

No. 22-306

IN THE
SUPREME COURT OF THE UNITED STATES

LINDSAY O'BRIEN QUARRIE,

Petitioner,

v.

STEPHEN WELLS; THE BOARD OF REGENTS OF
THE NEW MEXICO INSTITUTE OF MINING AND
TECHNOLOGY; LORIE LIEBROCK;
ALY EL-OSERY,

Respondents.

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Tenth Circuit*

**PETITIONER'S SECOND
SUPPLEMENTAL BRIEF**

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*On Petition for a Writ of Certiorari to the United
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**PETITIONER'S SECOND
SUPPLEMENTAL BRIEF**

This second supplemental brief, filed pursuant to Rule 15.8 of this Court, brings to the Court's attention an intervening matter of utmost importance to the proper disposition of the pending petition for a writ of certiorari in this case.

(1)

In Petitioner's first Supplemental Brief, he informed the Court that upon inspecting his academic/administrative file maintained by the Office of Graduate Studies at the New Mexico Institute of Mining and Technology ("NMT") in Socorro, New Mexico on October 18, 2022, he discovered therein for the first time two (2) copies of former-Dean of Graduate Studies Lorie Liebrock's April 27, 2012 letter terminating him from the graduate program at NMT ("Liebrock termination letter"). Although Petitioner made numerous verbal and written requests for photocopies of the two copies of the Liebrock termination letter immediately after their discovery and during the following two weeks, Respondents Aly El-Osery and NMT refused to provide them. *See* Supplemental Brief at 1-2 and the Appendix thereto at 1a-12a.

Petitioner now informs the Court that after he wrote a lengthy letter to Respondent NMT's legal counsel on October 31, 2022, explaining why he had a right to receive the requested photocopies of the two copies of the Liebrock termination letter without further delay and that if Respondent NMT continued to refuse to comply with his written requests he would be obliged to legally enforce his right, Respondent NMT finally provided the requested photocopies in electronic format on November 4, 2022, and then in paper format on November 9, 2022. *See* App. at 1a-3a.

Respondent NMT's legal counsel also formally admitted to Petitioner when he inspected his NMT files again in person on November 9, 2022, that the two copies of the Liebrock termination letter were in

his Office of Graduate Studies file on October 18, 2022, and that they had since been removed from that file and placed in a separate folder marked “Letters mistakenly in Graduate Office File Removed 10/18/2022”. *See App. at 3a.*

Petitioner further informs the Court that because Respondent NMT *et al.* committed fraud on the court by repeatedly concealing the existence and location of the two copies of the Liebrock termination letter in defiance of several discovery requests and two district court orders, Petitioner sent Respondent NMT’s legal counsel a *Fourth Notice of Rescission* on November 15, 2022 concerning the Settlement Agreement and Mutual Release (“Settlement Agreement”) between Petitioner and Respondent NMT *et al.* *See App. at 4a-6a.*

A. Respondents committed fraud on the court

After Respondent NMT revealed in its Response to Petitioner’s Request for Production No. 20 during discovery in 2020 that it had “transferred” “certain documents [...] to a legal file pursuant to the terms of the Settlement Agreement (e.g., the termination letter and associated communications)”, Petitioner served his Interrogatory No. 16 on Respondent NMT, which requested the following:

It is presumed that by “termination letter” in the above context Defendant NMT is referring to the April 27, 2012 letter from Lorie Liebrock to Plaintiff. Describe in detail how many copies of

the April 27, 2012 letter from Lorie Liebrock to Plaintiff (including all variations of it) are currently in each of Plaintiff's academic, administrative, and legal files at NMT. Include in your answer the total number of variations of this letter – i.e., signed or unsigned, stamped or unstamped, and with or without letterhead – that are currently in each of Plaintiff's academic, administrative, and legal files at NMT.

App. at 7a-8a.

Rather than responding to this simple and straightforward interrogatory by revealing the total number of copies of the Liebrock termination letter currently in each of Petitioner's academic, administrative, and legal files at NMT, Respondent NMT fought tooth and nail to withhold this information from Petitioner by objecting to his interrogatory in its entirety and by forcing Petitioner to file a motion to compel discovery. *See id.*

In his first Order filed on May 4, 2020, Magistrate Judge Gregory B. Wormuth of the United States District Court for the District of New Mexico found that the information that Petitioner sought in his Interrogatory No. 16 was self-evidently "relevant" and "reasonably proportional to the needs of the case":

To the extent that Plaintiff's ability to sue is premised on Defendant NMT's failure to remove the termination letter from his academic and other administrative files within five business days of the Settlement Agreement, the relevance

of any current copies of that termination letter—including their total number and specific locations—is self-evident.

