief from judgment to remedy fraud on the court pursuant to Federal Rule of Civil Procedure 60(b). In support thereof, DeBose alleges as follows:

SUMMARY

DeBose came before this court in December 2015 asserting claims against the University of South Florida Board of Trustees ("USFBOT") for unlawful employment practices including gender and race discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended ("Title VII") and the Florida Civil Rights Act of 1992, §760.01, Fla. Stat., *et seq.* ("FCRA"); intentional interference with a business relationship; civil conspiracy; and breach of contract under Florida law. On September 26, 2018, the jury returned a unanimous verdict in DeBose's favor on her discrimination and retaliation claims. DeBose was awarded $310,500, $35,000 in costs, and unspecified front pay damages. At all

N.P.

relevant times of the litigation, USFBOT engaged in various forms of misconduct to procure favorable judgments through deceit and fraud. As a result, the verdict DeBose won was lost. DeBose asks this Court to right this wrong and states as follows:

GENERAL ALLEGATIONS

1. This action arises from a perjury and fraud scheme spearheaded by Gerard Solis, USFBOT General Counsel; Richard McCrea, Greenberg Traurig; USFBOT; Greenberg Traurig, and its employees to violate federal law, including but not limited to suborning perjury, perjury, concealing and withholding discovery, withholding and destroying public records, conspiring to obstruct justice, obstruction of justice, and fraud to procure favorable judgments for themselves and set aside judgments favorable to DeBose. Solis and McCrea sentiently set in motion an unconscionable scheme calculated to interfere with the judicial system's ability to properly adjudicate DeBose's case in chief by unfairly hampering the presentation of her evidence and claims or defenses.

2. This conspiratorial enterprise has illicit motives: financial gain by avoiding paying damages for its employment discrimination and retaliation against DeBose, a racial minority employed by USFBOT, an arm of state government; to set aside or procure favorable judgments; to avoid court sanctions. The Defendants made a series of false and misleading statements regarding the destruction of DeBose's evidence to corrupt or influence the court to impartially perform its judicial function. Defendants knew or were reckless in not knowing that their statements were false and/or misleading because they did not have an adequate basis in fact for their assertions. Defendants did not satisfy numerous contingencies, such as securing or placing a litigation hold on DeBose's files.

3. All of this comes at the expense of Plaintiff Angela DeBose, by virtue of the conspiratorial scheme directed by the Defendants to conceal and destroy evidence that they had a duty to disclose and preserve. The Defendants false and misleading statements and omissions caused significant confusion and disruption in the proceedings resulting in further harm to DeBose for exposing governmental agency's diabolical scheme to prevent its unlawful discriminatory and retaliatory actions and practices from being exposed.

4. The fraudulent conduct of the Defendants resulted in DeBose being smeared, defamed, discriminated against, retaliated against, fired, and interfered with by the Defendants' administrative officials and employees.

5. Many of the employees who supported DeBose were preyed upon by USFBOT in its conspiratorial enterprise, including using unsophisticated employees and student workers from poor or modest backgrounds. Through exploitation of their social inequity and inequality and lack of representation, they became pawns of the Defendants and unwittingly were used to violate federal law. The Defendants abused their powers and USFBOT specifically put its students and employees in jeopardy.

6. The purpose of this action is to hold the Defendants USFBOT and its co-conspirators and representatives in Greenberg Traurig, liable for the harm they have wrought on the life and career of Angela DeBose, who worked for the University of South Florida for over 27 years in various capacities. DeBose had an illustrious career and was on her way to becoming an Associate Vice President within her profession in higher education. Defendants willfully set out to destroy DeBose and her bright future, on account of her race-gender, and used unlawful and/or illegal means to do so. Based on information and belief and USFBOT employment data, the

injustices DeBose experienced are routinely committed against other blacks and racial minorities by USFBOT and the contractors hired to represent the Board.

7. USFBOT and Greenberg Traurig defrauded DeBose and conspired to obstruct justice and obstructed justice; Defendants robbed DeBose of her job, career, good name, her jury verdict, and the potential for other damages. After DeBose won her case, USFBOT and Greenberg Traurig, relying on USFBOT's government status, conspired with others to commit fraud in a deplorable scheme, in coordination with federal and state courts.

8. By engaging in the conduct alleged in this Complaint, USFBOT, Greenberg Traurig, Solis, McCrea, and others violated, and unless restrained will violate again, federal law.

NATURE OF PROCEEDINGS AND RELIEF SOUGHT

9. Plaintiff, ANGELA DEBOSE brings this Independent Action for Relief from Judgment to Remedy Fraud on the Court against Defendants, the UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and GREENBERG TRAURIG, P.A., pursuant to Federal Rule of Civil Procedure 60(b). DeBose seeks declaratory relief and damages for ill-gotten gains, along with prejudgment interest, civil penalties, and such further relief as the Court may deem appropriate.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the acts complained of raise federal questions under the Constitution and laws of the United States. This Court also has jurisdiction ancillary to its original exercise of jurisdiction in *Angela DeBose v. University of South Florida Board of Trustees*, et al., Civil Case No. 8:15-cv-02787-EAK-AEP. This Court also has jurisdiction because the amount in controversy exceeds $1,530,500.

11. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the fraud committed by the Defendants was practiced in this district and the injuries occasioned by the fraud was

suffered in this district by the named Plaintiff. The Defendants transact business in this district and the Defendants directly or indirectly made use of the means, instruments, or instrumentalities of communication or transportation in interstate commerce, or of the mails, particularly during the period relevant to the allegations, in this district.

THE PARTIES

The Eleventh Circuit wrote in *Atkins v. McInteer*, 470 F.3d 1350, 1358 (11th Cir. 2006) that the ("particularity requirement" for pleading fraud means that a plaintiff must plead facts as to time, place, and substance of the defendant's alleged fraud, specifically the details of the defendant's allegedly fraudulent acts, when they occurred, and who engaged in them"). Plaintiff will support this "particularity requirement" by pleading the following facts:

12. Plaintiff ANGELA DEBOSE was an employee of USFBOT from January 1988 until August 19, 2015 and at all times material hereto, is a resident of Hillsborough County, Florida.

13. Defendant University of South Florida Board of Trustees ("USFBOT") is the governing body of the University of South Florida (USF), and public body corporate created by Article IX, Section 7 of the Constitution of the State of Florida. Defendant USFBOT is based at 4202 E. Fowler Avenue, Tampa, Florida. At all times material hereto, 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. The definition of public body presumably includes public universities within the State and records of a State University System higher educational institution, as defined in *National Collegiate Athletic Association v. Associated Press.* As a public university created and authorized pursuant to the laws of the State of Florida, USFBOT is subject to the provisions of the Government in the Sunshine and Public Records Laws.

14. At all relevant times, GERARD SOLIS, is a USFBOT employee in the Office of the General Counsel. Defendant Gerard Solis at all times material hereto, is a resident of Hillsborough County, Florida

15. Defendant GREENBERG TRAURIG, P.A., is a professional association practicing law in the State of Florida with its principal place of business being in Hillsborough County, Florida. Greenberg Traurig, P.A. entered an agreement with USFBOT for private legal services. As a Contractor for the University of South Florida, Greenberg Traurig, P.A. provides legal advice and representation.

16. At all relevant times, RICHARD C. MCCREA, is an attorney at law licensed to practice law in Florida. Defendant Richard C. McCrea, Jr. at all times material hereto, is a resident of Hillsborough County, Florida.

17. At all relevant times, Defendant PAUL DOSAL, is a USFBOT employee and DeBose's former supervisor, against whom DeBose filed discrimination charges, and at all times material hereto, is a resident of Hillsborough County, Florida.

18. At all relevant times, Defendant ALEXIS MOOTOO is a USFBOT employee and at all times material hereto, is a resident of Hillsborough County, Florida.

19. At all relevant times, Defendant SUZANNE MCCOSKEY-BISHOP is a USFBOT employee in the Office of the Registrar and at all times material hereto, is a resident of Hillsborough County, Florida.

20. Defendant LOIS PALMER was hired by USFBOT on or around August 17, 2015, as an employee in the Office of the Registrar, and at material times hereto, is residing in Hillsborough County, Florida.

21. At all relevant times, Defendant VICTORIA JOHNSON (termed) was a USFBOT employee in the Office of Human Resources, and at material times hereto, resides in Hillsborough County, Florida.

22. At all times material hereto, the Defendants engaged in unconscionable schemes to deceive or make representations through the court system. The Defendants acted jointly, in concert and as agents of one another, concerning the matters alleged herein, and further ratified the wrongful acts of each other by, *inter alia*, knowingly acting together to conspire to conceal or omit material information not otherwise known or available about the destruction of DeBose's personnel and employment files maintained in the registrar's office. The Defendants abused their power by commandeering students who worked in the registrar's office to destroy DeBose's files and other public records and contracting with a third party, using state funds from Florida citizens and taxpayers, in violation of Federal Rule of Civil Procedure 37 and other federal law. Defendants concealed the destruction and misrepresented that no destruction of the records occurred and that the records DeBose alleged were destroyed, did not exist.

23. When the Defendants made these representations, the Defendants knew them to be false. However, the representations were made by Defendants with the intent to defraud and deceive Plaintiff. At the time of the destruction of Plaintiff's employee files, Plaintiff was ignorant of Defendants' action. Plaintiff could not, in the exercise of reasonable due diligence, have discovered the Defendants' unlawful action. For what Plaintiff learned, she took appropriate action through the court to protect her interests and preserve her evidence. Had Plaintiff known the actual facts, she would have realized and made known to the court that its reliance on the Defendants was unjustified.

24. As a proximate result of Defendants' fraud, deceit, and destruction alleged herein, Plaintiff was damaged in the sum of $1,530,500.

25. In doing the acts alleged herein, the Defendants acted with oppression, fraud, and malice, and Plaintiff is entitled to punitive and treble damages from Greenberg Traurig, in excess of $1,530,500.

26. Therefore, this is also a Complaint for damages for $4,591,500. All conditions precedent have occurred, have been performed, or have been waived, including the notice requirement of Section 768.28, Florida Statutes.

THE FACTS

27. In December 2014, Plaintiff filed a discrimination complaint against the USFBOT with the Equal Employment Opportunity Commission (EEOC).

28. In February 2015, Plaintiff filed for a temporary restraining order and/or preliminary injunction against the USFBOT with the Middle District Court of Florida, Case No. 8:15-mc-00018-EAK-MAP, and subsequently added a claim of Retaliation to her EEOC complaint.

29. On March 27, 2015, DeBose sent Defendants a written notice to preserve her evidence.

30. On May 19, 2015, DeBose received notice of her separation and termination from USFBOT. At that time, DeBose made a verbal public records request for a copy of her departmental files, documents from her hard-drive, and her ESI in order to preserve and have in her possession, evidence to support her complaints and case in chief at trial.

31. On June 22, 2015, DeBose filed a Petition for Writ of Mandamus to obtain responses to the public records requests she made orally and in writing to USFBOT.

32. On August 12, 2015, Solis responded to DeBose's May 19, 2015 public records request DeBose made to Dr. Kofi Glover. Solis provided DeBose a charge document, seeking to charge

DeBose $9,083 to inspect/copy the nonexempt public records she created or maintained during the course of her employment. At the time of Solis's email, and unknown to DeBose, USFBOT had already contracted with a third party to shred DeBose's departmental files. DeBose was not notified of the destruction nor provided a copy of the department files she requested, which would have been, if done inadvertently instead of willfully, a less severe and lawful means of removing DeBose's files.

33. Defendants knew or had reason to know DeBose's files contained documents and evidence needed to maintain and prove her claims and damages. On behalf of USFBOT, Solis did not provide any responsive records to the public records request DeBose on May 19, 2015.

34. In his capacity as USFBOT's representative, Richard McCrea had a duty to request a litigation hold on DeBose's records. In his capacity as USFBOT's internal counsel, Solis had a duty to place a litigation hold on DeBose's records. However, McCrea and Solis willfully, without probable cause and without regard to the rights, health, and feelings of the Plaintiff; without right and without consent of the Plaintiff; and wholly against the wishes of the Plaintiff; facilitated the cover up of the destruction of DeBose's files and other similar public records DeBose needed to prove her claims and damages.

35. It is unreasonable to believe that the Defendants did not anticipate that DeBose would have need of these records; Defendants willfully violated Fed.R.Civ.P. 37 and other laws.

a. In June 2014, Solis had actual knowledge of the potential for litigation between DeBose and USF. Solis was informed by Dosal that DeBose had complained of discrimination.

b. In July 2014, Solis had knowledge that DeBose filed an EthicsPoint Complaint.

c. In August 2014, Solis had knowledge that DeBose filed discrimination complaints internally with the USF Office of Diversity, Inclusion and Equal Opportunity.

d. In December 2014, Solis had knowledge that DeBose filed a charge of discrimination with the EEOC.

e. In February 2015, Solis and McCrea had knowledge that DeBose filed a TRO and preliminary injunction with the Middle District Court of Florida, Tampa Division.

f. On March 27, 2015, Solis and McCrea had knowledge of DeBose's preservation notice and her expectation that her records would be available at trial.

g. On June 22, 2015, Solis and McCrea had knowledge of DeBose's Petition for Writ of Mandamus to obtain her department files and ESI.

h. On July 1, 2015, Solis and McCrea had knowledge of DeBose's Emergency Preservation Motion in state court action for mandamus relief, *Angela DeBose v. University of South Florida Board of Trustees*, Case No. 15-CA-005663. At all relevant times, Defendants opposed the Plaintiff's motion to preserve her evidence. The Defendants represented to the court that they understood their legal duty to do so and that an order was unnecessary. The Defendants knew of the court's justified but misguided reliance on Defendants' representations that they would protect and preserve DeBose's evidence.

i. On July 13, 2015, Solis and McCrea had knowledge of DeBose's Preservation Motion in Case 8:15-mc-00018-EAK-MAP to protect her ESI and evidence generally. At all relevant times, Defendants opposed the motion as unnecessary. Defendants were aware of the court's August 6, 2015 order in reliance on Defendants that Defendants knew and understood their duty to protect and preserve DeBose's evidence.

j. In August 12, 2015, Solis and McCrea had knowledge of a written follow-up to her oral May 19, 2015 public records request to Dr. Kofi Glover, who stated he did not recall receiving such a request. If Plaintiff's request was unknown, Defendants could have disclosed the destruction as a mistake, inadvertence, or negligence; however Defendants fraudulently concealed the destruction and did not, at all relevant times disclose that the destruction of DeBose's files had occurred. Furthermore, the Defendants have not at any time produced DeBose's ESI or departmental files through discovery or in response to DeBose's public records requests.

k. On August 31, 2015, DeBose filed a motion for sanctions in Case 8:15-mc-00018 -EAK-MAP following Solis's statement that telephone records requested from him via DeBose's public records request could not be provided because the "records were transitory" and had been destroyed. Solis and McCrea had knowledge of DeBose's EEOC discrimination and retaliation charges, the litigation underway in 8:15-mc-00018 -EAK-MAP and took no steps to preserve the telephonic records but rather allowed or facilitated their destruction. The Defendants were aware of the court's reliance by virtue of its October 14, 2015 order denying sanctions that Defendants would protect and preserve DeBose's evidence.

l. On December 4, 2015, Solis and McCrea knew or had reason to know that DeBose, who filed suit in federal court, would request her files and ESI through discovery, to have the documents available at the dispositive phases of the case and for trial.

