APPENDIX A

The Decisions of the U. S. Court of Appeals for the Ninth Circuit in the Title VII Retaliation Case

Guangyu Wang v. Nevada System of Higher Education

No. 21-15981

LINN, RAWLINSON, and HURWITZ, Circuit Judges

(From November 30, 2022 to December 15, 2022)

App 1-6

TABLE OF CONTENTS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED NOV 30 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GUANGYU WANG, Plaintiff-Appellant, v. NEVADA SYSTEM OF HIGHER EDUCATION, Defendant-Appellee.	▪ No. 21-15981 ▪ D.C. No.3:18-cv-00075-MMD-CLB ▪ MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

Miranda M. Du, Chief District Judge, Presiding

Argued and Submitted November 17, 2022

San Francisco, California

Before: LINN,** RAWLINSON, and HURWITZ, Circuit Judges.

1

Dr. Guangyu Wang appeals a judgment of the district court in favor of the Nevada System of Higher Education ("NSHE") in this action asserting violations ofTitle VII of the Civil Rights Act of 1964 and Nevada law. He also challenges the

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Richard Linn, United States Circuit Judge for the U.S.Court of Appeals for the Federal Circuit, sitting by designation.

district court's award of costs to NSHE. We review the district court's grant of summary judgment de novo, *Prison Legal News v. Lehman*, 397 F.3d 692, 698 (9th Cir. 2005), and its evidentiary rulings for abuse of discretion, *Obrey v. Johnson*, 400F.3d 691, 694 (9th Cir. 2005). We may reverse an award of costs if we find that the award would cause "severe injustice." *See Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003). We affirm the judgment in favor of NSHE but reverse the costs award.

1. Wang argues that the district court misconstrued his operative complaint as simply alleging five discrete acts of retaliation, as opposed to hostile work environment or breach of contract. We disagree. A plain reading of the operative complaint shows that Wang alleged separate claims arising from specific distinct acts, *see Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113–15 (2002), and the record developed at summary judgment and trial contains no evidence to supporta hostile work environment claim. Wang's operative complaint also fails to allege breach of contract.

2. The district court did not err in granting summary judgment on the first four claims of retaliation.

a. Although the court granted Wang partial summary judgment as to liability on the first two claims, it correctly held that Wang failed to establish damages from either retaliatory act. Because Wang did not seek nominal damages below, he has

waived any such claim on appeal. *See Fitzgerald v. Century Park, Inc.*, 642 F.2d 356, 359 (9th Cir. 1981).

b. The district court correctly held that undisputed evidence showed that the prior settlement amount of $21,589.02 was paid by the State of Nevada and not from Wang's grant.

c. The district court also correctly held that NSHE had no duty to preserve lab supplies purchased with university funds and that the university's obligations under a prior settlement agreement extended only to two equipment items unrelated to the lab supplies, obligations that NSHE satisfied.

3. The district court did not abuse its discretion by excluding evidence relating to the first four claims from the jury trial on the fifth claim. That evidence was not directly related to the issue at trial, which was whether NSHE retaliated against Wang by prohibiting his access to the lab several months after his employment wasterminated. *See Sprint/United Mgmt Co. v. Mendelsohn*, 552 U.S. 379, 382–85 (2008) (noting that district courts have broad discretion to determine what evidenceis relevant or when relevant evidence should be excluded). In any event, Wang suffered no prejudice from exclusion of the evidence, *see Obrey*, 400 F.3d at 701, as he failed to show any damage from denial of access to the lab given that the supplies related to his claims had already been discarded.

4. Because of the grossly different financial positions of the parties and Wang's partial success in establishing two acts of retaliation, we find that awarding costs to NSHE would cause severe injustice. The award of costs is therefore reversed.

AFFIRMED IN PART AND REVERSED IN PART. Each party shall bear its own costs on appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED DEC 15 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GUANGYU WANG, Plaintiff-Appellant, v. NEVADA SYSTEM OF HIGHER EDUCATION, Defendant-Appellee.	▪ No 21-15981 ▪ D.C. No.3:18-cv-00075-MMD-CLB ▪ ORDER

Before: LINN,* RAWLINSON, and HURWITZ, Circuit Judges.

Appellant's Petition for Panel Rehearing, filed December 7, 2022, is DENIED.

Case: 21-15981, 12/15/2022, ID: 12611403, DktEntry: 57, Page 1 of 1

* The Honorable Richard Linn, United States Circuit Judge for the U.S.Court of Appeals for the Federal Circuit, sitting by designation.

APPENDIX B

The Decisions of the U. S. District Court for Nevada, Reno in the Title VII Retaliation Case

Guangyu Wang v. Nevada System of Higher Education

No. 3:18-cv-00075-MMD-CLB
Miranda M. Du, Chief District Judge, Presiding
(From November 6, 2018 to January 10, 2022)
App 7-73

TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
* * *

GUANGYU WANG, Plaintiff, v. NEVADA SYSTEM OF HIGHEREDUCATION, Defendant.	Case No. 3:18-cv-00075-MMD-CBC Miranda M. Du, Chief District Judge ORDER

1

I. SUMMARY

This is a Title VII retaliation case brought by a pro se plaintiff. As a result of this order, the Court grants summary judgment in favor of Plaintiff on his first and second claims for retaliation, and Plaintiff's third, fourth, and fifth claims for retaliation will proceed to trial. In addition, Plaintiff's claim for defamation related to his first claim for retaliation is dismissed, at least to the extent Plaintiff asserts such a claim. Finally, the Court grants summary judgment in favor of Defendant on Plaintiff's claim for defamation related to his fifth claim for retaliation, again only to the extent Plaintiff asserts such a claim.

Defendant Nevada System of Higher Education filed two motions: a motion for judgment on the pleadings (ECF No. 24) and a motion for partial summary judgment (ECF No. 25). The Court has reviewed Plaintiff's responses (ECF Nos. 28, 30) and Defendant's replies (ECF Nos. 32, 33).

Plaintiff filed a motion for summary judgment (ECF No. 35). The Court has reviewed Defendant's response (ECF No. 36) and Plaintiff's reply (ECF No.

37). Defendant moved

for leave to supplement the record (ECF No. 38), and Plaintiff opposed (ECF No. 39). Plaintiff filed a motion to expedite consideration of his motion for summary judgment (ECFNo. 46) that Defendant opposed (ECF No. 47). Plaintiff also filed a motion to redact personal data (ECF No. 42) and a motion to update an illegible exhibit (ECF No. 43) that Defendant did not oppose (ECF Nos. 44, 45 (notices of non-opposition)).

II. BACKGROUND

The following allegations come from Plaintiff's First Amended Complaint ("FAC") (ECF No. 21) unless otherwise indicated.[1]

Plaintiff worked as a "Research Assistant Professor" in the Department of Pharmacology at the University of Nevada Reno School of Medicine ("UNR Med"), and his position was funded with an American Heart Association ("AHA") National Scientist Development Grant ("Grant"). (ECF No. 21 at 7.) Plaintiff received a discharge notice on June 15, 2012, and was provided with a 180-day compensatory extension until December12, 2012.[2] (*Id.*) Plaintiff filed a charge of race discrimination with the Nevada Equal Rights Commission ("NERC") and the Equal Employment Opportunity Commission ("EEOC") in December 2012. (*Id.*) Plaintiff also filed a lawsuit in

[1]These facts are not disputed unless otherwise indicated in this order. The Court does not rely on the disputed facts.

[2]Plaintiff alleges that the date was "12/12/2013" in his FAC, but this seems to be a typographical error.

state court against Defendant. (*Id.*) Plaintiff was unable to access lab equipment and supplies from December 12, 2012,[3] until April 17, 2013, when Plaintiff settled the charges and the lawsuit with Defendant. (*Id.*)

Plaintiff alleges that despite the settlement, Plaintiff's former supervisor—a non-party named Iain Buxton who heads up UNR Med—intentionally retaliated against Plaintiff for filing the charges of employment discrimination and the lawsuit in a number of ways: (1) by making disparaging comments about Plaintiff and unfavorable references to the fiscal official at UNR and the hiring official at UC Davis on June 18, 2013; (2) by disclosing///

Plaintiff's previous lawsuit against Defendant as a negative reference to the hiring official at UC Davis on June 19, 2013; (3) by depriving Plaintiff of funding from the Grant; (4) by refusing to transfer Plaintiff's lab chemical and biological products and supplies ("Lab Supplies") from UNR to UC Davis and by discarding them without Plaintiff's consent on October 15, 2013; and (5) by threatening Plaintiff and damaging his good reputation on October 15, 2013, by prohibiting him from accessing the UNR campus. (*Id.* at 8-9.)

Plaintiff conceives of his FAC as advancing five independent claims for retaliation based on the enumerated allegations above. (*See* ECF No. 30 at 9 ("It should be noteworthy that Plaintiff had at least five

[3]Again, Plaintiff seems to erroneously allege that the date was "12/12/2013."

claims in his [FAC] ").) Defendant adopts the same five claims in its response. (ECF No. 36 at 1-2.) Accordingly, the Court so construes Plaintiff's FAC for the purpose of addressing the pending motions. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (pleadings of pro se party must be liberally construed).

III. DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS (ECF NO. 24)

A. LEGAL STANDARD

A Rule 12(c) motion for judgment on the pleadings utilizes the same standard as a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted in that it may only be granted when it is clear to the court that "no relief could be granted under any set of facts that could be proven consistent with the allegations." *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988) (citations omitted).

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to

survive a motion to dismiss, a complaint must contain sufficient factual matter to "state aclaim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but not shown—that the pleader is entitled to relief. *Id.* at 679 (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivableto plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

A complaint must contain either direct or inferential allegations concerning "all the material elements necessary to sustain recovery under *some* viable legal theory." *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1989) (emphasis in original)).

Particular care is taken in reviewing the pleadings of a pro se party, for a more forgiving standard applies

to litigants not represented by counsel. *Hebbe*, 627 F.3d at 342. Still, a liberal construction may not be used to supply an essential element of the claim not initially pleaded. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a pro se plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).///

B. ANALYSIS

Plaintiff alleges in his first claim for retaliation that his former supervisor—Iain Buxton—made disparaging comments about him to a fiscal official at UNR—Charlene Hart—in an email dated June 18, 2013, to prevent the transfer of Plaintiff's Grant. (ECF No. 21 at 7.) Defendant moves to dismiss a defamation claim arising from this allegation (*see* ECF No. 24 at 5), although it is not clear that Plaintiff actually asserts a claim for defamation in his FAC. Nevertheless, Plaintiff opposes Defendant's motion (ECF No. 30),and Plaintiff's FAC could be liberally construed to assert a claim for defamation. Accordingly, the Court will consider whether Defendant is entitled to judgment on the pleadings with respect to a defamation claim arising from Plaintiff's allegations that Buxton made disparaging comments about him to Hart.

"An action for defamation requires the plaintiff to prove four elements: '(1) a false and defamatory statement; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.'" *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 503 (Nev.

2009) (quoting *Pope v. Motel6*, 114 P.3d 277, 282 (Nev. 2005)).

Defendant argues that Buxton's communications with Hart were not "published to a third person" because Buxton and Hart both worked for the same employer. (ECF No. 24 at 5.) Plaintiff does not directly address Defendant's argument regarding publication, and in most of the response, defends his claims for retaliation, which are not at issue with respect to this particular motion. (*See, e.g.*, ECF No. 30 at 8-9 ("[Buxton's] comments induced Plaintiff's emotional distress, damaged Plaintiff's good reputation and AHA grant, and prevented Plaintiff from securing employment opportunities . . . . In this regard, Defendant did subject Plaintiff [to] intentional retaliation).)

The Court agrees with Defendant that Buxton's communications with Hart were not "published to a third person" because Buxton and Hart both worked for UNR. *See Blanchard v. Circus Casinos, Inc.*, 373 P.3d 896, 2011 WL 4337055, *2 (Nev. 2011) ("A defamatory statement made between employees of a corporation does not constitute

publication."); *see also M & R Inv. Co. v. Mandarino*, 748 P.2d 488, 491 (Nev. 1987) (

> "Evidence that one employee of M & R said something defamatory about Mandarino to another employee of the corporation, without more, that is, without evidence regarding the tone in which the defamatory statement was made or the proximity of third parties, does not establish that the

defamatory statement was published.").

Accordingly, the Court will grant Defendant's motion for judgment on the pleadings. Plaintiff's claim for defamation arising out of the alleged communications between Buxton and Hart—to the extent Plaintiff attempts to assert such a claim—is dismissed with prejudice for failure to state a claim.