* * *

[A]s to Defendant NMT's objections that Interrogatory No. 16 is "harassing," "overbroad," and "cumulative," these are largely unexplained and appear generally without basis. For the reasons explained above, the Court finds that the request—at least in the absence of specific, persuasive argument to the contrary—is reasonably proportional to the needs of the case, and therefore is neither "harassing" nor overbroad. There is still less indication of the request's being cumulative.

App. at 9a (footnote omitted). The magistrate judge therefore overruled all of Respondent NMT's objections to Interrogatory No. 16 and ordered Respondent NMT "to provide a full and complete answer" thereto. App. at 10a. And the magistrate judge made clear "that Interrogatory No. 16 must encompass *all* copies of the termination letter contained in any of Plaintiff's files at NMT, including the four exhibit copies, as Defendant's response to Request for Production No. 20 referenced the termination letter generally." *Id.*

Although Respondent NMT produced twenty-four Bates-numbered copies of the Liebrock termination letter in its Supplemental Answer to Interrogatory No. 16 (see App. at 17a-18a), it violated the

magistrate judge's order by refusing to reveal the current location of those copies in each of Petitioner's files at NMT, thereby forcing Petitioner to file a motion for discovery and spoliation sanctions. *See* App. at 12a-15a.

In his second Order of August 3, 2020, Magistrate Judge Wormuth found that "no part of Defendant's supplemented response to Interrogatory No. 16 answers, even by reference, the simple question of which file(s) the copies may currently be found in." App. 14a. He therefore ordered Respondent NMT "to update its response to reflect the current file location of ***all copies*** of the termination letter." App. at 15a (emphasis added).

Although Respondent NMT stated in its Second Supplemental Answer to Interrogatory No. 16 that "each of these twenty-four copies of the termination letter (NMT.00464 through NMT.00487) were in the legal file maintained by Graduate Studies", App. at 18a, it knowingly concealed two additional copies of the Liebrock termination letter that were located in Petitioner's academic/administrative file maintained by the Office of Graduate Studies at NMT. This is indisputably a *non-legal* file; otherwise Petitioner would never have been allowed to inspect it in person on October 18, 2022 and again on November 9, 2022. *See* App. at 1a-3a.

Upon first reading Respondent NMT's Second Supplemental Answer to Interrogatory No. 16, Petitioner suspected that Respondent NMT was still not fully forthcoming for at least two reasons: (1) the twenty-four Bates-numbered copies of the Liebrock termination letter did not account for all known

copies that had already been discovered by Petitioner by that time, and since (2) Respondent NMT's weird use of the past tense "were" in the clause "were located in Petitioner's academic/administrative file maintained by the Office of Graduate Studies at NMT" is obviously evasive in that it does not answer the question "Where are the copies *currently* located?" Such a question requires a response in the present tense – "... *are* located ...".

Unfortunately, Petitioner was prevented from verifying Respondent NMT's Second Supplemental Answer to Interrogatory No. 16 at that time by inspecting his NMT files in person due to the coronavirus pandemic. And shortly thereafter discovery came to a close in the district court. Consequently, Respondent NMT got away with providing an answer that was neither complete nor honest. It is now evident, thanks to Petitioner's inspection of his NMT files on October 18, 2022, that Respondent NMT and its former legal counsel violated both district court orders to provide a full and complete answer to Interrogatory No. 16.

This constitutes fraud on the court because it tampers with the court's judicial machinery itself by knowingly concealing evidence that was requested several times by Petitioner and ordered twice by the district court. Despite spending tens of thousands of dollars over the course of many months of discovery in the instant case, Petitioner never received a complete and honest answer from Respondent NMT to the simple and straightforward interrogatory that sought the exact number of copies of the Liebrock termination letter and their current location in each

of Petitioner's files at NMT.