36. The Defendants did not preserve DeBose's records but rather willfully, intentionally, and maliciously in bad faith, destroyed them in violation of Fed. R. Civ. P. 37 and other laws.

37. The Defendants destroyed DeBose's files, knowing that DeBose was entitled to copies of any and all documents requested. The Defendants lied and make false statements to the court, claiming that the destruction was broadly noticed or publicized around the University's campus such that DeBose could have retrieved her files.

38. USFBOT's use of a third party to destroy DeBose's records was in violation of federal law, including Federal Rule of Civil Procedure 37. Defendants refused to produce documents related to the destruction or identify the third party that carried out the destruction. Defendants thwarted DeBose efforts to subpoena such records.

39. On July 7, 2016, Defendants answered DeBose's Third Amended Complaint in her federal suit.

a. At all times, the Defendants lied, denying in bad faith, having willfully, maliciously, and malignantly destroyed Plaintiff's evidence.

b. Defendants denied spoliation of any kind (i.e. First Party and Third Party) but in bad faith made the false claim that DeBose alleged First Party Spoliation so that DeBose's allegation against them would not be actionable.

c. As a result of Defendant's false statements of material fact, false averments, and misrepresentations, several of DeBose's meritorious claims for which she was owed damages and should have been compensated, were dismissed.

40. On November 10, 2016, Carrie Garcia was deposed in Case No. 8:15-cv-02787-EAK-AEP. Garcia denied at deposition that the personnel files maintained in the Office of the Registrar were sent out for shredding.

41. On November 16, 2016, Paul Dosal was deposed in Case No. 8:15-cv-02787-EAK-AEP. Dosal denied ordering the destruction and also denied that the departmental employee files were shredded.

42. On November 16, 2016, Alexis Mootoo was deposed in Case No. 8:15-cv-02787-EAK-AEP. Mootoo, who gave the order to Suzanne McCoskey Bishop to "get rid of the files" on Dosal's behalf, also denied knowledge of the shredding.

43. Following the depositions, DeBose obtained evidence of the Defendants fraud, having learned from Bushe-Whiteman that Defendants used student workers to carry out the destruction of DeBose's files and the other files in the department. DeBose obtained and submitted the Affidavits of Delonjie Tyson ("Tyson") and Vanessa Centelles ("Centelles").

44. On November 22, 2016, Centelles provided her affidavit, attesting to her direct knowledge of seeing DeBose's files put in the shred bins and being ordered to do so by Suzanne McCoskey Bishop ("McCoskey Bishop").

45. On November 23, 2016, Tyson provided her affidavit, attesting to their direct knowledge and also being commandeered by McCoskey-Bishop to put the employee files into the shred bins.

46. Centelles stated she saw and handled DeBose's files. Tyson and Centelles stated that DeBose's files were put in the shred bins along with the others by the students, after being ordered by McCoskey-Bishop to do so. Centelles and Tyson stated the department employee files were put in bins for shredding in early summer 2015, a short time after DeBose left the registrar's office.

47. In December 2016, the Defendants were notified by DeBose's counsels of a pending motion for sanctions.

48. On December 29, 2016, Solis summoned McCoskey Bishop to the USF Office of the General Counsel about the departmental files.

49. McCoskey Bishop, upset when she returned to the Office of the Registrar, was overheard by several employees, saying she would not take the blame for the destruction of the files.

50. On January 20, 2017, Bushe-Whiteman informed DeBose that McCoskey Bishop would be changing her story: After her meeting with Solis, McCoskey Bishop would state that "Victoria [Johnson]" in HR told her that it was okay to shred the records. McCoskey Bishop would not name Mootoo or Dosal as having ordered the shredding of the files.

51. On January 23, 2017, Defendants opposed the motion for sanctions and submitted affidavits from McCoskey Bishop, Lois Palmer, and Victoria Johnson, attesting to the story in the manner that Bushe-Whiteman warned.

52. In scripted affidavits written by the Defendants, McCoskey Bishop, Lois Palmer, and Victoria Johnson falsely stated that the shredding occurred in October 2015 (Fall) and not the Summer 2015. McCoskey Bishop, Lois Palmer, and Victoria Johnson submitted perjured statements that Lois Palmer, the *new* registrar, ordered the shredding.

a. To induce the court that Defendants should not be sanctioned, Defendants falsely misrepresented the timing of the shredding to avoid circumstantial evidence of the continuing recurrence of retaliation against DeBose, in close proximity and successive months after DeBose's discrimination, retaliation, and MDF complaints.

b. To induce the court that Defendants should not be sanctioned, Defendants lied about Lois Palmer, who was not present at USF at all relevant times during the shredding, to imply a nondiscriminatory, nonretaliatory reason for the shredding: *"I was surprised to discover a large number of files in an unsecured cabinet in a common area of the*

Registrar's Office on the USF Tampa campus. The cabinet contained what appeared to be copies of employee personnel records for both current and former employees...I was concerned that a number of files contained records associated with Family Medical Leave, which I consider to be sensitive employment records.... I was able to confirm that the materials were duplicative of records kept in the Official University Personnel file in Central Human Resources....the files were shredded per my instructions within thirty days of being placed in the shred bins."

c. Palmer falsely stated that she was present during the shredding to aid the Defendants in committing fraud on the court;

d. Palmer was not appointed University Registrar until August 17, 2015, after the shredding had already occurred;

e. The shredding was not "routine" but a first-time mass shredding of files maintained on current and former employees since the 1960s.

53. DeBose's counsel submitted the affidavits of Verna Glenn, Barbara Lamphere, and Kim Bushe-Whiteman who refuted the false statements proferred by the Defendants. Bushe and Lamphere stated that the files included documents that were not maintained by Human Resources. Lamphere stated other USF departments maintain similar records for their employees. Bushe and Lamphere stated the files were in locked lateral filing cabinets in a private office, located in the Registrar's Office. Glenn stated she was not notified of the destruction as the Defendants claimed and that her medical records provided pursuant to her use of sick/FMLA were destroyed.

54. On February 7, 2017, fourteen (14) days later, USFBOT filed a second round of affidavits from McCoskey Bishop, Palmer, and Johnson expressing new-found uncertainty that

the destruction actually included DeBose's records to induce the court to believe that the student workers, Centelles and Tyson, got it wrong.

55. At the February 8, 2017, the Defendants stipulated that "everything was destroyed."[1] The magistrate stated it would be noted for the record."[2] At all relevant times, Defendants denied the destroyed documents included contracts and other related documents that could be used as evidence at trial. Through lies, fraud, and deceit, the Defendants induced the court to believe that USFBOT stopped using written contracts in 2005. Additionally, in DeBose's state court proceeding 15-CA-005663, the Defendants deceitfully and fraudulently held out to the state court that DeBose's ESI and electronic files were not provided because DeBose failed to pay the $9,083 cost; Defendants have neither admitted nor conceded in state court that the public records were in fact destroyed.

56. On March 8, 2017, DeBose moved the court to allow oral testimony from Bushe-Whiteman, Marquisha Wilson, and Willette Roach at hearing scheduled on March 21, 2017, on Plaintiff's Motion for Sanctions, to testify to their direct knowledge that:

a. Alexis Mootoo visited the Office of the Registrar and ordered Suzanne McCoskey Bishop to have DeBose's and the other departmental employee files shredded.

b. Mootoo stated that "Dr. Dosal" ordered that the files be destroyed.

c. Mootoo was working with Dosal to help him fire DeBose.

d. Mootoo ordered McCoskey Bishop to "get rid of all the files—not just Angela's."

e. In June or July 2015, McCoskey-Bishop ordered approximately ten student workers in the Office of the Registrar to put all employee files in the shred bins for destruction.

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[1] See February 8, 2017 hearing transcript, (Doc. No. 202) [35:11-24, 17:20].
[2] February 8, 2017 hearing transcript, (Doc. 202) [39:17-20].

57. At all relevant times, Defendants opposed the oral testimony of Bushe-Whiteman, Wilson, and Roach.

58. On March 21, 2017, the Defendants again stipulated at hearing that "everything was destroyed."[3] At all relevant times, Defendants denied the destroyed documents included contracts and other related documents that could be used as evidence at trial. Through lies, fraud, and deceit, the Defendants induced the court to believe that USFBOT stopped using written contracts in 2005.

59. On May 23, 2017, the Court again held a hearing on Plaintiff's motion for sanctions. The Defendants falsely represented to the court that they only denied the destruction as to Paul Dosal. The Defendant stated the court should find them negligent or grossly negligent in destroying Plaintiff's evidence. As USFBOT's counsels, Solis and McCrea understood that a claim of negligence against the state agency would fail against a sovereign immunity defense.

60. The court took nearly three months to rule on the motion for sanctions. On August 7, 2017, the court denied the motion. The court stated it found Palmer's statement credible.

61. On April 12, 2018, Bushe-Whiteman submitted a sworn statement to the Tampa Police Department ("TPD") that Mootoo had been helping USFBOT officials with trying to get rid of DeBose. Bushe-Whiteman stated that Mootoo informed her in June 2014 that DeBose was going to be fired. Bushe-Whiteman also testified the filing cabinets containing the records were not in an unsecure location but locked and kept in her private office. Bushe-Whiteman's statement implicated Mootoo and Dosal in the destruction. Bushe-Whiteman made a connection to the destruction and Dosal's plans to "get rid of Angela" in June 2014. Bushe-Whiteman corroborated the information she provided to DeBose in her affidavit and several text messages.

[3] March 21, 2017 hearing transcript (Doc. 222) [19:11-20].

62. On July 18, 2018, Delonjie Tyson, Verna Glenn, and Barbara Lamphere were deposed.

63. At deposition, Tyson testified that the shredding occurred in the Summer of 2015 – and not late Fall. Tyson also stated that the registrar at the time the personnel files were destroyed was Carrie Garcia. Tyson identified Zayna James as another student worker who had knowledge of the shredding in the summer of 2015, and who also assisted with placing the personnel files in the shred bins. Tyson reaffirmed that Lois Palmer was not at USF during the shredding incident in a third Affidavit filed on February 24, 2019.

64. DeBose subsequently requested to depose Palmer, McCoskey Bishop, and Johnson. However, on July 10, 2018, the Defendants immediately filed a Motion for Protective Order.

65. On July 30, 2018, Plaintiff filed a motion to strike the January 23, 2017 and February 7, 2017 affidavits of Palmer, McCoskey Bishop, and Johnson as a sham and requested an evidentiary proceeding to establish whether or not Palmer was the registrar when the shredding of DeBose's files occurred and whether Palmer ordered the destruction of all of the files, as she claimed. The court did not hold a hearing and denied the motion to strike. The court, at all relevant times, induced by Defendant's misrepresentations, unreasonably relied on the affidavit submitted by Palmer, failing to properly and impartially adjudicate the matter--unfairly hampering the presentation of the Plaintiff's claims pursuant to the motion to strike.

66. In the push to trial, the court granted the Defendants' motions in limine to exclude any mention of the destruction of Plaintiff's files or Plaintiff's public records requests for her files and ESI. The court denied Plaintiff's motions for an adverse inference and for a stipulation concerning the destruction.

67. On September 26, 2018, following a two-week trial, the jury returned a verdict in DeBose's favor on her disparate treatment discrimination and retaliation claims for $310,500.

68. On November 21, 2018, the clerk taxed costs for DeBose of $35,325.

69. On December 11, 2018, at an evidentiary hearing on front pay, the court determined that DeBose would be awarded front pay, at a minimum of two years and a maximum of no more than five years. DeBose submitted evidence to show that USFBOT still used written contracts, contrary to the false statements made by Defendants that USFBOT stopped using written contracts in 2005. DeBose presented the 2019 contract extension of Dr. Ralph Wilcox, USF Provost, and Dr. Paul Dosal, USF Vice Provost and DeBose's former supervisor. DeBose's breach of contract claims were dismissed based on the Defendants' false statements, nondisclosure of DeBose's contracts in HR's possession, and destruction of DeBose's copies maintained in her department personnel files. The Defendants falsely stated at hearing that contracts are no longer offered for DeBose's classification. Plaintiff presented evidence that she and Dosal had the same Professional classification. Defendants fraudulently concealed from the court that their assertions were based on DeBose's racial classification. The court excluded at summary judgment statistical evidence and expert testimony to show that USFBOT discriminates against DeBose's protected classification (black females/blacks) in all phases of employment.

70. On February 14, 2018, the court overturned the jury verdict and reversed judgment in USFBOT's favor. The court granted USFBOT's motion for judgment as a matter of law (JMOL) and motion for conditional trial. The court also entered a Second Amended Judgment in favor of USFBOT on Plaintiff's retaliation claim, stating

71. On February 15, 2018, the court reversed the award of front pay and costs.

72. The court stated, "*DeBose takes nothing.*"

73. On February 18, 2018, the court ordered the parties to mediate. The Defendants tainted the mediation, submitting an ex parte communication that contained false statements to sway or influence the mediation and force Plaintiff to settle for an unfair amount.

74. On February 24, 2019, DeBose filed a motion to set aside the judgment or alternatively for a new trial. Plaintiff needed only to show that the evidence is sufficient to support one cause of action to prevail on her motion for new trial; or conversely, unless Defendant prevailed on each theory of liability, the Eleventh Circuit has held, the case must be remanded for a new trial. *Royal Typewriter Co. v. Xerographic Supplies Corp.*, 719 F.2d 1092, 1099 (11th Cir. 1983).

75. DeBose presented substantial testimony and evidence admitted at trial. Additionally, DeBose filed the February 20, 2019 affidavit of Delonjie Tyson to show that the Defendants were not entitled to JMOL in that Defendants did not establish their claims and defenses in the case by unimpeached testimony or disinterested witness as evinced by the destruction of DeBose's evidence. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151 (2000). Palmer gave contradictory, false testimony. Palmer lied about her presence and giving the order for the destruction. The Defendants induced the court to believe that Palmer was credible, in admitting to ordering the destruction inadvertently, mistakenly or negligently. However, the Defendants fraudulently concealed Palmer's employment with Ellucian, Palmer's knowledge of DeBose's EEOC complaint, Palmer's negotiation with USFBOT to replace DeBose prior to DeBose's termination, Palmer's start date, and that Palmer would have obtained Dosal's approval to carry out the massive destruction of all the files. The errors and omissions were committed through fraud on the courts.

76. On April 24, 2019, the court denied Plaintiff's motion to set aside the judgment to USFBOT and denied Plaintiff's motion for new trial. The court denied Plaintiff, who won the

jury verdict. Notwithstanding the court's action to overturn the jury's verdict, Plaintiff is still the prevailing party on her disparate treatment discrimination claim. Nevertheless, the court denied Plaintiff's motion for new trial. The errors and omissions were committed through fraud on the courts.