IV. DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT (ECF NO. 25)

A. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), and a dispute is material if it could affect the outcome of the suit under the governing law. *Id.*

Summary judgment is not appropriate when "reasonable minds could differ as to the import of the evidence." *See id.* at 250-51. "The amount of evidence necessary to raise a genuine issue of material fact is [that which is] enough 'to require a jury or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S.253, 288-89 (1968)). Decisions granting or denying summary judgment are made in light of the purpose of summary judgment "to avoid unnecessary trials when there is no dispute as to the

facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

The moving party bears the burden of showing that there are no genuine issues of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the moving party satisfies the requirements of Rule 56, the burden shifts to the party resisting the motion to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. In evaluating a summary judgment motion, a court views all facts and draws all inferences in the light most favorable to the nonmoving party. *In re Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008). If a party relies on an affidavit or declaration to support or oppose a motion, it "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). The nonmoving party "may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show that there is some metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783(9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient " *Anderson*, 477 U.S. at 252.

B. ANALYSIS

Defendant seeks summary judgment on Plaintiff's fifth claim, which Defendant construes as two claims: a defamation claim and a retaliation claim.

Plaintiff alleges in his fifth claim that Buxton prevented him from retrieving the Lab Supplies from UNR Med. (*See* ECF No. 21 at 9.) Plaintiff alleges that Buxton "threatened [Plaintiff] not to access the public UNR campus" and regarded him as a dangerous Nevada resident. (*Id.*) Plaintiff further alleges that Buxton instructed his staff to notify security if Plaintiff appeared on campus. (*Id.*)

1. Defamation

Defendant argues that the communications between Buxton and his staff were not "published to third persons" because they were communications between members of the

same organization. (ECF No. 25 at 6-7.) Plaintiff does not meaningfully respond to this argument. (See ECF No. 28.) The Court agrees with Defendant. See *Blanchard,* 2011 WL4337055, *2; *Mandarino,* 748 P.2d at 491; discussion supra Section III.B. Accordingly, the Court will grant summary judgment in favor of Defendant as to a claim for defamation arising out of Plaintiff's allegations supporting his fifth claim for retaliation.

2. Retaliation

"Title VII prohibits an employer from discriminating against an employee for opposing an unlawful employment practice, such as filing a complaint alleging sexual orientation harassment and

hostile work environment." *Dawson v. Entek Int'l*, 630 F.3d 928, 936 (9th Cir. 2011). "Retaliatory discharge claims follow the same burden-shifting framework described in *McDonnell Douglas*[, 411 U.S. 792 (1973)]." *Id.* "To establish a prima facie case, the employee must show that he engaged in a protected activity, he wassubsequently subjected to an adverse employment action, and that a causal link exists between the two." *Id.* (citing *Jordan v. Clark*, 847 F.2d 1368, 1376 (9th Cir. 1988)). "The causal link can be inferred from circumstantial evidence such as the employer's knowledge of the protected activities and the proximity in time between the protected activity and the adverse action." *Id.* "If a plaintiff establishes a prima facie case of unlawful retaliation, the burden shifts to the defendant employer to offer evidence that the challenged action was taken for legitimate, non-discriminatory reasons." *Id.* (citing *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 917 (9th Cir. 1996)). "If the employer provides a legitimate explanation for the challenged decision, the plaintiff must show that the defendant's explanation is merely a pretext for impermissible discrimination." *Id.* (citing *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000)).

> "Title VII retaliation claims may be brought against a much broader range of employer conduct than substantive claims of discrimination." *Campbell v. Hawaii Dep't ofEduc.*, 892 F.3d 1005, 1021 (9th Cir. 2018) (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67-68 (2006)). "Namely, a Title VII retaliation claim need not be supported by an adverse action that materially altered the terms or conditions of the

> plaintiff's employment; instead an allegedly retaliatory action is subject to challenge so long as the plaintiff can show that 'a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'"

Id. (quoting *Burlington*, 548 U.S. at 68).

Defendant argues that Plaintiff has not established a prima facie case because Plaintiff has not identified an adverse employment action. (ECF No. 25 at 7.) Defendant argues that barring Plaintiff from retrieving the Lab Supplies was not an adverse employment action because Plaintiff was no longer employed by UNR Med on October 15, 2013. (*Id.*) Plaintiff does not meaningfully respond to this argument. (*See* ECF No. 28.)

"A plaintiff may seek relief for retaliatory actions taken after her employment ends if 'the alleged discrimination is related to or arises out of the employment relationship.'" *Hashimoto v. Dalton*, 118 F.3d 671, 675 (9th Cir. 1997) (quoting *Passer v. Am. Chem. Soc'y*, 935 F.2d 322, 330 (D.C. Cir. 1991)). Accepting Plaintiff's allegations—which Defendant does not dispute—as true, and construing the facts in the light most favorable to him, Defendant's retaliatory action—barring Plaintiff from retrieving the Lab Supplies that allegedly were important to his past and future research under the Grant—arose out of the parties' employment relationship. A rational jury could find that such action would dissuade a reasonable worker from making or supporting a charge of discrimination, particularly when construing the facts in the light most favorable to Plaintiff. *See*

Campbell, 892 F.3d at 1021. Accordingly, the Court finds that Plaintiff has presented a genuine issueof fact as to whether Defendant took an adverse employment action.

Defendant further argues that it had the discretion and authority to deny Plaintiff access to laboratory space. (ECF No. 25 at 7.) Plaintiff does not meaningfully respond to this argument. (*See* ECF No. 28.) Even if Defendant has the authority and discretion to deny Plaintiff access, Defendant has not identified a legitimate, non-retaliatory reason for preventing Plaintiff from retrieving the Lab Supplies. (*See* ECF No. 25 at 7.) Rather, construing the facts in the light most favorable to Plaintiff, a rational jury could find that

Plaintiff was barred from retrieving the Lab Supplies in retaliation for Plaintiff's discrimination charges and lawsuit.

Accordingly, the Court will grant in part and deny in part Defendant's motion for summary judgment. The Court will grant summary judgment in favor of Defendant on a defamation claim arising out of Plaintiff's allegations in his fifth claim, and the Court will deny summary judgment as to Plaintiff's fifth claim for retaliation.

V. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 35)

Plaintiff moves for summary judgment on each of his claims for retaliation.[4] (ECF No. 35 at 4-5.) The

[4]For the legal standard applicable to motions for summary judgment, see *supra* Section IV.A.

Court will address them in turn.

A. CLAIM ONE

Plaintiff alleges in his first claim for retaliation that Buxton made unfavorable references to the hiring official at UC Davis—Peter Cala—on June 18, 2013, to prevent Plaintiff from securing grant-dependent employment opportunities. (ECF No. 21 at 7; *see also* ECF No. 35 at 19.) Defendant argues that Plaintiff is not entitled to summary judgment on this claim because Plaintiff has not produced any evidence to show that a conversationbetween Buxton and Cala ever took place. (ECF No. 36 at 3.) Defendant further argues that the alleged communication was not a negative reference discouraging employment because lawsuits are matters of public record. (*Id.* at 4.)

In response, Plaintiff cites to a hearing transcript attached to his FAC. (ECF No. 37 at 9 (citing ECF No. 21 at 99-104).) In that hearing, Cala testified about a phone call he received from Buxton: "I had gotten a very animated call from Dr. Wang's previous chair at Reno, Iain Buxton, and he was telling me somebody should have called him. That there had been a problem there; that he was sued by Dr. Wang." (ECF No. 21 at 102.) Also in that hearing, Plaintiff's supervisor at UC Davis—Jie Zheng—testified that Cala had a concern about Plaintiff's employment after learning of Buxton's negative references about Plaintiff's lawsuit:

Case 3:18-cv-00075-MMD-CLB Document 50 Filed 11/06/18 Page 10 of 17

11

Q At any point did Dr. Cala express any concerns or reservations about offering an appointment to Dr. Wang?

A Yes he did.

(ECF No. 21 at 103.) Clearly, Cala construed the call from Buxton as a negative reference in that Buxton expressed concerns about Plaintiff's hiring by UC Davis.

Defendant filed a de facto surreply along with the entire transcript of that hearing styled as a motion for leave to supplement the record. (*See* ECF No. 38 at 1.) Plaintiff opposed the motion on the ground that the full transcript contains information that is "misleading or unrelated to Plaintiff's First Amended Complaint." (ECF No. 39 at 5.)

Local Rule 7-2 states that "[s]urreplies are not permitted without leave of court; motions for leave to file a surreply are discouraged." Moreover, "[a] surreply may only be filed by leave of court, *and only to address new matters raised in a reply to which a party would otherwise be unable to respond.*" *Kanvick v. City of Reno*, No. 3:06-CV-00058-RAM, 2008 WL 873085, at *1 n.1 (D. Nev. March 27, 2008). Nevertheless, the Court will consider Defendant's surreply, the entire hearing transcript, and Plaintiff's opposition to Defendant's motion for leave to supplement the record.

Defendant does not dispute the admissibility of the hearing transcript, whether the transcript shows a conversation between Buxton and Cala took place, or whether Buxton's communications to Cala constituted a negative employment reference.[5] (*See* ECF No. 38 at

[5]Rather, Defendant argues that (1) UC Davis chose to hire Plaintiff regardless of Buxton's communication; (2) Plaintiff's termination from UC Davis was related to performance issues at UC Davis; (3) Cala stated that he was only made aware of litigation brought by Plaintiff against UNR Med—not any EEOC charges; (4) the conversation between Buxton and Cala played no role in the decision to terminate Plaintiff from UC Davis; and (5) Zheng never promised Plaintiff that he would be reappointed at UC Davis. (ECF No. 38 at 4-6.)

4-6.) Given that Defendant essentially concedes that Buxton provided a negative reference to Cala, the Court considers whether Plaintiff has carried his initial burden of establishing a prima facie case of retaliation.///

Plaintiff satisfies the first element—engagement in protected activity—because he alleges that he filed an employment discrimination lawsuit and related charges with the NERC and EEOC. (ECF No. 21 at 7.) Defendant does not dispute these allegations, which Plaintiff supports with admissible evidence: a copy of the charges of discrimination he filedwith the NERC and EEOC (ECF No. 21 at 161-63), and a copy of a filing in the state court action that describes the lawsuit (ECF No. 21 at 148).

Finally, Plaintiff has proven the third element—a causal connection between the adverse employment action and protected activity—because Buxton's negative reference to Cala was about Plaintiff's lawsuit. (ECF No. 21 at 102 (Cala's testimony: "I had gotten a very animated call from . . . Buxton, and he was telling me . . . that there had been a problem there; that he was sued by [Plaintiff].").)

The Court finds that Plaintiff has made out a prima facie case of retaliation supported by admissible evidence. Defendant has not rebutted this evidence or rebutted Plaintiff's prima facie case by articulating a legitimate, non-retaliatory reason for Buxton's

communication to Cala. Accordingly, the Court will grant summary judgment in favor of Plaintiff on Plaintiff's first claim for retaliation.

B. CLAIM TWO

Plaintiff's second claim is functionally identical to Plaintiff's first claim. (*See* ECF No. 21 at 7-8.) Accordingly, the Court grants summary judgment in favor of Plaintiff on his second claim for retaliation.

C. CLAIM THREE

In his third claim, Plaintiff alleges that Defendant improperly paid Plaintiff a settlement of $21,589.02 mostly out of Plaintiff's Grant rather than out of Defendant's funds. (ECF No. 21 at 8.)

Defendant did not address this claim in its response. (*See* ECF No. 36.) Thus, the Court considers whether Plaintiff has carried his burden of establishing that no genuine issue of material fact exists. *See Zoslaw*, 693 F.2d at 883 (citations and internal quotation marks omitted) ("The burden of demonstrating the absence of an issue of material fact lies with the moving party. The opposing party must then present specific facts demonstrating that there is a factual dispute about a material issue.")

First, the Court considers whether Plaintiff has established a prima facie case of retaliation. The Court finds that Plaintiff has not carried his burden of proving that he experienced an adverse employment action. Plaintiff contends that he experienced an adverse employment action when Defendant paid a settlement out of his Grant rather than its own pockets, but the evidence that Plaintiff cites to support this allegation is inconclusive. Plaintiff relies primarily on a financial report dated September 26, 2013, for the period July 1, 2012 through April 1, 2014. (ECF No. 21

at 134-35.) The report shows that about $30,000 was deducted from the Grant for Plaintiff's salary between July 1, 2012,and September 26, 2013. (*See id.*) Plaintiff argues that the $30,000 went toward the settlement award he received from Defendant—not his salary—because he was not paid any salary after April 11, 2013. (ECF No. 35 at 21.) But Plaintiff alleges in his FAC that hecontinued to work for Defendant from July 15, 2012, to December 12, 2012, as part of a

180-day extension. (*See id.* at 7.) Thus, construing the facts in the light most favorable to Defendant, a genuine issue of fact exists as to whether the $30,000 was deducted from Plaintiff's Grant as compensation for Plaintiff's work from July 15, 2012, to December 12, 2012.