If that information had been provided, it would most likely have led to a very different outcome in both the district court and court of appeals, for it would have provided additional support for Petitioner's contention that he had substantive grounds to unilaterally rescind the Settlement Agreement, which he effectuated on at least three different occasions between November of 2015 and March of 2017, and that Respondent NMT's contrary "belief" that the Settlement Agreement remained valid and enforceable was clearly dishonest and therefore nothing but a pretext for their ongoing racial discrimination against Petitioner as an African American.

Respondent NMT's willful concealment of the existence and location of the two copies of the Liebrock termination letter discovered by Petitioner for the first time on October 18, 2022 in his *non-legal* academic/administrative file maintained by the Office of Graduate Studies at NMT also constitutes further grounds for rescinding the Settlement Agreement, for it qualifies as (1) fraud, which in New Mexico contract law is considered a legally sufficient reason for rescission (*see, e.g., Putney v. Schmidt*, 16 N.M. 400, 411, 120 P. 720, 723 (1911)), and (2) falsification of the facts, which violates the implied covenant of good faith and fair dealing:

The obligation of good faith and fair dealing extends to the assertion, settlement and litigation of contract claims and defenses. [...] The obligation is violated by dishonest conduct such as

conjuring up a pretended dispute, asserting an interpretation contrary to one's own understanding, or *falsification of facts*.

Restatement (Second) of Contracts § 205(e) (1981) (emphasis added). The implied covenant of good faith and fair dealing is imposed upon every party to a contract. *See Restatement (Second) of Contracts* § 205 (1981) (“[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”). And this standard has been consistently upheld by the New Mexico Supreme Court: “Whether express or not, every contract imposes upon the parties a duty of good faith and fair dealing in its performance and enforcement.” *Watson Truck & Supply Co. v. Males*, 111 N.M. 57, 60, 801 P.2d 639, 642 (1990).

Petitioner therefore had the right – and exercised that right – to rescind the Settlement Agreement due to Respondent NMT's having committed fraud on the court and having violated the implied covenant of good faith and fair dealing by falsifying the facts. Thus, Respondent NMT's proffered reason for refusing to readmit Petitioner to the PhD program in Materials Engineering at NMT in 2016 and thereafter is unworthy of credence.

CONCLUSION

In light of the foregoing, the Court should exercise its inherent equitable power to set aside the judgments of the lower courts due to Respondent NMT's fraud on the court, for as this Court

emphatically stated in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*: “No fraud is more odious than an attempt to subvert the administration of justice.” *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 251 (1944). This is precisely what Respondent NMT did when it defied two court orders by knowingly concealing requested documents whose existence and location were highly relevant to the issue of the validity and enforceability of the Settlement Agreement and thus of the proper disposition of Petitioner’s intentional racial discrimination claim under Title VI of the Civil Rights Act of 1964.

The petition for a writ of certiorari should therefore be granted, the Tenth Circuit’s decision reversed, and the case remanded to the district court for further proceedings, including a thorough investigation of the fraud that Respondent NMT has practiced upon the court.

Respectfully submitted,

November 2022

/s/ Lindsay O’Brien Quarrie
Lindsay O’Brien Quarrie
Petitioner Pro Se

APPENDIX A

Second Declaration of Lindsay O'Brien Quarrie

I, Lindsay O'Brien Quarrie, declare the following under penalty of perjury:

1. I am over the age of eighteen and have personal knowledge of the factual information conveyed herein.

2. On October 18, 2022, I inspected my academic/administrative file maintained by the Office of Graduate Studies at the New Mexico Institute of Mining and Technology ("NMT") in Socorro, New Mexico and discovered therein for the first time two (2) copies of former-Dean of Graduate Studies Lorie Liebrock's April 27, 2012 letter terminating me from the graduate program at NMT ("Liebrock termination letter").

3. During that same inspection of my Office of Graduate Studies file on October 18, 2022, I made several verbal requests for photocopies of the two copies of the Liebrock termination letter, but Dean of Graduate Studies Aly El-Osery refused to provide them or allow me to make my own photocopies.

4. On October 18 and 19, 2022, I made additional requests in writing to Dean El-Osery and the NMT Records Custodian Melissa Tull for photocopies of the two copies of the Liebrock termination letter, but they still did not provide them.