77. In March 2019, DeBose located student worker, Zayna James, who provided DeBose her affidavit. In her affidavit, Zayna James definitively stated that Lois Palmer was not the Registrar when the personnel files were destroyed; Carrie Garcia was Acting Registrar: "***Although I do not remember much more, I do remember that the acting registrar, Carrie Garcia, was in charge of the office after Ms. DeBose left. Ms. Garcia was in charge when the files were shredded. I worked in the registrar's office when Ms. Garcia was replaced with Ms. Lois Palmer; this happened a few months after the shredding.***"

78. The Defendants fabricated and manufactured a false story and thereby committed fraud upon the courts. The Defendants understood that if Palmer was not there, Palmer's, McCoskey Bishop's, and Johnson's affidavits would be stricken or disbelieved. The Defendants understood that Dosal's, Mootoo's, and Garcia's false, misleading, perjurious deposition testimony to deny or disclaim knowledge of the shredding of DeBose's files, would be disbelieved.

79. The Defendants willfully, maliciously, self-servingly, and fraudulently suborned perjury from Defendant USFBOT's employees. The employees went along from a self-serving interest to protect their employer and their employment.

80. The Defendants unlawfully refused to furnish DeBose with copies of the records in her files and when DeBose persisted, the Defendants willfully abused its power to commandeer innocent student workers and an unsuspecting third party to violate federal law.

81. The files existed and contained documents that would have proven DeBose's employment status, employment contracts, and strong qualifications for the Assistant/Associate Vice President of Enrollment Planning & Management position.

82. The Defendants falsely and maliciously claimed the documents were nonexistent. The Defendants falsely and willfully stated that no such destruction of any sort occurred of DeBose's employee files or the files of other USF registrar office employees. The Defendants' concealment, nondisclosure, and misrepresentations were not done through inadvertence, mistake, or negligence. The Defendants acted willfully and maliciously, without regard for the rights of DeBose, but did so for their own financial gain and reputation.

83. The Defendants made multiple materially false statements that, taken together, left the court with false and misleading impressions about the destruction of DeBose's evidence and Palmer. The Defendants, including Palmer, knew or were reckless in not knowing that their statements were false and misleading. The Defendants statements were willful, intentional, voluntary, and fraudulent. The Defendants did not disclose any material facts that were known to them about the destruction when it actually occurred. The Defendants omitted material information or facts that they had a duty to disclose. Despite numerous inquiries, pleadings, hearings on February 8, 2017, March 21, 2017, and May 23, 2017 on Plaintiff's motion for sanctions, and similar opportunities to clarify what happened to DeBose's files, the Defendants kept silent, to prevent the information from coming to light.

COUNT I – FRAUD ON THE COURTS

84. Plaintiff re-alleges and re-avers paragraphs 1 through 80 above and sets forth the same with equal force, as if stated fully herein.

85. Based on her information, knowledge, and belief, DeBose alleges her department files included her employment contracts, including but not limited to her 2015 contract and 2019 contract extension, appointment status forms, offer letters, leave and attendance, absence, projects, certificates, letters of commendation, and other similar records.

86. Based on DeBose's knowledge and belief, her department files contained records that cannot be duplicated by Human Resources or any other USFBOT department.

87. DeBose's files also contained documents that were "personnel-related" or "records estimated for a potential lawsuit", and therefore should have been retained.

88. The Defendants did not preserve DeBose's records but willfully destroyed them. DeBose's records should have been retained under state and federal law.

89. The records were discoverable under Fed.R.Civ.P. 37.

90. DeBose was entitled to copies of any and all documents requested.

91. The Defendants abused their power and used its student employees to destroy DeBose's records in violation of federal law.

92. The Defendants unlawfully refused to furnish DeBose with copies of the records she previously maintained in the course of her employment and pertinent to litigation against her employer.

93. The six Affidavits advanced in support of USFBOT's claims and defenses from Palmer, McCoskey Bishop, and Johnson were intended to, and ultimately did, cover-up and suppress conclusive evidence that Defendants willfully, intentionally, maliciously, and malignantly destroyed DeBose's files.

94. Moreover, the Affidavits advanced in support of USFBOT's claims and defenses were intended to, and ultimately did, set up for the Defendants favorable judicial rulings built on

fraudulent statements that Palmer was the registrar at the time and ordered the destruction, when in fact she was not yet hired or present at USF.

95. The Affidavits advanced in support of USFBOT's claims and defenses were intentionally and knowingly false when made or were made in reckless disregard of whether the statements contained therein were true or false. Palmer, McCoskey Bishop, and Johnson acted with the knowledge of the falsity of statements in the Affidavits scripted by Solis and McCrea or with reckless disregard for the truth or falsity of their statements. The falsity of the statements is apparent upon reading the documents.

96. The Defendants believed the court would not sanction them, even though sanctions were clearly warranted. The Defendants intended that the courts would rely upon their false statements and honor their false statements and deny DeBose any evidence to put on at trial, to which she was lawfully entitled. The Defendants further intended that the courts would enter judgments in their favor and that appellate courts would rely upon Defendants' false statements to affirm judgments that were favorable to them. Likewise, the Defendants intended that the courts would reverse DeBose's judgments.

97. By the forgoing conduct, the Defendants practiced a fraud on this Court and other federal and state courts.

98. The Defendants' fraud on the courts is manifestly unjust and shocks the conscience. The Defendants' fraud directly harmed DeBose who was forced to march through a series of appeals to defend her jury verdict and judgment, ultimately lost her judgment, and had retribution taken against her for rejecting unfair settlements for far less than she was entitled. Moreover, the Defendants' fraud was intended to and did subvert the processes of this Court and the Court of Appeals.

99. As a result of the Defendants' fraud on the courts, DeBose was deprived of the judgment to which she was lawfully entitled and suffered substantial loss for which she should be compensated in damages. The Second Amended Judgment and/or Judgment as a Matter of Law ("JMOL") the court entered in favor of USFBOT after wrongly setting aside DeBose's judgment, is tainted by the Defendants' fraud, and is no bar to Plaintiff's relief pursuant to this Court's authority under the Federal Rules and the Court's inherent powers.

100. The proper measure of the Plaintiff's damages for the Defendants' fraud on the courts is the amount DeBose is entitled to pursuant to the judgment, increased to present value at a market interest rate in order fully and fairly to compensate Plaintiff for her loss. Such damages are in excess of $550,000.

WHEREFORE, Plaintiff demands judgment against the Defendants for damages, interest, costs, prejudgment interest, and for such other relief as the Court deems fair and just. By reason of the Defendants' fraud on the courts, the Plaintiff respectfully asks the Court to:

a. Rule that USFBOT, through Gerard Solis, Lois Palmer, and other defendants, and Greenberg Traurig, through Richard McCrea, perpetrated a fraud on the federal courts in the *Angela DeBose v. University of South Florida Board of Trustees*, et al. (Case No. 8:15-cv-02787 -EAK-AEP);

b. Award Plaintiff (1) compensatory damages of $300,000 for four years of pain and suffering caused by Defendants' deceit and fraud; (2) other damages of $310,500 for the defendants fraud, (2) costs of litigation estimated at no less than $35,000, (3) unrecovered fees of $30,000, and (4) lost compensation of $175,000—all including interest at a market rate since September 2018;

c. Award Plaintiff (5) opportunity damages for AVP EPM position of $90,000 and (6) contract damages of $590,000—including interest at a market rate since June 2015 when DeBose's records were destroyed; and (7) further relief as this Court deems fair and just.

WHEREFORE, Plaintiff demands judgment against the Defendants for damages, interest, costs, prejudgment interest in excess of $1,530,500 (one million, five hundred thirty thousand, five hundred dollars), and for such other relief as the Court deems fair and just.

Respectfully submitted this **9th** day of May, 2019.

/s/ Angela DeBose

Angela DeBose, Plaintiff

1107 W. Kirby Street
Tampa, FL 33604
813-932-6959

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No: 8:19-cv-1132-T-30AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, GREENBERG TRAURIG, P.A.,

Defendants.

ORDER

This cause is before the Court upon Plaintiff's Independent Action for Relief from Judgment to Remedy Fraud on the Court (Doc. 1) (the "Independent Action"). A review of the Independent Action reveals that it should be dismissed without prejudice to Plaintiff to file a motion for relief from judgment in the case *Angela DeBose v. University of South Florida Board of Trustees, et al.*, No. 8:15-cv-2787-EAK-AEP ("DeBose I").

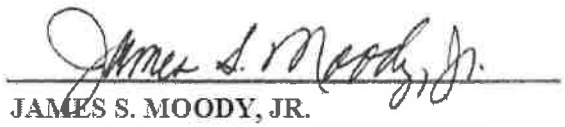
Specifically, *Pro Se* Plaintiff Angela DeBose is seeking relief pursuant to Rule 60(b) of the Federal Rules of Civil Procedure related to Defendants' purported fraud on the court in DeBose I. Rule 60(b) provides in relevant part that "*[o]n motion and just terms*, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Fed.R.Civ.P. 60(b)(3) (emphasis added).

The crux of Plaintiff's Independent Action is that the court's Second Amended Judgment entered in DeBose I (*See* Doc. 549)—which set aside a jury verdict in DeBose's favor—was "tainted by the Defendants' fraud." (Doc. 1). The Independent Action delineates the alleged fraud, all of which occurred in DeBose I. In light of these fraud allegations, the Court concludes that the appropriate course is for Plaintiff to file a motion in DeBose I pursuant to Rule 60(b). Indeed, the clear language of Rule 60(b) permits the filing of such a motion when fraud is alleged.[1]

It is therefore **ORDERED and ADJUDGED** that:

1. This action is dismissed without prejudice for the reasons explained herein.
2. The Clerk of Court is directed to close this case and terminate any pending motions as moot.

DONE and **ORDERED** in Tampa, Florida on May 16, 2019.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel/Parties of Record

[1] The Court expresses no opinion on the merits of such a motion. Rather, the Court is simply explaining that the appropriate action is to file a motion, not an "independent action."

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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

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

ANGELA W. DEBOSE,

Plaintiff-Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

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

Defendants-Appellees.

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

(April 27, 2020)

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

PER CURIAM:

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

I

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

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

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

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

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

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

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

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

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

* * *

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

II

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

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

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

A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B

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

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

C

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

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

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

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

D

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

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

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

III

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

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

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

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

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

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

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

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

IV

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

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

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

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

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

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

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

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

* * *

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

V

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

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

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

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

VI

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

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

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

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

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

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

AFFIRMED.

R.A. 332

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 27, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-14637-DD ; 19-10865 -DD
Case Style: Angela DeBose v. University of South Florida, et al
District Court Docket No: 8:15-cv-02787-EAK-AEP

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, each party to bear own costs.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Bradly Wallace Holland, DD at 404-335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs

R.A. 333

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

ANGELA DEBOSE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 8:15-cv-02787-EAK-AEP**
	)	
UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, et al.,	)	
	)	
Defendants.	)	
_____/		

PLAINTIFF'S INDEPENDENT ACTION FOR RELIEF FROM JUDGMENT TO REMEDY FRAUD ON THE COURT

Plaintiff, ANGELA DEBOSE ("DEBOSE"), files suit and this independent action for relief from judgment to remedy fraud on the court pursuant to Federal Rule 60(d)(1) and (3). In this action, Plaintiff specifically files allegations of fraud on the court against Defendant, UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES ("USFBOT"), GERARD SOLIS ("SOLIS"), RALPH WILCOX ("WILCOX"), PAUL DOSAL ("DOSAL"), ALEXIS MOOTOO ("MOOTOO"), CARRIE GARCIA ("GARCIA"), LOIS PALMER ("PALMER"), SUZANNE MCCOSKEY-BISHOP ("MCCOSKEY-BISHOP"), VICTORIA JOHNSON ("JOHNSON"), RICHARD MCCREA ("MCCREA"), and GREENBERG TRAURIG, P.A. ("GREENBERG"), based on new evidence, misconduct by opposing parties and their representatives, and for other reasons that justify relief.

BACKGROUND

DeBose timely filed the instant action on May 10, 2019 under 60(d) and 60(b) requirements, which was docketed as Case No. 8:19-cv-1132-T-30AEP. Through the court's random process to assign cases, the Honorable Judge James S. Moody, district court judge in

related case 8:19-cv-00200-JSM-AEP, was selected as well as Magistrate Anthony E. Porcelli. The docket and documents in Case No. 8:19-cv-1132-T-30AEP are attached hereto. With the independence of both judges reasonably in question, Plaintiff filed a motion to reassign the case to a judge and magistrate with no prior involvement in Plaintiff's federal cases. However, Judge Moody dismissed the action without prejudice and demanded that it be filed in the instant case before former presiding judge, the Honorable Elizabeth A. Kovachevich. Plaintiff objected on several grounds, not wishing to impact the progress of her appeals, but also having moved for Judge Kovachevich to voluntarily recuse herself, given that her impartiality was doubtful and put DeBose in reasonable apprehension and fear that she would not receive a fair trial. When Judge Kovachevich declined to step aside, Plaintiff sought her disqualification in prohibition before the Eleventh Circuit Court. Judge Moody denied Plaintiff's motion for a Rule 62.1 Indicative Ruling, and insisted that Plaintiff file her action before the Kovachevich court where:

a. The court denied sanctions, an adverse inference, and any stipulation concerning the Defendants admitted "first-time" mass destruction of all personnel files in the department a short time after DeBose's termination that destroyed DeBose's personnel files, including evidence of her 2015 employment contract and extended contract through FY 2019-20. USFBOT senior leaders, and specifically Paul Dosal, ordered that DeBose's records and the others, be put in shred bins for destruction. At all times this matter was under review, the court declined Plaintiff's request for an evidentiary hearing that included oral testimony. McCrea, on behalf of USFBOT and Greenberg, denied that the destruction of the files and/or DeBose's records occurred in responsive pleadings and at hearing. The first change in the Defendants' story came after DeBose's former counsels served the affidavits of student workers, Vanessa Centelles and Delonjie Tyson, which exposed USFBOT's destruction of DeBose's files and the mass destruction of all other employee personnel files. The Defendants had an epiphany twenty-eight (28) days later and changed their stories—from outright denials to "we only destroyed duplicates." Though discovery was over, the court allowed the Defendants to argue this new/recent defense.