Plaintiff has failed to carry his burden of proving no genuine issue of material fact exists with respect to whether funds were improperly deducted from the Grant. Accordingly, the Court finds that Plaintiff is not entitled to summary judgment on his third claim.

D. CLAIM FOUR

Plaintiff alleges in his fourth claim that Defendant retaliated against him by refusingto transfer the Lab Supplies from UNR to UC Davis and by discarding them without Plaintiff's consent on or about October 15, 2013, as a means of preventing Plaintiff from securing Grant-dependent employment opportunities. (ECF No. 21 at 8-9.)

Defendant first argues that this claim is foreclosed by the parties' settlement agreements, in which Plaintiff released Defendant from all claims arising out

of his employment with Defendant up to and including April 11, 2013. (ECF No. 36 at 9-10; ECFNo. 36-9 at 4-5; *see also* ECF No. 36-10 (negotiated settlement agreement).) But Plaintiff's allegations relate to Defendant's conduct after that date. (*See* ECF No. 21 at 8-9.) Thus, the release does not foreclose Plaintiff's claim.

Defendant further argues that Plaintiff has not produced evidence to show that the Lab Supplies belonged to Plaintiff. (ECF No. 36 at 11-12.) Defendant implies that if the Lab Supplies belonged to Defendant, then Plaintiff could not have experienced an adverse employment action when Defendant disposed of its own property. (*See id.*) Another implication of Defendant's argument is that Defendant had a legitimate, non-retaliatory reason for disposing of the Lab Supplies—they were Defendants property to do with as it pleased. (*See id.*)

Plaintiff argues that the Lab Supplies belonged to him because he purchased them with Grant funds. (ECF No. 37 at 13.) Plaintiff cites to a document titled "Guangyu Wang's

lab products and supplies at UNR" (ECF No. 21 at 36-37); the AHA award agreement form (*id.* at 49-50); an AHA guide for national research awards (*id.* at 52-53); three financial reports about the Grant (*id.* at 133-44); and documents titled "statement of account" (ECFNo. 35 at 40-87).

The Court finds that Plaintiff has failed to carry his initial burden of demonstrating ownership of the Lab Supplies. Plaintiff himself argues that the AHA award

agreement, AHA guide, and the parties' settlement agreements do not expressly contemplate ownership or transfer of the Lab Supplies. (*See* ECF No. 37 at 14-15.) In the absence of a contractual agreement about ownership of the Lab Supplies, Plaintiff bears the burden in seeking summary judgment of adducing evidence to show that the use of Grant funds to purchase the Lab Supplies made Plaintiff the owner of the Lab Supplies. Plaintiff has produced no such evidence—which might consist of industry custom, historic custom within UNR, or an employment policy—thereby precluding the Court from determining that Plaintiff owned the Lab Supplies as a matter of law.

Accordingly, the Court will deny summary judgment on Plaintiff's fourth claim for retaliation.

E. CLAIM FIVE

Plaintiff alleges in his fifth claim that Buxton prevented him from retrieving the Lab Supplies from UNR Med. (*See* ECF No. 21 at 9.) Plaintiff alleges that Buxton "threatened [Plaintiff] not to access the public UNR campus" and regarded him as a dangerous Nevada resident. (*Id.*) Plaintiff further alleges that Buxton instructed his staff to notify security if Plaintiff appeared on campus. (*Id.*)

Defendant seems to argue that Buxton had a legitimate, non-retaliatory reason for preventing Plaintiff from retrieving the Lab Supplies: "limit[ing] access to a laboratory by someone who was no longer employed by UNR Med." (ECF No. 36 at 7.) Plaintiff argues that this reason was pretextual because, among other things, the tone of Plaintiff's e-mail was polite and because Plaintiff did not present a security risk. (ECF No. 37 at 17-18.) Nevertheless, Defendant has raised a genuine issue of material fact as to whether

Buxton.

had a legitimate, non-retaliatory reason for preventing Plaintiff from retrieving the Lab Supplies. Accordingly, the Court will deny summary judgment as to Plaintiff's fifth claim for retaliation.

VI. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Defendant's motion for judgment on the pleadings (ECF No. 24) is granted. Any claim for defamation arising out of the allegations supporting Plaintiff's first claim for retaliation is dismissed with prejudice.

It is further ordered that Defendant's motion for partial summary judgment (ECF No. 25) is granted in part and denied in part. Summary judgment is granted in favor of Defendant as to any claim for defamation arising out of the allegations supporting Plaintiff's fifth claim for retaliation. Summary judgment is denied as to Plaintiff's fifth claim for retaliation.

It is further ordered that Plaintiff's motion for summary judgment (ECF No. 35) is granted in part and denied in part. Summary judgment is granted in favor of Plaintiff as to his first and second claims for retaliation. Summary judgment is denied as to Plaintiff's third, fourth, and fifth claims for retaliation.

It is further ordered that Defendant's motion for

leave to file a surreply (ECF No. 38) is granted.

It is further ordered that Plaintiff's unopposed motions to redact personal data (ECF No. 42) and to update an illegible exhibit (ECF No. 43) are granted.

///

///

///

///

It is further ordered that Plaintiff's motion to expedite consideration of his motion for summary judgment (ECF No. 46) is denied as moot.

DATED THIS 6th day of November 2018.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
* * *

GUANGYU WANG, Plaintiff, v. NEVADA SYSTEM OF HIGHEREDUCATION, Defendant.	Case No. 3:18-cv-00075-MMD-CBC Miranda M. Du, Chief District Judge ORDER

1

I. SUMMARY

This is a Title VII retaliation case brought by a *pro se* plaintiff. The Court previously construed Plaintiff Guangyu Wang's First Amended Complaint ("FAC") as advancing five independent claims for retaliation and granted summary judgment in favor of Plaintiff on the first two of those claims. (ECF No. 50 at 1, 3.) The parties now have filed cross-motions for summary judgment as to the following issues: (1) damages in connection with the firsttwo claims (ECF Nos. 52, 78); (2) liability in connection with the third claim (ECF Nos. 53,56); and (3) liability in connection with the fourth claim (ECF Nos. 61, 68). The Court has reviewed those motions as well as the parties' responses (ECF Nos. 54, 55, 59, 67, 72, 81) and replies (ECF Nos. 57, 58, 60, 70, 73, 84).[1] For the following reasons, the Court grants summary judgment in favor of Defendant Nevada System of Higher Education as to each issue raised. ///

[1]The Court also has reviewed the notice of corrections (ECF No. 92) Plaintiff filed, which corrects clerical errors in some of the briefing before the Court. The Court also has reviewed Plaintiff's notices of manual filing (ECF Nos. 83, 76).

II. BACKGROUND

The following facts are undisputed unless otherwise indicated.///

Case 3:18-cv-00075-MMD-CLB Document 97 Filed 05/08/19 Page 1 of 11

2

Plaintiff began working as a "Research Assistant Professor" at the University of Nevada Reno School of Medicine ("UNR Med") on October 1, 2010. (ECF No. 53 at 3.) Plaintiff's position was funded with a grant ("Grant") from the American Heart Association("AHA"). (*Id.* at 3; ECF No. 21 at 48-53 (Ex. 10, Ex. 11).) Plaintiff received notice on June15, 2012, that his employment would terminate 180 days later. (ECF No. 53 at 3; ECF No. 21 at 159 (Ex. 39).) Plaintiff was discharged on December 12, 2012. (ECF No. 21 at 161 (Ex. 40).) Plaintiff filed charges of discrimination with the Nevada Equal Rights Commission ("NERC") and the Equal Employment Opportunity Commission ("EEOC") as well as a lawsuit. (ECF No. 53 at 3; ECF No. 55 at 4.) The charges and the lawsuit were settled around April 11, 2013. (ECF No. 55 at 4; ECF No. 21 at 13-23 (Ex. A, Ex. B).)

Plaintiff alleges that despite the settlement, Plaintiff's former supervisor—a non-party named Iain Buxton who heads up UNR Med—intentionally retaliated against Plaintiff for filing the charges of employment discrimination and the lawsuit in a number of ways: (1) by making disparaging comments about Plaintiff and unfavorable references to the fiscal official at UNR Med (Charlene Hart) and the hiring official at UC Davis (Peter Cala); (2) by disclosing Plaintiff's previous lawsuit against Defendant as a negative reference to the hiring official at UC Davis; (3)

by depriving Plaintiff of funding from the Grant; (4) by refusing to transfer Plaintiff's lab chemical and biological products and supplies ("Lab Supplies") from UNR to UC Davis and by discarding them without Plaintiff's consent; and (5) by threatening Plaintiff and damaging his good reputation when he was prohibited from accessing the UNR campus. (ECF No. 21 at 8-9.)

III. LEGAL STANDARD

"The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits "show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine" if there is

a sufficient evidentiary basis on which a reasonable fact-finder could find for the nonmoving party and a dispute is "material" if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). Where reasonable minds could differ on the material facts at issue, however, summary judgment is not appropriate. *See id.* at 250-51. "The amount of evidence necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (*quoting First*

Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

The moving party bears the burden of showing that there are no genuine issues of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting the motion to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show that there is some metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." *Anderson*, 477 U.S. at 252.

Further, "when parties submit cross-motions for summary judgment, '[e]ach motion must be considered on its own merits.'" *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (citations omitted) (quoting William W. Schwarzer, *et al.*, The Analysis and Decision of Summary Judgment Motions, 139 ///

F.R.D. 441, 499 (Feb. 1992)). "In fulfilling its duty to review each cross-motion separately, the court must review the evidence submitted in support of each cross-motion." *Id.*

IV. CROSS-MOTIONS REGARDING DAMAGES FOR FIRST AND SECOND CLAIMS, (ECF NOS. 52, 78)

The Court previously granted summary judgment in favor of Plaintiff on his first and second claims for retaliation. (ECF No. 50 at 13.) Both claims are functionally identical and essentially allege that Plaintiff's supervisor at UNR Med—Iain Buxton—told the hiring official at UC Davis—Peter Cala—about Plaintiff's lawsuit against UNR Med to prevent UC Davis from hiring Plaintiff. (ECF No. 21 at 7; ECF No. 50 at 10, 13.) Plaintiff now asserts that he is entitled to several different kinds of relief related to those claims, including reinstatement, backpay, compensatory damages, and pain and suffering damages. (ECFNo. 52 at 2-3.)

Defendant generally contends that Plaintiff cannot demonstrate any causal relationship between damages he has suffered and the Buxton-Cala conversation. (ECF No. 78 at 6.) Plaintiff counters that the Buxton-Cala conversation caused his start date at UC Davis to be postponed from June 1, 2013 to October 1, 2013 (ECF No. 81 at 8); causedCala and Plaintiff's supervisor at UC Davis—Jie Zheng—to refrain from renewing his appointment at UC Davis (*id.* at 9); caused a negative workplace atmosphere to develop at UC Davis (*id.* at 18); and caused harm to Plaintiff's good reputation (*id.* at 25). The Court addresses each of these causal relationships below and grants summary judgment in favor of Defendant as to the issue of damages for Plaintiff's first and second claims.

A. START DATE

Plaintiff alleges that his start date was postponed from June 1, 2013 to October 1, 2013—causing him to go without pay for several months—because Buxton told Cala about Plaintiff's lawsuit against UNR Med. (ECF No. 81 at 8.) But the evidence before the Court unequivocally shows that Plaintiff's start date was postponed because the Grant was not transferred to UC Davis in time for Plaintiff to begin on June 1, 2013. And the AHA—not UNR Med or UC Davis—was responsible for that.

Plaintiff received an offer letter from UC Davis on June 12, 2013, indicating that his "appointment is effective June 1, 2013 through June 30, 2014." (ECF No. 21 at 55 (Ex. 12).) Plaintiff then began the process of transferring his Grant from UNR Med to UC Davis around June 17, 2013, when he provided UNR Med with a letter requesting such a transfer. (ECF No. 78-18 at 2.) Buxton and Hart (the fiscal officer for UNR Med) had both signed the request by June 24, 2013. (*Id.*) UC Davis officials signed a letter supporting transfer of the Grant on June 25, 2013. (ECF No. 78-20 at 2.) Plaintiff submitted these letters to the AHA on July 1, 2013. (ECF No. 78-21 at 2.) The AHA did not approve the transfer of the Grant until August 29, 2013. (ECF No. 78-23 at 2.)