5. Several days later on October 24, 2022, NMT's legal counsel Carol Dominguez Shay contacted me by email, stating that she would "respond shortly with next steps that will hopefully resolve the matter."

(1a)

6. After patiently waiting for another week without receiving the requested photocopies of the two copies of the Liebrock termination letter, I sent NMT's legal counsel Ms. Shay a lengthy letter on October 31, 2022, explaining why I had a right to receive the requested photocopies without further delay and that if NMT continued to refuse to comply with my written requests, I would be obliged to legally enforce my right.

7. In her November 2, 2022 email response to my October 31, 2022 letter, Ms. Shay stated: "We will be providing you a copy of your files as soon as they are gathered by the administration."

8. I replied via email to Ms. Shay that same day, making clear that there was nothing to "gather" and that I was still waiting for the long-overdue requested photocopies of the two copies of the Liebrock termination letter.

9. Finally, on November 4, 2022, Ms. Shay sent me electronic copies of the two copies of the Liebrock termination letter discovered on October 18, 2022 in my file maintained by the Office of Graduate Studies at NMT. She also stated in her email that a time was being arranged for me to inspect my records at NMT the following week.

10. On November 9, 2022, starting at around 1:00 PM, I visited NMT with a witness over the age of eighteen who was also a notary public for the purpose of inspecting my academic/administrative file in the Department of Materials Engineering, but upon arriving on the campus and meeting with NMT's legal counsel Ms. Shay and the NMT Records Custodian Melissa Tull, I was informed that no such

file existed.

11. During that same meeting, which took place in the Gold Building at NMT, Ms. Shay showed me and the notary public the two copies of the Liebrock termination letter that I had previously discovered on October 18, 2022 in my file maintained by the Office of Graduate Studies at NMT. The two copies of the letter had since been removed from that file and placed in a separate folder with the title on it "Letters mistakenly in Graduate Office File Removed 10/18/2022".

12. After Ms. Shay formally admitted that the two copies of the Liebrock termination letter were in my Office of Graduate Studies file on October 18, 2022, a NMT administrator provided me with photocopies of the two copies of the letter (as well as of the front cover of the folder containing them), which were then immediately notarized by the notary public accompanying me during the meeting on November 9, 2022 at NMT.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 16, 2022

/s/ Lindsay O'Brien Quarrie
Lindsay O'Brien Quarrie

APPENDIX B

Lindsay O'Brien Quarrie
609 Neel Street
Socorro, NM 87801
(858) 334-9997
lindsay.o.quarrie@gmail.com

November 15, 2022

To: New Mexico Tech, Attorney

Carol Dominguez Shay
Conklin, Woodcock & Ziegler, P.C.
320 Gold Ave. S.W., Suite 800
Albuquerque, New Mexico 87102

FOURTH NOTICE OF RESCISSION

Dear Ms. Carol Dominguez Shay/New Mexico Tech,

I hereby notify your clients the Board of Regents of the New Mexico Institute of Mining and Technology (NMT) *et al.* that pursuant to New Mexico contract law I have unilaterally rescinded the 2015 Settlement Agreement and Mutual Release (Settlement Agreement) due to NMT's having failed to abide by the terms of the Settlement Agreement and due to its having committed fraud on the court by knowingly concealing copies of Lorie Liebrock's April 27, 2012 termination letter whose existence and location were highly relevant to the issue of the validity and enforceability of the Settlement

(4a)

Agreement.

This notice of rescission of the Settlement Agreement is now the fourth one that I have sent to NMT *et al.* The first notice was sent by email on November 6, 2015, the second one by letter on June 30, 2016, and the third one by way of my federal lawsuit for racial discrimination under Title VI filed on March 20, 2017 (case no. 2:17-cv-00350-MV-GBW).

As you are well aware, upon inspecting my academic/administrative file maintained by the Office of Graduate Studies at NMT on October 18, 2022, I discovered therein two (2) copies of Lorie Liebrock's April 27, 2012 termination letter. The existence and location of these two additional copies of the Liebrock termination letter were knowingly concealed by NMT and its former legal counsel during discovery in violation of two court orders issued on May 4th and August 3rd of 2020 by Magistrate Judge Gregory B. Wormuth of the United States District Court for the District of New Mexico. *See* Docs. 308 and 353. This constitutes fraud on the court.