However, with discovery over, the court nevertheless declined to require the Defendants to produce the original documents, if they existed. Additionally, the court had actual knowledge that USFBOT's Ralph Wilcox gave false testimony in claiming that USF stopped using written employment contracts. DeBose was offered and accepted a 5-year contract extension that Dosal stated was like his and Wilcox's. USFBOT produced Wilcox's and Dosal's 5-year contract extensions at the end of trial. At a hearing on the award of front pay, Solis and McCrea stated that contracts were eliminated specifically for DeBose's *classification*. McCrea falsely stated falsely that the Defendants only denied the destruction as to Paul Dosal. McCrea's statement is not supported by the record. The court did not apply Florida Law, specifically Chapter 119, F.S. because no mental state is required, except that the Defendants "knowingly" destroyed the records. Under Florida law, if a knowing destruction was committed by the Defendants, they would have been stripped of any affirmative defenses. Despite this, the magistrate allowed the Defendants to provide an affirmative defense after discovery was closed, while holding the Plaintiff to a different and much stricter standard.[1]

b. The court misapplied the law to exclude 550 pages of Plaintiff's evidence on the erroneous ground of improper authentication. One would have to believe that neither the judge nor the magistrate knew of the change in the law to throw out all of DeBose's evidence. The court's error impacted DeBose's substantial rights to a trial by jury against Ellucian and dismissed meritorious claims against USFBOT.

c. The court excluded DeBose's fact witnesses, including Earle C. Traynham and Albert Colom who were to testify about Wilcox's tortious interference with DeBose's business opportunity at the University of North Florida (UNF). The court also excluded DeBose's expert witness affidavit, statistical data and analysis report, purportedly because DeBose's former counsels did not include them as part of Rule 26 disclosures. At the time, when objecting to her counsels' defective withdrawal, DeBose stated that she could not see the discovery docket to know the status/condition of the case. The

[1] The magistrate disallowed DeBose from obtaining meaningful discovery from USFBOT after the defective withdrawal of her counsels. The magistrate inquired of DeBose at hearing on the motion to withdraw by her counsels, whether her failure to file a motion to compel discovery was excusable. The withdrawing counsels were present, and the magistrate's question should have been posed to them. This was error. Additionally, at pretrial hearings, the magistrate excluded all of DeBose's witnesses because, unknown to DeBose, her former counsels did not make Rule 26 disclosures.

magistrate nevertheless stated that DeBose was competent to represent herself and that she just "might win". In pretrial hearings, DeBose argued any neglect on her part should be excused, given the circumstances of the withdrawal, etc. The magistrate nevertheless excluded the witnesses. DeBose also filed a motion to compel discovery from USFBOT because no motion to compel had been filed previously by DeBose's withdrawing counsels. The magistrate denied the motion, stating it was too late—that the discovery deadline had passed.

d. The court granted motions in limine to exclude relevant, probative evidence from DeBose, allegedly because the evidence was unfairly prejudicial to USFBOT. The court excluded any evidence or testimony about the destruction of DeBose's personnel files, her 2015 employment contract, her 5-year contract extension, the 'grandfather' clause in her contract to payout the total leave balance in the event of a compulsory leave, her fact witnesses, her expert witness, and the vandalism to her car while parked in the lot at USF.

e. When DeBose prevailed at trial against USFBOT on her discrimination and retaliation claims with the evidence she had, the court that coordinated with the Defendants and the state court to send her to trial with no evidence, delayed five (5) months to disregard the evidence presented at trial, overturned the jury's verdict, and substitute the *biased* and clearly erroneous opinion of the court. The court determined that "no reasonable jury" could have possibly found for DeBose. Like at summary judgment after excluding 550 pages of DeBose's evidence and completely disregarding her pleadings and argument, the court misstated the record. In its conclusory holding, the court stated that "DeBose just didn't have any evidence."

After Judge Kovachevich retired, DeBose again moved the court in Case No. 8:19-cv-1132-T-30AEP to continue. Judge Moody again declined. DeBose, therefore, files in the instant case and now alleges as follows:

SUMMARY

DeBose came before this court in December 2015 asserting claims against the University of South Florida Board of Trustees ("USFBOT") for unlawful employment practices including

gender and race discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended ("Title VII") and the Florida Civil Rights Act of 1992, §760.01, Fla. Stat., *et seq.* ("FCRA"); intentional interference with a business relationship; civil conspiracy; and breach of contract under Florida law. On September 26, 2018, the jury returned a unanimous verdict in DeBose's favor on her discrimination and retaliation claims. DeBose was awarded $310,500, $35,000 in costs, and unspecified front pay damages. At all relevant times of the litigation, the Defendants engaged in various forms of misconduct to procure favorable judgments through deceit and fraud. As a result, the verdict DeBose won was lost. DeBose asks this Court to right this wrong and states as follows:

GENERAL ALLEGATIONS

1. This action arises from a perjury and fraud scheme spearheaded by Gerard Solis, USFBOT General Counsel; Richard McCrea, Greenberg Traurig; USFBOT; Greenberg Traurig, and its employees to violate federal law, including but not limited to suborning perjury, perjury, concealing and withholding discovery, withholding and destroying public records, conspiring to obstruct justice, obstruction of justice, and fraud to procure favorable judgments for themselves and set aside judgments favorable to DeBose. Solis and McCrea sentiently set in motion an unconscionable scheme calculated to interfere with the judicial system's ability to properly adjudicate DeBose's case in chief by unfairly hampering the presentation of her evidence and claims or defenses.

2. This conspiratorial enterprise has illicit motives: financial gain for USFBOT to achieve preeminence, a status it was previously denied. The Florida Preeminence Program began in 2013 and rewards high-achieving universities based on achievement of certain metrics. The preeminence designation comes with an increase of approximately $6.15 million in new funding

from the State of Florida every year. Notably, after being denied preeminence in a publicly embarrassing manner, USFBOT was granted preeminence by the Florida Board of Governors after the jury verdict was overturned, a decision that exposed to the public, the racism and retaliation committed by USFBOT executive leadership, and more specifically its Provost and Executive Vice President, Ralph Wilcox. Additionally, USFBOT sought to avoid paying damages for employment discrimination and retaliation, knowing it would open it up to more lawsuits for its unlawful employment practices. In order to procure favorable judgements and avoid any sanction, USFBOT, through its employees, representatives, contractors, agents, and assigns, et al., coordinated together to commit fraud on the court. The courts coordinated with the Defendants representatives and excused their fraud. By way of example, the Defendants made a series of false and misleading statements regarding the destruction of DeBose's evidence in conflicting affidavits from the same party, to corrupt or influence the court that affected the impartial performance of its judicial function. Defendants knew or were reckless in not knowing that their statements were false and/or misleading because they did not have an adequate basis in fact for their assertions. Defendants did not satisfy numerous contingencies, such as securing or placing a litigation hold on DeBose's files. Another example is the Defendants McCrea, USFBOT, and Greenberg's *ex parte* communications with the court, prior to court-ordered mediation on March 19, 2019, that corrupted the entire proceeding. The mediator tried to cure Defendants' *taint* by requiring McCrea to disclose the ex parte communication at the close of the Settlement Conference. However, the disclosure did not cure the Defendants' failure to negotiate in good faith, knowing they did not have to since the "*shock and awe*" denials by the courts to DeBose's federal and state court actions/pleadings were projected to occur, should DeBose failed to accept the Defendants' low-ball settlement offers. When DeBose did just that

and an impasse to settlement was reached, the denials occurred in federal and state court—one after the other.

3. All of this comes at the expense of Plaintiff Angela DeBose, by virtue of the conspiratorial scheme directed by the Defendants to conceal and destroy evidence that they had a duty to disclose and preserve. The Defendants' false and misleading statements and omissions caused significant confusion and disruption in the proceedings resulting in further harm to DeBose for exposing the governmental agency's diabolical scheme to prevent its unlawful discriminatory and retaliatory actions and practices from being exposed.

4. The fraudulent conduct of the Defendants resulted in DeBose being smeared, defamed, discriminated against, retaliated against, fired, and interfered with by the Defendants' administrative officials and employees. Many of the employees who support DeBose were preyed upon by USFBOT in its conspiratorial enterprise, including using unsophisticated employees and student workers from poor or modest backgrounds. Additionally, USFBOT has continued its retaliation against those who support DeBose. Through exploitation of their social inequity and inequality and lack of representation, they became pawns of the Defendants and unwittingly were used to violate federal and state laws. The Defendants abused their powers and USFBOT specifically put its students and employees in jeopardy.

5. The purpose of this action is to hold the Defendants USFBOT liable for the harm they have wrought on the life and career of Angela DeBose, who worked for the University of South Florida for over 27 years in various capacities. DeBose had an illustrious career and was on her way to becoming an Associate Vice President within her profession in higher education. Defendants willfully set out to destroy DeBose and her bright future, on account of her race-gender, and used unlawful and/or illegal means to do so. Based on information and belief and

USFBOT employment data, the injustices DeBose experienced are routinely committed against other blacks and racial minorities by USFBOT and the contractors hired to represent the Board.

6. The Defendants defrauded DeBose and conspired to obstruct justice and obstructed justice; Defendants robbed DeBose of her job, career, good name, her jury verdict, and the potential for other damages. After DeBose won her case, the Defendants, relying on USFBOT's government status, conspired with others to commit fraud in a deplorable scheme, in coordination with federal and state courts.

7. By engaging in the conduct alleged in this Complaint, USFBOT, Solis, McCrea, and others violated, and unless restrained will violate again, federal law.

NATURE OF PROCEEDINGS AND RELIEF SOUGHT

8. Plaintiff, ANGELA DEBOSE brings this Independent Action for Relief from Judgment to Remedy Fraud on the Court against Defendants, the UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES and GREENBERG TRAURIG, P.A., pursuant to Federal Rule of Civil Procedure 60(b). DeBose seeks declaratory relief and damages for ill-gotten gains, along with prejudgment interest, civil penalties, and such further relief as the Court may deem appropriate.

Rule 60(b)

In pertinent part, Rule 60(b) provides the following grounds for relief from a final judgment, order, or proceeding:

> **(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);**
>
> **(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; or**
>
> **(6) any other reason that justifies relief.**

Under Rule 60(d), there are other powers to grant relief. The rule does not limit the court's power to:

> **(1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or**
>
> **(3) set aside a judgment for fraud on the court.**

Evidence

Plaintiff will submit the following evidence (new and existing) to evince the misconduct of the Defendants (i.e. lies, false statements of material fact, fraud, fraudulent misrepresentation, fraudulent concealment, fraudulent nondisclosure, perjury, etc.):

1. Affidavit of Zayna James
2. Affidavits of Delonjie Tyson
3. Affidavit of Vanessa Centelles
4. Affidavit of Verna Glenn
5. Affidavit of Barbara Lamphere
6. Affidavits of Suzanne McCoskey Bishop
7. Affidavits of Lois Palmer
8. Affidavits of Victoria Johnson
9. Affidavit and Police Report of Kimberly Bushe Whiteman
10. Affidavit of Marquisha Wilson **(new)**
11. 2015 employment contract of Angela DeBose
12. 5-year contract extension of Ralph Wilcox
13. 5-year contract extension of Paul Dosal
14. Transcript testimony of Ralph Wilcox **(new)**
15. USF DIEO complaint of Sharon Scarborough alleging continued retaliation of those affiliated/associated with DeBose **(new)**
16. 07/18/2018 Deposition of Delonjie Tyson
17. 02/08/2017 hearing before Magistrate Porcelli
18. 03/21/2017 hearing before Magistrate Porcelli
19. 05/23/2017 hearing before Magistrate Porcelli
20. 07/18/2018 Deposition of Verna Glenn **(new – pending transcript)**
21. 07/18/2018 Deposition of Barbara Lamphere **(new – pending transcript)**
22. 08/14/2018 pretrial conference before Magistrate Porcelli
23. 09/10/2018 proceedings before Magistrate Porcelli
24. 12/11/2018 Evidentiary Hearing on Front Pay before Magistrate Porcelli
25. 03/18/2019 Proceedings before Magistrate Elizabeth A. Jenkins **(new – pending transcript)**

JURISDICTION AND VENUE

9. This Court has original jurisdiction because this court heard the case first. This Court also has subject matter jurisdiction because the acts complained of raise federal questions, and because the amount in controversy exceeds $75,000, with damages estimated at $1,530,500.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the fraud committed by the Defendants was practiced in this district and the injuries occasioned by the fraud was suffered in this district by the named Plaintiff. The Defendants transact business in this district and the Defendants directly or indirectly made use of the means, instruments, or instrumentalities of communication or transportation in interstate commerce, or of the mails, particularly during the period relevant to the allegations, in this district.

THE PARTIES

The Eleventh Circuit wrote in *Atkins v. McInteer*, 470 F.3d 1350, 1358 (11th Cir. 2006) that the ("particularity requirement" for pleading fraud means that a plaintiff must plead facts as to time, place, and substance of the defendant's alleged fraud, specifically the details of the defendant's allegedly fraudulent acts, when they occurred, and who engaged in them"). Plaintiff will support this "particularity requirement" by pleading the following facts:

11. Plaintiff ANGELA DEBOSE was an employee of USFBOT from January 1988 until August 19, 2015 and at all times material hereto, is a resident of Hillsborough County, Florida.

12. Defendant University of South Florida Board of Trustees ("USFBOT") is the governing body of the University of South Florida (USF), and public body corporate created by Article IX, Section 7 of the Constitution of the State of Florida. Defendant USFBOT is based at 4202 E.

Fowler Avenue, Tampa, Florida. At all times material hereto, 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. The definition of public body presumably includes public universities within the State and records of a State University System higher educational institution, as defined in *National Collegiate Athletic Association v. Associated Press.* As a public university created and authorized pursuant to the laws of the State of Florida, USFBOT is subject to the provisions of the Government in the Sunshine and Public Records Laws. USFBOT had a duty to preserve DeBose's evidence for trial, when it actually anticipated or reasonably should have anticipated litigation. USFBOT et al., concealed the destruction and misrepresented that no destruction of the records occurred and that the records DeBose alleged were destroyed, did not exist; USFBOT et al. spoliated evidence to prevent DeBose from proving her 2015 employment contract and her 5-year contract extension; USFBOT et al., concealed the contract extension of DeBose, and the contract extension of Wilcox and Dosal which were similar to DeBose's; USFBOT fraudulently misrepresented that DeBose had to exhaust her leave and was not entitled to full payout of her leave balance at the end of paid compulsory leave under a grandfather clause until the claim was excluded by way of motion in limine and could not be raised. USFBOT et al., spoliated and falsified evidence to prevent DeBose from proving other claims.

13. At all relevant times, GERARD SOLIS, is a USFBOT employee in the Office of the General Counsel. Defendant Gerard Solis at all times material hereto, is a resident of Hillsborough County, Florida. Gerard Solis is a licensed attorney in the State of Florida and an employee of USFBOT. Gerard Solis provides legal advice and counsel to the USFBOT regarding policy matters, the issuance of written legal opinions, and the drafting and review of

contracts, leases, administrative orders, rules, grant agreements, agency final orders, and proposed legislation affecting the USFBOT. Gerard Solis provided advice and oversight with regard to the litigation by Greenberg Traurig, P.A. and Richard McCrea in this action. As General Counsel, Solis knew or anticipated litigation and was responsible for issuing preservation notices to safeguard DeBose's evidence for trial. Solis concealed the destruction and misrepresented that no destruction of the records occurred and that the records DeBose alleged were destroyed, did not exist. Solis coordinated with the other defendants to conceal the destruction and suborned perjury from Suzanne McCoskey-Bishop, Lois Palmer, Victoria Johnson, and others. Solis wrote their scripted affidavits. Solis breached his duty to preserve DeBose's evidence and spoliated the evidence to prevent DeBose from proving her 2015 employment contract, her 5-year contract extension, her entitlement to full payout of her leave balance at the end of paid compulsory leave, and other claims.