Defendant asserts that the transfer of the Grant was out of its control after Buxton and Hart signed the transfer request from UNR Med. (ECF No. 78 at 11.) Plaintiff provides no evidence to the contrary, and

Defendant also cites Plaintiff's testimony[2] that UC Davis did not contribute to the delay in any way. (*Id.* (citing ECF No. 78-2 at 13).) Based on the evidence before the Court, no reasonable juror could conclude that Buxton's conversation with Cala delayed the transfer of the Grant. Indeed, it only took about two weeks for two large public universities to complete the paperwork Plaintiff needed to transfer the Grant. Accordingly, the Court finds that Plaintiff has failed to show the Buxton-Cala conversation caused his start date to be postponed.

B. REAPPOINTMENT

Plaintiff alleges that his position at UC Davis was not renewed because Buxton told Cala about Plaintiff's litigation against UNR Med, but the evidence before the Court contradicts Plaintiff's position and shows that Plaintiff's poor performance was the basis for his nonrenewal. First, there is the testimony of Cala and Zheng themselves. When asked whether his "knowledge of any litigation that Dr. Wang had initiated or maintained figure[d] in any way into [Cala's] decision to sign the letter of non-reappointment," Cala answered: "Absolutely not." (ECF No. 78-2 at 20.) Zheng responded similarly. (ECF No. ///

78-3 at 10.) Cala and Zheng also testified that they knew about Plaintiff's litigation with UNR Med before hiring him and decided to proceed with hiring him

[2]The testimony comes from a hearing held at UC Davis on January 28, 2015. (ECFNo. 78-1 at 2.)

anyway. (ECF No. 78at 6 (citing ECF No. 78-2 at 17; ECF No. 78-3 at 10, 13).) If Cala and Zheng were concerned about Plaintiff's lawsuit, they probably would not have hired Plaintiff in the first place.

Defendant also has introduced evidence that Plaintiff's nonrenewal was based on his poor performance in the lab. Cala testified that "Dr. Wang wasn't performing to the level of expectations. That he wasn't integrated into the laboratory. That other members of the laboratory were a bit put off because they . . . would extend a helping hand to Dr. Wang but the reciprocity didn't exist." (ECF No. 78-2 at 18.) Cala also testified that Dr. Wang could not perform "even the simple things . . . without some kind of assistance." (*Id.*)Zheng showed Cala revisions Zheng had made to Plaintiff's grant proposal, and Plaintiff's"writing was indecipherable." (*Id.*) As a result, Zheng had edited "virtually the entire thing."(*Id.*) Zheng testified that he had never supervised a researcher at Plaintiff's level who performed so poorly. (*See* ECF No. 78-3 at 9.) Zheng also testified that he devoted substantial time and resources to supervising Plaintiff:

> "I was a little disappointed that thefirst draft after the extensive discussion came out like this. I pretty much had to rewrite it, as you can see. Of course, I didn't anticipate that I had to put in so much time on this. Frankly, it was obvious to me that if I wrote this it would be a lot easier."

(*Id.* at 7.) Zheng also testified that he had to intervene when Plaintiff repeatedly contacted a journal editor who had rejected an article Plaintiff submitted for publication. (*Id.* at 6.)

Plaintiff offers no response to Zheng and Cala's own testimony that their knowledge of his litigation had

nothing to do with their nonrenewal decision. Rather, Plaintiff attempts to piece together circumstantial evidence to show that his performance was satisfactory. Plaintiff contends that his job description "had nothing to do with whether lab members help each other or the amount of time or effort Jie Zheng spent for Plaintiff or Jie Zheng's intervention," (ECF No. 81 at 12), but it is common sense that professional work requires an ability to work well both independently and with others. Plaintiff also cites his annual

appraisal at UNR Med, which indicates his performance was "Excellent." (*Id.* at 14 (citing ECF No. 21 at 62 (Ex. 14)).) But this performance evaluation does not rebut Cala and Zheng's own testimony that their knowledge of his litigation against UNR Med had nothing to do with their nonrenewal decision. Accordingly, the Court finds that Plaintiff cannot show the Buxton-Cala conversation caused his nonrenewal.

C. HOSTILE WORK ENVIRONMENT

Plaintiff alleges that the Buxton-Cala conversation caused a hostile work environment to develop at UC Davis. (ECF No. 21 at 9.) Specifically, Plaintiff alleges that he was not supported to attend a professional meeting in San Francisco; he was not introduced to other faculty members at UC Davis; his faculty bio was never posted on the department website; he was never notified of the department faculty meeting or Christmas party; his office or lab was unsecured; he was not invited to speak with external seminar speakers; he was isolated from several faculty

activities; and UC Davis failed to provide Plaintiff with a fair annual appraisal regarding his excellent performance. (*Id.*)

Defendant argues that Plaintiff did not experience a hostile work environment and that even if he did, it had nothing to do with Buxton's disclosure of Plaintiff's lawsuit to Cala. (ECF No. 78 at 12-16.) To show that Plaintiff did not experience a hostile work environment, Defendant cites to Plaintiff's hearing testimony. There, Plaintiff testified that Cala "is a very nice professor. He almost every day, because his office is opposite my lab so we can see everything. He is very nice. He treats us very nice, nicely. I have to mention this, he is a good professor." (ECF No. 78-1 at 19.) Plaintiff also testified that he was not subject to any racially motivated comments while at UC Davis. (ECF No. 78-2 at 14.)

Defendant also argues that Plaintiff has not connected any of his grievances to the Buxton-Cala conversation. (ECF No. 78 at 15.) The Court agrees. Plaintiff has not produced any evidence to show that the various grievances he alleges were the result of Buxton's conversation with Cala. /// ///

D. REPUTATIONAL HARM

Plaintiff alleges that the Buxton-Cala conversation harmed his reputation. (ECF No. 81 at 25.) But Plaintiff does not specifically allege how his reputation was harmed or any resulting damages. (*See id.* at 25-26.) Plaintiff contends that he was unable to secure "anyequal employment opportunity in USA to explore the life science and to pursue happiness." (*Id.* at 26.) But Plaintiff has not introduced evidence to show that

he applied for jobs and was rejected based on damage to his reputation caused by the Buxton-Cala conversation. Given that Plaintiff cannot show that any of his harm was caused by the Buxton-Cala conversation, the Court will grant summary judgment in favor of Defendant on the issue of damages in connection with Plaintiff's first and second claims for retaliation. The Court will deny Plaintiff's motion for summary judgment on damages as to those claims.

V. CROSS-MOTIONS FOR SUMMARY JUDGMENT ON THIRD CLAIM (ECF NOS.53, 56)

In his third claim, Plaintiff alleges that Defendant improperly paid Plaintiff a settlement of $21,589.02 mostly out of Plaintiff's Grant rather than out of Defendant's funds. (ECF No. 21 at 8.) Defendant has introduced evidence that the settlement payments actually came from the State of Nevada Tort Claim Fund and the Nevada System of Higher Education. (ECF No. 56 at 8 (citing ECF No. 56-1 at 2, 4; ECF No. 56- 2 at 2-3; ECF No. 56-7 at 2).) Plaintiff has produced no evidence to the contrary. (*See generally* ECF No. 59.) Accordingly, the Court will grant summary judgment in favor of Defendant on Plaintiff's third claim for relief.

Plaintiff advances two additional theories of liability that seem to lie outside the scope of the FAC: (1) Defendant only paid Plaintiff half-time salary and benefits during the180-day period from June 1, 2012 through December 31, 2012; and (2) Plaintiff's salary and benefits for that time period should have been paid from Defendant's funds rather than his Grant. (ECF No. 59 at 6-8.) Nevertheless, the Court will address these contentions. Defendant introduces evidence in the form of a memorandum of understanding—signed by Plaintiff—stating that Plaintiff's salary during

that time period

would come from the Grant and that he would be paid for half-time work. (ECF No. 60-1 at 2.) Plaintiff does not dispute this evidence. The Court thus grants summary judgment infavor of Defendant on Plaintiff's third claim to the extent it is based on these two additional theories of liability.

Having granted summary judgment in favor of Defendant on Plaintiff's third claim for relief, the Court will deny Plaintiff's cross-motion for summary judgment on that claim.

VI. CROSS-MOTIONS FOR SUMMARY JUDGMENT ON FOURTH CLAIM (ECF NOS. 61, 68)

Plaintiff alleges in his fourth claim that Defendant retaliated against him by refusingto transfer the Lab Supplies from UNR Med to UC Davis and by discarding them without Plaintiff's consent on or about October 15, 2013. (ECF No. 21 at 8-9.) The parties dispute whether the Lab Supplies belonged to UNR Med or Plaintiff. (ECF No. 68 at 2; ECF No. 61 at 4.) The Court finds that the undisputed evidence supports a finding that the Lab Supplies belonged to UNR Med.

The parties signed an award agreement form that does not expressly address ownership of the Lab Supplies. (ECF No. 68-3 at 2-4.) But the agreement provides that UNR Med's policies and practices control in the absence of a pertinent contractual provision. (*Id.* at 4 (

"In accepting an Award from the American Heart

> Association (AHA), the Awardee and the Institution assume the obligation to expend Award for the purposes set forth in the Research Project application submitted to the AHA, and in accordance with the regulations and the policies governing the AHA Award programs or, where not specified, consistent with the policies and practices of the Institution."

).)UNR Med policiesprovide that any items purchased with UNR Med funds—including funds received throughа grant—belong to UNR Med. (ECF No. 68-1 at 2 (citing various policy provisions).)

In addition, Defendant introduces evidence that Plaintiff purchased the Lab Supplies using a credit card issued by UNR Med and did not pay sales tax on the purchases. (ECF No. 68 at 8 (citing ECF No. 68-4 at 2).) The Court finds that this evidence also shows that the Lab Supplies belonged to UNR Med. The purchasing cardholder

agreement signed by Plaintiff indicated that the card "cannot" be used "for the purchase of goods and services of a personal nature and that the purchase of such goods and services shall be deemed an improper use of the purchasing card." (ECF No. 68-7 at 3.) In addition, the sales tax exemption letter issued to Defendant states that "purchases . . . made by the Nevada System of Higher Education" are exempt from sales tax and the "exemption applies only to the above named organization [NSHE] and is not extended to individuals, or contractors or lessors to or for such organizations." (ECF No. 68-6 at 2.)

Given that the Lab Supplies were purchased with funds entrusted to UNR Med, witha university credit card, and using a sales tax exemption that belongs to the university, the Court finds that no reasonable juror could conclude that the Lab Supplies belonged to Plaintiff. Accordingly, the Court will grant summary judgment in favor of Defendant on Plaintiff's fourth claim and deny Plaintiff's cross-motion for summary judgment on that claim.

Plaintiff argues that the award agreement form identifies Plaintiff as the owner of the Lab Supplies, but the provision Plaintiff cites conditioned the award of funds on the parties' acceptance of the terms. It did not specify Plaintiff as the owner of lab supplies purchased with the Grant. (*See* ECF No. 72 at 5 (

> "Awardee and Institution acknowledge and agree that the award of any funds by the American Heart Association, Inc. (the AHA) shall be subject to Awardee providing the information as requested on this form and acceptance of the terms and conditions attached hereto, as shown by Awardee's and Institution's authorized signatures set out below."

).)

Plaintiff also cites the letter requesting transfer of the Grant from UNR Med to UC Davis because the letter identifies the Grant as "my [Plaintiff's] AHA grant." (*Id.*) This letter does not establish that the Grant funds or lab supplies purchased with Grant funds belonged to Plaintiff, particularly in light of the undisputed evidence produced by Defendant that the Lab Supplies belonged to UNR Med. ///

Plaintiff makes a similar argument based on a memorandum he sent to the Department of Pharmacology referring to the Grant as "[m]y AHA grant." (*Id.* at 8 (citing ECF No. 37 at 25 (Ex. 61)).) Plaintiff's use of a possessive pronoun to refer to the Grant does not establish that the Lab Supplies belonged to him in light of Defendant's undisputed evidence to the contrary.

VII. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Defendant's motions for summary judgment (ECF Nos. 56, 68, 78) are granted. The Court grants summary judgment in favor of Defendant as to the issue of damages in connection with Plaintiff's first and second claims. The Court also grants summary judgment in favor of Defendant on Plaintiff's third and fourth claims.

It is further ordered that Plaintiff's motions for summary judgment (ECF Nos. 52, 53, 61) are denied.

DATED THIS 8th day of May 2019.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
* * *

GUANGYU WANG, Plaintiff, v. NEVADA SYSTEM OF HIGHEREDUCATION, Defendant.	Case No. 3:18-cv-00075-MMD-CBC Miranda M. Du, Chief District Judge ORDER

1

I. SUMMARY

Pro se Plaintiff Guangyu Wang has brought this Title VII retaliation against Defendant Nevada System of High Education. Before the Court is Defendant's second motion in limine (the "Motion") (ECF No. 130).[1] For the reasons explained below, the Court will grant in part and deny in part the Motion.[2]

II. BACKGROUND

The following facts are undisputed unless otherwise indicated.