It also constitutes further grounds for unilateral rescission of the Settlement Agreement, since (1) it qualifies as yet another uncured breach of the terms of the contract (*see* Settlement Agreement at p. 2), and (2) it qualifies as yet another falsification of the facts, which in turn further breaches the contract by violating the implied covenant of good faith and fair dealing (*see* the *Restatement (Second) of Contracts* §

205(e) (1981)), which is recognized by the New Mexico Supreme Court as being central to every contract. *See, e.g., Watson Truck & Supply Co. v. Males*, 111 N.M. 57, 60, 801 P.2d 639, 642 (1990).

Because unilateral rescission requires an offer to return any and all consideration received as part of a contract (*see, e.g., Putney v. Schmidt*, 16 N.M. 400, 120 P. 720, 723 (1911)), I hereby offer to again return the \$6,000 that I received from NMT and the New Mexico Risk Management pursuant to the terms of the Settlement Agreement. (As the record shows, I already returned the \$6,000 in 2016 and 2017.) Please inform me of the names and addresses of the payees and their preferred method of payment. Any refusal on the part of NMT *et al.* to accept my offer to return the \$6,000 does not invalidate the unilateral rescission of the Settlement Agreement. *See, e.g.,* Dan B. Dobbs, *Handbook on the Law of Remedies* § 4.8 at 295 (West 1973).

Sincerely,
/s/ Lindsay O'Brien Quarrie
Lindsay O'Brien Quarrie

11/15/2022

Cc: New Mexico Risk Management, Randall Cherry

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

LINDSAY O'BRIEN QUARRIE,

Plaintiff, [Filed on 05/04/2020]

v. Civ. No. 17-350 MV/GBW

STEPHEN WELLS, et al.,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTIONS TO COMPEL DISCOVERY RESPONSES

THIS MATTER comes before the Court on Plaintiff's Motion to Compel Discovery (*doc. 278*) and Plaintiff's Motion to Compel (*doc. 286*). Having considered both motions, the parties' briefing (*docs. 284, 302, 287, 301, 304*), and the relevant law, the Court will GRANT IN PART Plaintiff's first motion (*doc. 278*) and GRANT IN PART Plaintiff's second motion (*doc. 286*).

* * *

C. Interrogatory No. 16

Plaintiff's sixteenth interrogatory reads:

(7a)

It is presumed that by “termination letter” [in Defendant NMT’s response to Request for Production No. 20,] Defendant NMT is referring to the April 27, 2012 letter from Lorie Liebrock to Plaintiff. Describe in detail how many copies of the April 27, 2012 letter from Lorie Liebrock to Plaintiff (including all variations of it) are currently in each of Plaintiff’s academic, administrative, and legal files at NMT. Include in your answer the total number of variations of this letter—i.e., signed or unsigned, stamped or unstamped, and with or without letterhead—that are currently in each of Plaintiff’s academic, administrative, and legal files at NMT.

Doc. 278-2 at 4. Defendant NMT objected to the request in its entirety and provided no substantive response, stating:

Objection, this interrogatory is harassing, overbroad, burdensome, and cumulative. Multiple copies of this letter have been produced. There is no dispute over the contents of the termination letter. Over the course of multiple disputes among the parties since 2012 . . . multiple copies of this letter have been generated. Because there is no dispute over the contents of the letter, seeking NMT to review its files to count the number of copies of this letter, and whether it contains a stamp, signature, etc., serves no purpose and is cumulative and burdensome.

Id.

The Court is unpersuaded by Defendant NMT's argument that the request is objectionable because the contents of the termination letter are not in dispute. No part of Interrogatory No. 16 asks Defendant NMT to describe or provide the substantive contents of the termination letter, and establishing the letter's contents is quite evidently not Plaintiff's aim in requesting this information. Rather, Plaintiff clearly believes that the number of copies of the termination letter present in his various NMT files bears on the validity and enforceability of the Settlement Agreement. To the extent that Plaintiff's ability to sue is premised on Defendant NMT's failure to remove the termination letter from his academic and other administrative files within five business days of the Settlement Agreement,⁵ the relevance of any current copies of that termination letter—including their total number and specific locations—is self-evident.