14. At all relevant times, Defendant RICHARD C. MCCREA, is an attorney at law licensed to practice law in Florida since 1982. McCrea at all times material hereto, is a resident of Hillsborough County, Florida. McCrea is an employee and shareholder with the defendant law firm of Greenberg Traurig, P.A. and is counsel of record in this action for defendant USFBOT. McCrea had a duty to preserve DeBose's evidence for trial, when litigation was actually anticipated or reasonably should have been anticipated. McCrea concealed the destruction and misrepresented that no destruction of the records occurred and that the records DeBose alleged were destroyed, did not exist. McCrea coordinated with the other defendants to conceal the destruction. McCrea breached his duty to preserve DeBose's evidence and used the spoliated evidence to prevent DeBose from proving her 2015 employment contract, her 5-year contract extension, and her entitlement to full payout of her leave balance at the end of paid compulsory

leave, and other claims. DeBose, McCrea, and Greenberg, though legal adversaries or opponents, shared a plaintiff-defendant relationship, whereby Plaintiff reposed trust and confidence in Defendants that her files, documents, records, and evidence would be preserved for trial. This fiduciary relationship gave rise to an affirmative duty by Defendant to preserve Plaintiff's documents for inspection/copying and for trial. Defendants undertook such trust and had a legal, nondelegable duty to protect Plaintiff's evidence in the Defendants' possession and control. Defendants breached that duty, despite being on notice and having knowledge of its legal duty or obligation to preserve Plaintiff's evidence. As a result of McCrea's breach, Plaintiff suffered damages.

15. Defendant GREENBERG TRAURIG, P.A., is a professional association practicing law in the State of Florida with its principal place of business being in Hillsborough County, Florida. Greenberg entered an agreement with USFBOT for private legal services. As a Contractor for the University of South Florida, Greenberg provides legal advice and representation. Greenberg employs and was responsible for the supervision of Richard C. McCrea, in the performance of his duties. In supervising or providing oversight, Greenberg had a duty to ensure that McCrea fulfilled the duty to preserve relevant evidence for trial, when USFBOT actually anticipated or reasonably should have anticipated litigation. Greenberg was responsible for supervising or providing oversight to ensure McCrea was candid to the tribunal, even to the extent of disclosing information adverse to his client's position. Furthermore, DeBose, McCrea, and Greenberg, though legal adversaries or opponents, shared a plaintiff-defendant relationship, whereby Plaintiff reposed trust and confidence in Defendants that her files, documents, records, and evidence would be preserved for trial. This fiduciary relationship gave rise to an affirmative duty by Defendant to preserve Plaintiff's documents for inspection/copying and for trial. The

Defendants undertook such trust and had a legal, nondelegable duty to protect Plaintiff's evidence in the Defendants' possession and control. Defendants breached that duty, despite being on notice and having knowledge of its legal duty or obligation to preserve Plaintiff's evidence. As a result of Greenberg's breach, Plaintiff suffered damages.

16. At all relevant times, Defendant RALPH WILCOX, is a USFBOT employee and Provost that fired DeBose after she filed discrimination charges and a complaint in Case 8:15-mc-00018-EAK-MAP to maintain the status quo during the pendency of the EEOC investigation. At all times material hereto, Wilcox is a resident of Hillsborough County, Florida. In coordination with Paul Dosal, Wilcox ordered or approved of the destruction of DeBose's personnel files to destroy DeBose's 2015 employment contract, 5-year contract extension, grandfather' clause entitling DeBose to full payout of her leave balance at the end of paid compulsory leave, and other claims. Though Defendants denied the existence of any grandfather clause at hearing before the magistrate, at trial Wilcox admitted that he could have approved DeBose to receive all of her paid time off (PTO) under the grandfather clause and likewise authorize compulsory leave with pay, without requiring DeBose to use any leave or PTO. Wilcox forced DeBose to exhaust her PTO in retaliation for filing complaints. Additionally, Wilcox's affidavit that stated that USFBOT stopped using employment contracts and that DeBose had no written employment contract. At summary judgment, trial, and the evidentiary hearing on front pay, Wilcox's statement in his affidavit and any prior testimony was shown to be false. Wilcox testified at trial that he did not debrief with Ellucian, L.P.'s Andrea Diamond, though email exchanged between Diamond and Dosal showed otherwise. In a separate state court proceeding, Wilcox affirmed that he did debrief with Diamond. Therefore, Wilcox gave false, perjured testimony at trial on this question. Wilcox's termination letter stated DeBose was not fired for cause or disciplinary

reasons to bar DeBose from appealing or grieving the termination action. Wilcox gave testimony at various points that DeBose was terminated for three significant findings in the Ellucian Report. Wilcox's termination letter was either pretext or Wilcox gave false, contradictory, perjured testimony on a material factual issue.

17. At all relevant times, Defendant PAUL DOSAL, is a USFBOT employee and DeBose's former supervisor, and at all times material hereto, is a resident of Hillsborough County, Florida. Dosal was charged with unlawful discrimination and retaliation by DeBose. Dosal ordered Alexis Mootoo to have DeBose's personnel files in the Office of the Registrar destroyed to prevent DeBose from proving her claims, including DeBose's 2015 employment contract, 5-year contract extension, entitlement to payout of her full leave balance at the end of paid compulsory leave, and other claims. Dosal testified at deposition that no such destruction of files occurred. Dosal testified about the existence of "derogatory" emails about DeBose. USFBOT did not produce the derogatory emails. Plaintiff requested the emails of Paul Dosal for the months of March, April and May, 2015—leading up to DeBose's termination. McCrea lied to the magistrate at hearing that the emails were produced. In a letter to DeBose, Solis stated the emails provided stopped at March and did not include April or May 2015. The emails would have shown USFBOT was motivated by a discriminatory, retaliatory animus and that this was the only motivating factor, and that Wilcox/USFBOT did not terminate DeBose for any other nondiscriminatory, nonretaliatory legitimate or lawful reason.

18. At all relevant times, Defendant ALEXIS MOOTOO is a USFBOT employee, and at all times material hereto, a resident of Hillsborough County, Florida. Alexis Mootoo reported to Paul Dosal and carried out Dosal's specific directive to have DeBose's files destroyed, the intent of which was covered up by the mass destruction of all employee files maintained by the

Registrar's Office. Mootoo acted to assist Dosal with destroying DeBose's copy of her 2015 employment contract, 5-year contract, grandfather clause to DeBose's contract entitling her to full payout of her leave balance at the end of paid compulsory leave, and other claims. Mootoo gave false, contradictory, perjured testimony at deposition that no destruction of the files occurred.

19. At all relevant times, Defendant SUZANNE MCCOSKEY-BISHOP is a USFBOT employee in the Office of the Registrar and at all times material hereto, is a resident of Hillsborough County, Florida. McCoskey-Bishop received the order from Mootoo and deployed student workers in the department to place DeBose's personnel files, and those of other current and former employees, in the shred bins. McCoskey-Bishop stated the records were put in shred bins because she did not believe the Registrar's Office was supposed to have them. McCoskey-Bishop concealed the destruction and misrepresented uncertainty as to whether DeBose's records were destroyed. McCoskey-Bishop's back-to-back, inconsistent, scripted affidavits are refuted by USF employees and student workers. McCrea has held out that he represents McCoskey-Bishop and at all relevant times kept her from being deposed.

20. Defendant LOIS PALMER was hired by USFBOT on or around August 17, 2015, as an employee in the Office of the Registrar, and at material times hereto, is residing in Hillsborough County, Florida. Palmer stated it was she, not Wilcox or Dosal, that ordered the mass destruction of the employee personnel files in the Registrar's Office because they were in an unsafe location. Palmer gave false testimony about the destruction to cover-up Wilcox's and Dosal's continued retaliation against DeBose following her termination. Palmer falsely claimed that she was USF registrar at the time of the destruction to cover-up the timing—that it occurred in close proximity or almost immediately after DeBose's termination. Palmer falsely

misrepresented uncertainty as to whether DeBose's records were destroyed to have it appear that the first-time destruction was ordinary and not willfully, intentionally, and knowingly done by the Defendants to destroy DeBose's evidence. Palmer's back-to-back, inconsistent, scripted affidavits are refuted by USF employees and student workers who state Garcia, and not Palmer, was the registrar at the time of the destruction. McCrea has held out that he represents Palmer and at all relevant times kept her from being deposed.

21. At all relevant times, Defendant VICTORIA JOHNSON (terminated and subsequently rehired) was a USFBOT employee in the Office of Human Resources, and at material times hereto, resides in Hillsborough County, Florida. Johnson stated she advised Palmer and McCoskey-Bishop that the files could be destroyed because the records in the files were duplicative of documents in Human Resources ("HR"). Johnson's back-to-back, inconsistent, scripted affidavits are refuted by USF employees and student workers. McCrea held out that he represented Johnson and at all relevant times kept her from being deposed.

22. At all relevant times, Defendant CARRIE GARCIA, a USFBOT employee and former Acting Registrar, is residing in Hillsborough County, Florida. Garcia falsely misrepresented that mass destruction of employee personnel files maintained by the USF Office of the Registrar did not occur during her tenure as acting registrar, in order to cover-up Wilcox's and Dosal's continued retaliation against DeBose immediately following her termination. Garcia's deposition testimony is refuted by USF employees and student workers who state Garcia, and not Palmer, was the registrar at the time of the destruction.

23. At all times material hereto, the Defendants engaged in unconscionable schemes to deceive or make representations through the court system. The Defendants acted jointly, in concert and as agents of one another, concerning the matters alleged herein, and further ratified

the wrongful acts of each other by, *inter alia*, knowingly acting together to conspire to conceal or omit material information not otherwise known or available about the destruction of DeBose's personnel and employment files maintained in the registrar's office. The Defendants abused their power by commandeering students who worked in the registrar's office to destroy DeBose's files and other public records and contracting with a third party, using state funds from Florida citizens and taxpayers, in violation of Federal Rule of Civil Procedure 37 and other federal law. Defendants concealed the destruction and misrepresented that no destruction of the records occurred and that the records DeBose alleged were destroyed, did not exist. The Defendants carried out the destruction to prevent DeBose from proving her 2015 employment contract, her 5-year contract extension, her entitlement to full payout of her leave balance at the end of paid compulsory leave, and other claims.

24. When the Defendants made these representations, the Defendants knew them to be false. However, the representations were made by Defendants with the intent to defraud and deceive Plaintiff. At the time of the destruction of Plaintiff's employee files, Plaintiff was ignorant of Defendants' action. Plaintiff could not, in the exercise of reasonable due diligence, have discovered the Defendants' unlawful action. For what Plaintiff learned, she took appropriate action through the court to protect her interests and preserve her evidence. Had Plaintiff known the actual facts, she would have realized and made known to the court that its reliance on the Defendants was unjustified.

25. As a proximate result of Defendants' fraud, deceit, and destruction alleged herein, Plaintiff was damaged in the sum of $1,530,500.

26. In doing so, Defendants USFBOT, Solis, Wilcox, Dosal, Mootoo, Garcia, Palmer, McCoskey, and Johnson acted knowingly, willfully, and intentionally to defraud DeBose.

27. In doing the acts alleged herein, the Defendants McCrea and Greenberg acted with oppression, fraud, and malice, and Plaintiff is entitled to punitive and treble damages from Greenberg Traurig, in excess of $1,530,500.

28. Therefore, this is also a Complaint for damages for $4,591,500. All conditions precedent have occurred, have been performed, or have been waived, including the notice requirement of Section 768.28, Florida Statutes.

THE FACTS

29. In December 2014, Plaintiff filed a discrimination complaint against the USFBOT with the Equal Employment Opportunity Commission (EEOC).

30. In February 2015, Plaintiff filed for a temporary restraining order and/or preliminary injunction against the USFBOT with the Middle District Court of Florida, Case No. 8:15-mc-00018-EAK-MAP, and subsequently added a claim of Retaliation to her EEOC complaint.

31. On March 27, 2015, DeBose sent Defendants a written notice to preserve her evidence.

32. On May 19, 2015, DeBose received notice of her separation and termination from USFBOT. At that time, DeBose made a verbal public records request for a copy of her departmental files, documents from her hard-drive, and her ESI in order to preserve and have in her possession, evidence to support her complaints and case in chief at trial.

33. On June 22, 2015, DeBose filed a Petition for Writ of Mandamus to obtain responses to the public records requests she made orally and in writing to USFBOT.

34. On August 12, 2015, Solis responded to DeBose's May 19, 2015 public records request DeBose made to Dr. Kofi Glover. Solis provided DeBose a charge document, seeking to charge DeBose $9,083 to inspect/copy the nonexempt public records she created or maintained during the course of her employment. Shortly after Solis's email, and unknown to DeBose, USFBOT

made moves to contract with a third party to shred DeBose's departmental files. DeBose was not notified of the destruction nor provided a copy of the department files she requested, which would have been, if done inadvertently instead of willfully, a less severe and lawful means of removing DeBose's files.

35. Defendants knew or had reason to know DeBose's files contained documents and evidence needed to maintain and prove her claims and damages. On behalf of USFBOT, Solis did not provide any responsive records to the public records request DeBose on May 19, 2015.

36. In his capacity as USFBOT's representative, Richard McCrea had a duty to request a litigation hold on DeBose's records. In his capacity as USFBOT's internal counsel, Solis had a duty to place a litigation hold on DeBose's records. However, McCrea and Solis willfully, without probable cause and without regard to the rights, health, and feelings of the Plaintiff; without right and without consent of the Plaintiff; and wholly against the wishes of the Plaintiff; facilitated the cover up of the destruction of DeBose's files and other similar public records DeBose needed to prove her claims and damages.

37. It is unreasonable to believe that the Defendants did not anticipate that DeBose would have need of these records; Defendants willfully violated Fed.R.Civ.P. 37 and other laws.

a. In June 2014, Solis had actual knowledge of the potential for litigation between DeBose and USF. Solis was informed by Dosal that DeBose had complained of discrimination.

b. In July 2014, Solis had knowledge that DeBose filed an EthicsPoint Complaint.

c. In August 2014, Solis had knowledge that DeBose filed discrimination complaints internally with the USF Office of Diversity, Inclusion and Equal Opportunity.

d. In December 2014, Solis had knowledge that DeBose filed a charge of discrimination with the EEOC.

e. In February 2015, Solis and McCrea had knowledge that DeBose filed a TRO and preliminary injunction with the Middle District Court of Florida, Tampa Division.

f. On March 27, 2015, Solis and McCrea had knowledge of DeBose's preservation notice and her expectation that her records would be available at trial.

g. On June 22, 2015, Solis and McCrea had knowledge of DeBose's Petition for Writ of Mandamus to obtain her department files and ESI.

h. On July 1, 2015, Solis and McCrea had knowledge of DeBose's Emergency Preservation Motion in state court action for mandamus relief, *Angela DeBose v. University of South Florida Board of Trustees*, Case No. 15-CA-005663. At all relevant times, Defendants opposed the Plaintiff's motion to preserve her evidence. The Defendants represented to the court that they understood their legal duty to do so and that an order was unnecessary. The Defendants knew of the court's justified but misguided reliance on Defendants' representations that they would protect and preserve DeBose's evidence.

i. On July 13, 2015, Solis and McCrea had knowledge of DeBose's Preservation Motion in Case 8:15-mc-00018-EAK-MAP to protect her ESI and evidence generally. At all relevant times, Defendants opposed the motion as unnecessary. Defendants were aware of the court's August 6, 2015 order in reliance on Defendants that Defendants knew and understood their duty to protect and preserve DeBose's evidence.

j. In August 12, 2015, Solis and McCrea had knowledge of a written follow-up to her oral May 19, 2015 public records request to Dr. Kofi Glover, who stated he did not

recall receiving such a request. If Plaintiff's request was unknown, Defendants could have disclosed the destruction as a mistake, inadvertence, or negligence; however, Defendants fraudulently concealed the destruction and did not, at all relevant times disclose that the destruction of DeBose's files had occurred. Furthermore, the Defendants have not at any time produced DeBose's ESI or departmental files through discovery or in response to DeBose's public records requests.

k. On August 31, 2015, DeBose filed a motion for sanctions in Case 8:15-mc-00018 -EAK-MAP following Solis's statement that telephone records requested from him via DeBose's public records request could not be provided because the "records were transitory" and had been destroyed. Solis and McCrea had knowledge of DeBose's EEOC discrimination and retaliation charges, the litigation underway in 8:15-mc-00018 -EAK-MAP and took no steps to preserve the telephonic records but rather allowed or facilitated their destruction. The Defendants were aware of the court's reliance by virtue of its October 14, 2015 order denying sanctions that Defendants would protect and preserve DeBose's evidence.

l. On December 4, 2015, Solis and McCrea knew or had reason to know that DeBose, who filed suit in federal court, would request her files and ESI through discovery, to have the documents available at the dispositive phases of the case and for trial.