Plaintiff began working as a "Research Assistant Professor" at the University of Nevada Reno School of Medicine ("UNR Med") on October 1, 2010. (ECF No. 53 at 3.) Plaintiff's position was funded with a grant ("Grant") from the American Heart Association. (*Id.* at

[1]The Court has also reviewed Plaintiff's response (ECF No. 133).

[2]While the Court has continued trial due primarily to COVID-19's spread in this district, the Court will not entertain any new motions in this case. And any such motions will be summarily denied particularly given the number of frivolous motions filed by Plaintiff.

3; ECF No. 21 at 48-53 (Ex. 10, Ex. 11).) Plaintiff was discharged on December 12,2012. (ECF No. 21 at 161 (Ex. 40).) Plaintiff filed charges of discrimination with the Nevada Equal Rights Commission and the Equal Employment Opportunity Commission ("EEOC")

Case 3:18-cv-00075-MMD-CLB Document 163 Filed 03/30/20 Page 1 of 11

2

as well as a lawsuit. (ECF No. 53 at 3; ECF No. 55 at 4.) The charges and the lawsuit were settled around April 11, 2013. (ECF No. 55 at 4; ECF No. 21 at 13-23 (Ex. A, Ex. B).) Plaintiff alleges that despite the settlement, Plaintiff's former supervisor—a non-party named Iain Buxton who heads up UNR Med—intentionally retaliated against Plaintiff for filing the charges of employment discrimination and the lawsuit in a number of ways that gave rise to five claims. (ECF No. 97 at 2.) The Court granted summary judgment in favor of Defendant on the first four claims[3] (*id.* at 1, 11) but denied summary judgment on Plaintiff's fifth claim (ECF No. 50 at 16). This fifth claim—based on allegations that Defendant retaliated by threatening Plaintiff and damaging his good reputation when he was prohibited from accessing the UNR campus (the "Fifth Claim") (ECF No. 97 at 2)—is the only claim remaining for trial.

[3]Plaintiff's four claims allege that Defendant retaliated against Plaintiff (1) by makingdisparaging comments about Plaintiff and unfavorable references to the fiscal official at UNR Med (Charlene Hart) and the hiring official at UC Davis (Peter Cala); (2) by disclosing Plaintiff's previous lawsuit against Defendant as a negative reference to the hiring official at UC Davis; (3) by depriving Plaintiff of funding from the Grant; and (4) by refusing to transfer Plaintiff's lab chemical and biological products and supplies from UNR to UC Davis and by discarding them without Plaintiff's consent. (ECF No. 97 at 2.)

III. LEGAL STANDARD

A motion in limine is a procedural mechanism to limit testimony or evidence in a particular area in advance of trial. *See United States v. Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009). It is a preliminary motion whose outcome lies entirely within the discretion of the Court. *See Luce v. United States*, 469 U.S. 38, 41-42 (1984). To exclude evidence on a motion in limine, "the evidence must be inadmissible on all potential grounds." *See, e.g., Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004). "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context." *Hawthorne Partners v. AT & T Tech., Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993). This is because although rulings on motions in limine may save "time, cost, effort

and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence." *Wilkins v. Kmart Corp.*, 487 F. Supp. 2d 1216, 1218 (D.Kan. 2007).

In limine rulings are provisional. Such "rulings are not binding on the trial judge . . .[who] may always change h[er] mind during the course of a trial." *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000). "Denial of a motion in limine does not necessarily mean thatall evidence contemplated by the motion will be admitted at trial." *Ind. Ins. Co.*, 326 F. Supp. 2d at 846. "Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded." *Id.*

Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Fed. R. Evid. 401. Only relevant evidence is admissible. *See* Fed. R. Evid. 402. Relevant evidence may still be inadmissible "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "Unfairly prejudicial" evidence is that which has "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *United States v. Gonzalez-Flores*, 418 F.3d 1093, 1098 (9th Cir. 2005) (quoting *Old Chief v. United States*, 519 U.S. 172, 180 (1997)).

IV. DISCUSSION

A. MIL No. 1

The Court agrees with Defendant that evidence relating to Plaintiff's first four— previously dismissed—claims should be excluded because such claims are irrelevant. However, Plaintiff will be allowed to testify as to the background facts in order to provide context for his Fifth Claim, including his employment with UNR Med, his research and grant and his reason for requesting access to his lab. The Court therefore grants in part and denies in part Defendant's Motion.

///

B. MIL No. 2

The Court agrees with Defendant that Plaintiff's exhibits relating to the EOOC proceedings have no relevance here because the Fifth Claim was not considered nor decided upon by the EEOC. (ECF No. 130 at 8.) Therefore, the Court excludes these exhibits.

C. MIL No. 3

The Court grants Defendant's request to exclude all evidence of settlement discussions because such evidence is inadmissible under Federal Rule of Evidence 408 and none of the exceptions outlined in Rule 408(b) apply here. (*Id.* at 10.) *See* Fed. R. Evid. 408.

D. MIL No. 4

Defendant seeks to exclude Plaintiff's revised transcripts of his deposition. (ECF No. 130 at 10-11.) As Defendant pointed out, the Court already found that such revisions were made outside the process permitted under Federal Rule of Civil Procedure 30 (ECF No. 109 at 2), therefore only the certified transcript can be used at trial. (*See* ECF No. 130at 11.) Moreover, Plaintiff cannot use his deposition transcript to prove his case at trial because such transcripts constitute a "hearsay" statement, which are inadmissible in court unless a federal statute, the Federal Rules of Evidence, or other rules prescribed by the United States Supreme provides otherwise. *See* Fed. R. Evid. 802; *see also id.* at 801(c) (defining "hearsay" as an out-of-court statement that "a party offers in evidence to prove the trust of the matter

asserted in the statement").[4] Accordingly, the Court excludes Plaintiff's revised transcript at this time.

E. MIL No. 5

The Court grants Defendant's request to exclude Plaintiff's exhibits 170-182 because they were disclosed on March 20, 2019 (ECF No. 32-136) after the discovery cutoff, February 4, 2019 (ECF No. 22). (ECF No. 130 at 11.) Because the exhibits are also irrelevant to Plaintiff's Fifth claim (*see id.* at 12), the Court grants Defendant's request.

F. MIL No. 6

The Court will deny without prejudice Defendant's request to exclude Buxton's June 18, 2013 email relating to a request to sign paperwork to transfer the Grant from UNR Med to U.C. Davis. At this time, the Court cannot determine whether this email is relevant and provides context for Plaintiff's Fifth Claim without hearing more evidence at trial. The Court thus denies Defendant's Motion without prejudice.

G. MIL No. 7

[4]Rule 801(d)(2)(a) provides that a "statement that is offered against an opposing party" and "was made by the party in an individual or representative capacity" is not hearsay. In other words, Defendant can use Plaintiff's deposition transcript at trial without running a foul of the hearsay rules. Thus, Plaintiff should understand that while he cannot offer his own deposition transcript, Defendant may offer Plaintiff's deposition testimony to help Plaintiff remember his deposition testimony or to impeach Plaintiff if he were to testify inconsistently with how he testified in his deposition.

The Court agrees with Defendant that Plaintiff's "Evidence 1" and exhibit 119 should be excluded because they are partial and redacted versions of a transcript. (ECF No. 130 at 13.) Moreover, if the transcripts are important, they should be offered in their entirety. The Court therefore grants Defendant's request.

H. MIL No. 8

Because documents relating to another case or settlement are irrelevant and inadmissible, the Court grants Defendant's request to exclude Plaintiff's exhibits 36, 40, 47, 48. (*Id.*)

I. MIL No. 9

Defendant requests that the Court exclude Plaintiff's exhibits 56-57 and 176-180. The Court finds that these exhibits are inadmissible hearsay. While Plaintiff can have an expert witness testify to the subject matter in the articles in exhibits 57 and 176-180, Plaintiff cannot offer the articles without having an expert witness explaining them. The Court therefore grants Defendant's request.

///

///

J. MIL No. 10

Finally, the Court grants Defendant's motion to exclude a series of Plaintiff's allegations that amount to nothing more than personal attacks. (ECF No. 130 at 14-15.)

V. CONCLUSION

The Court notes that the parties made several

arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the Motion beforethe Court.

It is therefore ordered that Defendant's second motion in limine (ECF No. 130) is granted in part and denied in part as discussed herein.

DATED THIS 30th day of March 2020.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE

AO450 (NVD Rev. 2/18) Judgment in a Civil Case

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GUANGYU WANG,

Plaintiff,

v.

NEVADA SYSTEM OF HIGHEREDUCATION,

Defendant.

JUDGMENT IN A CIVIL CASE

Case No. 3:18-CV-75-MMD-CLB

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

___ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been triedor heard and a decision has been rendered.

___ **Decision by Court.** This action came for consideration before the Court. The issues have beenconsidered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Judgment is entered in favor of Defendants against Plaintiff pursuant to the jury's verdict.

Date 5/10/2021

DEBRA K. KEMPI

Clerk

/s/ P. Vannozzi,

Deputy Clerk

Case 3:18-cv-00075-MMD-CLB Document 263 Filed 07/23/21 Page 1 of 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
* * *

GUANGYU WANG,

Plaintiff,

v.

NEVADA SYSTEM OF HIGHEREDUCATION,

Defendant.

Case No. 3:18-cv-00075-MMD-CLB

CLERK'S MEMORANDUM REGARDING TAXATION OF COSTS

After a jury trial, judgment was entered in favor of defendant Nevada System of Higher Education ("NSHE") and against plaintiff Guangyu Wang (ECF No. 234). On May 24, 2021, NSHE filed a bill of costs (ECF No. 239); on May 31, 2021, plaintiff filed an objection to the bill of costs (ECF No. 245); no response was filed.

Plaintiff's objection asserts that it was reasonable to proceed to a jury trial, the defendant would have offered him more in damages, and that he "is actually the prevailing party in this whole case." The clerk must rely on the judgment entered and finds defendant to be the prevailing party. No specific objections were made.

Costs are taxed in the amount of **$15,696.80** and are included in the judgment.

Dated: July 23, 2021

DEBRA K. KEMPI, CLERK
By: /s/ Lia Griffin
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GUANGYU WANG, Plaintiff, v. NEVADA SYSTEM OF HIGHEREDUCATION, Defendant.	Case No. 3:18-cv-00075-MMD-CLB Miranda M. Du, Chief District Judge ORDER

1

I. SUMMARY

The jury returned a verdict in favor of Defendant the Nevada System of Higher Education on *pro se* Plaintiff Guangyu Wang's single remaining claim for retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). (ECF Nos. 232, 234.) Before the Court is Defendant's motion for costs and attorneys' fees and motion to compel Wang to order all parts of the trial proceeding for transcript. (ECF Nos. 241, 264.) Additionally, before the Court is Wang's motion for sanctions and motion to reconsider the Clerk of Court's memorandum regarding taxation of costs.[1] (ECF Nos. 243, 268.) The Court, having reviewed the parties' motions and corresponding briefs—and as further explained below—will grant in part and deny in part Defendant's motion for costs and attorneys' fees, and deny Defendant's motion to enforce, Wang's motion for sanctions, and Wang's motion for reconsideration.

[1]Wang filed the motion for reconsideration as an "objection" (ECF No. 268) to the Clerk's memorandum regarding taxation of costs (ECF No. 263). The Court construes Wang's objection more appropriately as a motion for reconsideration

II. BACKGROUND

Plaintiff Guangyu Wang filed a first amended complaint alleging five claims against Defendant for retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-

Case 3:18-cv-00075-MMD-CLB Document 269 Filed 01/10/22 Page 1 of 13

2

3(a). (ECF Nos. 21, 105.) The Court dismissed four of those claims, with the remaining claim—the fifth claim—to be tried by a jury. (ECF No. 97.) Wang alleged in his fifth claim that Iain Buxton retaliated against him, in violation of Title VII, by preventing him from retrieving his lab supplies from the Medical School at the University of Nevada at Reno. (ECF No. 105 at 9.)

The parties held a settlement conference on August 26, 2019, and Defendant thereafter offered a judgment to Wang in the amount of $5,800.00. (ECF Nos. 111, 241- 4.) Wang did not accept the offer and the case proceeded to a jury trial. (ECF No. 241-2 at 2.) Jury selection took place on May 4, 2021, and trial began the following day regarding Wang's remaining fifth claim of retaliation. (ECF Nos. 219, 220.)

During trial, Defendant's second-chair attorney, Susan Poore, examined one witness on May 6, 2021. (ECF No. 222.) On the following day, Poore presented and argued Defendant's Rule 50(a) motion, which the Court denied. (ECF No. 226.) Later that day, Iain Buxton provided his testimony. (*Id.*) The jury began their deliberation on May 10,2021, and they returned a verdict in favor of Defendant on Wang's fifth claim. (ECF Nos. 228, 232.) The Court subsequently entered

a judgment, and Wang filed notice of appeal on June 8, 2021. (ECF Nos. 234, 251.) On June 28, 2021, both Wang and Defendant filed transcript designations. (ECF Nos. 258, 259.) Wang designated only the transcript of Buxton's trial testimony, and Defendant designated the entire trial transcript to be used on appeal. (*Id.*)

After the jury trial, Poore filed a notice of appearance as counsel for Defendant. (ECF No. 235.) Thereafter, on May 24, 2021, Defendant submitted a Bill of Costs and supporting exhibits, with costs and expenses totaling $15,696.80. (ECF Nos. 239, 239-1–239-34.) Defendant additionally filed a motion for costs and attorneys' fees and attached signed declarations. (ECF Nos. 241, 241-2, 241-3.) Defendant requests $29,722.70 in attorneys' fees, with the total of costs and attorneys' fees to be awarded to Defendant totaling $45,419.50. (ECF No. 241.) ///

In response, Wang filed an objection to Defendant's Bill of Costs. (ECF No. 245.) On July 23, 2021, the Clerk of Court issued a memorandum regarding taxation of costs. (ECF No. 263.) The memorandum states, in part, that the Clerk was "relying on the judgment entered and finds defendant to be the prevailing party" and that "[c]osts are taxed in the amount of $15,696.80 and are included in the judgment." (ECF No. 263 (emphasis omitted).) Wang objects to the Clerk's memorandum and has filed, which the Court now construes, as a motion for reconsideration. (ECF No. 268.)

III. MOTION FOR COSTS & ATTORNEYS'

FEES[2]

Defendant argues that, as the prevailing party in this action, Defendant should be awarded costs and attorneys' fees under Federal Rules of Civil Procedure 54(d) and 68(d),and 42 U.S.C. § 2000e-5(k). (ECF No. 241.) Defendant further argues this is appropriate when considering Wang's bad faith conduct in this action and at trial. (*Id.* at 4-12.) Wang counters that his retaliation claim was "serious, reasonable and grounded." (ECF No. 244at 1.) The Court agrees with Defendant that they are entitled to reasonable costs but disagrees that attorneys' fees are appropriate in this instance. The Court will address both issues below in turn.

A. Reasonable Costs

Defendant claims it is entitled to reasonable costs as it is the prevailing party underRules 68(d) and 54(d) of the Federal Rules of Civil Procedure. (ECF No. 241.) Rule 68(d) provides that "[i]f the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made." Rule 54(d)(1) states, in part, that "costs—other than attorney's fees—should be allowed to the prevailing party." As such, prevailing parties are generally entitled to reasonable costs other than attorney's fees. *See* Fed. R. Civ. P. 54(d)(1); LR 54-1. The Ninth Circuit has interpreted Rule 54(d) "to create a presumption in favor of awarding costs to the prevailing

[2]The parties filed a corresponding response and reply. (ECF Nos. 244, 246.) The Court notes that Wang's response was filed as an "objection" to Defendant's motion, which the Court construes as his response to the motion. (ECF No. 244.)

party," *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1996), and the burden is on the losing party to "show why costs should not be awarded," *Save Our Valley v. Sound Transit*,335 F.3d 932, 944-45 (9th Cir. 2003) (citing *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069,1079 (9th Cir. 1999)).

Here, Defendant made an offer of judgment to Wang prior to trial in the amount of $5,800.00, which Wang declined to accept. (ECF Nos. 241-2, 241-4.) Defendant prevailed,[3] as the Court previously granted summary judgment in favor of Defendant on four claims, the remaining fifth claim was found by the jury in favor of Defendant, and judgment was entered accordingly. (ECF Nos. 97, 232, 234.) Thereafter, Defendant timely submitted a Bill of Costs totaling $15,696.80 and attached supporting documents. (ECF Nos. 239, 239-1 - 239-34.) Wang filed an objection to the Bill of Costs raising several arguments but none of those arguments were objections to the costs nor arguments as to why costs should not be awarded to Defendant. (ECF No. 245.) Wang merely concludes his claims are "serious, reasonable and grounded" and he is "actually the prevailing partyin this whole case." (*Id.* at 1-2.) Accordingly, the Clerk of Court issued a Bill

[3]The Court notes that Wang filed an objection to Defendant's Bill of Costs. (ECF No. 245.) In his objection, Wang states that "Plaintiff is actually the prevailing party in this whole case." (*Id.* at 2.) However, this is incorrect, and the Court reiterates the words of the Clerk of Court in the memorandum regarding taxation of costs that the Court "must rely on the judgment entered and finds [D]efendant to be the prevailing party." (ECF No. 263. *See*ECF No. 234.)

of Costs taxing costs in the amount of $15,696.80 and included that amount in the judgment. (ECF No. 262.) The Clerk further issued a memorandum expressly stating that the Clerk relied on the judgment entered and "finds defendant to be the prevailing party." (ECF No. 263.)

In his response to the motion for costs and attorneys' fees, Wang makes several arguments[4] that appear to justify why he brought his Title VII retaliation claims against Defendant in the first place. (ECF No. 244.) But similar to his objection to the Bill of Costs,

none of Wang's arguments dispute the costs itself nor provide sufficient basis as to why the Court, in its discretion, should not grant reasonable costs to Defendant. *See Assoc. ofMexican-Am. Educators*, 231 F.3d 572, 592-93 (9th Cir. 2000) (discussing four reasons a district court can deny costs to defendants and recognizing these "good reasons" are not an exhaustive list). Accordingly, Wang has failed to meet his burden to "show why costs should not be awarded" to Defendant. *Save Our Valley*, 335 F.3d at 944-45. The Court therefore finds Defendant—as the prevailing

[4]The Court notes that Wang argues in his response, among his other arguments, that Attorney Susan Poore should be sanctioned by the Court. (ECF No. 244 at 8-9.) This argument, however, is not a proper response to Defendant's motion for costs and attorneys' fees and elsewhere (see ECF Nos. 245 at 2, 265 at 4-5, 268 at 2). The Court will address sanctions against Poore below only when addressing Wang's motion for sanctions. *See infra* at pp. 8-9.

party—is entitled to reasonable costs in the amount of $15,696.80 as set forth in the Court's Bill of Costs (ECF No. 262).

B. Attorneys' Fees

Defendant claims they are also entitled to $29,722.70 in attorneys' fees because, again, they are the prevailing party under 42 U.S.C. § 2000e-5(k). (ECF No. 241.) Defendant further argues that Wang's bad faith conduct entitles them to attorneys' fees. (Id. 5-12.) Specifically, Defendant asserts that Wang engaged in a pattern of "bad faith litigation," which includes challenging his deposition testimony, ignoring the Court's orders by filing duplicate documents, engaging in unsupported attacks on opposing counsel, and continuing his bad faith conduct at trial. (*Id.*) Although the Court recognizes the challenges Defendant experienced in litigating this action given Wang's conduct that led to repeated warnings from the Court during trial, the Court nevertheless finds awarding attorney's fees in this instance to be unwarranted.

Section 2000e-5(k) states, in relevant part, that "the court, in its discretion, may allow the prevailing party . . . reasonable attorney's fee (including expert fees) as part of the costs[.]" (parentheses in original). The Ninth Circuit has articulated that under § 2000e-5(k)—the fee-shifting provision of Title VIII of the Civil Rights Act—"attorney's fees should be awarded to a prevailing defendant *only* if the plaintiff's claim was "frivolous, unreasonable, or without foundation." *Green v. Mercy Hous., Inc.*, 991 F.3d 1056, 1057 (9th Cir. 2021) (emphasis added) (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)). A plaintiff's claim is not frivolous in this context merely because the plaintiff did not prevail. *See*

Christiansburg, 434 U.S. at 421-22. Moreover, the denials of

motions to dismiss and summary judgment may suggest a plaintiff's claims are not without merit. *See Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1041 (9th Cir. 1990).

Here, Wang's retaliation claim survived Defendant's various motions to dismiss and summary judgment. (ECF Nos. 19, 50, 97) *See Sanchez*, 936 F.2d at 1041. On numerous occasions, Wang relied on the Equal Employment Opportunity Commission's ("EEOC") determination letter to support his allegations that Defendant retaliated against him. (ECF Nos. 105, 244, 245.) The letter stated that the EEOC determined, based on the evidence, there was "reasonable cause to believe that [Defendant] retaliated against [Wang] for engaging in protected activity [.]" (ECF No. 105 at 27-28.) Wang reasonably believed— relying in part on the letter—that Defendant had retaliated against him in violation of Title VII, and he stood his ground by not accepting the offer of judgment. *See Mitchell v. Office of L.A. Cnty. Superintendent of Sch.*, 805 F.2d 844, 847-48 (9th Cir. 1986) (stating that "[a] plaintiff receiving [an EEOC determination] letter would reasonably believe that there was an adequate basis in law and fact to pursue his claim."); *Watson v. Cnty. of Yavapai*, 240 F. Supp. 3d 996, 1002 (D. Ariz. 2017) ("Standing one's ground is not equivalent to frivolousness, unreasonableness, or an action lacking foundation[.]")). While all of Wang's claims were ultimately unsuccessful, the Court finds his claims were not frivolous merely because Wang did not ultimately

prevail. *See Christiansburg*, 434 U.S. at 421-22.

However, the Court is mindful that Wang engaged in a pattern of conduct that Defendant's describe where Wang would "file and refile motions, objections and requests for reconsiderations." (ECF No. 241 at 5.) But that conduct is afforded leniency from the Court when considering Wang who, *in propria persona*, pursued his claims without counsel. Although he is required to comply with the rules that govern this Court, Wang is afforded leniency as a *pro se* litigant. As the Ninth Circuit has articulated in *Miller v. Los Angeles County Board of Education*, "pro se plaintiffs cannot simply be assumed to have the same ability as a plaintiff represented by counsel to recognize the objective merit (or lack of merit) of a claim." 827 F.2d 617, 620 (9th Cir. 1987) (parentheses in original). The Court therefore held in *Miller* that the "*Christiansburg* standard is applied with particular

strictness in cases [when] the plaintiff proceeds pro se." *Id.* Admittedly, Wang's conduct throughout this case gives the Court pause. But his conduct does not amount to "exceptional circumstances" that would permit granting attorneys' fees to the prevailing Defendant. *Christianburg*, 434 U.S. at 422; *see also Harris v. Maricopa Cnty. Superior Ct.*, 631 F.3d 963 (9th Cir. 2011) (italicized and internal quotes omitted) ("[D]efendant is entitled only to the amount of attorneys fees attributable exclusively to a plaintiff's frivolous claims."). Ultimately, the Court must strike a balance between the competing considerations of potentially chilling legitimate Title VII claims on the

one hand—a stated critical concern in Title VII and central the very concept of equal opportunity—and, on theother hand, immunizing plaintiffs with potentially unfounded claims from the usual rules of law that govern litigants. *See Watson*, 240 F. Supp. 3d at 1001 (citing *Blue v. U.S. Dep't of Army*, 914 F.2d 525, 535 (4th Cir. 1990)). As the Ninth Circuit has observed, "[t]he only purpose served by awarding attorneys' fees to a prevailing defendant is to discourage frivolous litigation." *Dosier v. Miami Valley Broad. Corp.*, 656 F.2d 1295, 1301 (9th Cir. 1981). "But an award of fees should not serve to chill employees from pursuing questionable but reasonable claims." *Williams v. Clark Cnty. Sch. Dist.*, Case No. 2:16-cv- 02248-APG-PAL, 2019 WL 8051706, at *1 (D. Nev. Feb. 4, 2019) (citing *Christiansburg*, 434 U.S. at 422). The Court finds that Wang's conduct was not so egregious as to justify risking the potential chilling effect of pursuing non-frivolous Title VII claims.

Because the Court finds that Wang's claims were reasonable, and in weighing possible chilling effects of awarding additional attorneys' fees, the Court further finds the taxed costs against Wang is more than sufficient to keep him and others from filing frivolous claims without chilling prospective plaintiffs from pursuing reasonable claims. The Court therefore declines to award attorneys' fees to Defendant in the amount requested. Accordingly, Defendant's motion for costs and attorneys' fees is granted in part and denied in part as stated herein.

///

///

IV. MOTON FOR SANCTIONS[5]

Wang argues that Susan Poore should be sanctioned under Rule 11 of the Federal Rules of Civil Procedure. The crux of Wang's argument is that Poore appeared at trial to examine a witness and present Defendant's Rule 50(a) motion before filing a notice of appearance as counsel for Defendant. (ECF No. 243.) Wang further argues that Poore's presence destroyed jury scheduling, disrupted trial proceedings, caused an unnecessary delay to trial, and increased the cost of litigation. (*Id.* at 1.) As a result, Wang requests that Poore "pay all the parties' legal fees including attorneys' fees as a result of her violation." (*Id.* at 5.) Defendant counters that Wang failed to comply with Rule 11(c)(2) and has failed to show how Poore's appearance has caused any delay, harm, or negative impact on this action. (ECF No. 247 at 2-4.) The Court agrees with Defendant on the relevant latter argument.

> "Three primary sources of authority enable courts to sanction parties or their lawyers for improper conduct: (1) Federal Rule of Civil Procedure 11, which applies to signed writings filed with the court, (2) 28 U.S.C. § 1927, which is aimed at penalizing conduct that unreasonably and vexatiously multiplies the proceedings, and (3) the court's inherent power."

Fink v. Gomez, 239 F.3d 989, 991 (9th Cir. 2001). Wang appears to move for sanctions under Rule 11 and the Court's inherent authority. The Court considers

[5]The parties filed a corresponding response and reply. (ECF Nos. 247, 248.)

Wang's motion under its inherent authority only, as a Rule 11 sanction is inapplicable in this instance. Federal courts have the inherent power to punish conduct which abuses the judicial process, including accessing attorneys' fees when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NSDCO, Inc.*, 501 U.S. 32, 45-46 (1991) (citation omitted). When imposing sanctions under its inherent authority, a court must make an explicit finding of bad faith or willful misconduct. *See In re Dyer*, 322F.3d 1178, 1196 (9th Cir. 2003). Negligence cannot sustain a sanction under a court's inherent authority. *See Zambrano v. City of Tustin*, 885 F.2d 1473, 1485 (9th Cir. 1989). In

addition, "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers*, 501 U.S. at 44.

Here, Matthew Milone has been the lead attorney on record since this action began. (*See* ECF No. 6.) Milone argued the majority of Defendant's case at trial with Poore examining one witness and arguing one motion. (ECF Nos. 220, 226.) After trial concluded, Poore filed her notice of appearance as counsel for Defendant on May 11, 2021. (ECF No. 235 ("Notice").) Poore is admitted and authorized to practice before the Court, which is what she did at trial. (ECF No. 247-1.) Although Poore did file her Notice after appearing at trial, and the record does in fact reflect two different e-

mail address for Poore as Wang points out,[6] these errors are *de minimis* and negligent at best. The Court finds Poore neither acted in bad faith nor engaged in willful misconduct that would warrantsanctions under the Court's inherent power. Nor did Poore's involvement at trial create any disruption or delay as Wang claims. Accordingly, Wang's motion for sanctions is denied.

V. MOTON TO ENFORCE[7]

Defendant argues that Wang has failed to comply with Rule 10 of the Federal Rule of Appellate Procedure and that he must order the entire trial proceeding transcript in this action. (ECF No. 264.) Specifically, Wang has failed to file with the Ninth Circuit a certificate regarding unnecessary portions of the transcript. (*Id.*) Wang appears to counter that, outside of Iain Boxton's trial testimony, "other portions of the transcript of the jury trial hearing are not necessary to the appeal" and, if Defendant thinks otherwise, then Defendant should be responsible to pay. (ECF No. 265 at 4.) Wang further counters that his notice of appeal and motion for appointment of counsel "clearly stated that this appeal

[6]It is unclear to the Court the exact argument or issue Wang is making with respect to Poore's use of two different e-mail addresses. The Court notes that it previously advised Poore to update her court account information pursuant to LR IC 2-1(g). (ECF No. 237.) Poore's e-mail on the docket record now reflects the one Poore listed on her Notice.

[7]The parties filed corresponding response and reply to the motion. (ECF Nos. 265, 266.)

is to resolve the issues about the District Court of Nevada's erroneous decisions on Wang's claims for Title VII intentional retaliation and damages against [Defendant]." (*Id.* at 7.) Moreover, Wang makes several new and non-responsive arguments regarding the accuracy of the trial proceedings. The Court is not convinced by either parties' arguments, and will deny the motion to enforce.

A. Transcript

Rule 10(b)(1)(A) of the Ninth Circuit's Federal Rules of Appellate Procedure states, in part, that the appellant has a duty to "order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary[.]"

> "Unless the entire transcript is ordered . . . the appellant must—within the 14 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement[.]"

Fed. R. App. P. 10(b)(3)(A). If the appellee considers it necessary to have other parts of the transcript proceedings, the appellee may "either order the parts or move in the district court for an order requiring the appellant to do so." Fed. R. App. R. 10(b)(3)(C).

In his notice of appeal, Wang states he is appealing this Court's last judgment entered on May 11, 2021, orders entered "on the dates including, but not limited to, 5/8/2018, 7/12/2019, 3/30/2020 and 5/25/2021," and "orders that may be entered on and after 6/8/2021." (ECF No. 251 at 1.) On June 23, 2021, Wang filed a

motion for appointment of counsel with the Ninth Circuit and states that his appeal is "regarding the Title VII retaliation and damages."[8] Additionally, he filed a designation of transcripts to be used in record on appeal in this Court and lists Buxton's trial testimony transcript, which was later entered on the docket.[9] (ECF Nos. 258, 260.)

Case 3:18-cv-00075-MMD-CLB Document 269 Filed 01/10/22 Page 10 of 13

11

While it is understandable based on the record why Defendant believed the entire trial transcript proceeding should be ordered given the scope of Wang's appeal, the decision of whether to order the entire transcript belongs to Wang, not Defendant. Wang makes clear in his response that he has decided other portions outside of Buxton's testimony are "not necessary to the appeal." (ECF No. 265 at 4.) The Court therefore agrees with Wang that if Defendant believes other portions of the trail proceeding are necessary for the appeal (*id.*), then Defendant is responsible for ordering them. Accordingly, Defendant's motion to enforce Wang to order all parts of the trial proceeding for transcript is denied.

[8]The Court takes judicial notice of Wang's motion for appointment of counsel in hisappeal to the Ninth Circuit. *See* Motion for Appointment of Counsel, Wang v. Nev. Sys. of Higher Educ., Case No. 21-15981 (9th Cir. Jun. 23, 2021), ECF No. 3.

[9]On the same day that Wang filed his designation of transcript, Defendant did the same and designated "Trial Proceedings/Witness testimony" as the following transcripts to be used in the record on appeal. (ECF No. 259.)

B. Wang's Additional Arguments

In his response, Wang raises the following new and non-responsive arguments: (1) there is no audio recording to prove the transcript is "complete, correct, and accurate;" (2)the Court Reporter sent an e-mail to Wang stating that she deleted the audio recording of the trial proceedings; (3) the Court Reporter reminded Defendant's counsel "to use deposition transcripts to defeat Wang" during trial; (4) and the transcript of Iain Buxton's trial testimony is "incomplete and has some errors." (*Id.* at 6-7.) The Court notes that these allegations are improper responses to Defendant's motion to enforce, as they do not directly respond to Defendant's arguments. However, the Court takes allegations of misconduct against it and its staff seriously, and will therefore address Wang's argumentshere.

28 U.S.C. § 753(b) of the Court Reporters Act provides, in pertinent part, that

> "[e]ach session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means,electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge."

Additionally, "[t]he transcript in any case certified by the reporter or other individual designed to produce the record shall be deemed prime facie a correct statement of the testimony taken and proceedings had." *Id.* "While 28 U.S.C. § 753(b) provides a party with

the right to receive a transcript of in-court proceedings, audio . . . recordings are not subject to disclosure." *Johnson v. Young*, Case No. 3:14-cv-00178-RCJ-VPC, 2017 WL 662904, at *3 (D. Nev. Feb. 17, 2017).

Here, the Court Reporter produced a transcript of Buxton's trial testimony and certified "that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter." (ECF No. 260 at 60.) Pursuant to the plain language of 28 U.S.C.§ 753(b), no audio recording is required when another official method of recording is available. Wang offered no evidence to support his assertion that the transcript is incorrect. Even if the Court were to accept Wang's allegation that Buxton's testimony regarding Wang's "excellent" job performance was omitted from the Court Report's transcript (ECF No. 265 at 7), Wang has not demonstrated that this omission has adversely affected the outcome of his trial. *See United States v. Carrillo*, 902 F.2d 1405, 1409-10 (9th Cir. 1990). Additionally, the allegation that the Court Reporter reminded Defendant's counsel to use the deposition transcript against Wang is improper as the Court was present at trial and did not observe any mishandling from staff. The errors that Wang further raises regarding the misspelling of names of individuals at trial (ECF No. 265 at 7) are *de minimis* and again do not adversely impact the case outcome. As such, the Court rejects Wang's allegations of improper conduct.

VI. MOTON TO RECONSIDER

As stated above, Wang filed an "objection" (ECF No. 268) to the Clerk of Court's memorandum

regarding taxation of costs, which the Court construes as a motion for reconsideration. *See supra* n.1 at pp. 1. A motion for reconsideration must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). The Court, having reviewed Wang's motion, finds that Wang repeats several of the arguments he has raised throughout this case and has failed to offer a valid reason as to why the Court should reconsider the memorandum. Accordingly, Wang's motion to reconsideration is denied.

VII. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Defendant's motion for costs and attorneys' fees (ECF No. 241) is granted in part and denied in part. Defendant is entitled to reasonable costs inthe amount of $15,696.80. The Court denies Defendant's motion with respect to attorneys' fees.

It is further ordered that Defendant's motion to enforce Plaintiff Guangyu Wang to order all parts of the trial proceeding for transcript (ECF No. 264) is denied.

It is further ordered that Wang's motion for sanctions (ECF No. 243) is denied.

It is further ordered that Wang's motion for reconsideration (ECF No. 268) is denied.

DATED THIS 10th Day of January 2022.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX C

The Investigative Memorandum and the Determination of the U. S. Equal Employment Opportunity Commission, San Francisco District Office, in the Title VII Retaliation Charge

Guangyu Wang v. Nevada System of Higher Education

No. 480-2014-00657

Scott Doughtie, Enforcement Supervisor

(June 23, 2017)

WILLIAM R. TAMAYO, District Director

(June 26, 2017)

App 74-83

TABLE OF CONTENTS

U.S. Equal Employment Opportunity Commission

San Francisco District Office

Phillip Burton Federal Building
450 Golden Gate Avenue
5 West P.O. Box 36025
San Francisco, CA 94102
Direct Dial: (415) 522-3000
TTY: (415) 522-3152
Fax: (415) 522-3415

Investigative Memorandum

To: William R. Tamayo, District Director
Through Scott Doughtie, Enforcement Supervisor
/s/,6/23/17
From: Warren S. Chen, Investigator

Date: June 05, 2017

SUBJECT: Guangyu Wang v. NEVADA SYSTEM OF HIGHER EDUCATION
CHARGE NO: 480-2014-00657C

Title	Basis	Issue	Finding
VII	Retaliation	Terms & Conditions (Discarding Equipment)	b(5) b(5)
VII	Retaliation	Terms & Conditions (Unfavorable Reference)	

Jurisdiction/ Timeliness:

Alleged Violation:
Unfavorable Job Reference: June 2014
Filing: July 10, 2014

Number of Employees:

The Respondent, University of Nevada, Reno ("UNR",

"R") is a state funded public entity. According to R's human resources website, it employs approximately 9,000 employees as of October 01, 2016.

I. Charging Party's ("CP") allegations

In or around October 2010, CP was hired as a Research Assistant Professor at the Department of Pharmacology of R. In or around June 2012, CP was discharged and he later filed a lawsuit of discrimination against Respondent in December 2012. CP was prohibited from entering R's facility after he was discharged and was unable to access his research equipment and products. On or around April 17, 2013, CP settled the suit with R and he was in negotiation for employment with another university, U.C. Davis ("UCD"). However, CP alleges R subjected him to various forms of retaliation despite the lawsuit being settled. For instance, CP claims R refused to transfer his lab equipment and supplies as agreed upon by the settlement agreement. R, in fact, discarded CP's belongs without his consent. Additionally, CP alleges R was trying to prevent him from getting a job offer by telling UCD about the lawsuit. As a result,

Redacted Enforcement Investigator's Recommendation Memorandum to Director containing one column/s of pre-decisional, deliberative analysis and recommendations

1/Page

CP believes he was retaliated against for engaging in protected activity.

II. Respondent's ("R") position:

R denies it refused to transfer CP's equipment and discard his items without his consent. R asserts in the position statement that the Settlement Agreement of the lawsuit only addressed two pieces of

equipment that needed to be turned over to CP, and R states that both pieces of equipment were transferred to CP's new employer, UCD, in or around October 2013. In respect to the allegation that R was trying to prevent CP from getting a job offer from UCD by disclosing the lawsuit to the hiring official, R did not confirm nor deny the incident. R explains in the position statement that CP filed the lawsuit against UNR publicly and the information was available to the public. Therefore, there is no expectation of privacy or confidentiality of the suit.

III. Analysis of evidence based on the Models of Proof

Retaliation/ Terms and Conditions — Discarding equipment (No Cause)

1. CP participated in the EEO process;
   - CP filed a lawsuit of discrimination under Title VII against R in or around December 2012.

b(5)

   - CP's equipment and items were discarded by R.

b(5)

b(5)

b(5) CP filed a lawsuit against R in December 2013 and his items were discarded after the lawsuit was settled.

b(5)

b(5)

b(5)

b(5)

R explains in the position statement that CP had signed a Settlement Agreement ("Agreement") upon settling his lawsuit with R, and the Agreement only required R to transfer two items a "*UV/Visible, Scanning Spectrophotometer*" and a "*Sorwall Legend Microcentrifuge*" to CP's subsequent employer. R argues that both items were turned over to UCD in or around October 2013. R also provides a copy of the Agreement to support its argument.

b(5)

2/Page

Redacted nine lines of pre-decisional, deliberative analysis and recommendations including Investigator's thought process.

b(5)

Retaliation/ Terms and Conditions – Unfavorable Reference

1. CP participated in the EEO process;
   - CP filed a lawsuit of discrimination under Title VII against R in or around December 2012.

b(5)

b(5)

   - CP alleges that R was trying to prevent him from getting a job offer by disclosing the lawsuit to the hiring official at UCD.

b(5)

b(5)

b(5) R argues in the position statement that CP had publicly filed two lawsuits against R, and the details of both cases can be obtained online through the court filing systems. Therefore, there is no expectation of privacy or confidentiality regarding these documents.

Analysis and Pretext:

On June 13, 2016, I conducted a telephone interview with Ia[i]n Buxton, the Chairman of the Department of Pharmacology of UNR, and he was CP's former supervisor. Dr. Buxton was also the ADO because he was the one who called and disclosed CP's lawsuit to UCD hiring official. Matthew Milone, the attorney of R, also participated in the interview. During the interview with Dr. Buxton, I asked him if he remembered CP, and he said "*I remember a great deal about Dr. Wang.*" I then asked Dr. Buxton if he had called Dr. Cala at UCD to disclose CP's lawsuit,

b(5) he b(5) stated he does not remember Dr. Cala, and he has no recollection of calling him. I then informed Dr. Buxton that I had talked to Dr. Cala, and Dr. Cala had identified his name as the caller. However, Dr. Buxton insisted that he has no collection of Dr. Cala b(5) and calling him.

b(5)

3/Page

Redacted fourteen lines of pre-decisional analysis and recommendations including Investigator's thought process.

U.S. Equal Employment Opportunity Commission

San Francisco District Office

Phillip Burton Federal Building
450 Golden Gate Avenue
5 West P.O. Box 36025
San Francisco, CA 94102
Direct Dial: (415) 522-3000
TTY: (415) 522-3152
Fax: (415) 522-3415

EEOC charge Number 480-2014-00657

Guangyu Wang
6369 Walnut Creek Road
Reno, NV 89523 Charging Party

Nevada System of Higher Education
2601 Enterprise Road
Reno, NV 89512 Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended ("Tilt VII"). All jurisdictional requirements have been met.

The Respondent is an employer within the meaning of Title VII. Timeliness, deferral, and all other requirements for coverage have been met.

The charging Party alleges that the Respondent subjected him to retaliation for engaging in protected activity under Title VII. The Charging Party claims that the Respondent tried to prevent him from securing

a job offer by making unfavorable references and failed to transfer his laboratory equipment to his new employer.

The Respondent denies Charging Party's allegations. The Respondent contends that the institution was only required to transfer two (2) items, as stated on the prior settlement agreement, to the Charging Party's new employer, and the two stated items were properly transferred. The Respondent further denies that the institution was trying to prevent the Charging Party from securing a job offer by making unfavorable references to his new employer.

There is insufficient evidence to indicate that Respondent retaliated against Charging Party by failing to transfer his laboratory equipment to his new employer.

Determination
EEOC Changing No. 480-2014-00657
Page 2

Based upon the investigation and the information obtained in the investigation, it is *"more likely than not"* that the Respondent did subject the Charging Party to retaliation by making unfavorable references to his new employer to prevent him from securing a job offer.

Based on the evidence, I have determined that there is reasonable cause to believe that Respondent retaliated against Charging Party for engaging in protected activity in violation of the statute.

Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended requires that if the Commission determines that there is reasonable cause to believe that the charge is true, it shall endeavor to eliminate the alleged unlawful employment practice by informal

methods of conference, conciliation and persuasion. Having determined that there is reasonable cause to believe that the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter.

Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. Where the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason, is unable to secure a settlement acceptable to the District Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to the Charging Party and the Commission.

You are reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On behalf of the Commission,

6/26/2017
Date

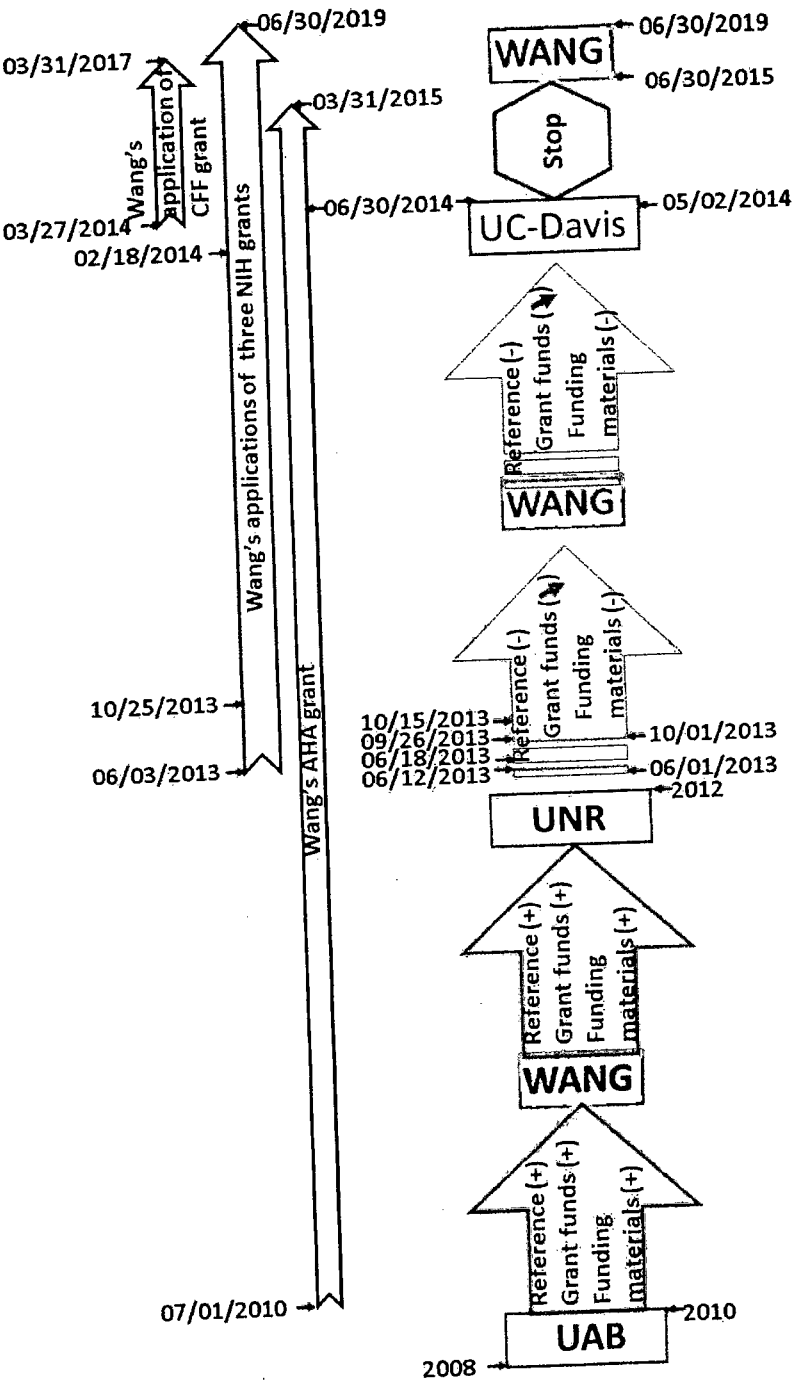
/s/ William R. Tamayo
Willian R. Tamayo
District Direct

APPENDIX D

Dr. Wang's Employment Chain along with His Grant Activities Involved in the Title VII Retaliation Case

Guangyu Wang v. Nevada System of Higher Education

No. 480-2014-00657
No. 3:18-cv-75-MMD-CLB
No. 21-15981
App 84-85


06/30/2019
03/31/2017
Wang's application of CFF grant
03/31/2015
Wang's applications of three NIH grants
06/30/2014
03/27/2014
02/18/2014
Wang's AHA grant
10/25/2013
06/03/2013
07/01/2010
WANG
06/30/2019
06/30/2015
Stop
UC-Davis
05/02/2014
Reference (-)
Grant funds (-)
Funding materials (-)
WANG
Reference (-)
Grant funds (-)
Funding materials (-)
10/15/2013
09/26/2013
06/18/2013
06/12/2013
10/01/2013
06/01/2013
2012
UNR
Reference (+)
Grant funds (+)
Funding materials (+)
WANG
Reference (+)
Grant funds (+)
Funding materials (+)
2010
UAB
2008

APPENDIX E

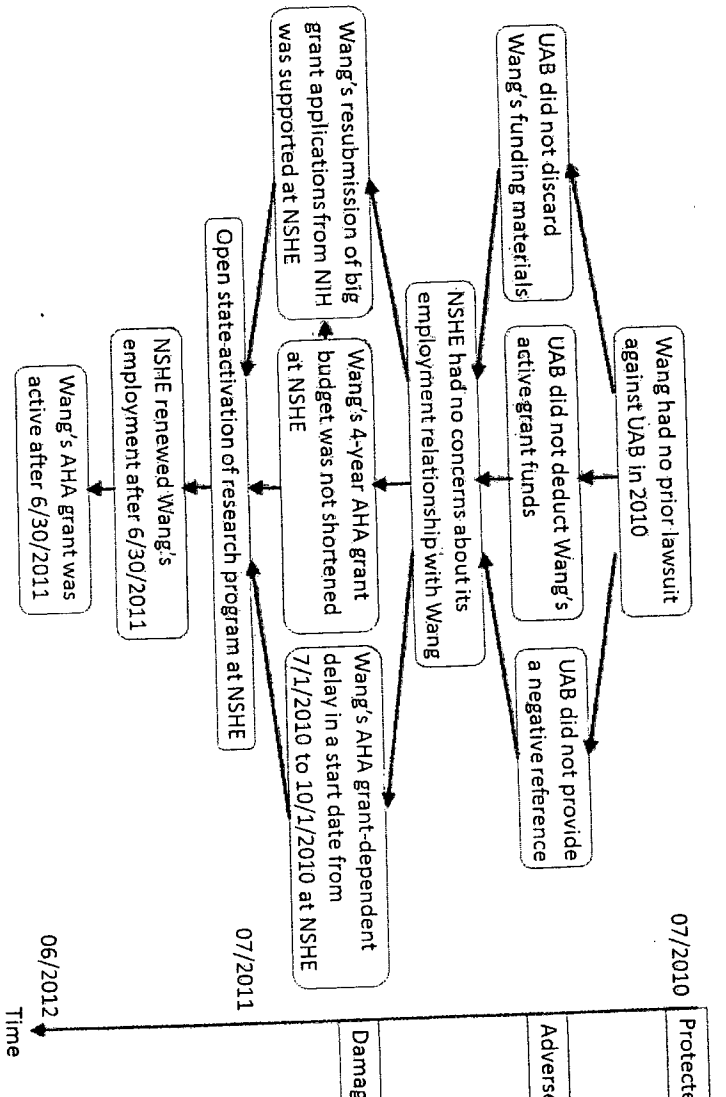
The Hierarch Network Structure Based on the Anti-retaliation Standard Involved in the Title VII Retaliation Case

Guangyu Wang v. Nevada System of Higher Education

No. 480-2014-00657
No. 3:18–cv–75–MMD–CLB
No. 21-15981
App 86-88

TABLE OF CONTENTS

a. Negative control



b. NSHE's retaliation subjected Wang to damages inherently for his protected activity