* * *

Finally, as to Defendant NMT's objections that Interrogatory No. 16 is "harassing," "overbroad," and "cumulative," these are largely unexplained and appear generally without basis. For the reasons explained above, the Court finds that the request—at

⁵ The Court expresses no opinion about whether Defendant NMT's failure to remove the termination letter would, in fact, constitute a material breach of the Settlement Agreement, as that issue has not been properly raised or briefed.

least in the absence of specific, persuasive argument to the contrary—is reasonably proportional to the needs of the case, and therefore is neither “harassing” nor overbroad. There is still less indication of the request’s being cumulative. Certainly, Defendant NMT asserts that “multiple copies of this letter have been generated,” doc. 278-2 at 4, and the Court sees no reason to doubt it. But Interrogatory No. 16 does not ask Defendant NMT to generate copies of the termination letter. Instead, it requests identification of the location and other details of all currently existing copies of the termination letter. The Court therefore finds no evidence that Plaintiff has made this specific discovery request before, and does not consider it cumulative.

For these reasons, Defendant NMT’s objections to Interrogatory No. 16 are OVERRULED, and Defendant NMT is ORDERED to provide a full and complete answer.

* * *

However, it appears to the Court that Interrogatory No. 16 must encompass *all* copies of the termination letter contained in any of Plaintiff’s files at NMT, including the four exhibit copies, as Defendant’s response to Request for Production No. 20 referenced the termination letter generally.

* * *

11a

IT IS ORDERED that Defendant NMT shall provide its updated responses, as delineated herein, no later than **May 18, 2020**.

* * *

/s/ Gregory B. Wormuth

GREGORY B. WORMUTH

UNITED STATES MAGISTRATE JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

LINDSAY O'BRIEN QUARRIE,

Plaintiff, [Filed on 08/03/2020]

v. Civ. No. 17-350 MV/GBW

STEPHEN WELLS, *et al.*,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SANCTIONS

THIS MATTER comes before the Court on Plaintiff's Motion for Discovery and Spoliation Sanctions (doc. 325) and related briefing (docs. 330, 338). For the reasons that follow, the Court will GRANT IN PART and DENY IN PART Plaintiff's Motion.

* * *

iii. Interrogatory No. 16

Plaintiff's Interrogatory No. 16 asked Defendant NMT to:

(12a)

Describe in detail how many copies of the April 27, 2012 letter from Lorie Liebrock to Plaintiff (including all variations of it) are currently in each of Plaintiff's academic, administrative, and legal files at NMT. Include in your answer the total number of variations of this letter—i.e., signed or unsigned, stamped or unstamped, and with or without letterhead—that are currently in each of Plaintiff's academic, administrative, and legal files at NMT.

Doc. 325-7 at 4. In its May 4, 2020 ruling, the Court ordered Defendant NMT to respond in full. *Doc. 308* at 17.

Defendant NMT provided the following Supplemental Answer: "Pursuant to Fed. R. Civ. P. 33(d), see twenty-four copies of termination letter in all its forms produced herein (NMT.00464 through NMT.00487)." *Doc. 325-7* at 4. Defendant attached twenty-four Bates-stamped documents. *Id.* at 7-30.

Plaintiff contends that this supplemented response fails to address subpart (2) of his interrogatory, which asked Defendant to identify in which NMT file each individual copy of the letter was "currently" located. He argues:

According to Defendant NMT's response to Request for Production No. 9, there are "approximately five legal files" pertaining to me at NMT. Which of the twenty-four copies of the termination letter are currently in each of those five legal files, which are currently in Plaintiff's

(former) administrative files, and which are currently in Plaintiff's NMT academic files?

Doc. 325 at 19.

Plaintiff's belief that there are five legal files pertaining to Plaintiff at NMT derives from a response to Plaintiff's Request for Production No. 9, which asked for "[e]ach and every document . . . that pertain[s] to the creation, execution, performance, enforcement, and validity of the 2015 Settlement Agreement and Mutual Release between Lindsay O'Brien Quarrie and NMT *et al.*" *Doc. 330-4* at 2. Defendant responded, in relevant part: "Because this Request seeks documents that are clearly privileged . . . and because of the breadth of the Request, NMT will not prepare a privilege log of the contents of approximately five legal files." *Id.* at 3. In its response brief, Defendant NMT explains that Plaintiff's belief is based on a "misconstruction" of its answer, and that "[t]here are not five separate legal files." *Doc. 330* at 9–10. The nature of this misconception is not entirely clear to the Court, but it seems that Defendant NMT's prior response may have been based on the "five legal proceedings" between Plaintiff and NMT. *See id.*

More importantly, no part of Defendant's supplemented response to Interrogatory No. 16 answers, even by reference, the simple question of which file(s) the copies may currently be found in. To be sure, Defendant answers this question readily in its response brief. *See id.* at 10 ("The multiple copies of the termination letter identified and produced to Plaintiff in Supplemental Answer to Interrogatory

No. 16 were contained within the legal file maintained by Graduate Studies."). But, as this Court has explained before, answers to interrogatories must be clearly stated without reference to outside documents. *See Fed. R. Civ. P. 33(b)(3)* ("Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath."). Defendant's statement in its response brief is not a proper substitute for a full and separate answer to Plaintiff's interrogatory.

Accordingly, Plaintiff's motion is GRANTED with respect to Interrogatory No. 16. Defendant NMT shall further supplement its response to describe the current file location of all twenty-four copies of the termination letter.

* * *

The Motion is GRANTED as it pertains to Interrogatory No. 16. Defendant NMT is hereby ORDERED to update its response to reflect the current file location of all copies of the termination letter. This may be done by clear and concise reference to its other interrogatory responses.

* * *

/s/ Gregory B. Wormuth
GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LINDSAY O'BRIEN QUARRIE,

Plaintiff,

v.

STEPHEN WELLS in his official capacity, ALY EL-OSERY in his official capacity, and the BOARD of REGENTS of the NEW MEXICO INSTITUTE of MINING and TECHNOLOGY in their official capacities,

Defendants.

No. 2:17-cv-00350-MV/GBW

**DEFENDANT NMT'S FIFTH SUPPLEMENTAL
OBJECTIONS AND ANSWERS TO
PLAINTIFF'S FIFTH SET OF
INTERROGATORIES**

* * *

Plaintiff's Interrogatory No. 16:

In its Response to Plaintiff's Request for

(16a)

Production No. 20 ("Response"), Defendant NMT wrote the following:

While certain documents were transferred to a legal file pursuant to the terms of the Settlement Agreement (e.g., the termination letter and associated communications), no documents were destroyed. Subject to said objection and without waiving the same, to the extent this Request seeks the termination letter, this has already been produced. No other responsive documents.

Defendant NMT's Response at 1.

It is presumed that by "termination letter" in the above context Defendant NMT is referring to the April 27, 2012 letter from Lorie Liebrock to Plaintiff. Describe in detail how many copies of the April 27, 2012 letter from Lorie Liebrock to Plaintiff (including all variations of it) are currently in each of Plaintiff's academic, administrative, and legal files at NMT. Include in your answer the total number of variations of this letter – i.e., signed or unsigned, stamped or unstamped, and with or without letterhead – that are currently in each of Plaintiff's academic, administrative, and legal files at NMT.

* * *

Supplemental Answer: Pursuant to Fed. R. Civ. P. 33(d), see twenty-four copies of termination letter

in all its forms produced herein (NMT.00464 through NMT.00487).

Second Supplemental Answer: In addition to the above Answer, each of these twenty-four copies of the termination letter (NMT.00464 through NMT.00487) were in the legal file maintained by Graduate Studies.

CONKLIN, WOODCOCK, & ZIEGLER, P.C.

By: /s/ Alisa Wigley-DeLara
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APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

LINDSAY O'BRIEN QUARRIE,

Plaintiff,

v.

No. 2:17-cv-00350 MV/GBW

**STEPHEN WELLS in his official
capacity, ALY EL-OSERY in his
official capacity, and the BOARD of
REGENTS of the NEW MEXICO
INSTITUTE OF MINING AND TECHNOLOGY
in their official capacities,**

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2020, a true and correct copy of Defendant NMT's Fifth Supplemental Objections and Answers to Plaintiff's Fifth Set of Interrogatories along with a copy of this Certificate of Service were served to Plaintiff Lindsay O'Brien Quarrie (lindsay.o.quarrie@gmail.com), via electronic mail.

Respectfully Submitted,

CONKLIN, WOODCOCK, & ZIEGLER, P.C.

(19a)

20a

By: /s/ Alisa Wigley-DeLara

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