38. Defendants USFBOT, Solis, Wilcox, Dosal, and Garcia did not preserve DeBose's records but rather willfully and intentionally, in bad faith, concealed and used their unlawful destruction to obtain favorable judgments, in violation of Fed. R. Civ. P. 37 and other laws. Defendants McCrea and Greenberg did not preserve DeBose's records but rather maliciously and

malignantly, in bad faith, concealed the destruction in violation of Fed. R. Civ. P. 37 and other laws.

39. The Defendants destroyed DeBose's files, knowing that DeBose was entitled to copies of any and all documents requested. The Defendants lied and make false statements to the court, claiming that the destruction was broadly noticed or publicized around the University's campus such that DeBose could have retrieved her files.

40. USFBOT's use of a third party to destroy DeBose's records was in violation of federal law, including Federal Rule of Civil Procedure 37. Defendants refused to produce documents related to the destruction or identify the third party that carried out the destruction. Defendants thwarted DeBose efforts to subpoena such records.

41. On July 7, 2016, Defendants answered DeBose's Third Amended Complaint in her federal suit.

a. At all times, Defendants McCrea and Greenberg lied, denying in bad faith, having willfully, maliciously, and malignantly destroyed Plaintiff's evidence.

b. Defendants denied spoliation of any kind (i.e. First Party and Third Party) but in bad faith made the false claim that DeBose alleged First Party Spoliation so that DeBose's allegation against them would not be actionable.

c. As a result of Defendant's false statements of material fact, false averments, and misrepresentations, several of DeBose's meritorious claims for which she was owed damages and should have been compensated, were dismissed.

42. On November 10, 2016, Carrie Garcia was deposed in Case No. 8:15-cv-02787-EAK-AEP. Garcia denied at deposition that the personnel files maintained in the Office of the Registrar were sent out for shredding.

43. On November 16, 2016, Paul Dosal was deposed in Case No. 8:15-cv-02787-EAK-AEP. Dosal denied ordering the destruction and also denied that the departmental employee files were shredded.

44. On November 16, 2016, Alexis Mootoo was deposed in Case No. 8:15-cv-02787-EAK-AEP. Mootoo, who gave the order to Suzanne McCoskey Bishop to "get rid of the files" on Dosal's behalf, also denied knowledge of the shredding.

45. Following the depositions, DeBose obtained evidence of the Defendants fraud, having learned from Bushe-Whiteman that Defendants used student workers to carry out the destruction of DeBose's files and the other files in the department. DeBose obtained and submitted the Affidavits of Delonjie Tyson ("Tyson") and Vanessa Centelles ("Centelles").

46. On November 22, 2016, Centelles provided her affidavit, attesting to her direct knowledge of seeing DeBose's files put in the shred bins and being ordered to do so by Suzanne McCoskey Bishop ("McCoskey Bishop").

47. On November 23, 2016, Tyson provided her affidavit, attesting to their direct knowledge and also being commandeered by McCoskey-Bishop to put the employee files into the shred bins.

48. Centelles stated she saw and handled DeBose's files. Tyson and Centelles stated that DeBose's files were put in the shred bins along with the others by the students, after being ordered by McCoskey-Bishop to do so. Centelles and Tyson stated the department employee files were put in bins for shredding in early summer 2015, a short time after DeBose left the registrar's office.

49. In December 2016, the Defendants were notified by DeBose's counsels of a pending motion for sanctions.

50. On December 29, 2016, Solis summoned McCoskey Bishop to the USF Office of the General Counsel about the departmental files.

51. McCoskey Bishop, upset when she returned to the Office of the Registrar, was overheard by several employees, saying she would not take the blame for the destruction of the files.

52. On January 20, 2017, Bushe-Whiteman informed DeBose that McCoskey Bishop would be changing her story: After her meeting with Solis, McCoskey Bishop would state that "Victoria [Johnson]" in HR told her that it was okay to shred the records. McCoskey Bishop would not name Mootoo or Dosal as having ordered the shredding of the files.

53. On January 23, 2017, Defendants opposed the motion for sanctions and submitted affidavits from McCoskey Bishop, Lois Palmer, and Victoria Johnson, attesting to the story in the manner that Bushe-Whiteman warned.

54. In scripted affidavits written by the Defendants, McCoskey Bishop, Lois Palmer, and Victoria Johnson falsely stated that the shredding occurred in October 2015 (Fall) and not the Summer 2015. McCoskey Bishop, Lois Palmer, and Victoria Johnson submitted perjured statements that Lois Palmer, the *new* registrar, ordered the shredding.

a. To induce the court that Defendants should not be sanctioned, Defendants falsely misrepresented the timing of the shredding to avoid circumstantial evidence of the continuing recurrence of retaliation against DeBose, in close proximity and successive months after DeBose's discrimination, retaliation, and MDF complaints.

b. To induce the court that Defendants should not be sanctioned, Defendants lied about Lois Palmer, who was not present at USF at all relevant times during the shredding, to imply a nondiscriminatory, nonretaliatory reason for the shredding: *"I was surprised to discover a large number of files in an unsecured cabinet in a common area of the*

Registrar's Office on the USF Tampa campus. The cabinet contained what appeared to be copies of employee personnel records for both current and former employees...I was concerned that a number of files contained records associated with Family Medical Leave, which I consider to be sensitive employment records.... I was able to confirm that the materials were duplicative of records kept in the Official University Personnel file in Central Human Resources....the files were shredded per my instructions within thirty days of being placed in the shred bins."

c. Palmer falsely stated that she was present during the shredding to aid the Defendants in committing fraud on the court;

d. Palmer was not appointed University Registrar until August 17, 2015, after the shredding had already occurred;

e. The shredding was not "routine" but a first-time mass shredding of files maintained on current and former employees since the 1960s.

55. DeBose's counsel submitted the affidavits of Verna Glenn, Barbara Lamphere, and Kim Bushe-Whiteman who refuted the false statements proferred by the Defendants. Bushe and Lamphere stated that the files included documents that were not maintained by Human Resources. Lamphere stated other USF departments maintain similar records for their employees. Bushe and Lamphere stated the files were in locked lateral filing cabinets in a private office, located in the Registrar's Office. Glenn stated she was not notified of the destruction as the Defendants claimed and that her medical records provided pursuant to her use of sick/FMLA were destroyed.

56. On February 7, 2017, fourteen (14) days later, USFBOT filed a second round of affidavits from McCoskey Bishop, Palmer, and Johnson expressing new-found uncertainty that

the destruction actually included DeBose's records to induce the court to believe that the student workers, Centelles and Tyson, got it wrong.

57. At the February 8, 2017, the Defendants stipulated that "everything was destroyed."[2] The magistrate stated it would be noted for the record."[3] At all relevant times, Defendants denied the destroyed documents included contracts and other related documents that could be used as evidence at trial. Through lies, fraud, and deceit, the Defendants induced the court to believe that USFBOT stopped using written contracts in 2005. Additionally, in DeBose's state court proceeding 15-CA-005663, the Defendants deceitfully and fraudulently held out to the state court that DeBose's ESI and electronic files were not provided because DeBose failed to pay the $9,083 cost; Defendants have neither admitted nor conceded in state court that the public records were in fact destroyed.

58. On March 8, 2017, DeBose moved the court to allow oral testimony from Bushe-Whiteman, Marquisha Wilson, and Willette Roach at hearing scheduled on March 21, 2017, on Plaintiff's Motion for Sanctions, to testify to their direct knowledge that:

a. Alexis Mootoo visited the Office of the Registrar and ordered Suzanne McCoskey Bishop to have DeBose's and the other departmental employee files shredded.

b. Mootoo stated that "Dr. Dosal" ordered that the files be destroyed.

c. Mootoo was working with Dosal to help him fire DeBose.

d. Mootoo ordered McCoskey Bishop to "get rid of all the files—not just Angela's."

[2] See February 8, 2017 hearing transcript, (Doc. No. 202) [35:11-24, 17:20].
[3] February 8, 2017 hearing transcript, (Doc. 202) [39:17-20].

e. In June or July 2015, McCoskey-Bishop ordered approximately ten student workers in the Office of the Registrar to put all employee files in the shred bins for destruction.

59. At all relevant times, Defendants opposed the oral testimony of Bushe-Whiteman, Wilson, and Roach.

60. On March 21, 2017, the Defendants again stipulated at hearing that "everything was destroyed."[4] At all relevant times, Defendants denied the destroyed documents included contracts and other related documents that could be used as evidence at trial. Through lies, fraud, and deceit, the Defendants induced the court to believe that USFBOT stopped using written contracts in 2005.

61. On May 23, 2017, the Court again held a hearing on Plaintiff's motion for sanctions. The Defendants falsely represented to the court that they only denied the destruction as to Paul Dosal. The Defendant stated the court should find them negligent or grossly negligent in destroying Plaintiff's evidence. As USFBOT's counsels, Solis and McCrea understood that a claim of negligence against the state agency would fail against a sovereign immunity defense.

62. The court took nearly three months to rule on the motion for sanctions. On August 7, 2017, the court denied the motion. The court stated it found Palmer's statement credible.

63. On April 12, 2018, Bushe-Whiteman submitted a sworn statement to the Tampa Police Department ("TPD") that Mootoo had been helping USFBOT officials with trying to get rid of DeBose. Bushe-Whiteman stated that Mootoo informed her in June 2014 that DeBose was going to be fired. Bushe-Whiteman also testified the filing cabinets containing the records were not in an unsecure location but locked and kept in her private office. Bushe-Whiteman's statement

[4] March 21, 2017 hearing transcript (Doc. 222) [19:11-20].

implicated Mootoo and Dosal in the destruction. Bushe-Whiteman made a connection to the destruction and Dosal's plans to "get rid of Angela" in June 2014. Bushe-Whiteman corroborated the information she provided to DeBose in her affidavit and several text messages.

64. On July 18, 2018, Delonjie Tyson, Verna Glenn, and Barbara Lamphere were deposed.

65. At deposition, Tyson testified that the shredding occurred in the Summer of 2015 – and not late Fall. Tyson also stated that the registrar at the time the personnel files were destroyed was Carrie Garcia. Tyson identified Zayna James as another student worker who had knowledge of the shredding in the summer of 2015, and who also assisted with placing the personnel files in the shred bins. Tyson reaffirmed that Lois Palmer was not at USF during the shredding incident in a third Affidavit filed on February 24, 2019.

66. DeBose subsequently requested to depose Palmer, McCoskey Bishop, and Johnson. However, on July 10, 2018, the Defendants immediately filed a Motion for Protective Order.

67. On July 30, 2018, Plaintiff filed a motion to strike the January 23, 2017 and February 7, 2017 affidavits of Palmer, McCoskey Bishop, and Johnson as a sham and requested an evidentiary proceeding to establish whether or not Palmer was the registrar when the shredding of DeBose's files occurred and whether Palmer ordered the destruction of all of the files, as she claimed. The court did not hold a hearing and denied the motion to strike. The court, at all relevant times, induced by Defendant's misrepresentations, unreasonably relied on the affidavit submitted by Palmer, failing to properly and impartially adjudicate the matter--unfairly hampering the presentation of the Plaintiff's claims pursuant to the motion to strike.

68. In the push to trial, the court granted the Defendants' motions in limine to exclude any mention of the destruction of Plaintiff's files or Plaintiff's public records requests for her files

and ESI. The court denied Plaintiff's motions for an adverse inference and for a stipulation concerning the destruction.

69. On September 26, 2018, following a two-week trial, the jury returned a verdict in DeBose's favor on her disparate treatment discrimination and retaliation claims for $310,500.

70. On November 21, 2018, the clerk taxed costs for DeBose of $35,325.

71. On December 11, 2018, at an evidentiary hearing on front pay, the court determined that DeBose would be awarded front pay, at a minimum of two years and a maximum of no more than five years. DeBose submitted evidence to show that USFBOT still used written contracts, contrary to the false statements made by Defendants that USFBOT stopped using written contracts in 2005. DeBose presented the 2019 contract extension of Dr. Ralph Wilcox, USF Provost, and Dr. Paul Dosal, USF Vice Provost and DeBose's former supervisor. DeBose's breach of contract claims were dismissed based on the Defendants' false statements, nondisclosure of DeBose's contracts in HR's possession, and destruction of DeBose's copies maintained in her department personnel files. The Defendants falsely stated at hearing that contracts are no longer offered for DeBose's classification. Plaintiff presented evidence that she and Dosal had the same Professional classification. Defendants fraudulently concealed from the court that their assertions were based on DeBose's racial classification. The court excluded at summary judgment statistical evidence and expert testimony to show that USFBOT discriminates against DeBose's protected classification (black females/blacks) in all phases of employment.

72. On February 14, 2018, the court overturned the jury verdict and reversed judgment in USFBOT's favor. The court granted USFBOT's motion for judgment as a matter of law (JMOL)

and motion for conditional trial. The court also entered a Second Amended Judgment in favor of USFBOT on Plaintiff's retaliation claim, stating

73. On February 15, 2018, the court reversed the award of front pay and costs.

74. The court stated, "*DeBose takes nothing.*"

75. On February 18, 2018, the court ordered the parties to mediate. The Defendants tainted the mediation, submitting an ex parte communication that contained false statements to sway or influence the mediation and force Plaintiff to settle for an unfair amount.

76. On February 24, 2019, DeBose filed a motion to set aside the judgment or alternatively for a new trial. Plaintiff needed only to show that the evidence is sufficient to support one cause of action to prevail on her motion for new trial; or conversely, unless Defendant prevailed on each theory of liability, the Eleventh Circuit has held, the case must be remanded for a new trial. *Royal Typewriter Co. v. Xerographic Supplies Corp.*, 719 F.2d 1092, 1099 (11th Cir. 1983).

77. DeBose presented substantial testimony and evidence admitted at trial. Additionally, DeBose filed the February 20, 2019 affidavit of Delonjie Tyson to show that USFBOT and Defendants employees and representatives did not establish their claims and defenses by unimpeached testimony or disinterested witness as evinced by the destruction of DeBose's evidence. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151 (2000). Palmer gave contradictory, false testimony. Palmer lied about her presence and giving the order for the destruction. The Defendants induced the court to believe that Palmer was credible, in admitting to ordering the destruction inadvertently, mistakenly or negligently. However, the Defendants fraudulently concealed Palmer's employment with Ellucian, Palmer's knowledge of DeBose's EEOC complaint, Palmer's negotiation with USFBOT to replace DeBose prior to DeBose's termination, and Palmer's start date. Most ridiculous is that Defendants would have the court

believe that Palmer, a new registrar very early in her tenure, suddenly ordered the destruction of DeBose's and the other employee files without a word to Dosal. This is not remotely plausible and moreover Palmer was not the registrar at the time, but rather Garcia. Both Garcia and Palmer benefited from DeBose's termination. The errors and omissions were committed through fraud on the courts.

78. On April 24, 2019, the court denied Plaintiff's motion to set aside the judgment to USFBOT and denied Plaintiff's motion for new trial. The court denied Plaintiff, who won the jury verdict. Notwithstanding the court's action to overturn the jury's verdict, Plaintiff is still the prevailing party on her disparate treatment discrimination claim. Nevertheless, the court denied Plaintiff's motion for new trial. The errors and omissions were committed through fraud on the courts.

79. In March 2019, DeBose located student worker, Zayna James, who provided DeBose her affidavit. In her affidavit, Zayna James definitively stated that Lois Palmer was not the Registrar when the personnel files were destroyed; Carrie Garcia was Acting Registrar: "***Although I do not remember much more, I do remember that the acting registrar, Carrie Garcia, was in charge of the office after Ms. DeBose left. Ms. Garcia was in charge when the files were shredded. I worked in the registrar's office when Ms. Garcia was replaced with Ms. Lois Palmer; this happened a few months after the shredding.***"

80. On August 6, 2019, Marquisha Wilson ("Wilson"), after resigning from her position at USFBOT, provided DeBose her affidavit. Wilson attested that Garcia and not Palmer was the Registrar when the personnel files were destroyed. Wilson testified in overhearing the conversation between Mootoo and McCoskey Bishop, that Mootoo made it clear that keeping the files was not an option but "an order from the higher-ups."

81. The Defendants fabricated and manufactured a false story and thereby committed fraud upon the courts. The Defendants understood that if Palmer was not there, Palmer's, McCoskey Bishop's, and Johnson's affidavits would be stricken or disbelieved. The Defendants understood that Dosal's, Mootoo's, and Garcia's false, misleading, perjurious deposition testimony to deny or disclaim knowledge of the shredding of DeBose's files, would be disbelieved.

82. Defendants McCrea and Greenberg willfully, maliciously, self-servingly, and fraudulently through Defendant Solis suborned perjury from Defendant USFBOT employees. The employees went along from a self-serving interest to protect their employer and their employment.

83. The Defendants unlawfully refused to furnish DeBose with copies of the records in her files and when DeBose persisted, the Defendants willfully abused its power to commandeer innocent student workers and an unsuspecting third party to violate federal law.

84. The files existed and contained documents that would have proven DeBose's employment status, employment contracts, and strong qualifications for the Assistant/Associate Vice President of Enrollment Planning & Management position.

85. Defendants McCrea and Greenberg falsely and maliciously claimed the documents were nonexistent. The Defendants falsely and willfully stated that no such destruction of any sort occurred of DeBose's employee files or the files of other USF registrar office employees. The Defendants' concealment, nondisclosure, and misrepresentations were not done through inadvertence, mistake, or negligence. Defendants McCrea and Greenberg acted willfully and maliciously, without regard for the rights of DeBose, but did so for their own financial gain and reputation.

86. The Defendants made multiple materially false statements that, taken together, left the court with false and misleading impressions about the destruction of DeBose's evidence and Palmer. The Defendants, including Palmer, knew or were reckless in not knowing that their statements were false and misleading. The Defendants statements were willful, intentional, voluntary, and fraudulent. The Defendants did not disclose any material facts that were known to them about the destruction when it actually occurred. The Defendants omitted material information or facts that they had a duty to disclose. Despite numerous inquiries, pleadings, hearings on February 8, 2017, March 21, 2017, and May 23, 2017 on Plaintiff's motion for sanctions, and similar opportunities to clarify what happened to DeBose's files, the Defendants kept silent, to prevent the information from coming to light.

COUNT I – FRAUD ON THE COURTS

87. Plaintiff re-alleges and re-avers paragraphs 1 through 86 above and sets forth the same with equal force, as if stated fully herein.

88. Based on her information, knowledge, and belief, DeBose alleges her department files included her employment contracts, including but not limited to her 2015 contract and 2019 contract extension, appointment status forms, offer letters, leave and attendance, absence, projects, certificates, letters of commendation, and other similar records.

89. Based on DeBose's knowledge and belief, her department files contained records that cannot be duplicated by Human Resources or any other USFBOT department.

90. DeBose's files also contained documents that were "personnel-related" or "records estimated for a potential lawsuit", and therefore should have been retained.

91. The Defendants did not preserve DeBose's records but willfully destroyed them. DeBose's records should have been retained under state and federal law.

92. The records were discoverable under Fed.R.Civ.P. 37.

93. DeBose was entitled to copies of any and all documents requested.

94. The Defendants abused their power and used its student employees to destroy DeBose's records in violation of federal law.

95. The Defendants unlawfully refused to furnish DeBose with copies of the records she previously maintained in the course of her employment and pertinent to litigation against her employer.

96. The six Affidavits advanced in support of USFBOT's claims and defenses from Palmer, McCoskey Bishop, and Johnson were intended to, and ultimately did, cover-up and suppress conclusive evidence that Defendants USFBOT, Solis, Wilcox, Dosal, Mootoo, and Garcia willfully and intentionally destroyed DeBose's files. Defendants McCrea and Greenberg maliciously and malignantly used the unlawful destruction of DeBose's files as a legal or tactical advantage.

97. Moreover, the Affidavits advanced in support of USFBOT's claims and defenses were intended to, and ultimately did, set up for the Defendants favorable judicial rulings built on fraudulent statements that Palmer was the registrar at the time and ordered the destruction, when in fact she was not yet hired or present at USF.

98. The Affidavits advanced in support of USFBOT's claims and defenses were intentionally and knowingly false when made or were made in reckless disregard of whether the statements contained therein were true or false. Palmer, McCoskey Bishop, and Johnson acted with the knowledge of the falsity of statements in the Affidavits scripted by Solis and McCrea or with reckless disregard for the truth or falsity of their statements. The falsity of the statements is apparent upon reading the documents.

99. The Defendants believed the court would not sanction them, even though sanctions were clearly warranted. The Defendants intended that the courts would rely upon their false statements and honor their false statements and deny DeBose any evidence to put on at trial, to which she was lawfully entitled. The Defendants further intended that the courts would enter judgments in their favor and that appellate courts would rely upon Defendants' false statements to affirm judgments that were favorable to them. Likewise, the Defendants intended that the courts would reverse DeBose's judgments.

100. By the forgoing conduct, the Defendants practiced a fraud on this Court and other federal and state courts.

101. The Defendants' fraud on the courts is manifestly unjust and shocks the conscience. The Defendants' fraud directly harmed DeBose who was forced to march through a series of appeals to defend her jury verdict and judgment, ultimately lost her judgment, and had retribution taken against her for rejecting unfair settlements for far less than she was entitled. Moreover, the Defendants' fraud was intended to and did subvert the fair and unbiased processes of this Court and the Court of Appeals.

102. As a result of the Defendants' fraud on the courts, DeBose was deprived of the judgment to which she was lawfully entitled and suffered substantial loss for which she should be compensated in damages. The August 7, 2017 Order denying the Motion for Sanctions [Doc. 144] is tainted by the Defendants' fraud on the court. The September 29, 2017 Summary Judgment Opinion and Order [Doc. 210] dismissing several of DeBose's claims against USFBOT is tainted by the Defendants' fraud on the court. The February 14, 2019 Order granting USFBOT Judgment as a Matter of Law ("JMOL") wrongly setting aside the jury verdict in favor of DeBose and denying DeBose a new trial [Docs. 548-550 and 571], is tainted by the

Defendants' fraud on the court, and is no bar to Plaintiff's relief pursuant to this Court's authority under the Federal Rules and the Court's inherent powers. The settlement mediation process ordered on February 28, 2019 [Doc. 555, 564] was tainted by Defendants' ex parte communication; Defendants acted in bad faith and furtherance to commit fraud on the court.

103. The proper measure of the Plaintiff's damages for the Defendants' fraud on the courts is the amount DeBose is entitled to pursuant to the judgment, increased to present value at a market interest rate in order fully and fairly to compensate Plaintiff for her loss. Such damages are in excess of $550,000.

WHEREFORE, Plaintiff demands judgment against the Defendants for damages, interest, costs, prejudgment interest, and for such other relief as the Court deems fair and just. By reason of the Defendants' fraud on the courts, the Plaintiff respectfully asks the Court to:

a. Grant Declaratory relief that Defendants USFBOT and GREENBERG perpetrated a fraud on the federal courts in the instant case, *Angela DeBose v. University of South Florida Board of Trustees*, et al. (Case No. 8:15-cv-02787 -EAK-AEP), through SOLIS, WILCOX, DOSAL, MOOTOO, GARCIA, PALMER, MCCOSKEY-BISHOP, JOHNSON, and MCCREA;

b. Award Plaintiff (1) compensatory damages of $300,000 for four years of pain and suffering caused by Defendants' deceit and fraud; (2) other damages of $310,500 for the defendants misconduct to defraud DeBose of her jury award , (2) costs of litigation estimated at no less than $35,000, (3) unrecovered fees of $30,000, and (4) lost compensation of $175,000—all including interest at a market rate since September 2018;

c. Award Plaintiff (5) opportunity damages for AVP EPM position of $90,000 and (6) contract damages of $590,000—including interest at a market rate since June 2015

when DeBose's records were destroyed; and (7) further relief as this Court deems fair and just.

WHEREFORE, Plaintiff demands judgment against the Defendants for damages, interest, costs, prejudgment interest in excess of $1,530,500 (one million, five hundred thirty thousand, five hundred dollars), and for such other relief as the Court deems fair and just.

Respectfully submitted this 12th day of May, 2020. */s/ Angela DeBose*
Angela DeBose

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May **12th**, 2020, the foregoing document was filed with the clerk of Court through the CM/ECF and will serve all identified in the Service List to receive Notices of Electronic Filing.

Respectfully submitted,

/s/ Angela DeBose
Angela DeBose, Plaintiff
1107 W. Kirby Street
Tampa, FL 33604
(813) 932-6959
awdebose@aol.com

THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA DEBOSE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 8:15-cv-02787-VMC-AEP**
	)	
UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, UNIVERSITY OF SOUTH FLORIDA,	)	
	)	
Defendant.	)	
_____/		

NOTICE OF APPEAL

Plaintiff Angela DeBose hereby gives Notice of Appeal to the U.S. Court of Appeals for the Eleventh Circuit from the **June 23, 2020 Order [607] (Exhibit A)**, denying Plaintiff's motion for relief, which she brought as an "Independent Action" [588] in equity, as provided for by Federal Rule of Civil Procedure 60(d)(1), to remedy the errors in "*DeBose I*" and also denying Plaintiff's May 12, 2020 Motion for an Evidentiary Hearing [600].

On May 10, 2019, Ms. DeBose filed her complaint and independent action, with new evidence of the Defendant's and its representatives' fraud or misconduct. The case style, *Angela DeBose v. University of South Florida Board of Trustees and Greenberg Traurig, P.A.*[1], was filed under Case No. 8:19-cv-01132-JSM-AEP. The district court in that action dismissed Ms. DeBose's Independent Action *without prejudice*, insisting that Ms. DeBose file with the district court in the instant case, *DeBose I*, before Judge Elizabeth A. Kovachevich. After multiple times challenging the district court in Case No. 8:19-cv-01132-JSM-AEP to allow her to proceed, Ms.

[1] In *DeBose I*, the district court failed to issue the summons to serve process on Greenberg Traurig, P.A. The district court failed to address in its orders why the summons failed to issue.

DeBose filed her Rule 60(d) Independent Action in *DeBose I*, with Judge Virginia M. Covington presiding. Rule 60 of the Federal Rules of Civil Procedure provides for "Relief from a Judgment or Order" by motion (Part (b)) or by independent action (Part (d)). Part (d) is commonly referred to as Rule 60's "savings clause" and states: "This rule does not limit a court's power to entertain an independent action to relieve a party from a judgment, order, or proceeding." Fed.R.Civ.P. 60(d)(1). Such an action has no time limitation. Additionally, Ms. DeBose also appeals the **June 24, 2020 Order [608] (Exhibit B)**, denying as "moot" her May 25, 2020 motion to reassign a new magistrate to replace Magistrate Judge Anthony E. Porcelli, pursuant to 28 U.S. Code § 455 and *Marshall v. Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980). On June 26, 2020, Plaintiff moved the district court to reconsider its orders [607, 608]. The district court denied Plaintiff's motion for reconsideration on several erroneous grounds, including an inaccurate finding that Plaintiff filed the independent action but only after the Eleventh Circuit panel affirmed the district court's decision to overturn the jury verdict in favor of Ms. DeBose and grant Defendant USFBOT's motion for judgment as a matter of law (JMOL). Therefore, finally, Ms. DeBose also appeals the **July 10, 2020 Order [611] (Exhibit C)**, denying her motion for reconsideration.

Submitted July 21, 2020

Respectfully submitted,

/s/ Angela DeBose
Angela DeBose

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **21st** day of July, 2020, the above and foregoing was filed electronically, which will email the following: Richard C. McCrea, Jr., Greenberg Traurig, P.A., 101 East Kennedy Boulevard, Suite 1900, Tampa, Florida 33602-5148; email: (mccrear@gtlaw.com); and other counsel of record.

/s/ Angela DeBose
Angela DeBose, Plaintiff

1107 W. Kirby Street
Tampa, Florida 33604
Telephone: (813) 230-3023
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EXHIBIT

A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No: 8:15-cv-2787-T-33AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, et al.,

Defendants.

_____/

ORDER

This cause comes before the Court pursuant to pro se Plaintiff Angela DeBose's Motion for Independent Action for Relief from Judgment to Remedy Fraud on the Court (Doc. # 588), filed on May 12, 2020, DeBose's Motion for an Evidentiary Hearing (Doc. # 600), filed on June 6, 2020, and DeBose's Motion for Extension of Time to File a Second Amended Appeal (Doc. # 603), filed on June 9, 2020. Defendant University of South Florida Board of Trustees (USFBOT) has responded to all three motions. (Doc. # 599, 604, 605). For the reasons detailed herein, the Motions are denied.

I. Background

This case has a long and complex history, one that the parties are familiar with. For now, it is sufficient to say that, following her termination from USF, DeBose brought this lawsuit against both USFBOT and Ellucian Company, L.P., a software developer whose products are used for academic and administrative recordkeeping. (Doc. # 45). This Court granted summary judgment to Defendants on several counts, including all counts against Ellucian. (Doc. # 210). After a jury found for DeBose on the remaining counts, the Court granted judgment as a matter of law to USFBOT and denied DeBose's post-trial motions. (Doc. ## 471, 548, 549). DeBose appealed to the Eleventh Circuit and, on April 28, 2020, the Eleventh Circuit affirmed in full. (Doc. # 587).

Shortly after the Eleventh Circuit handed down its decision, DeBose filed the instant Motion for Independent Action, which argued that, due to various alleged frauds that USFBOT and related entities had perpetrated on the Court, the Court should allow DeBose to pursue an independent action for relief from judgment and/or should set aside the judgment, pursuant to Federal Rule of Civil Procedure 60(d). Although DeBose raises multiple allegations of fraud in her Motion, the thrust of her argument is that USFBOT engaged in wrongful

and nefarious conduct in order to impede discovery and the administration of justice in this case, including, among other things, wrongly destroying her personnel file, including various employment contracts, presenting false testimony to the Court, and convincing the Court to wrongfully exclude certain witnesses and evidence proffered by DeBose. (Doc. # 588).

In its response, USFBOT outlines in great detail the procedural history of this case, including the numerous motions and other filings submitted by DeBose in which she alleged that USFBOT had destroyed or withheld evidence, persuaded witnesses to lie under oath and otherwise suborned perjury. (Doc. # 599 at 3-9). As the response explains, and as the record bears out, this Court repeatedly rejected DeBose's arguments because the allegations were never accompanied by competent evidence or were "thinly veiled" attempts to attack substantive orders. See, e.g., (Doc. # 548 at 9) ("The Court and the assigned Magistrate Judge have exhaustively addressed on multiple occasions the issues and arguments raised by the instant Motion for Sanctions. Since the outset of this litigation, DeBose has failed to substantiate her allegations against the Board related to her 'employment contracts,' whether it be in the form of their

concealment, destructions, or breach."); (Doc. # 144 at 7-8) ("In essence, Plaintiff, based upon unsupported hearsay statements and conjecture, requests that the Court conclude that numerous individuals . . . all agreed to lie under oath and agreed to execute elaborate steps to shred information directly relevant to Plaintiff's claims in this case. 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.").

USFBOT therefore argues that DeBose's instant Motion for Independent Action is an improper effort to relitigate issues already decided by the Court and, in any event, does not meet the "heightened Rule 60(d) fraud standard." (Doc. # 599 at 13-17).

DeBose also seeks an evidentiary hearing pertaining to her request for an independent action and has requested that the Court enlarge her time to file an amended notice of appeal in appellate case number 18-13545. (Doc. ## 600, 603). USFBOT has responded in opposition to these Motions as well (Doc. ## 604, 605), and the Motions are all ripe for review.

II. Legal Standard

Federal Rule of Civil Procedure 60(d) authorizes a Court to (1) "entertain an independent action to relieve a party from a judgment, order, or proceeding," or (2) "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(1), (3).

Because an independent action under Rule 60(d) is an equitable one, the proponent must show a meritorious claim or defense and that the judgment should not, in equity and good conscious, be enforced. Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1151 (11th Cir. 1985) (citation omitted); Jeffus v. Att'y Gen. for State of Fla., No. 6:10-cv-1174-Orl-28, 2011 WL 2669147, at *2 (M.D. Fla. July 6, 2011). "The Supreme Court has made clear that such independent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata." Aldana v. Del Monte Fresh Produce N.A., Inc., 741 F.3d 1349, 1359 (11th Cir. 2014) (quoting United States v. Beggerly, 524 U.S. 38, 46 (1998)) (internal quotations and citation omitted). Indeed, "relief under Rule 60(d) is reserved for the rare and exceptional case where a failure to

act would result in a miscarriage of justice." Jeffus, 2011 WL 2669147, at *2; see also Fox v. Brewer, 620 F.2d 177, 180 (8th Cir. 1980) (noting that Rule 60(d) "provides for extraordinary relief on a showing of exceptional circumstances").

As to Rule 60(d)(3), courts have similarly found that "only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court." Galatolo v. United States, 394 F. App'x 670, 672 (11th Cir. 2010); see also Gupta v. Walt Disney World Co., 519 F. App'x 631, 632 (11th Cir. 2013) (movant must show an "unconscionable plan or scheme" to improperly influence the court's decision).

III. Analysis

There are no extraordinary circumstances here that warrant relief under Rule 60(d). DeBose accuses USFBOT of suborning perjury and fabricating evidence. But "[p]erjury and fabricated evidence do not constitute fraud upon the court, because they 'are evils that can and should be exposed at trial,' and '[f]raud on the court is therefore limited to the more egregious forms of subversion of the legal process, . . . those we cannot necessarily expect to be

exposed be the normal adversary process.'" Council v. Am. Fed'n of Governmental Emps., 559 F. App'x 870, 873 (11th Cir. 2014) (quoting Travelers Indemnity Co., 761 F.2d at 1552). In a similar vein, the simple nondisclosure of facts or withholding of discovery does not establish fraud on the court. See BDT Invs., Inc. v. Lisa, S.A., No. 18-22005-CIV, 2019 WL 7344829, at *9 (S.D. Fla. Oct. 25, 2019) ("The mere nondisclosure of allegedly pertinent facts also does not ordinarily rise to the level of fraud on the court."); Bryant v. Troutman, No. 3:05-cv-162-J-20MCR, 2006 WL 1640484, at *1 (M.D. Fla. June 8, 2006) (holding that party's averments that their adversary lied under oath, gave misleading answers, thwarted their discovery efforts, and concealed certain pertinent evidence did not rise to the level of fraud on the court).

But more importantly, DeBose's allegations have already been considered, weighed, and rejected by this Court on multiple occasions. As explained above, the Court consistently found that DeBose's claims were unsupported by competent evidence. In the instant Motion, DeBose claims that she has "new evidence." The Court's review of the deposition transcripts and affidavits attached to the Motion, however, reveals that these documents either were or could have been

previously submitted to the Court, or contain information that is duplicative of other accusations already lodged by DeBose earlier in the litigation.

Under such circumstances, DeBose cannot demonstrate a miscarriage of justice, as required for relief under Rule 60(d). See Council, 559 F. App'x at 873 (rejecting a Rule 60(d)(3) claim where the claimant made conclusory averments, unsupported by probative facts, that the other party committed perjury and fabricated evidence).

Instead, the Court agrees with USFBOT that the instant request for an independent action is an attempt to re-litigate issues that have been, or could have been, raised by DeBose while the litigation was active. See Travelers Indem. Co., 761 F.2d at 1552 (explaining that a plaintiff "cannot use an independent action as a vehicle for the relitigation of issues"); Maye v. United States, No. 8:10-cv-2327-T-30TBM, 2010 WL 4279405, at *2 (M.D. Fla. Oct. 25, 2010) ("A party cannot relitigate 'in the independent equitable action issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action.'"). For these reasons, DeBose's request for an independent action must be denied.

Furthermore, DeBose has requested an evidentiary hearing on her motion for an independent action. (Doc. # 600). For the reasons described herein, her Motion is meritless and, as such, the Court will not hold an evidentiary hearing. See Cano v. Baker, 435 F.3d 1337, 1342-43 (11th Cir. 2006) (the district court did not abuse its discretion by denying request for an evidentiary hearing where holding such a hearing would not aid the court's analysis on a question of law).

Finally, DeBose seeks an extension of time in which to file an amended notice of appeal in appellate case number 18-13545. (Doc. # 603). By way of background, in 2018, DeBose appealed this Court's July 20, 2018, order denying her motion for sanctions and its subsequent order denying her motion for reconsideration of its July 20 order. (Doc. ## 293, 296, 316, 527). As the Eleventh Circuit correctly pointed out, neither of these orders were final, appealable orders at the time DeBose filed her notice of appeal. (Id.). Accordingly, the Eleventh Circuit dismissed the appeal for lack of jurisdiction, although it noted that nothing prevented DeBose from appealing the final judgment. (Id.). The final judgment in favor of USFBOT was entered on February 14, 2019. (Doc. # 549).

Typically, under the Federal Rules of Appellate Procedure, notices of appeal must be filed within 30 days from entry of the judgment or order appealed from. Fed. R. App. P. 4. A district court can extend that time if a party files a motion within 30 days after the deadline expires and it shows "excusable neglect or good cause." Fed. R. Civ. P. 4(a)(5). In addition, the time to file an appeal may be reopened for 14 days if: (1) the moving party did not receive notice of the entry of judgment or order appealed within 21 days after entry; (2) the motion is filed within 180 days after the judgment or order is entered or within 14 days of when the moving party received notice of the entry; and (3) no party would be prejudiced. Fed. R. App. P. 4(a)(6). Even if all three prongs are met, however, a district court retains the discretion to deny a motion to reopen. Watkins v. Plantation Police Dep't, 733 F. App'x 991, 994 (11th Cir. 2018).

DeBose did not file her motion within 30 days of entry of the judgment here, nor 30 days after that time expired. Moreover, DeBose had the opportunity to appeal these orders within her plenary appeal, but she did not do so. Nor can DeBose plausibly allege that she did not receive notice of the orders she seeks to appeal or the final judgment. What's

more, Rule 4(a)(6) does not provide DeBose relief because the final judgment against USFBOT was entered more than 180 days ago. In short, the Federal Rules of Appellate Procedure do not allow this Court to reopen or extend the time for DeBose to file the requested amended notice of appeal.

Accordingly, it is now

ORDERED, ADJUDGED, and **DECREED:**

(1) Plaintiff Angela DeBose's Motion for Independent Action for Relief from Judgment to Remedy Fraud on the Court (Doc. # 588) is **DENIED.**

(2) DeBose's Motion for an Evidentiary Hearing (Doc. # 600) is **DENIED.**

(3) DuBose's Motion for Extension of Time to File a Second Amended Appeal (Doc. # 603) is **DENIED.**

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 23rd day of June, 2020.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

EXHIBIT

B

		Company, LP. The appeal is otherwise still open and active to all remaining parties as to 506 Notice of Appeal filed by Angela W. DeBose, 573 Notice of Appeal filed by Angela W. DeBose. EOD: 6/19/20; USCA number: 18-14637-DD-19-10865 -DD. (JNB) (Entered: 06/22/2020)
06/23/2020	607	**ORDER denying 588 Motion ; denying 600 Motion ; denying 603 Motion for Extension of Time to Amend. Signed by Judge Virginia M. Hernandez Covington on 6/23/2020. (SGM)** (Entered: 06/23/2020)
06/24/2020	608	**ENDORSED ORDER denying as moot 596 Motion for Reassignment or Recusal, given the Court's 607 Order. Signed by Magistrate Judge Anthony E. Porcelli on 6/24/2020. (JMF)** (Entered: 06/24/2020)
06/26/2020	609	MOTION for Reconsideration re 607 Order on Motion for Miscellaneous Relief,Order on Motion for Extension of Time to Amend, 608 Order on Motion for Miscellaneous Relief by Angela W. DeBose. (DeBose, Angela) (Entered: 06/26/2020)
06/30/2020	610	MEMORANDUM in opposition re 609 Motion for Reconsideration / Clarification filed by University of South Florida Board of Trustees. (McCrea, Richard) (Entered: 06/30/2020)
07/10/2020	611	**ORDER: Angela DeBose's Motion for Reconsideration (Doc. # 609) is DENIED. Signed by Judge Virginia M. Hernandez Covington on 7/10/2020. (SGM)** (Entered: 07/10/2020)

R.A. 387

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EXHIBIT

C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA DEBOSE,

Plaintiff,

v. Case No. 8:15-cv-2787-T-33AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, et al.,

Defendants.
_____/

ORDER

This matter comes before the Court upon consideration of pro se Plaintiff Angela DeBose's Motion for Reconsideration of its prior Orders denying various motions filed by DeBose. (Doc. # 609). For the reasons that follow, the Motion is denied.

I. Background

After the Eleventh Circuit issued a written opinion affirming this Court's grant of summary judgment in Defendants' favor on certain claims, affirming this Court's entry of judgment as a matter of law in favor of Defendant University of South Florida Board of Trustees ("USFBOT"), and affirming this Court's denial of DeBose's request for attorneys' fees and costs, (Doc. # 587), DeBose filed a motion

for independent action for relief pursuant to Federal Rule of Civil Procedure 60(d). (Doc. # 588). DeBose also filed, in short succession, a motion for the recusal or reassignment of the magistrate judge in this matter, a motion for evidentiary hearing, and a motion for extension of time to file an amended notice of appeal. (Doc. ## 596, 600, 603).

On June 23, 2020, this Court entered an Order denying DeBose's motion for independent action and also denying her motions for an evidentiary hearing and leave to file an amended notice of appeal. (Doc. # 607). This Court explained that DeBose had failed to meet the high standard required to grant Rule 60(d) motions because she merely sought to relitigate matters already considered and rejected by this Court in the years-long litigation leading up to the motion. (Id.). On June 24, 2020, United States Magistrate Judge Porcelli, having had the motion for recusal referred to his chambers, denied the motion for reassignment or recusal as moot. (Doc. # 608). On June 26, 2020, DeBose filed a motion for reconsideration of this Court's Orders of June 23 and 24, 2020. (Doc. # 609).

USFBOT has filed a response in opposition (Doc. # 610), and the Motion is ripe for review.

II. Legal Standard

"Federal Rules of Civil Procedure 59(e) and 60 govern motions for reconsideration." Beach Terrace Condo. Ass'n, Inc. v. Goldring Invs., No. 8:15-cv-1117-T-33TBM, 2015 WL 4548721, at *1 (M.D. Fla. July 28, 2015). "The time when the party files the motion determines whether the motion will be evaluated under Rule 59(e) or Rule 60." Id. "A Rule 59(e) motion must be filed within 28 days after the entry of the judgment." Id. "Motions filed after the 28-day period will be decided under Federal Rule of Civil Procedure 60(b)." Id.

Here, the Motion was filed within 28 days of the Court's Order, so Rule 59 applies. "The only grounds for granting a Rule 59 motion are newly discovered evidence or manifest errors of law or fact." Anderson v. Fla. Dep't of Envtl. Prot., 567 F. App'x 679, 680 (11th Cir. 2014)(quoting Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007)).

Granting relief under Rule 59(e) is "an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." United States v. DeRochemont, No. 8:10-cr-287-T-24MAP, 2012 WL 13510, at *2 (M.D. Fla. Jan. 4, 2012)(citation omitted). Furthermore, "a Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised

prior to the entry of judgment." Michael Linet, Inc. v. Vill. of Wellington, 408 F.3d 757, 763 (11th Cir. 2005).

III. Analysis

While DeBose raises various points in her Motion, all of her arguments crystallize to a single contention - that this Court erred in denying her motion for independent action. However, DeBose has not pointed to any new evidence in support of her Motion. Moreover, DeBose's arguments are, essentially, a rehash of the arguments raised in her Rule 60(d) motion. DeBose has spent considerable time and energy over the course of this litigation attempting to convince the Court that sanctions are in order against USFBOT for spoliation of evidence and various other infractions. As explained in its prior Order, this Court has considered and rejected these arguments on multiple occasions. Such arguments are not permissible on a Rule 59(e) motion.

In sum, DeBose has not met her burden of demonstrating that newly discovered evidence or manifest errors of law or fact merit reconsideration of the Court's June 23, 2020, or June 24, 2020, Orders under Rule 59(e). Her motion for reconsideration must be denied.

Accordingly, it is now

ORDERED, ADJUDGED, and **DECREED:**

Angela DeBose's Motion for Reconsideration (Doc. # 609) is **DENIED**.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 8th day of July, 2020.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE