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MEMORANDUM OPINION AND JUDGMENT OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA (JANUARY 23, 2019)

DISTRICT OF COLUMBIA COURT OF APPEALS

DAYO ADETU, ET AL.,

Appellants,

v.

SIDWELL FRIENDS SCHOOL,

Appellee.

No. 17-CV-888

Appeal from the Superior Court of the District of Columbia (CAB-9948-15) (Hon. Florence Pan, Trial Judge)

Before: BLACKBURNE-RIGSBY, Chief Judge, BECKWITH, Associate Judge, and FARRELL, Senior Judge.

PER CURIAM: Appellants Dayo Adetu and her parents, Titilayo and Nike Adetu, appeal from the trial court's order granting appellee Sidwell Friends School's motion for summary judgment and bill of costs. We conclude summary judgment was appropriate, as the Adetus do not claim any damages other than emotional damages for their breach of contract claims and did not make

a sufficient showing of any adverse action taken by Sidwell. The Adetus also failed to establish that the trial court abused its discretion in granting Sidwell's bill of costs in the amount of $37,834.58. Accordingly, we affirm the trial court's grant of summary judgment and bill of costs.

I.

The relevant facts are as follows. Dayo Adetu[1] was a student at Sidwell Friends School from 2000 until her graduation in June of 2014. During Dayo's junior year, she and her parents filed a discrimination charge with the D.C. Office of Human Rights (DCOHR). In the complaint, the Adetus alleged a number of discriminatory and retaliatory[2] acts, including false and inaccurate grading of her work in her sophomore and junior math classes and placement in the wrong math course for her junior and senior years. The Adetus and Sidwell eventually entered into a settlement agreement during the summer before Dayo's senior year. The agreement included the following relevant provisions:

> B. Respondent agrees not to retaliate against Complainant's daughter as a student.
>
> C. Respondent agrees, in good faith, to recalculate or recompute with explanation the following grades by September 30, 2013; how-

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[1] To avoid confusion, as her parents share the same last name, we will refer to Dayo Adetu as "Dayo" throughout this memorandum opinion and judgment.

[2] The Adetus asserted that the retaliation against Dayo stemmed from a separate legal dispute that had previously arisen between Dayo's older sister and the Sidwell math department.

ever, Respondent offers no guarantees as to any changes in results:

1. Fall and spring Semesters—Calculus 2012-2013.
2. Math–II 2011-2012.
3. If any grade increases as a result, it will be recorded in Dayo Adetu's official record and transcript with Respondent. If there is a decrease, no change will be made in the grade.
4. Complainant agrees not to bring any further action resulting from the recalculations.

The agreement also included a nondisparagement clause, which stated, in relevant part: "Respondent and its agents or employees agree not to make any disparaging or negative statements or comments about Complainant to any business, organization, individuals, or other persons regarding matters relevant to this Agreement."

Marie Koziebrodzka and Joshua Markey, Dayo's math and calculus teachers, respectively, provided recalculations and written explanations of Dayo's grades to Sidwell by early September 2013. The recalculations resulted in a change to Dayo's first semester calculus grade—from an A- to an A—after Mr. Markey noticed he had inadvertently failed to drop the lowest quiz grade for all of the students in his class. Dayo's other grades remained the same. Sidwell reported the recalculation and written explanations to the Adetus

sometime after September 30, 2013, and the incorrect grade was changed on Dayo's official transcript on October 4, 2013. Dayo submitted an authorization to release her transcripts on November 1, 2013.

Dayo began the process of applying to colleges during her senior year at Sidwell. One component of the application process was a Secondary School Report (SSR), which Sidwell prepares on behalf of the student for each school she applies to. The SSR asks Sidwell to rate the student compared to other students in his or her class on a scale that ranges from "below average" to "outstanding." Dayo's rating differed among the SSRs depending on the school, with her academic achievement rated as either "good" or "very good" for Dartmouth, Yale, Cornell, Columbia, Purdue, Pennsylvania, MIT, and Johns Hopkins and "excellent" for Spelman College. She also received a letter of recommendation from her counselor, Diane Scattergood. In this letter, Ms. Scattergood mentioned Dayo's Nigerian heritage, which Dayo herself had discussed in her college essays. Dayo ultimately was denied admission to, placed on a waitlist for, or withdrew her applications from the schools she applied to that year. She reapplied to colleges the following year and matriculated at the University of Pennsylvania in August 2015.

The Adetus filed—and later amended and verified—a complaint in Superior Court, alleging five causes of action: (1) declaratory judgment; (2) breach of settlement agreement; (3) violation of 42 U.S.C. § 1981 (b); (4) violation of the District of Columbia Human Rights Act; and (5) breach of the implied covenant of good faith and fair dealing. The parties filed cross-motions for summary judgment, and in separate written orders the court denied the Adetus'

and granted Sidwell's. Sidwell subsequently filed a bill of costs,[3] and after a hearing, the trial court deemed almost all of the requested costs reasonable and necessary and granted costs to Sidwell in the amount of $37,834.58. In making that determination, the court declined to consider a written opposition the Adetus had filed on the day of the hearing and limited the Adetus' arguments to the reasonableness of requested costs, as opposed to whether such costs should be assessed at all.

II.

On appeal, the Adetus first argue that the trial court erred in granting summary judgment in favor of Sidwell. "The question whether summary judgment was properly granted is one of law, and we review *de novo*." *Johnson v. District of Columbia*, 144 A.3d 1120, 1125 (D.C. 2016) (citation omitted). "Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Liu v. U.S. Bank Nat'l Ass'n*, 179 A.3d 871, 876 (D.C. 2018) (citation omitted). A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319, 1321 (D.C. 1994). While the court must draw all justifiable inferences in the nonmoving party's favor, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1985), "conclusory allegations by the nonmoving party are insufficient to establish a genuine issue of material fact or to defeat the entry

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[3] The bill of costs was filed pursuant to D.C. Super. Ct. Civ. R. 54 & 54-I.

of summary judgment." *Hamilton v. Howard Univ.*, 960 A.2d 308, 313 (D.C. 2008) (citation omitted).

A. Counts 1, 2, and 5

With respect to counts 1, 2, and 5 of the amended complaint, the Adetus contend that it was error for the trial court to grant summary judgment in favor of Sidwell because material facts remained in dispute regarding Sidwell's alleged breach of the settlement agreement and the implied obligation of good faith and fair dealing. The Adetus also argue that Dayo is entitled to emotional distress damages for any breach. Sidwell responds that, even with all reasonable inferences drawn in the Adetus' favor, the Adetus have failed to allege any genuine dispute of material fact as to whether there was a material breach of the settlement agreement. Sidwell also rejects the Adetus' contention that this court's precedent leaves room for the award of emotional distress damages in a breach of contract case.[4]

To establish a claim of breach of contract, a plaintiff must prove: "(1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages

[4] In their reply brief, the Adetus characterize Sidwell as not having contested the Adetus' contention, in their opening brief, that our prior cases do not absolutely foreclose nonpecuniary damages stemming from the breach of a settlement agreement. While Sidwell's appellate brief does not respond at great length to the Adetus' argument about damages, it is clear from that brief, from Sidwell's elaboration upon the issue at oral argument, and from the pleadings both sides filed during the summary judgment proceedings in Superior Court that Sidwell does not concede this issue and that both Sidwell and the Adetus have fully litigated the issue in the Superior Court and before us.

caused by breach." *See Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009). In granting summary judgment, the trial judge ultimately concluded that there was no material fact in dispute regarding whether there was a material breach of any of the settlement agreement's provisions. In reviewing this decision de novo, however, we need not address whether a material breach occurred because the Adetus' argument fails for another reason: they seek damages that may not properly be awarded under our case law.[5]

In their amended complaint and their opposition to Sidwell's summary judgment motion, the Adetus contended that Dayo suffered from emotional distress damages as a result of Sidwell's alleged breach of the settlement agreement. "[T]he damages which are normally recoverable in actions for breach of contract are those which arise directly from the breach itself, or could reasonably have been in contemplation of both parties when they made the contract. . . . " *Phenix –Georgetown, Inc. v. Chas. H. Tompkins Co.*, 477 A.2d

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[5] This court "has discretion to uphold a summary judgment under a legal theory different from that applied by the trial court" as long as the party opposing that ruling "had notice of the ground upon which affirmance is proposed, as well as an opportunity to make an appropriate factual and legal presentation with respect thereto." *Franco v. District of Columbia*, 3 A.3d 300, 307 (D.C. 2010) (internal quotation marks and citations omitted). In this case, there is no procedural unfairness where the parties debated the damages issue in their filings related to the Adetus' cross-motion for summary judgment, where the trial court actually ruled on the issue, albeit in its denial of the Adetus' motion and not in its order granting Sidwell's motion, and where the Adetus argued in its brief before us that emotional distress damages could properly be awarded in this case. *See Papageorge v. Stuckey*, 196 A.3d 426, 428 (D.C. 2018); *In re J.R.*, 33 A.3d 397, 400 n.3 (D.C. 2011).

215, 225 (D.C. 1984) (citation omitted). As to emotional damages, however, the general rule is that "damages for mental anguish suffered by reason of the breach [of a contract] are not recoverable." *Pfeffer v. Ernst*, 82 A.2d 763, 764 (D.C. 1951); *see also Howard Univ. v. Baten*, 632 A.2d 389, 392 (D.C. 1993) (declining to depart from "the traditional rule . . . that mental anguish is not a compensable injury in a contract action" (citing *Asuncion v. Columbia Hosp. for Women*, 514 A.2d 1187, 1190 (D.C. 1986)).

The Adetus urge us to adopt the "modern" contract rule, which would allow for recovery of contract damages for emotional distress. *See* 3 Restatement (Second) of Contracts § 353 (1981) ("Recovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result.") They direct us to cases from other jurisdictions in which the court concluded that emotional distress damages could be awarded for a breach of a settlement agreement. Unlike these decisions, which do not bind us,[6] we have repeatedly

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[6] The circumstances of these cases also differ greatly from the present case. In *Munday v. Waste Management of North America, Inc.*, 997 F. Supp. 681 (D. Md. 1998), for example, the plaintiff suffered from preexisting emotional problems and faced sex discrimination at her job. After being reinstated following a settlement agreement, the other employees—who were aware of the plaintiff's emotional problems—acted with "actual malice" and in an overt manner. The court found that the retaliatory conduct was "of a nature that no reasonable employee should be expected to endure." *Id.* at 687. The court further concluded that emotional damages were appropriate in part because of the procedural posture of the case—that is, that the decision being appealed was then "the law of the case," and even if it was not,

and expressly declined to depart from the traditional rule in our own cases. *See Asuncion*, 514 A.2d at 1190-91 (stating it would be "inappropriate" in that case to announce "as a matter of contract law" that negligent infliction of emotional distress may be compensable); *Baten*, 632 A.2d at 393 ("In light of *Asuncion* and *Pfeffer v. Ernst*, therefore, we conclude that the trial judge erred here in permitting the jury to award damages for mental anguish on Baten's breach of contract claim."); *cf. Hedgepeth v. Whitman Walker Clinic*, 22 A.3d 789, 802 n.18 (D.C. 2011) (acknowledging that "the District of Columbia does not allow consequential damages for emotional distress in a breach of contract action"). In light of this precedent, we decline to deviate from the general rule, and conclude that summary judgment was appropriate with respect to counts 1, 2, and 5 of the settlement agreement.[7]

B. Counts 3 and 4

The Adetus also argue it was error to grant summary judgment in favor of Sidwell on counts 3 and 4 of the amended complaint. In these counts, the Adetus allege that Sidwell engaged in retaliation in violation

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the District Court had to attempt to determine what the Court of Appeals would have done if this case had been before it. *Id.*

[7] We also note that despite the Adetus' claim that "Sidwell intended to and did needlessly trouble[] and annoy[] Dayo during her senior year of high school and during the very heart of the college admissions process," any alleged breach in recalculating Dayo's grades or of the nondisparagement clause is not "such a kind that serious emotional disturbance was a particularly likely result." 3 Restatement (Second) of Contracts § 353 (1981) (emphasis added). Nor is any alleged breach of the anti-retaliation clause. *See infra* note 7.

of 42 U.S.C. § 1981 (b) and in violation of the District of Columbia Human Rights Act, D.C. Code § 2-1402.61 (2012 Repl.).

To establish a claim for retaliation under 42 U.S.C. § 1981 (b), a plaintiff must allege that (1) she participated in a statutorily protected activity; (2) defendant took adverse action against her; and (3) a causal connection exists between the two. *See Jones v. District of Columbia Water & Sewer Auth.*, 922 F. Supp. 2d 37, 41 (D.D.C. 2013). Under the District of Columbia Human Rights Act, a plaintiff must similarly allege that (1) she engaged in a protected activity by opposing or complaining about practices that are unlawful under the Human Rights Act; (2) defendant took adverse action against her; and (3) there was a causal connection between the protected activity and the adverse action. *See Vogel v. District of Columbia Office of Planning*, 944 A.2d 456, 463 (D.C. 2008). An adverse action is one that "has materially adverse consequences affecting the terms, conditions, or privileges of [education] or future [educational] opportunities such that a reasonable trier of fact could find objectively tangible harm." *District of Columbia Dep't of Pub. Works v. District of Columbia Office of Human Rights*, 195 A.3d 483, 491 (D.C. 2018) (internal quotation marks and citation omitted). "By contrast, purely subjective injuries, such as dissatisfaction with a reassignment, public humiliation, or loss of reputation, are not adverse actions[.]" *Id.* (internal quotation marks and citation omitted).

The Adetus first assert the trial court was incorrect in failing to address the fact that they engaged in protected activity on numerous occasions, including by inquiring about the status of the grade recompu-

tations, meeting with Ms. Scattergood, and filing documents in superior court. They put forth five[8] "adverse actions" taken by Sidwell that the Adetus contend support their claims of retaliation and entail material facts in dispute: (1) ranking Dayo differently on her Secondary School Reports (SSRs) depending on what school the SSR was for; (2) referring to Dayo's Nigerian heritage in a letter of recommendation; (3) excluding Dayo's SAT II Chemistry test score from her "Test Record"; (4) performing "disparate advocacy" with respect to Dayo's applications to Ivy League schools, as compared to her Spelman application; and (5) making "negative or disparaging remarks about

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[8] The Adetus also argue that the alleged breaches of the settlement agreement—specifically, the failure to timely and correctly recalculate Dayo's math and calculus grades and report them accurately on her transcript—constituted additional adverse action. The trial court did not address this in its analysis of the retaliation claim, as it concluded that these were not material breaches of the settlement agreement. Sidwell contends that these claims belong with the Adetus' breach of contract claims. We agree with the Adetus that an alleged breach of the settlement agreement could properly be part of the retaliation analysis. Nevertheless, any alleged breach here does not rise to the level of "adverse action." "[D]ecisions involving academic dismissal or [performance] merit summary judgment . . . 'unless the plaintiff can provide some evidence from which a fact finder could conclude that there was no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance.'" *See Hajjar-Nejad v. George Wash. Univ.*, 37 F. Supp. 3d 90 (D.D.C. 2014) (quoting *Paulin v. George Wash. Univ. Sch. of Med. & Health Scs.*, 878 F. Supp. 2d 241, 247 (D.D.C. 2012). Dayo's teachers provided rational explanations for why her grade either did or did not change, and even assuming *arguendo* that the delay in providing the explanations was a material breach, the Adetus have not offered any evidence to support a claim that this delay resulted in objectively tangible harm. *District of Columbia Dep't of Pub. Works*, 195 A.3d at 491.

Dayo." Sidwell responds that the trial court did not need to address the Adetus' alleged protected activity, because their claims fail if they fail to satisfy even one prong of the relevant test, and thus the trial court's analysis of the "adverse actions" and conclusion that they were not supported by any evidence rendered any analysis of protected activity moot. On the issue of the alleged "adverse actions," Sidwell argues these are simply "generalized gripes founded upon Appellants' speculation" and that Sidwell is entitled to academic deference.

After reviewing the extensive factual record in this case, we agree with Sidwell that the Adetus have failed to offer sufficient evidence showing any genuine issue of material fact exists for any of the alleged adverse actions that underlie the charges of retaliation. For many of their claims, the Adetus cite to their own beliefs or dissatisfaction as support for their claim that these actions were adverse. For example, with respect to the SSRs, the Adetus point to Dayo's testimony in which she stated, "I believe that my evaluation was wrong, because for Spelman . . . they gave me marks—very high marks, and then when I applied to more selective school[s], they gave me average marks." Ms. Scattergood testified that the practice was to compare students with the peers applying to the same school. The Adetus have maintained their view that this is not the way it should be done, given the SSR form's use of the phrase "[c]ompared to other students in her class," but have offered no evidence to dispute that this was the regular practice. "Purely subjective injuries, such as dissatisfaction . . . are not adverse actions," *District of Columbia Dep't of Pub. Works*, 195 A.3d at 491 (citation omitted), and

thus there is no genuine issue of material fact on this point.

Similarly, there is no genuine issue of material fact regarding the alleged retaliation from the letter of recommendation. The Adetus take issue with the fact that Ms. Scattergood referred to Dayo's heritage in her letter of recommendation, despite Dayo's own testimony that she was not offended by it and was proud of her cultural upbringing and that she had herself written about her heritage in her college essay. On appeal, the Adetus assert that this constituted adverse action by creating a false impression that Dayo was not American and therefore would not receive the benefit of affirmative action, ultimately harming her college prospects. The Adetus offer no nonspeculative evidence to support this assertion, however, and conclusory allegations are insufficient to defeat the entry of summary judgment. *See Hamilton v. Howard Univ.*, 960 A.2d 308, 313 (D.C. 2008). Summary judgment was thus appropriate with respect to this claim as well.

The Adetus' claims of adverse action with respect to the test record, alleged disparate advocacy, and alleged disparaging remarks fail for similar reasons. While the test record may have omitted Dayo's SAT II Chemistry score, the Adetus have offered assertions, but no other evidence, that Sidwell's actions caused it to be missing,[9] that a record omitting it was sent to

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[9] Indeed, Sidwell contends that the score was missing because the College Board did not provide the peel-off label, and in any case it is not responsible for submitting a student's SAT scores to universities. The Adetus have not offered any evidence to suggest this is not the case. If the "moving defendant has made an initial showing that the record presents no genuine issue of

McGill or any college, or that it had any impact on her college admissions process. The Adetus further cite Sidwell's encouragement and support of Dayo's Spelman application as evidence that they engaged in disparate advocacy. As evidence of the "negative assistance" they claim Sidwell provided Dayo with respect to her applications to other universities, they cite only their characterization of the advice to reach out personally to the school at which she was waitlisted as "a self-help directive." Finally, the Adetus point to Dayo's second semester calculus grade, her SSRs, and the letter of recommendation as evidence that Sidwell "made negative or disparaging remarks about Dayo." The Adetus are unsatisfied with the fact that this grade did not change in the way they expected after the recalculations, and, as discussed *supra*, there is no evidence that the SSRs and letter of recommendation contained anything that constituted adverse action. Thus, absent additional evidence, no genuine dispute of material fact exists for these claims.

While we draw all justifiable inferences in the Adetus' favor, the Adetus failed to make a sufficient showing that Sidwell engaged in "adverse action" against Dayo or that objectively tangible harm resulted. We therefore conclude that the trial court did not err in granting summary judgment with respect to counts 3 and 4.[10]

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material fact, then the burden shifts to the plaintiff so show that such an issue exists." *Bradshaw v. District of Columbia*, 43 A.3d 318, 323 (D.C. 2012) (quotation marks and citation omitted). On this issue, the Adetus have failed to meet that burden by failing to meaningfully dispute Sidwell's argument.

[10] Because a plaintiff must meet all three prongs to prove retaliation under the tests for a violation of 42 U.S.C. § 1981 (b) and

III.

The Adetus next argue the trial court improperly awarded Sidwell's bill of costs in the amount of $37,834.58. They contend that the amount was excessive, that the trial court should have considered the Memorandum in Opposition to the Bill of Costs the Adetus filed hours before the hearing, that the trial court abused its discretion by not considering the economic disparity between Dayo and Sidwell, and that even if Sidwell should have been granted costs, some of its specific requests should have been denied. Sidwell responds that the trial court did not abuse its discretion because it followed the proper procedure for awarding the bill of costs, that Dayo's resources are irrelevant in considering the amount of costs to be awarded, and that the trial judge gave adequate weight to the Adetus' disagreements with the specific line items they take issue with in their brief.

"The award of costs to the prevailing party under Super. Ct. Civ. R. 54 (d) is 'within the trial court's discretion and may only be overturned upon our finding that the exercise of such discretion was an abuse.'" *Kleiman v. Aetna Cas. & Sur. Co.*, 581 A.2d 1263, 1267 (D.C. 1990) (quoting *Ingber v. Ross*, 479 A.2d 1256, 1265 (D.C. 1984)). An appellant contesting an award of costs "bears the burden of convincing this court on appeal that the trial court erred . . . [and] the burden is even greater when the standard of review is abuse of discretion." *Robinson v. Howard Univ.*, 455 A.2d 1363, 1370 (D.C. 1983). Under this standard, we

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the Human Rights Act, we need not address whether the Adetus engaged in protected activity or whether there was a causal connection.

conclude that the trial court did not abuse its discretion in granting Sidwell's bill of costs in the amount of $37,834.58.

First, because the trial court determined that the Adetus' opposition was untimely and allowed counsel to make arguments at the hearing regarding the reasonableness of certain costs, the court did not abuse its discretion in concluding that it would not consider the opposition. Under Super. Ct. Civ. R. 54 (d)(1), "[u]nless an applicable statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. . . . The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action." *Id.* The Adetus contend that the trial court did not follow the correct process and "circumvent[ed] the clerk's action," thereby violating their right to due process and fundamental fairness. Yet the rule only states what the clerk may do when costs are at issue. The Adetus were aware on July 24, 2017, that a bill of costs would be filed, and Sidwell in fact filed the bill of costs four days later. The court noted on September 14, 2017, that it had set a hearing date of October 2, 2017. The Adetus were thus on notice of both the filed bill of costs and the hearing date, but they waited until the day of the hearing to file their opposition. The trial court noted the untimeliness of the filing and the prejudice to Sidwell, which had no meaningful opportunity to review it or respond to it, and ultimately allowed the Adetus to make arguments on the reasonableness of costs without considering the written pleading. Under these circumstances, the trial court did not abuse its dis-

cretion in balancing the competing interests and making these decisions.

It was also not an abuse of discretion to award costs despite Dayo's comparative resources. While a court may, in its discretion, choose not to impose costs when the unsuccessful party is indigent or has significantly fewer resources than the prevailing party, "we do not think[ ] that a contrary result necessarily constitutes an abuse of discretion." *Robinson*, 455 A.2d at 1367 n.7. The trial court stated that its role was to "make sure that the costs being requested are reasonable and necessary" and carefully considered both parties' arguments. We therefore disagree with the Adetus' characterization of the bill of costs as "punitive," and conclude it was not an abuse of discretion for the trial court to decline to consider the parties' relative resources.

Finally, the trial court did not abuse its discretion in awarding the specific line items the Adetus take issue with in their brief. The Adetus contest a duplicative charge of $600, but the trial court specifically deducted that from its final total. For several of the other costs, the Adetus reiterate arguments that were made to the trial court. The court considered both parties' positions on these issues, at times asking for further examples to aid it in making its decision on the reasonableness and necessity of these costs. The court ultimately found that the costs were incurred in good faith in pursuit of the litigation and reasonable and necessary in light of the well-documented instances of contentious interactions between the parties. The court therefore did not abuse its discretion in awarding these costs, or the others the Adetus challenge without citation to any authority.

IV.

For the foregoing reasons, we affirm the grant of summary judgment in favor of Sidwell Friends School and we affirm the bill of costs in the amount of $37,834.58.

Entered by Direction of the Court:

/s/ Julio A. Castillo
Clerk of the Court

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ORDER OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (JULY 14, 2017)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION

DAYO ADETU, ET AL.,

v.

SIDWELL FRIENDS SCHOOL,

Case Number: 2015 CA 9948 B

Before: Florence Y. PAN, Judge.

This matter comes before the Court upon consideration of defendant's Motion for Summary Judgment ("Def. Mot."), filed on February 27, 2017; plaintiff's Opposition ("Pl. Opp."), filed on March 31, 2017; and defendant's Reply Brief ("Def. Reply"), filed on April 7, 2017.[1] The Court has considered the pleadings of the parties, the relevant law, and the entire record. For the following reasons, defendant's motion for summary judgment is granted as to all counts in the Amended Verified Complaint.

[1] Plaintiffs also moved for partial summary judgment. The Court denied their motion in a separate order on May 31, 2017.

Procedural History

On December 23, 2015, plaintiffs Dayo, Titilayo, and Nike Adetu[2] filed a verified complaint against defendant Sidwell Friends School ("Sidwell"), alleging discrimination and retaliation against Dayo Adetu from 2011 to 2014, perpetrated by various teachers and administrators at Sidwell when Dayo was a student at the school. Plaintiffs assert that Sidwell breached a settlement agreement, which was entered by the parties to resolve a formal complaint filed by plaintiffs against Sidwell with the D.C. Office of Human Rights ("OHR"). Plaintiffs' original verified complaint (1) requested a declaratory judgment that Sidwell breached the Settlement Agreement; (2) sought damages for breach of the Settlement Agreement; and (3) sought damages for fraudulent inducement to enter the Settlement Agreement. *See* Original Complaint ¶¶ 98, 103,116. On May 9, 2016, defendant filed an Answer to plaintiffs' original complaint, which denied many of plaintiffs' allegations and raised numerous defenses. *See* Answer, Defenses ¶¶ 3, 14, 15. In addition, on May 9, 2016, defendant filed a motion to dismiss plaintiffs' fraudulent inducement claim, which the Court granted on June 16, 2016. *See* Order Granting Motion to Dismiss Count III, dated June 16, 2016 (Irving, J.) (holding that plaintiffs failed to allege any facts to support their claim that defendant never intended to satisfy the terms of the Settlement Agreement before entering the agreement).

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[2] Dayo is a former student of Sidwell Friends School, who was 20 years old at the time that the complaint was filed. Titilayo and Nike are her parents. Amended Complaint ¶ 1.

On August 16, 2016, plaintiffs filed a motion for leave to file an amended complaint, in order to "amplify" their claims in light of evidence obtained during the course of discovery. *See* Mot. to Amend Complaint at 4. In particular, plaintiffs wished to add three causes of action: (1) violation of 42 U.S.C. § 1981 (b); (2) violation of the District of Columbia Human Rights Act; and (3) breach of the implied obligation of good faith and fair dealing. *Id.* After hearing oral argument on September 19, 2016, the Court granted plaintiffs' motion to amend the complaint. *See* Order Granting in Part Motion to Amend Complaint, dated November 1, 2016, (Irving, J.) (allowing plaintiffs to add additional causes of action, but declining to revisit previous dismissal of fraudulent inducement claim). On November 8, 2016, plaintiffs filed their Amended Verified Complaint.

On November 30, 2016, defendant filed a motion to dismiss the Amended Verified Complaint and to compel arbitration, or in the alternative, to dismiss the two, newly added civil rights claims. On February 17, 2017, the Court denied the motion to dismiss. *See* Order Denying Motion to Dismiss, (Pan, J.). In particular, the Court found that plaintiffs are not required to submit their claims to arbitration, and that plaintiffs sufficiently pleaded claims of retaliation under 42 U.S.C. § 1981(b) and under the District of Columbia Human Rights Act. The Court ruled that plaintiffs adequately alleged in their Amended Verified Complaint that Sidwell took adverse actions against Dayo, which prevented her from being admitted to the college of her choice, in retaliation for her engagement in protected activity, *i.e.*, the filing of the discrimination

complaint against Sidwell before the OHR. *See* Order Denying Motion to Dismiss, at 15-16.

On February 27, 2017, defendant filed the instant Motion for Summary Judgment, pursuant to Super. Ct. Civ. R. 56(c). In its motion, defendant asserts that it is entitled to judgment as a matter of law for the following reasons: (1) plaintiffs cannot prove their retaliation claims because defendant's actions were not "materially adverse actions," and because there is no evidence that plaintiffs' protected activity was the "but for" cause of defendant's alleged adverse actions; and (2) any breach of the Settlement Agreement was immaterial. *See* Def. Mot. at 3. Further, defendant asserts that plaintiffs have failed to produce any facts, beyond mere speculation, that show that Dayo was treated any differently from other students. *See* Def. Mot. at 11.

On March 31, 2017, plaintiffs filed an opposition to defendant's motion for summary judgment. In their opposition, plaintiffs assert that they have presented genuine issues of material fact, as set forth in their Verified Amended Complaint, with respect to their retaliation claims and their breach-of-contract claims. *See* Pl. Opp. at 15.

On April 7, 2017, defendant filed a reply brief, asserting that plaintiffs' opposition relies almost entirely on their Verified Amended Complaint and their own discovery responses, in an attempt to create the appearance of disputed facts, when none actually exist. *See* Def. Reply at 2-4.

Factual Background

Dayo Adetu began her high school education at Sidwell in the fall of 2010, and graduated in 2014. *See* Def. Statement of Undisputed Facts ¶ 1. On April 22, 2013, when Dayo was a junior, plaintiffs filed a Charge of Discrimination against Sidwell with the District of Columbia Office of Human Rights ("OHR"). *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 37; OHR Case No. 13-246-EI. Plaintiffs' allegations against Sidwell before the OHR concerned "Dayo's treatment by Defendant's math professors and disagreement over her grades" during the 2011-2012 and 2012-2013 academic years. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶¶ 38-40; Def. Exh. I: Charge of Discrimination ("My daughter's math professors treated her differently than other students (White/U.S.) . . . our daughter's math grade for the semester was A- when it should have been an A. She was not allowed to advance to Calculus BC because she received an A-.").

On July 17, 2013, the parties entered into a Settlement Agreement to resolve their dispute before the OHR. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 41; Def. Exh. J: Settlement Agreement. In the Settlement Agreement, Sidwell agreed (1) to pay plaintiffs $50,000.00; (2) to not retaliate against Dayo; and (3) to recalculate certain challenged math grades. *See* Settlement Agreement ¶ 1(C). In particular, Sidwell agreed to recalculate "with explanation" Dayo's Calculus grades for the fall 2012 and spring 2013 semesters, and her Math II grades for the 2011-2012 year. *See* Settlement Agreement ¶ 1(C)(1), (2). Sidwell agreed to complete the recalculations by September

30, 2013. *See* Settlement Agreement ¶ 1(C).[3] The Settlement Agreement further provided that any grade increases based on the recalculations would be reflected in Dayo's transcript; and that any grade decreases based on the recalculations would not be reflected in her transcript. *See* Settlement Agreement ¶ 1(C)(3). The Settlement Agreement did not specify how the recalculations would be performed, but provided that they should be done "in good faith," and that "complainant agrees not to bring any further action resulting from the recalculations." *See* Settlement Agreement ¶ 1(C)(4).

Within three business days of the entry of the Settlement Agreement, Sidwell sent plaintiffs a check for $50,000.00. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 45; Titilayo Adetu Depo. at 228. The parties dispute whether Sidwell otherwise materially breached the Settlement Agreement with respect to (1) its obligations to recalculate Dayo's math grades and to modify her transcript to reflect any grade increases, and (2) Sidwell's obligation to act in good faith, both under the express terms of the Settlement Agreement and pursuant to the implied covenant of good faith

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[3] The parties seem to concur that the Settlement Agreement required defendant to correct Dayo's transcript by September 30, 2013. The plain terms of the Settlement Agreement, however, do not necessarily support that interpretation. Although the Settlement Agreement states that defendant agrees to "recalculate or recompute with explanation" certain grades by September 30, 2013, it is silent on the deadline by which Dayo's transcript must be updated. *See* Settlement Agreement ¶ 1(C). Nevertheless, the Court will assume that the Settlement Agreement imposed a deadline of September 30, 2013, for the correction of Dayo's transcript, in light of the parties' apparent agreement on this point.

and fair dealing. The parties also dispute whether there is evidence that allegedly adverse actions taken by Sidwell in the aftermath of the Settlement Agreement were motivated by an intent to retaliate against plaintiffs for filing the discrimination case before the OHR.

Applicable Legal Standards

To prevail on a motion for summary judgment, the moving party must establish that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Hunt v. District of Columbia*, 66 A.3d 987, 990 (D.C. 2013) (citing *Grant v. May Dep't Stores Co.*, 786 A.2d 580, 583 (D.C. 2001)); D.C. Super. Ct. Civ. R. 56(c). A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319, 1321 (D.C. 1994). The moving party has the initial burden of proving there is no genuine issue of material fact in dispute; after satisfying that burden, the burden shifts to the non-moving party to establish that such an issue exists. *Bradshaw v. District of Columbia*, 43 A.3d 318, 323 (D.C. 2012) (quoting *Beard v. Goodyear Tire & Rubber Co.*, 587 A.2d 195, 198 (D.C. 1991)). The non-moving party must set forth "significant probative evidence tending to support the complaint," *Barrett v. Covington & Burling LLP*, 979 A.2d 1239, 1245 (D.C. 2009) (internal citations omitted), consisting of specific facts showing there is a genuine issue for trial. *See also* Super. Ct. Civ. R. 56(c)(4) ("An affidavit or declaration used to support or oppose a motion 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.").

Analysis

Defendant Sidwell argues that it is entitled to judgment as a matter of law as to all of the counts in plaintiffs' Amended Verified Complaint because there is no genuine issue of material fact as to (1) whether any breach of the Settlement Agreement was material or demonstrated bad faith in executing the contract's terms; and (2) whether any actions taken by Sidwell after the agreement was reached were "adverse" and "retaliatory."

A. Alleged Breach of the Settlement Agreement

Three of plaintiffs' causes of action relate to Sidwell's alleged violation of the Settlement Agreement: Count One seeks a declaratory judgment that Sidwell breached the Settlement Agreement; Count Two seeks damages based on Sidwell's breach of the Settlement Agreement; and Count Five contends that Sidwell failed to abide by the implied covenant of good faith and fair dealing with respect to its performance under the Settlement Agreement. Plaintiffs claim that Sidwell breached the Settlement Agreement and failed to honor the implied covenant of good faith and fair dealing by (1) failing to timely change one of Dayo's grades that was raised from an "A-" to an "A" after it was recalculated; and (2) inaccurately recalculating other grades that were not changed. *See* Verified Amended Complaint ¶¶ 126-127.[4]

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[4] Counts III and IV, the two civil rights claims, allege retaliation against plaintiffs for engaging in protected activity, in

To establish a claim of breach of contract, a plaintiff must prove "(1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach." *See Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009). A breach of contract is "an unjustified failure to perform all or any part of what is promised in a contract entitling the injured party to damages." *See Fowler v. A&A Co.*, 262 A.2d 344, 347 (D.C. 1970) (internal quotation omitted). Every contract contains an implied covenant of good faith and fair dealing, which ensures that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *See Hais v. Smith*, 547 A.2d 986, 987 (D.C. 1988) (quoting *Uproar v. National Broadcasting Co.*, 81 F.2d 373, 377 (1st Cir. 1936)). The implied covenant "prevents a party from evading the spirit of the contract, willfully rendering imperfect performance or interfering with the other party's performance." *See Hais*, 547 A.2d at 987-88. Further, to create "triable issues of fact" on a claim of violation of the implied covenant of good faith and fair dealing, plaintiffs must "present evidence not simply of negligence or lack of diligence by [defendant], but of arbitrary and capricious action on its part." *See Allworth v. Howard Univ.*, 890 A.2d 194, 202 (D.C. 2006).

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violation of certain statutes; but plaintiffs also assert that the retaliatory acts that underlie those claims constitute a breach of the Settlement Agreement, which contains a provision barring Sidwell from retaliating against Dayo. *See* Settlement Agreement ¶ 1(B); Verified Amended Complaint ¶¶ 127, 138. The allegations of retaliation are addressed *infra*.

(1) Failure to Meet September 30, 2013, Deadline

As discussed in the Court's prior Order denying plaintiff's Motion for Partial Summary Judgment, the parties dispute whether a conceded failure to correct Dayo's transcript by the deadline of September 30, 2013, constituted a material breach of the Settlement Agreement. *See generally* Order Denying Plaintiffs' Motion for Partial Summary Judgment, dated May 31, 2017. To summarize, the parties agree that Dayo's Calculus teacher, Josh Markey, recomputed her 2012-2013 Calculus grades on or around July 17, 2013, and promptly provided written explanations with the re-computations to administrators at Sidwell. *See id.* at 5. After recalculating Dayo's Calculus grades, Mr. Markey determined that her Calculus grade for the fall 2012 semester should be changed from an "A-" to an "A." *See id.* The parties also agree that after Mr. Markey recalculated Dayo's Calculus grades, Sidwell did not modify Dayo's transcript before September 30, 2013. *See id.*

In considering plaintiffs' Motion for Partial Summary Judgment, the Court reviewed all of the evidence presented by the parties that bears on the issue of whether Sidwell's failure to timely change Dayo's transcript to reflect the grade increase was a material breach. *See* Order Denying Plaintiffs' Motion for Partial Summary Judgment, at 7-10. The Court found that the evidence presented by both parties "establishes that (1) the grade was changed on October 4, 2013, or at least by November 1, 2013; (2) the authorization to send the transcript to colleges was submitted by Dayo Adetu on November 1, 2013; and (3) the corrected transcript was sent out on and after November 4, 2013." *See* Order Denying Plaintiffs'

Motion for Partial Summary Judgment, at 10. Because plaintiffs did not present any evidence that the transcript was not corrected before Sidwell sent it to the colleges and universities to which Dayo applied, plaintiffs failed to establish that the belated correction of Dayo's transcript was a material breach of the Settlement Agreement. *See id.* The Court need not re-visit this issue, which was already resolved in the previous order.

(2) Alleged Inaccuracies in Recalculation of Other Grades

Plaintiffs contend that there is a genuine issue of material fact as to whether Sidwell breached the Settlement Agreement, or violated the implied covenant of good faith and fair-dealing, by failing to accurately recalculate other math grades, which ultimately were not changed. *See* Pl. Opp. at 3. In particular, plaintiffs contend that Sidwell administrator Justin Heiges admitted that Mr. Markey should have changed Dayo's spring 2013 Calculus grade from a "B+" to an "A-"; and that Dayo's Math II teacher, Maria Koziebrodzka, did not properly recalculate her 2011-2012 Math II grades to reflect grade increases. *See* Pl. Statement of Disputed Facts ¶ 7. Plaintiffs apparently believe that Dayo should have received grades of "A" in all of her math classes. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 43 ("Plaintiffs do not believe Dayo's Math II and Calculus grades were recalculated in 'good faith' because she should have received an 'A' for all semesters."); Pl. Statement of Disputed Facts ¶ 43 ("This fact is undisputed.").

Plaintiffs' allegations with respect to the spring 2013 Calculus grade appear to be as follows:[5] When Mr. Markey recalculated Dayo's spring 2013 Calculus grade, he used a methodology that was not consistent with what he had outlined in his written course policy. *See* Justin Heiges Depo. at 77-78 (responding affirmatively to the question, "So when he counts the senior exam twice and/or otherwise varies from his course policy, Dayo receives the lower grade").[6] Using the allegedly wrong methodology, Dayo's grade was calculated at a point value of 88.96, which is a "B+"; but if Mr. Markey had used the methodology outlined in his course policy, she would have received a point value of 89.96, which is an "A-," assuming that Mr. Markey would have rounded up to the nearest integer. *See* Justin Heiges Depo. at 67-76. Plaintiffs appear to contend that Dayo was entitled to the recalculation methodology that was promised in Mr. Markey's course policy, and that Mr. Markey's failure to use that methodology to recalculate Dayo's semester grade breached the Settlement Agreement. In addition, plaintiffs assert that Mr. Markey could not have re-calculated Dayo's grades in good faith because he did not have all of Dayo's test and quizzes in his possession when he performed the recalculations. *See*, *e.g.*, Pl. Statement

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[5] Plaintiffs do not clearly explain in their Opposition why they believe that the spring 2013 Calculus grade should have been changed. The Court attempts to glean what their argument is from the pages of Mr. Heiges's deposition transcript that are cited.

[6] According to Mr. Heiges's testimony, Mr. Markey counted the "senior exam" twice, although his course policy did not require that methodology of calculation. *See* Justin Heiges Depo. at 69-70 ("Now, nowhere, in Markey's policy, does he say he's going to compute the senior exam twice, right? . . . " "That's correct.").

of Disputed Facts ¶ 7; Josh Markey Depo. at 72 (explaining that he did not regrade each question on the quizzes and tests from the 2012-2013 school year because he did not maintain access to the exams).

Plaintiffs' allegations with respect to the Math II grades appear to be as follows: When Ms. Koziebrodzka recalculated Dayo's Math II grades, she also deviated from her course syllabus by (1) altering her "grade computation methodology in the 3rd quarter to adversely impact Dayo," and (2) including a score of 79 for an exam that Dayo disputes ever taking. *See*, *e.g.*, Pl. Statement of Disputed Facts ¶ 7; Maria Koziebrodzka Depo. at 210 (agreeing that she changed her grading methodology for the third quarter from her stated policy "to the extent that [she multiplied] the test average by three, the quest average by two, and quiz average by one," although she did not notify parents of the change); Nike Adetu Depo. at 183-84 (explaining that Ms. Koziebrodzka did not recalculate the grades in good faith because she included a grade of 79, although "Dayo never had a grade of 79 throughout the first quarter."). Plaintiffs also explain that Ms. Koziebrodzka's use of "quests" in her recomputation of Dayo's grades was inappropriate, as her course syllabus does not include any references to quests for "grade computation purposes." *See*, *e.g.*, Pl. Statement of Disputed Facts ¶ 7; Pl. Exhibit 9: Koziebrodzka Math II Syllabus (stating that quarter grades would be weighted as follows: 85% for tests and quizzes, and 15% for homework, class participation, and extra assignments; but making no mention of "quests" in the assessment policy). Plaintiffs appear to concede, however, that the use of "quests" was intended to benefit the students by giving Ms. Kozie-

brodzka discretion to convert a "quest" to a quiz or a test depending on whether it boosted the student's grade. *See* Pl. Opp. at 4.

Although plaintiffs assert that the grade recalculations for the spring 2013 semester of Calculus and both semesters of Math II were erroneous and therefore breached the settlement agreement, the methodologies employed by Mr. Markey and Ms. Koziebrodzka to perform the recalculations do not violate the express terms of the Settlement Agreement. The Settlement Agreement is silent as to the proper method for recalculating the grades. Moreover, the Settlement Agreement suggests that plaintiffs are required to accept the results of the grade recalculations if they were performed in good faith, as Sidwell "offers no guarantees as to any change in results." *See also* Settlement Agreement ¶ 1(C)(4) ("complainant agrees not to bring any further action resulting from the recalculations"). Accordingly, plaintiffs' complaints about the grade recalculations appear to be actionable only if the recalculations were so wrong that they demonstrate bad faith, which would violate the terms of the Settlement Agreement, as well as the implied covenant of good faith and fair dealing.

Despite plaintiffs' disagreement and dissatisfaction, there does not appear to be any evidence that Mr. Markey and Ms. Koziebrodzka did not recalculate Dayo's grades in good faith. The alleged error of Mr. Markey with respect to the spring 2013 Calculus grade—in employing a scoring methodology that was not outlined in his course policy—does not constitute evidence of bad faith. Plaintiffs have presented no evidence that Mr. Markey employed a different grading methodology for the purpose of giving Dayo a lower

grade; or that the methodology he used to compute Dayo's grade was different from the methodology that he used for her classmates. There is no evidence that the grading methodology was arbitrary or capricious, or even unreasonable. It was appropriate for Mr. Markey to use the same methodology to calculate Dayo's grade as he used to calculate the grades of all of the other students in her class. In any event, it is notable that the recalculation performed by Mr. Heiges in his deposition using Mr. Markey's stated policy would only result in a grade increase for Dayo if Mr. Markey rounded up his grades, which he apparently was not required to do.[7] It is also notable that Mr. Markey's recalculation of Dayo's fall 2012 Calculus grade resulted in a grade increase. This favorable outcome for Dayo with respect to one of Dayo's grades is strong evidence that Mr. Markey performed all of the grade recalculations in good faith; and it certainly belies any contention that Mr. Markey intended to evade the spirit of the Settlement Agreement.[8]

There is also no evidence that Ms. Koziebrodzka's recalculation of Dayo's Math II grades was performed in bad faith. Plaintiffs' dissatisfaction with Dayo's Math II grades, and Ms. Koziebrodzka's failure to retain her grade books, do not establish bad faith or

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[7] Justin Heiges testified that Mr. Markey rounded up in his recalculation of Dayo's Fall 2012 semester Calculus grade, but does not state that Mr. Markey was required to round up. *See* Justin Heiges Depo. at 80-82.

[8] Plaintiffs suggest bad faith or breach based on Mr. Markey's failure to regrade each of Dayo's tests, quizzes and assignments as part of the recalculation. The Settlement Agreement does not require this, and failing to do so certainly does not reflect bad faith.

any nefarious motive on Ms. Koziebrodzka's part. *See* Koziebrodzka Depo., at 178-182 (explaining that it is her practice to keep her grade books for one year after the school year ends, and then destroy them).[9] Again, there is no evidence that Ms. Koziebrodzka selected a grading methodology with the intention of giving Dayo a lower grade, or that she applied a methodology for Dayo's grade that was different from that used for other students. Although there appears to be a genuine factual dispute about whether Dayo ever got a 79 on a test, there is no evidence that Ms. Koziebrodzka intentionally falsified her grading records, or intentionally used inaccurate information. Accordingly, there is no evidence that the recalculations were done in bad faith, and thus no genuine dispute with respect to the issue that matters. Thus, defendant Sidwell is entitled to summary judgment with respect to the counts alleging breach of contract based on the grade recalculations.

B. Alleged Retaliation

Plaintiffs' allegations of retaliation underlie Counts III and IV of the Amended Complaint, which respectively assert violations of 42 U.S.C. § 1981(b) and the District of Columbia Human Rights Act. To establish a claim for retaliation under 42 U.S.C. § 1981(b), a plaintiff must allege that (1) she participated in a

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[9] Plaintiffs seem to believe that Ms. Koziebrodzka's destruction of her grade book after the school year ended is evidence of bad faith or breach. *See* Pl. Statement of Undisputed Facts ¶ 7. Plaintiffs have not presented evidence to suggest that the destruction of the grade books was motivated by a desire to hamper the litigation of this case. Rather, the evidence establishes that it was consistent with the teacher's routine practice.

statutorily protected activity; (2) defendant took adverse action against her; and (3) a causal connection exists between the two. *See Jones v. D.C. Water & Sewer Auth.*, 922 F. Supp. 2d 37, 41 (D.D.C. 2013). Similarly, to establish a claim of retaliation under the District of Columbia Human Rights Act, D.C. Code § 2-1402.61, a plaintiff must allege that (1) she engaged in a protected activity by opposing or complaining about practices that are unlawful under the Human Rights Act; (2) defendant took adverse action against her; and (3) there was a causal connection between the protected activity and the adverse action. *See Vogel v. D.C. Office of Planning*, 944 A.2d 456, 463 (D.C. 2008).

Plaintiffs contend that Sidwell subjected Dayo to materially adverse actions "[n]early each month during Dayo's 2013-2014 Scholastic year;" that such actions would "dissuade" a reasonable student from exercising her "Civil Rights;" and that the timing of the actions, which took place after Dayo engaged in protected activity by filing her initial complaint with OHR or by seeking to enforce the Settlement Agreement, establishes Sidwell's retaliatory motive. *See* Pl. Opp. at 8-9, 15. Defendant argues that there is no genuine dispute that the actions at issue were not adverse, and that there is no evidence that Sidwell acted in these instances to retaliate against Dayo.

Plaintiffs enumerate five examples or categories of defendant's "adverse actions" against Dayo that allegedly support their claims of retaliation: (1) negative and retaliatory "Secondary School Report forms," in which Dayo was not appropriately ranked against her classmates who applied to the same, selective colleges; (2) a negative letter of recommendation written

by Dayo's college counselor, Diane Scattergood, in which Ms. Scattergood "suppressed" Dayo's academic achievements, but extolled her Nigerian nationality; (3) the exclusion of Dayo's SAT II Chemistry test score from her "Test Record," which allegedly disqualified Dayo from admission to certain college engineering programs; (4) "otherwise false portrayal of Dayo's standardized test results and academic achievements" to colleges and universities to which Dayo applied; and (5) advocating "vociferously" on behalf of Dayo's application to Spelman College, but not similarly advocating for her applications to other colleges. *See*, *e.g.*, Pl. Opp. at 6-7; Verified Amended Complaint ¶¶ 65-73.[10]

(1) Secondary School Report Forms

Plaintiffs contend that Sidwell took material, retaliatory, adverse action against Dayo by failing to provide strong recommendations to a number of colleges to which she applied. In particular, plaintiffs assert that the "secondary school reports" ("SSRs") that Sidwell submitted on Dayo's behalf did not accurately rank her among Sidwell students who applied to each college or university.[11] In filling out the SSRs, the

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[10] The Court notes that defendant contends that its rational decisions should be afforded academic deference. *See* Def. Mot. at 10. The Court need not rely on that doctrine, because the Court does not find that plaintiffs have proffered sufficient evidence of adverse action, beyond their own speculation, to show retaliation.

[11] SSRs are forms created by Sidwell to compare Sidwell's students applying to specific universities to one another, based on historic data reflecting how students with comparable qualifications had fared at a particular school in the past. *See*, *e.g.*, Diane Scattergood Depo. at 21; Lauren Carter Depo. at 194-200. The forms are filled out by Sidwell college counselors and submitted

college counselors compared the students "alongside their peers who were applying to the same school, and an appropriate rating was delineated on the student's SSR based upon their academic achievement, curriculum rigor, and grades." *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 79; Lauren Carter Depo. at 192-193; Patrick Gallagher Depo. at 335 (stating that the SSRs compared Dayo to other students in her class at Sidwell applying to a particular college or university). The parties agree that Diane Scattergood completed all of Dayo's SSRs. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 81; Diane Scattergood Depo., at 182 ("I completed [the SSRs] for every college [Dayo] told me she applied to.").

To support their argument that Dayo's SSRs were inaccurate (and therefore materially adverse), plaintiffs assert that Dayo's rating for academic achievement in the SSR for Spelman College ("Excellent") was notably stronger than her ratings ("Good") in the SSRs for Cornell, Columbia, MIT, Harvard and Yale. *See*, *e.g.*, Pl. Opp. at 15-16; Pl. Statement of Disputed Facts ¶ 83; Titilayo Depo. at 320 ("If [the college counselor]

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to universities, along with "the student's transcript, letters of recommendation, ... and school profile." *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 73, 75; Diane Scattergood Depo. at 18-19, 38-40 (explaining that the college counselors submit the SSRs and recommendation letters to schools on behalf of the students, but that the students are responsible for submitting their own common application). Defendant's college counseling team, which consisted of Diane Scattergood, Jane Alexander, and Lauren Carter, prepared the SSRs for each student applying to colleges and universities in the 2013-2014 school year. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 77; Lauren Carter Depo. at 192 ("The team—the three counselors, Diane Scattergood, Jane Alexander, and myself would fill out the form collaboratively.").

said Dayo was excellent in her—in—in her writings to Spelman, that she was excellent in everything, how come then when it came to the Ivy League Schools and to all other colleges, Dayo was no longer excellent."); Dayo Adetu Depo. at 101 ("I feel–I believe that my evaluation was wrong, because for Spelman, which is one of the schools I applied to, they gave me marks—very high marks, and then when I applied to more selective schools, they gave me average marks. So there's a discrepancy there. If I'm applying to any school, the marks should be the same."). This discrepancy, however, is readily explained by the fact that each SSR reflects the applicant's ranking against the other students who have applied from Sidwell to the college in question; in other words, the rankings necessarily vary depending on the strength of the applicant pool for each college or university. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 82 (SSRs are "based on historical trends of the caliber of student that has been admitted to the particular institution in the past; significantly, the evaluations contained in the SSRs vary based on the school."). The Ivy League and other selective schools to which Dayo applied (and for which she complains about her rankings) would naturally attract a strong applicant pool. And, of course, the stronger the applicant pool, the more difficult it would be to achieve a rating of "Excellent" within that pool.

Defendant also asserts that plaintiffs have presented no evidence, beyond mere speculation, of a retaliatory motive in defendant's use of the SSR methodology that resulted in a higher ranking of Dayo in the SSR for Spelman, as compared to other schools to which she applied. Indeed, plaintiff's Opposition

contains no specific arguments and cites no evidence that would support a finding of a retaliatory motive with respect to the preparation of the SSRs. Accordingly, there is no genuine issue of material fact on this point.

(2) Letter of Recommendation

Plaintiffs contend that the letter of recommendation that Sidwell provided for Dayo was "negative" and "retaliatory," because it highlighted Dayo's Nigerian heritage, while suppressing her academic achievements. *See* Pl. Opp. at 6. Dayo's college counselor, Diane Scattergood, wrote the letter. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 129; Titilayo Adetu Depo. at 339. Plaintiffs complain that (1) "Scattergood described Dayo's ability to handle complex math problems as 'powering' her way through a math problem, as opposed to describing her skillset as 'gifted;'" and (2) Ms. Scattergood explicitly stated that Dayo's parents were Nigerian nationals. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶¶ 129, 130; Titilayo Adetu Depo. at 377-78 ("Why does she have to power through anything? Why doesn't—why is she not gifted to simply understand math problems. Why does it have to be that she has to use brutal force to just power through. That—what that is suggesting here is that this student—student is not actually gifted, she's not talented, but she is hard working. I disagree."); Verified Amended Complaint ¶ 65.

Plaintiffs have not proffered any evidence to support their contention that the letter was adverse or retaliatory. First, characterizing Dayo as hard-working is not negative, and does not necessarily imply a lack of innate ability. Even if plaintiffs would have

preferred a different description, the overall picture of Dayo that was presented by the passage in question was objectively positive.[12] *See also* Scattergood Depo. at 243 (explaining her word choice: "She was a great student in terms of really doing her work in a methodical way. And many of our students are more scattered."). Even viewing this evidence in the light most favorable to plaintiffs, there is no genuine dispute that the letter was not negative and therefore not adverse to Dayo. *See Allworth*, 890 A.2d at 200 ("We review the record in the light most favorable to the non-moving party, and draw all reasonable inferences in favor of that party.").

Nor is there any evidence to support plaintiffs' contention that Ms. Scattergood's reference to Dayo's Nigerian heritage was an adverse action. Dayo apparently was proud of her background, and described her Nigerian heritage in one of her college essays. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 132; Dayo Adetu Depo. at 191 (When asked what she wrote about in her college essays, Dayo responded, "I wrote about my interest in engineering and also Nigerian homecoming."); Dayo Adetu Depo. at 285 (stating that "Yeah," she is "proud of [her] cultural upbringing.").

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[12] Plaintiffs appear to believe that evaluations of Dayo may be retaliatory even if they are very positive, because the evaluators may have described other students with even more positive language; and they assert that the only way to determine whether an evaluation that appears positive is actually disparaging is by comparing it to other students' evaluations. *See* Titilayo Adetu Depo. at 382-384 (describing teacher evaluations, as opposed to the recommendation letter). Plaintiffs, nonetheless, have not provided any evidence that Dayo's recommendation letter was actually negative or retaliatory in comparison with those written for other students.

Because Dayo also discussed her Nigerian heritage in her applications, it is difficult to *see* how Ms. Scattergood's reference to Dayo's nationality was adverse—it did not convey any information that was not already evident, nor contradict anything that Dayo herself said. Ms. Scattergood indicated that she included the reference to show that Dayo would add diversity to the colleges and universities to which she had applied, a fact that would help Dayo gain admission. *See* Scattergood Depo. at 243 ("I think we all recognize and understand that colleges are interested in diversity. And where ever we could possibly add a little bit of background information that might tweak some thinking, we would do that."). Indeed, Dayo herself admitted that she was not offended by the description of her nationality in the recommendation letter. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 131; Dayo Adetu Depo. at 285 ("I think it's awkwardly put in the paragraph, but I'm not offended.").

Because there is no evidence to support an inference that the [sic] letter in question was adverse to Dayo, and no evidence to suggest that the letter was retaliatory in any way, there is no genuine issue of material fact related to the recommendation letter.

(3) Omission of SAT II Chemistry Score

Plaintiffs assert that defendant retaliated against Dayo by failing to include her SAT II Chemistry score on her "Test Record," which disqualified Dayo from admission to several engineering programs to which she had applied, including the program at McGill University. *See*, *e.g.*, Pl. Opp. at 6, 16; Verified Amended Complaint at ¶¶ 68, 69, 73. In response, defendant notes that Sidwell does not send students' stan-

dardized test scores to colleges; rather, students are responsible for submitting their own standardized test scores. *See* Def. Mot. at 15. According to defendant, the "Test Record" is merely an internal record kept by Sidwell that generally is not submitted to colleges and universities. *See*, *e.g.*, Def. Mot. at 15; Def. Statement of Undisputed Facts ¶ 122; Diane Scattergood Depo. at 17-18 (describing the Test Record as an internal document that is generally not submitted to colleges); Jane Lenherr Depo. at 75 ("There—there—this is just for our records. It doesn't go anywhere. It doesn't mean anything . . . A lot of time, students want us to have their records all together that—whatever we have.").[13]

Although it appears that Dayo's Test Record inaccurately omitted her SAT II Chemistry score,[14]

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[13] The Test Record "stays in [a student's] permanent file, it's microfilmed after [the student] graduates, and it stays in her record"; and the Test Record contains test scores from lower and middle school, as well as from Upper School. *See* Jane Lenherr Depo. at 65. Plaintiffs apparently dispute whether the Test Record is merely an internal document, and assert that Lauren Carter sent an inaccurate Test Record to Spelman College, which excluded Dayo's SAT II Chemistry score. *See*, *e.g.*, Pl. Statement of Disputed Facts ¶ 122; Patrick Gallagher Depo. at 121-22 (explaining that although it's the students' responsibility to send their own standardized test scores, Lauren Carter may have sent a Test Record to Spelman out of due diligence).

[14] Defendant asserts that the only reason Dayo's SAT II Chemistry score was not listed on her Test Record was "because the College Board did not provide the peel off label reflecting the score to SFS." *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 127; Jane Lenherr Depo. at 71-72 (explaining that Dayo's chemistry record was not on the Test Record because she did not receive the label from the college board: "if our high school code had been in her college board record, we would have a sheet

there is no evidence that this inaccuracy was materially adverse or retaliatory. Plaintiffs assert that the Test Record was sent to McGill University, and that Dayo was disqualified from consideration for that school's engineering program due to the omission of the chemistry score. *See*, *e.g.*, Pl. Opp. at 6, 16; Verified Amended Complaint at ¶¶ 68, 69, 73. Plaintiffs, however, do not cite any evidence to support their contention that the omission of the SAT II Chemistry score from Dayo's Test Record caused her to be rejected by McGill. There does not appear to be any evidence in the record that the Test Record was, in fact, transmitted to McGill.[15] Nor do plaintiffs establish that the SAT II Chemistry score was not provided to McGill through the normal channels, *i.e.,* by the College Board, based

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like this for the chemistry test, where the chemistry score would be up here . . . We did not receive this—we did not receive this for the chemistry test taken in June, on June 2nd, 2012, and I did not receive a label."); Jane Lenherr Depo. at 74-75 (explaining that she would not handwrite the score on the Test Record because "I only put on official labels received directly from the college board . . . I'm not going to create a label on behalf of the college board. If I received the label, I would have put it on here.").

[15] Plaintiffs cite only their own discovery responses to support their contention that Sidwell sent the Test Record to McGill. *See*, *e.g.*, Dayo Adetu's Supplemental Responses to Interrogatory No. 12, ¶ 7 ("By omission of Dayo's Chemistry Test Score, Lenherr intentionally caused confusion regarding Dayo's SAT tests and test scores, and college counselors looking into Dayo's file to believe that she did not have the prerequisite subject tests for admission to collegiate engineering programs."); No. 15 (explaining that Sidwell submitted an incomplete Test Record to McGill University, which rejected Dayo because her chemistry score was "missing from Dayo's portfolio, as submitted by SFS.").

on Dayo's request.[16] Finally, plaintiffs point to no evidence that this omission was intentional or motivated by a retaliatory purpose. Accordingly, there is no genuine issue of material fact raised by plaintiffs' allegations about the Test Record.

(4) False Portrayal of Academic Achievements

Plaintiffs contend that defendant retaliated against Dayo through "false portrayal of Dayo's standardized test results and academic achievements before the top colleges and universities to which she had applied for admission Fall 2014." *See* Pl. Opp. at 6-7. This general allegation is supported only by a single citation to the Verified Amended Complaint, which provides that "Sidwell's agents or employees . . . failed to properly support Dayo's applications by either making negative statements, or by circumspectly remaining mute, respecting Dayo's attributes, achievements and her overall applications' packages." *See* Verified Amended Complaint ¶ 65. No genuine issue of material fact is raised by this allegation because plaintiffs have failed to support their broad claims with evidence.

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[16] It appears to be uncontroverted that the College Board provides students' SAT scores to colleges and universities. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 121; Patrick Gallagher Depo. at 105 ("[The SATs] come from the College Board. . . . they don't come from the College Counseling Office."). It also appears to be uncontroverted that students are responsible for "arranging for the delivery of their standardized test scores to the colleges and universities to which they apply." *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 123; Patrick Gallagher Depo. at 123 ("The policy of the College Counseling Office is that students take ownership and responsibility of sending their standardized test scores."); Jane Lenherr Depo. at 100 (agreeing that it is "correct" that "the school would not submit SAT tests and other scores").

Plaintiffs have cited no evidence that Sidwell made negative comments about Dayo or otherwise interfered with her college admissions process, beyond plaintiffs' own speculation. The Court has reviewed plaintiffs' lengthy Statement of Disputed Material Facts, and notes that the record citations that plaintiffs offer to support their general allegations of foul play by Sidwell are to the Verified Amended Complaint and to plaintiffs' own interrogatories and deposition testimony, all of which merely state plaintiffs' opinions. *See, e.g.*, Def. Statement of Disputed Facts, ¶¶ 90, 91, 92, 100, 101.[17] To the extent plaintiffs claim that Sidwell gave "negative feedback" about Dayo to Coach Riese from Brown University, that allegation also appears to be supported only by citations to the

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[17] For example, plaintiffs rely on the deposition testimony of Titilayo Adetu, which appears merely to state his opinions. *See, e.g.,* Titilayo Adetu Depo. at 85 ("And the college admission office at Sidwell and the director, they all stated that they did not promote [Dayo] at all, they didn't say anything about her. I in fact believed they said negative things about her, but I can't tell you that for sure because I don't have the record except for sometimes what I hear back from the coaches. But the truth of the matter is they can't show an instance of an active promotion, of a positive promotion of Dayo."); Titilayo Adetu Depo. at 89-90 ("With the involvement of Sidwell Friends School she didn't get admission to University of Pennsylvania. Doesn't that tell a story that obviously her involvement with Sidwell Friends School prevented her from getting into the University of Pennsylvania . . . you know deductive reasoning."); Titilayo Adetu Depo. at 91-92 (when asked for other facts to show that Sidwell's "nonsupport" caused Dayo's rejections, "They didn't say a single thing to all of the 14 colleges, they kept quiet. I mean this is a record. I'm not the one saying it. If you keep quiet to a school like University of Pennsylvania and you don't do anything when there are thousands of other well qualified students, why would they take her, why would they even consider her?").

Amended Verified Complaint and to statements made by plaintiffs themselves in interrogatories and depositions. *See, e.g.,* Def. Statement of Disputed Facts at ¶ 95, 96, 97.[18] None of this unsupported hearsay creates a genuine issue of material fact. *See Clay Properties, Inc. v. Washington Post Co.*, 604 A.2d 890, 893-94 (D.C. 1992) ("The focus of our inquiry is twofold: first, we look to see if the moving party has met its burden of proving that no material fact remains in

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[18] *See also, e.g.,*Verified Amended Complaint ¶ 58 (alleging that Ms. Scattergood told Dayo that "someone" from Brown called to ask about her, and then five days later, "Brown's track coach informed Dayo that based upon the 'feedback' from Sidwell officials, the recruitment effort must cease and desist."); Supplemental Responses to Interrogatory No. 13 ("This effort came to a halt in September 2015 when Brown (Riese) communicated with Sidwell, *i.e.* Scattergood on the phone, during which Sidwell passed negative information about Dayo to Brown. Riese then called Dayo, stating that Dayo's recruitment must cease based upon the 'feedback' from Sidwell."); Dayo Adetu Depo. at 85-87 ("And you can see that in their efforts to thwart my college admission process . . . in the instance of Brown, it was a phone call that ended that process. The coach, he didn't have to tell me, but he told me because he thought—he thought it was odd. In the case of Princeton, he thought it was also odd, and he said it hasn't happened before that someone with my academic merit wouldn't be admitted to the school."); Nike Adetu Depo. at 104-108 ("Sidwell couldn't show us any support they gave Dayo when Coach Riese contacted Sidwell. Sidwell is not the type of school that a student will be athletic—athletically gifted and a coach will be interested and Sidwell Friends School will not be able to close the deal." Nike Adetu also explained that Brown's coach initially expressed interest in Dayo, but then called to say that "they have to stop the admission process."). Similar assertions concerning a sudden loss of interest in Dayo by Princeton and Columbia are also unsupported by any evidence that Sidwell took any action to communicate negative comments about Dayo to those schools. *See* Pl. Opp. at 5.

dispute, and then we also must determine whether the party opposing the motion has offered 'competent evidence admissible at trial showing that there is a genuine issue as to a material fact.'" (internal quotations omitted)).[19]

One of the few specific allegations that plaintiffs make is that Sidwell did not send Dayo's mid-year transcript to McGill University until after Dayo's application had been rejected. *See* Def. Statement of Undisputed Facts ¶ 89 (d). But plaintiffs again fail to support this claim with evidence. Defendant mailed Dayo's mid-year transcript to McGill University on February 6, 2014—the same day that it sent the mid-year transcripts of all Sidwell students who applied to McGill. *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 118; Jane Lenherr Depo. at 175 (When asked why Ms. Lenherr sent Dayo's mid-year transcript to McGill by mail on February 6, 2014, she responded, "I sent all the McGill transcripts in the mail all together at one time, because they do not accept electronic submissions from high schools;" and explained that she always sends the transcripts in the regular mail, as opposed to overnight mail, unless she receives a special request.); Jane Lenherr Depo. at 186 (explaining that Dayo Adetu did not ask her to FedEx her transcript to McGill, because "if she had asked to

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[19] Although the Court agrees with plaintiffs' assertion that its verified amended complaint may be viewed as a sworn affidavit, *see Munz v. Michael*, 28 F.3d 795, 799 (8th Cir. 1994) ("For summary judgment purposes, we must believe the allegations in [non-movant's] verified complaint as they are evidence to the same extent as statements in a sworn affidavit."), plaintiffs still must produce competent evidence to withstand defendant's motion for summary judgment. Plaintiffs have not done so.

have it FedExed, it–I would have FedExed it, yes."). The fact that Sidwell sent all of its students' transcripts to McGill University on the same date and in the same manner belies any suggestion that the circumstances of the mailing were adverse or retaliatory.

Finally, plaintiffs contend that Sidwell interfered with Dayo's college applications by remaining "mute" about her achievements and attributes during the application process. *See* Pl. Statement of Disputed Facts, ¶¶ 65, 98. As evidence of this, plaintiffs note that the college counselors, Ms. Scattergood and Ms. Carter, remained "mute" when plaintiffs asked them how they advocated for Dayo to non-historically black colleges in a meeting on April 14, 2014. *See* Nike Adetu Depo. at 110 ("When we had the meeting April 14, 2014, with Diane Scattergood and Lauren Carter, we asked them if she'd tell us one instance of advocacy they did for Dayo. They were both quiet. They had no information to give us."). A failure to advocate actively on behalf of Dayo cannot be equated with sabotaging or interfering with her college applications. It is unclear what duty Sidwell had to affirmatively "sell" Dayo to colleges and universities, and Sidwell's failure to do that in the absence of any such duty or obligation cannot be considered an "adverse action."[20] In addition,

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[20] Sidwell asserts that it only speaks with colleges in limited circumstances for limited purposes: "If a college or university is willing to have a communication with SFS's College Counseling Office, the discussion is about admission cycles, an overview of trends, and the group of SFS students that applied to the said university or college." *See*, *e.g.*, Def. Statement of Undisputed Facts ¶ 114; Lauren Carter Depo. at 58-61 (When asked what factors would determine whether Sidwell would speak with specific colleges about specific students who applied, Ms. Carter explained, "It depends if the school is willing to have a conver-

plaintiffs proffer evidence that Sidwell's track coach, Gabbi Grebski, advocated on behalf of another student, but not Dayo; Ms. Grebski testified, however, that the other student approached her to ask for help, whereas Dayo did not. *See* Gabbi Grebski Depo. at 30-43. This further evidence of non-advocacy on behalf of Dayo does not raise any genuine issue of material fact with respect to plaintiffs' retaliation claims.[21]

(5) Disparate Advocacy on Behalf of Dayo

Plaintiffs contend that Sidwell engaged in retaliatory conduct by advocating "vociferously" on behalf of Dayo regarding her application to Spelman College, but failing to similarly advocate for Dayo with respect to her applications to Ivy League or other "top, non-Historically Black Colleges." *See* Pl. Opp. at

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sation with us in general, about their admission cycle, or if they had any particular information on a candidate because it really can depend on where a student is in that admission cycle, where they are in a committee review . . . we may get feedback or we may not.").

21 Plaintiffs also suggest that Dayo's admission to the University of Pennsylvania and to Williams College during the following year, after Sidwell ceased to be involved in her applications, is evidence that Sidwell "interfered" with her applications during her senior year. *See* Pl. Statement of Disputed Facts, ¶ 119. The Court discounts this evidence because there are so many factors that affect whether a student is admitted to a college. For example, (1) the applicant pool during the following year was necessarily completely different; (2) Dayo had an additional year of experience when she applied the second time; and (3) Dayo may have submitted different essays or supplemental application materials the second time. It is impossible to know why Dayo was admitted when she applied to Penn and Williams for a second time, and the Court therefore draws no inferences about Sidwell's conduct from this evidence.

7. Plaintiffs apparently believe that this advocacy with respect to the Spelman application was indicative of Sidwell's intent to "steer Dayo to Spelman, an HBCU, and away from the Ivys or non-HCBUs for retaliatory and other unlawful reasons." *See* Pl. Statement of Disputed Facts, ¶ 113. Plaintiffs do not cite any evidence to support this claim.

Defendant notes that counselor Lauren Carter followed up with Spelman College about Dayo's application only because Dayo submitted her application after Spelman's deadline, and Ms. Carter wished to ensure that Spelman had received the complete application. *See*, *e.g.*, Def. Mot. at 15; Def. Statement of Undisputed Facts ¶ 112; Lauren Carter Depo. at 72-73 (When asked for examples of how Sidwell advocated on behalf of Dayo to Spelman College, Ms. Carter testified: "I had an e-mail correspondence because her application was late. So I had followed up on that to make sure material has been received . . . I don't remember how I became aware that Dayo had applied to Spelman. She had not requested her materials to go—her school materials to go . . . So I had e-mailed them to try to ensure that her application was complete there.").[22] Ms. Carter's communications with Spelman for this purpose do not

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[22] Plaintiffs provide two e-mail exchanges between Spelman College and Lauren Carter, which indicate Ms. Carter's interest in ensuring that Dayo's complete application was received; but those emails do not suggest any ulterior motive by Ms. Carter to guarantee that Dayo attend a historically black college, as opposed to any other school. *See*, *e.g.*, Pl. Exhibit 23 (Email from Lauren Carter to Sonya Mason at Spelman College, dated March 24, 2014); Pl. Exhibit 24 (Email chain between Lauren Carter and Shan Lambry at Spelman College, dated between March 27, and March 31, 2014).

support plaintiff's contention that Sidwell attempted to steer Dayo to an HBCU instead of to an Ivy League school.

Notably, plaintiff's argument of disparate advocacy appears to be undermined by evidence that in April, 2014, Sidwell offered Dayo assistance in gaining admission to the University of Virginia (a non-HBCU) off of its waitlist. *See* Def. Statement of Undisputed Facts ¶ 107. Without disputing that this offer of assistance was made, plaintiffs contend that the offer was not made in good faith, in light of Sidwell's other alleged efforts to sabotage Dayo's applications. *See* Pl. Statement of Disputed Facts ¶ 107 ("SFS's 'offer' of support was not made in good faith after SFS's officials had abused Dayo by existentially ensuring her non-acceptance to a non-HCBU."); *see also* Nike Adetu Depo. at 124-125 ("They had an opportunity the first time around. If they advocated for her as student athlete, Dayo should have gotten a college in September or October. This doesn't mean anything. Sidwell is a very dishonest school.").

Lauren Carter testified that she advised Dayo, via email, to contact the admissions officers at the University of Virginia to express her interest in being accepted off the waitlist. *See* Lauren Carter Depo. at 116-117 ("And we have found that to be helpful in student obtaining admission off the wait list, if the college hears directly . . . from them. And that was included in my attachment. And I do mention in the e-mail I have attached a copy of those suggestion[s] to this e-mail . . . we have found it to be very beneficial if the student reaches out to a college to indicate their interest so that a college knows that the student's interest is strong and genuine because they

have heard from the student."). After meeting with Dayo in person, Lauren Carter offered additional assistance to plaintiffs, both with the University of Virginia and with submitting other late applications. *See* Pl. Exhibit 25 (Email from Lauren Carter to Nike Adetu, dated April 16, 2014: "We're happy to help with UVA and with the submission of any late applications, if Dayo would like to pursue either option . . . We look forward to continuing to work with you and Dayo."). That plaintiffs were not inclined to accept Sidwell's offers of assistance is not evidence that the offers of support were not made in good faith.[23]

Conclusion

After reviewing the parties' pleadings and the voluminous exhibits submitted to support the parties' arguments, the Court is unable to identify any genuine issue of material fact that is supported by competent

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[23] Plaintiffs make a number of other factual allegations that do not appear to be relevant to the instant motion for summary judgment. Some of these claims relate to conduct that occurred prior to the entry of the Settlement Agreement. *See, e.g.,* Pl. Statement of Disputed Facts, ¶ 11 (alleging that Sidwell Head of School Thomas Farquhar, physically assaulted Dr. Adetu and stated that Sidwell wanted the Adetus "gone, gone, gone," and that "non-retaliation is now off the table"); Pl. Statement of Disputed Facts, ¶ 26 (alleging that Principal Lee Palmer threatened Dayo with "expulsion" if she did not attend the math class in which she was placed for the 2012-2013 school year). Others claims are plainly immaterial to Dayo's college admission process. *See, e.g.,* Pl. Opp. at 16, n.8 & Pl. Statement of Disputed Facts, ¶ 157 (Dayo was not identified as a Girls' Varsity Track Captain in the 2014 Yearbook); Pl. Opp. at 16 & Pl. Statement of Disputed Facts, ¶¶ 158-160 (Sidwell did not adequately explain the reason for an incorrect grade in "Black Liberation in Americas," which was later corrected).

evidence. There is no evidence, and therefore no genuine dispute, that any breach of the Settlement Agreement was material; and there is no evidence, and therefore no genuine dispute, that Sidwell took adverse actions against plaintiffs in retaliation for their engagement in protected activities.

Accordingly, it is this 14th day of July, 2017, hereby

ORDERED that defendant's motion for summary judgment is GRANTED as to all of plaintiffs' remaining causes of action.

SO ORDERED.

/s/ Florence Y. Pan
Judge, Superior Court of the
District of Columbia

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AMENDED VERIFIED COMPLAINT (NOVEMBER 7, 2016)

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, CIVIL DIVISION

DAYO ADETU and DAYO ADETU
By Her Next Friends and Parents
TITILAYO ADETU and NIKE ADETU,

Plaintiffs,

v.

SIDWELL FRIENDS SCHOOL,

Defendant.

Case No.: 2015 CA 009948 B
Judge: Alfred S. Irving, Jr.

To the Honorable Judges of said Court:

COME NOW, the Plaintiffs, Dayo Adetu, and Dayo Adetu, by her next friends and parents, Titilayo Adetu and Nike Adetu ("Dayo," "Complainant," "Plaintiff," or "Plaintiffs"), by counsel, hereby files this Amended Complaint for Declaratory Judgment (Count I), Breach of Settlement Agreement (Count II), Violation of 42 U.S.C. Section 1981(b) (III), Violation of the District of Columbia Human Rights Act (IV), and Breach of the Implied Covenant of Good Faith and Fair Dealing (Count V), as follows:

The Parties

1. Dayo is a twenty (20) year old June 6, 2014 graduate of the Sidwell Friends School ("Sidwell" or the "School"). In 2000, at the age of four (4) years, she commenced attending Sidwell's lower school, and thereafter, matriculated to the middle school. At the commencement of the 2010-2011 scholastic year, without any break in attendance, Dayo matriculated to the School's Washington, D.C., high school or "Upper School" (9th-12th grades). All of the acts and omissions complained of herein occurred in the District of Columbia.

2. Dayo is a competitive scholar-athlete. Her academic accomplishments may be summarized as follows: 2014 National Achievement Scholarship: Semi-Finalist; 2014 National Merit Scholarship: Commended Student; AP Scholar 2013, 2014; District of Columbia Math League Contest: District of Columbia Champion (2008). Dayo's extra-curricular achievements are no less striking. She set the District of Columbia State Records in 100m and 200m in 2014, and Sidwell Friends School Record in 100m and 4x200m; she was the 2014 District of Columbia State Champion in 100m and 200m, the captain of 2014 Sidwell's Girls Varsity Track Team, a member of the 2012 USATF All-American 4x400m Relay Young Women. She placed 2nd in the 400m, and 3rd in the 200m at the State Games of America (2013). She was selected Independent School League All-League (2011, 2014); the recipient of Sidwell Friends School Award for Track (2010, 2014), the recipient of Sidwell Friends Coach's Award (2009). Suffice it to say, Dayo is one of the top female student-athletes in the United States.

3. Dayo was one of the most accomplished math students at the School. In the 10th grade, Dayo was the only Black female in the School's accelerated mathematics course, Math II.

4. On March 31, 2015, Dayo was admitted to the University of Pennsylvania ("Penn") for study in the School of Engineering and Applied Science; she registered in August 2015 for the 2015-2016 scholastic year as a freshman. However, the year prior, while a student at Sidwell and as a direct and proximate result of Sidwell's negative or non-support, and other retaliatory acts and omissions, Dayo was denied admission to all Universities to which she applied, including Penn.

5. Titilayo and Nike Adetu (the "Parents") are the biological parents of Dayo and her elder sister, Lola, who graduated from the School in June 2009. While Dayo and Lola were born in America, the Parents are Nigerian nationals.

6. Because of certain discriminatory and retaliatory actions or omissions perpetrated against Lola by the School, Lola and her Parents, *pro se*, filed a discrimination Intake Complaint and resultant Charge of Discrimination with the OHR against the School in 2010, OHR Docket No.: 10-315-EI. By that complaint, Lola alleged that Sidwell engaged in disparate treatment, and retaliation for Lola having engaged in protected EEO activity, by providing inaccurate, disparaging information regarding Lola generally and specifically during the college applications process. In that case, Lola was rejected for admission by each University to which she applied and Sidwell submitted commentary. Conversely, she was accepted by each University, which Sidwell did not provide either

commentary or letters of "recommendation," e.g., Georgetown University and the University of Michigan. Sidwell's retaliatory, spiteful conduct towards Lola spilled-over and/or became infused into its relationship with and treatment of Lola's younger sister, Dayo.

7. Defendant Sidwell is a co-educational Quaker (Religious Society of Friends) day school with a campus in Washington, D.C. It professes to be a highly selective Quaker private school located in Upper Northwest Washington, D.C. It relishes in its moniker the "Harvard of Washington's private schools." It has educated children and grandchildren of presidents of the USA, U.S. Congressmen and Senators, Fortune 500 Corporate executives and the world's "power-elite." Sidwell is also perceived as a "feeder-school" to Ivy League and other top universities in the world. Sidwell purports to offer a highly competitive, transparent and objective college preparatory experience, touting a 100% college matriculation rate for its graduating high school seniors. Sidwell upon information and belief employs over 100 employees.

8. Thomas Farquhar ("Mr. Farquhar") (white male), at all times relevant to this action, was Sidwell's Head of School acting within the scope of his employment, or as a duly authorized agent of Sidwell. Upon information and belief, Mr. Farquhar was relieved of his duties at Sidwell in or about mid-summer, 2014.

9. Mamadou Gueye ("Mr. Gueye") (black male), at all times relevant to this action, was Sidwell's Academic Dean acting within the scope of his employment, or as a duly authorized agent of Sidwell. Upon information and belief, during mid-summer 2014, Mr. Gueye received a promotion to Principal of Sidwell's Upper School.

10. Lee Palmer ("Ms. Palmer") (white female), at all times relevant to this action, was Sidwell's Upper School Principal acting within the scope of her employment, or as a duly authorized agent of Sidwell.

11. Josh Markey ("Mr. Markey) (white male), at all times relevant to this action, was an instructor in Sidwell's Upper School math department, acting within the scope of his employment, or as a duly authorized agent of Sidwell.

12. Maria Koziebrodzka ("Ms. Koziebrodzka") (white female), at all times relevant to this action, was an instructor in Sidwell's Upper School math department, acting within the scope of her employment, or as a duly authorized agent of Sidwell.

13. Diane Scattergood ("Ms. Scattergood") (white female), at all times relevant to this action, was a college counselor in Sidwell's Upper School counseling department, acting within the scope of her employment, or as a duly authorized agent of Sidwell.

14. Lauren Carter ("Ms. Carter") (black female), at all times relevant to this action, was the Director of College Counseling in Sidwell's Upper School counseling department, acting within the scope of her employment, or as a duly authorized agent of Sidwell.

15. [1]Justin Heiges ("Mr. Heiges") (white male), at all times relevant to this action, was Sidwell's Upper

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[1] As Lola Adetu's math teacher, Justin Heiges took Lola to Sidwell's Honor Committee on trumped up charges. Lola was completely exonerated of the charges, an unexpected decision from a Committee that usually rubber-stamped teachers' claims, much to the dismay of a visibly irate and shaken Heiges, who subsequently became the head of the math department and Koziebrodzka's first line superior.

School Math Department Head, acting within the scope of his employment, or as a duly authorized agent of Sidwell.

Jurisdiction

16. Jurisdiction is proper here pursuant to D.C. Code Section 11-921, et seq., as amended.

Facts Common to All Counts

17. Dayo and her Parents initially suspected foul play and retaliation directed at Dayo during the scholastic year 2011-2012. This retaliation stems from Sidwell's resentment of Lola's challenge of Sidwell's authority by the filing of her Charge of Discrimination.

18. During that time, Ms. Koziebrodzka served as Dayo's Math II instructor. Ms. Koziebrodzka maintained unquestionable loyalty to her first line superior, Mr. Heiges, and her ultimate superior—Mr. Farquhar. In the mid-fall, 2011, Dayo and her Parents first noticed commencement of an inconceivable pattern of identical scores of 68% on four (4) Math II tests administered and scored by Koziebrodzka, recurrent scores of 89% on quizzes, recurrent scores of 70% on extra-credit assignments.

19. Accordingly, on October 28, 2011, the Parents called a meeting with Koziebrodzka and the Sidwell's Academic Dean, Mr. Gueye, concerning Koziebrodzka's perceived racially discriminatory grading practices vis-à-vis Dayo. When the Parents challenged Koziebrodzka's biased, improper scoring of Dayo's then most recent October 26, 2011, quiz (the "October 2011 Quiz"), Koziebrodzka vehemently asserted during

the meeting, without mathematical justification, that Dayo's grade of 86% was correct. This meeting, however, concluded on acrimonious terms as the Parents insisted Ms. Koziebrodzka had erred in her scoring, whereas Koziebrodzka maintained her position. Mr. Gueye remained mute, unwilling to assume any position contrary to Ms. Koziebrodzka. The very next day Koziebrodzka finally admitted her error and changed Dayo's October 2011 Quiz grade from 86% to 93%.

20. Dayo through her Parents continued to complain to Mr. GUI respecting Koziebrodzka's recurring, harsh unjustified grading of Dayo's test, quizzes and quests as well as providing repeated identical low marks.

21. On or about February 27, 2012, the Parents requested an update from Mr. Gueye; however, he refused to further investigate the matter or assume any corrective action and in a persnickety manner responded that he was still: "waiting for the light to shine."

22. On or about April 9, 2012, the Parents then appealed to Ms. Palmer, Principal of the Upper School, respecting Koziebrodzka's inaccurate scoring of Dayo's Math II tests, quests and quizzes. Palmer, a devout minion and alter ego of Farquhar, failed to promptly respond to the Parents about Dayo's complaint of discrimination/retaliation, repeatedly asserting that she (Palmer) was "looking into" the matter.

23. On May 15, 2012, the Parents were forced to approach Koziebrodzka again regarding ongoing and continuous mistreatment of Dayo relative administration of a May 9, 2012, trigonometry test (the "May 9, 2012 Trig Test"). Koziebrodzka had rescheduled or

otherwise adjusted administration of tests for several of Dayo's white peers based upon their involvement in extracurricular activities, etc.; however, when Dayo by her Parents requested similar reasonable adjustments based upon her illness and representation of Sidwell in out-of-state track/field competitions, Koziebrodzka steadfastly refused. The Parents nevertheless maintained to Koziebrodzka and Sidwell that Koziebrodzka was acting unlawfully toward Dayo.

24. On or about May 30, 2012, in retaliation, Koziebrodzka incorrectly scored Dayo's final "quest" as 81% (the "May 30, 2012 Quest"). Quickly identifying Koziebrodzka's error, Dayo challenged Koziebrodzka before the entire Math II class. Koziebrodzka countered that Dayo was grossly mistaken. Dayo stood her ground and her peers affirmed Dayo's rightful analysis of the mathematical problem; then, Koziebrodzka was forced to again concede her error and reluctantly increased Dayo's May 30, 2012 Quest grade from "81%" to "89%." Much discussion was had in the corridors of Sidwell regarding Dayo's respectful, yet dramatic contest with Koziebrodzka.

25. The next day, May 31, 2012, nearly two (2) months after the Dayo by her Parents had appealed to Palmer, Palmer finally reported during the meeting that she was standing behind Koziebrodzka's malicious, repeated incorrect scoring of Dayo's work. Dayo by her Parents contended that Koziebrodzka's improper scoring of Dayo's Math II work was retaliatory and/or discriminatory and, as such, systematically designed to retard Dayo's transition to Math III, which according to Sidwell's mathematics policy mandated an overall Math II grade of "B." Palmer refused to conduct actual,

mutual review of Koziebrodzka's scoring of all Dayo's Math II work in the presence of Koziebrodzka and the Parents. Instead, Palmer assumed such an unjustifiable overall affirmative posture of Koziebrodzka's actions/omissions, even though Koziebrodzka's scoring of Dayo's work had been repeatedly proven wrong by Dayo.

26. On or about June 6, 2012, the Parents appealed to and met with Farquhar concerning Koziebrodzka's disparate treatment and retaliatory misconduct respecting Dayo. At this point, it was clear that Koziebrodzka's misconduct had had its intended effect Dayo's overall performance in Math II (per Koziebrodzka's appraisal) of C+/C was insufficient for matriculation to Math III. During this meeting, the Parents thus stated Dayo's case and sought placement of Dayo in Math III. Farquhar—an exquisite charlatan—initially admitted that Koziebrodzka's scoring pattern of recurring identical scores respecting Dayo's work was "quite odd." Dayo by her Parents then contended that based upon Dayo's objective math achievements and related overall math prowess, Dayo should be deemed academically eligible for Math III—despite Koziebrodzka's false and inaccurate assessment of Dayo's performance. Farquhar stated that all academic placement decisions were subject to his approval, and that he would consider the Dayo's concerns about Math III placement and Koziebrodzka and respond after his summer vacation.[2]

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[2] At her deposition in this case, Ms. Koziebrodzka testified that despite being instructed by Mr. Farquhar to retain all records and documents related to Dayo Adetu, she destroyed her original grade book containing Dayo Adetu's recorded grades on all test, quests, quizzes and homework. Ms. Koziebrodzka also testified that without any proper approval and authorization, she

27. On July 17, 2012, at approximately 2:00 p.m., Farquhar called the Parents. Mr. Adetu spoke to Farquhar, reiterating Koziebrodzka's repeated erroneous scoring of Dayo's work was having an oppressive, inequitable effect upon Dayo's achievement in math. Farquhar again admitted that Koziebrodzka's scoring pattern of Dayo's tests and quizzes as 68% and 89%, respectively, was "quite odd." Farquhar further stated that he did not know what to do in this situation. Mr. Adetu asserted that if Sidwell failed to correct this injustice, it was telling Dayo and her peers that: (a) Dayo was not good enough to compete in advanced mathematics; (b) Dayo could be singled out for disparate treatment before her peers by teachers, and the School would support and endorse such injustice; (c) regardless of her talent, Dayo would be denied her rightful place at Sidwell merely because of her race. Farquhar then refused to place Dayo in Math III, stating that Dayo would still "get an enriching math experience in the lower class [Calculus]." Farquhar said nothing about any *bona fide* review of Koziebrodzka's wrongful, false scoring of Dayo's Math II work, or any further remedial action in that respect.

28. On or about August 27, 2012, Mrs. Adetu contacted Farquhar seeking reconsideration of his reported decisions. Farquhar remained steadfast in supporting the actions and omissions of Koziebrodzka, Ms. Palmer and Gueye, directing that Dayo report to Calculus instead of Math III for the 2012-2013 schol-

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employed subjective, unorthodox grading methodologies to the disinterest and detriment of Dayo Adetu and contrary to Koziebrodzka's published 2011-2012 Math II course syllabus.

astic year.[3] Farquhar cleverly remarked to Mrs. Adetu that "this is a good lesson for Dayo to learn that she cannot always get what she wants" and that he was "sure that Dayo already [knew] more math than Obama." That decision by Farquhar all but foreclosed any possibility for Dayo to complete her high school experience with having conquered Calculus BC, which was one of her objectives, and confirmed Farquhar's mean-spirited, executive concurrence, affirmance and ratification of Sidwell's systematic mistreatment of Dayo.

29. Unwilling to accept such an adverse action, Dayo by her Parents again appealed to Farquhar. On or about November 6, 2012, Farquhar met with the Parents along with their representative Lennox Abrigo, President of the D.C. Chapter of the National Action Network ("Mr. Abrigo"). Also, present were Ms. Palmer and Mr. Gueye. The Parents re-iterated their position on behalf of Dayo, particularly focusing upon the disparate/retaliatory scoring of Dayo's work and the impact the same was having upon Dayo's objective of enrolling in Math III and ultimately Calculus BC. Farquhar promised to respond in two (2) days; however,

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[3] Moreover, contrary to the industry standard, Sidwell math teachers Koziebrodzka and Joshua Markey would often intentionally refuse to assign specific point values to certain specific test, quest or quiz questions at the time the test was administered. This unusual, substandard methodology of scoring permitted these math teachers to arbitrarily and capriciously assign or re-assign point values to questions, after the students completed the assessments. These instructors employed this methodology in Dayo's case and to her detriment because occasionally when Dayo scored well on certain critical assessments, her performance would be devalued, whereas the performance of her white peers "up-valued."

he did not. The Parents then called a follow-up meeting which occurred on December 6, 2012.

30. On or about December 6, 2012, a meeting was held at the School attended by Farquhar, Ms. Palmer, the Parents and Mr. Abrigo. When Mr. Adetu asserted the issue of Dayo being the victim of racial discrimination and retaliation, Mr. Farquhar became irate, used profane language and all but physically removed the Parents and Mr. Abrigo from his office. Mr. Farquhar bellowed that "all of the teachers want the Adetus gone, gone, gone from the School," and that "non-retaliation [against Dayo] is now off the table."

31. In accordance with Farquhar's promise, Markey issued Dayo a false, retaliatory Fall 2012 Semester Calculus grade of an "A-." On or about January 31, 2013, the Parents received Dayo's 2012-2013 "1st Semester Report" issued by the School on its official letterhead (the "Fall 2012 1st Semester Report").[4] Dayo and her Parents, however, computed Dayo's grade as an "A," i.e., 93.112%. Thus, Markey acting in concert with Farquhar, Koziebrodzka, Ms. Palmer, Gueye and other Sidwell agents and employees continued their scheme to retaliate and/or discriminate against Dayo by, *inter alia*: (a) manufacturing a false academic record; (b) portraying Dayo in a false light academically and intellectually; (c) precluding Dayo from enrolling in BC Calculus for the 2013-2014 scholastic year; and/or (d) interfering with or impeding

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[4] The Parents know from their 14 year experience with the Sidwell that the Fall 2012 1st Semester Report and other such reports are routinely and necessarily kept and relied upon by Sidwell as an integral part a student's official academic record with Sidwell.

Dayo's post-secondary matriculation efforts to an "Ivy League" university.

32. On March 12, 2013, Dayo personally met with Calculus teacher Mr. Markey for purposes of requesting Mr. Markey's re-computation of her Fall Semester 2012 Calculus grade. After much discourse regarding the assigned weight for tests, quizzes and homework, Mr. Markey told Dayo her grade of "A-" was "correct," said grade was not subject to modification, and she would be a "good fit" in AB Calculus vice BC Calculus, based upon "how other students have fared in the past."

33. Knowing that Mr. Markey had falsely represented Dayo's Fall 2012 Calculus, was purposefully blocking Dayo from enrolling in Calculus BC for the 2013-2014 scholastic year which required at least an "A" in Calculus, and that the Sidwell was otherwise actively implementing discriminatory and/or retaliatory schema against Dayo, on April 22, 2013, Dayo by her Parents filed her First Intake Complaint for Discrimination and Reprisal against Sidwell with the District of Columbia Office of Human Rights ("OHR"), OHR Case No. 13-246-EI ("OHR Case No. 13-246-EI"). Dayo alleged disparate treatment and retaliation evidenced by, *inter alia*: (a) false, inaccurate grading of Dayo's Math II tests, quizzes, and extra-credit assignments in scholastic year 2011-2012; (b) wrongful placement of Dayo in Calculus for scholastic year 2012-2013, rather than Math III which is where she should have been placed; (c) false, inaccurate scoring and computation of Dayo's Fall 2012 Calculus grade as an "A-," rather than an "A" (which she rightfully earned); (d) wrongful placement of Dayo in AB Calculus on or about March 12, 2013, by Mr. Markey, rather than BC Calculus for the 2013-2014 scholastic year (which

is where she rightfully should have been placed). Certain cumulative adverse effects of the School's discrimination and/or retaliation was preclusion of Dayo from: (a) enrolling in the School's top mathematics course, Calculus BC; and (b) being admitted to certain top college or university engineering programs, which require completion of high school Calculus BC.

34. On May 28, 2013, Mrs. Adetu saw Mr. Gueye in the College Counseling office of Sidwell's Upper School. Mr. Gueye reported that this was "deja' vu" as Dayo could only be placed in Calculus AB; Mr. Gueye and Sidwell were unaware of OHR Case No. 13-246-EI at that time. Mr. Gueye made such pronouncement prior to the School's issuance of Spring Second Semester 2013 final grades, again manifesting Sidwell's predisposition and intentional effort to, *inter alia*, preclude Dayo from Calculus BC.

35. On or about June 2, 2013, OHR then issued its first Charge of Discrimination against Sidwell (the "First Charge").

36. On or about June 7, 2013, Sidwell was served with the OHR's First Charge reflecting Dayo's assertions of discrimination and retaliation.

37. On June 14, 2013, seven (7) days later, Mr. Gueye radically changed his position regarding Dayo's placement in Calculus BC. Mr. Gueye issued the Parents an email stating that Dayo "is in Calculus BC." Heretofore, Sidwell had staunchly refused to place Dayo in Calculus BC articulating various meritless, pre-textual considerations. Sidwell's "about face" reflected nothing more than Sidwell's admission of liability of discrimination and retaliation as alleged in the First Charge, OHR Case No. 13-246-EI.

38. In or about late June, 2013, Mr. Markey attempting to "cover" for Sidwell falsely issued Dayo final grade of "B+" for the Spring Second Semester Calculus course.

39. Dayo was shocked to receive a final grade of "B+." Dayo was further concerned because she had received a 97% on her 2012 Spring Semester final exam and at mid-term (March 22, 2013) had a received a grade of "B+/A-."

40. On July 15, 2013, Dayo requested of Mr. Markey via email "all the raw scores, and how these scores factored into my second semester grade." Mr. Markey responded providing the raw scores and explaining the outcome as "88.96%, which is a B+." Markey's scoring, however, was inaccurate, fraudulent, and wrongful in that nowhere in the "Calculus Course Policies 2012-2013" did it indicate that Markey would count the "senior exam" twice, as Markey did to Dayo's detriment. Most importantly, Markey intentionally erred in scoring Dayo's homework at 9.64% of the core grade, rather than 10.0% of core because Dayo completed all her homework timely and accurately. In Dayo's March 22, 2013 "3rd Quarter Report," Markey admitted: "her homework record is exemplary." Thus, an accurate account of Dayo's Spring Second Semester Calculus grade revealed a final grade of "A-," or 90.246%; not, a "B+," or 88.96%.

41. On or about July 17, 2013, the parties were summoned before a third-party neutral by the OHR. After several hours of mediation, the parties entered into a mediated settlement agreement (the "Settlement Agreement"). As a part of that Settlement Agreement, Sidwell promised to: (a) pay Complainant exactly "$50,000.00 within three (3) business days of signing

of the Settlement Agreement"; (b) "not retaliate against" Dayo "as a student"; (c) "in good faith, recalculate or recompute with explanation the following grades by September 30, 2013; however, [Sidwell] offers no guarantees as to any change in results: 1. Fall and Spring Semesters–Calculus 2012-2013. 2. Math-II, 2011-2012. 3. If any grade increases as a result, it will be recorded in Dayo Adetu's official record and transcript with [Sidwell]. If there is a decrease, no change will be made in the grade." *See*, Settlement Agreement, Section 1 (A)-(C). Sidwell also expressly agreed to not "disparage" Dayo. *See*, Settlement Agreement, Section 10 (B).

42. Paragraph No. 4 of the Settlement Agreement entitled: "Sole and Entire Agreement," contains express language wherein the Parties agreed that the Settlement Agreement: "sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between the Parties. . . ."

43. In reliance upon the terms and conditions of the Settlement Agreement, the Parents decided to allow Dayo to return to Sidwell for the 2013-2014 scholastic year.

44. On or about July 22, 2013, Complainant received a check, evidencing payment of the settlement amount of $50,000.00. However, because of Sidwell's violations of the Settlement Agreement as below described, Complainant never negotiated said settlement check.

45. Sidwell breached the Settlement Agreement in myriad particulars. The deadline of September 30, 2013, came and went without Sidwell's compliance.

In particular, Sidwell intentionally violated the Settlement Agreement by failing in "good faith" to, *inter alia*: (a) timely re-compute Dayo's Calculus 2012-2013 and Math II 2011-2012 grades by September 30, 2013; (b) accurately and completely re-compute Dayo's Calculus and Math II grades by September 30, 2013; (c) timely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (d) accurately and completely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (e) timely modify Dayo's official Sidwell record and transcript to reflect grade increase(s) by September 30, 2013; and (f) accurately and completely modify Dayo's "official record and transcript with [Sidwell]" to reflect grade increase(s) by September 30, 2013.

46. Sidwell's material breach of the Settlement Agreement was designed to harass, upset, irritate and annoy Dayo and/or to otherwise subject Dayo to retaliatory hostile educational environment.

47. Sidwell's material breach of the Settlement Agreement was part and parcel of Sidwell's continuous pattern and practice of discrimination and retaliation against and harassment of Dayo.

48. For instance, when Dayo's mother, Mrs. Adetu, notified Sidwell of its default on or about October 1, 2013, Head of School, Thomas Farquhar, dismissively stated: "I am aware of the deadline," or words to that effect. Nothing further was stated. Such speech and conduct evidence Mr. Farquhar's knowledge and awareness of the breach, and that his actions or omissions on behalf of Sidwell were willful, deliberate and intentional.

49. Having intentionally failed to comply with the Settlement Agreement, Complainant filed her Petition for Breach of Settlement Agreement (the "Petition") with the D.C. Office of Human Rights on or about November 6, 2013. In the Petition, Plaintiffs also alleged that the breach was discriminatory based upon Dayo's race and national origin and retaliatory stemming from Plaintiffs' prior formal and informal protected activity.

50. In response, on November 15, 2013, some forty-five (45) days after the stipulated deadline of September 30, 2013, legal counsel for Sidwell (Mr. Christopher Davies, Esq. of Wilmer Hale & Dorr) freely admitted Sidwell's breach of the Settlement Agreement. Mr. Davies wrote via email: "[t]he School is delinquent in providing Ms. Adetu with the written explanation of the recalculation of grades. We will be providing that imminently." Mr. Davies further alleged that Dayo's Calculus grade had been "timely recalculated" by Sidwell;[5] and, consequently, the Calculus grade should be changed from an "A-," to an "A." Sidwell's attorney then admitted, however, that Sidwell violated the Settlement Agreement by failing to amend Dayo's record and transcript accordingly by the September 30, 2013, deadline. As and for its proffered excuse,

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[5] Dayo questions the veracity of Mr. Davies' statement that the Fall 2012 Calculus grade was "timely" recomputed by the September 30, 2013, deadline. If this were so, then why did Sidwell fail to amend Dayo's transcript until purportedly November 14, 2013, as Mr. Davies' wrote initially via email dated November 15, 2013? It strains credulity that in the face of a contractual obligation it would take nearly 45 days to internally correct an official transcript.

Mr. Davies nonchalantly claimed: "administrative error."

51. On November 26, 2013, Dayo, by counsel, submitted her Reply to Sidwell's Response of November 15, 2013 to the Petition.

52. Disappointed with impact and effect of Dayo's zealous advocacy, on December 2, 2013, Sidwell's attorney fired a pernicious email communication to Georgia Stewart of the DC OHR, claiming that Sidwell's breach should be generally excused, and that Sidwell would file a "Sur-reply" to Dayo's Response, within seven (7) days.

53. On December 16, 2013, Dayo, by counsel, filed her detailed Response to Sidwell's Sur-reply, proffering other relevant evidence of Sidwell's wrongful conduct under Rule 404(b) of the Federal Rules of Evidence. In that vein, Dayo proffered additional evidence of Sidwell's other discriminatory/retaliatory "bad acts," thereby demonstrating the absence of mistake, *modus operandi* and intentional, retaliatory breach of the Settlement Agreement by Sidwell.

54. In fact, in further violation of the Settlement Agreement, Sidwell intentionally interfered with Dayo's pursuit of admission to several top colleges and universities. During the late summer and early fall of 2013, Dayo was intensely recruited by various Ivy League schools for track student-athlete admission consideration. In that vein, on or about August 13-14, 2013, Dayo went on an unofficial visit and met with the track coaches from Princeton, Columbia and Brown Universities. Having no other transcript of her academic record at Sidwell, Dayo was compelled to deliver a true unofficial copy of her then high

school transcript to each such track coach, who subsequently transmitted the transcript to the respective university admissions' officers. This unofficial transcript contained the inaccurate grades which had been knowingly generated by Sidwell, or its agents, in both Math II and Calculus.

55. After their review of Dayo's academic transcript, all three (3) universities by and through their respective coaches articulated substantial, continued interest in having Dayo attend their prestigious institutions; indeed, Dayo had every expectation of being offered admission to one, or all three (3), of these universities as a college bound student athlete. Moreover, as an expression of their sustained interest, Princeton and Columbia sponsored Dayo for an official visit October 17-19, 2013 and October 26-28, 2013, respectively.

56. After these visits, Columbia Athletic Department placed Dayo on its "Preferred List" with Admissions.

57. Princeton's Athletic Department wrote a "Letter of Support" of Dayo's application to Princeton's Admissions office, as an expression of the Athletic Department's unequivocal desire to have Dayo attend Princeton.

58. On or about September 10, 2013 (twenty (20) days prior to the stipulated September 30, 2013 deadline under the Settlement Agreement), Ms. Scattergood, Dayo's assigned college counselor at Sidwell, reported to Dayo that "someone" from Brown called to inquire about her. Scattergood was actually aware of Dayo's EEO activity, as she acknowledged the same to the Parents. Five (5) days later, on or about

September 15, 2013, Brown's track coach informed Dayo that based upon the "feedback" from Sidwell officials, the recruitment effort must cease and desist. But for Sidwell's retaliatory, unlawful actions and omissions and lack of support and unwarranted, negative communications, Dayo would have been accepted at Brown as a student-athlete.

59. Note, it was two (2) weeks thereafter that, on October 1, 2013, Mrs. Adetu notified Mr. Farquhar of Sidwell's violation of the September 30, 2013 deadline.

60. Three (3) weeks thereafter, on or about October 24, 2013, Mr. and Mrs. Adetu met with Ms. Scattergood. Ms. Scattergood remarkably claimed that her only communication with Brown was via "email." When the Parents inquired as to what happened, Ms. Scattergood proudly proclaimed that "Brown dropped Dayo like a hot potato."[6] During this meeting, Mr. and Mrs. Adetu stated that they believed Sidwell was

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6 In this instance, Scattergood reported to Dayo that "someone" from Brown "called" to inquire about Dayo. We can confirm by email dated September 11, 2013 that Scattergood in fact had communication with Dayo relative to Brown on September 10, 2013. It is only logical then to presume that Scattergood had a telephone conversation(s) or other communications with the "someone" from Brown who allegedly "called" her. Later when pressed by the Parents, Scattergood then claimed that her "only" communication with Brown was *via* email, which appears to be untrue. Moreover, Scattergood knew of Brown's rejection of Dayo in the absence of having been told of such rejection by Dayo, or her Parents. Recall, Scattergood characterized Brown's swift rejection of Dayo's preliminary application as being "dropped like a hot potato." Dayo asserts Scattergood had oral or written communications with Brown officials providing disparaging, negative commentary regarding Dayo as a part of Sidwell's retaliatory scheme against Dayo and in violation of the Settlement Agreement, Sections 1 (B) and 10(B).

discriminating or retaliating against Dayo by, *inter alia*, not providing her the same level of support as provided to Sidwell's white college bound student athletes. Ms. Scattergood had no further explanation for her statement of Brown's precipitous loss of interest in Dayo, even though in its "College Counseling" Policy, Sidwell declares that counselors such as Ms. Scattergood shall: " . . . stay in touch with the admissions officers, making sure that they have all the documents required and that they are 'reading' the students correctly, i.e., that their particular strengths are coming through loud and clear."

61. In early November, 2013, Dayo engaged in several communications with Scattergood regarding Dayo's intention of applying for "Early Action" at Princeton University. Dayo was excited about the prospect of attending Princeton based upon strong expressions of interest by the Athletic Department, specifically the head track coach, in mid-August, 2013. However, on December, 16, 2013, Dayo's admissions decision was surprisingly "deferred." Dayo received this result two (2) weeks after her receipt of Sidwell's attorney's pernicious, abrasive email stating, *inter alia*, that "we have now had a chance to review [Dayo's] submission" [i.e., Dayo's Reply to Sidwell's Response to the Petition for Breach of Settlement Agreement], and less than three (3) weeks after Dayo, by counsel, submitted her Reply. (Emphasis supplied).

62. On or about January 14, 2014, and at other times, Sidwell's attorney Chris Davies also met with Scattergood and other officials at Sidwell about Dayo and in development of retaliatory, hostile schema to ensure Dayo's non-acceptance to the colleges and

universities of her selection in 2013-2014 and other malicious adversity.

63. Interestingly, on April 15, 2014, Lauren Carter, the director of Sidwell's College Counseling, reported that Sidwell did not once communicate with Princeton on behalf of Dayo, noting: "We agreed to check on whether we spoke with anyone at Princeton. I have checked and . . . we have no record that any discussion actually occurred." Such representation strains credulity as Sidwell's non-participation in Dayo's Princeton application process would constitute Sidwell's violation of its own policy and an abdication of its duty to Dayo as a Sidwell student, or student-athlete.

64. During the time period of December 31, 2013-January 1, 2014, Dayo applied to Yale, Harvard, Columbia, Cornell, Penn, Duke, Johns Hopkins, CalTech, MIT, UVA and McGill. Scattergood and other Sidwell officials were well aware of Dayo's applications to, and interest in attending, each such university.

65. However, in retaliation and/or discrimination, Sidwell's agents or employees, including but not limited to Scattergood (unlike respecting white students or those who had not complained of discrimination or retaliation), failed to properly support Dayo's applications by either making negative statements, or by circumspectly remaining mute, respecting Dayo's attributes, achievements and her overall applications' packages. Scattergood volunteered to write Dayo's college recommendation letter. Therein, Scattergood minimized palpably Dayo's academic and extra-curricular achievements, yet expressly proffered that Dayo's parents were Nigerian nationals. Moreover, as per Lauren Carter, unlike any other student, Dayo's

college recommendation letter was written by Scattergood in collaboration with Head of School, Farquhar, and her college counseling file kept in the Upper School Principal's office (rather than within the college counseling office).

66. During the time period of December, 2013-March 2014, Scattergood completed false, retaliatory 2013-2014 Secondary School Reports ("SSRs") on behalf of Dayo. The stated purpose of the SSR is two-fold. First, the SSRs rate the "course selection" of a particular Sidwell Friends student applying to a particular college or university by "compar[ing]" the applicant's course selection "to other Sidwell Friends School students." The applicable rating categories are "less demanding," "average," "demanding," "very demanding," and "most demanding." Second, the SSRs "rate" a particular applicant by "comparison" of the applicant "to other students in his or her class" at Sidwell in the categories of "Academic Achievement," "Extracurricular Achievements," "Personal Qualities," and Creativity."

67. In retaliation, discrimination and/or as a result of intentionally subjecting Dayo to a retaliatory hostile educational environment, Scattergood as a duly authorized agent of Sidwell rated Dayo "excellent" in every category, including "Academic Achievement" against her Sidwell classmates respecting her application to Spelman College, a Historically Black Women's College ("HBCU"),[7] in Atlanta, Georgia.

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[7] During the time period of on or about March 24, 2014-March 30, 2014, Lauren Carter made four or more contacts with Spelman College steadfastly supporting Dayo's application. Carter went to the extent of telling bold lies to Spelman in her March 24, 2014, email in which she stated that she/her office had "faxed

However, respecting all the Ivy League colleges and indeed the other colleges or universities to which Dayo applied (all being non-HBCU), Scattergood rated Dayo's "Academic Achievement" against Dayo's Sidwell classmates as either "good" or "very good" clearly falsely rating Dayo before said colleges and universities.

68. In early February, 2014, Sidwell sabotaged Dayo's admission to McGill University. Unlike the other eleven (11) universities, McGill did not require letters of endorsement from Sidwell in support of an application for undergraduate admissions. McGill required timely submission of three (3) academic records, namely: high school transcript, mid-term report /transcript and SAT I and two (2) SAT II subject test scores, for admissions review purposes. Dayo duly instructed Sidwell in January 2014 of her application to McGill and requested submission of her transcripts to McGill, including the mid-term report. The official mid-term report was available for issuance by Sidwell to McGill on or before January 31, 2014. Dayo amply satisfied the prerequisite course grades,

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in, as well as submitted, electronically also on Thursday, March 13" Dayo's records. Such an event was impossible given that Dayo first informed Sidwell about her application to Spelman on March 20, 2014. Neither Lauren Carter, Scattergood, nor any other Sidwell college counselor initiated, or attempted to initiate, contact in advocacy for Dayo respecting any of the non-HBCUs to which Dayo applied. Carter and Sidwell's efforts in support of Dayo's Spelman College were thus remarkable reflecting the biased effort to steer Dayo to Spelman, after having made her non-acceptance at the non-HBCUs where she had applied *a fait accompli*. Dayo was the only student in her Sidwell class to apply to Spelman; she ultimately withdrew her Spelman application.

SAT I and SAT II and other admissions requirements for acceptance to McGill.

69. Sidwell, however, failed to cause the mid-term report to be delivered to McGill until February 26, 2014, i.e., twelve (12) days after McGill rejected Dayo's application because McGill's "academic requirement" was not met by Dayo. Sidwell had also failed to provide McGill with Dayo's SAT II Chemistry score of 720. The only unsatisfied academic requirement was Sidwell's retaliatory non-delivery, or untimely delivery, of Dayo's: (a) official mid-term transcript; and (b) SAT II Chemistry score.

70. In late August, 2014, Sidwell unwittingly submitted to OHR, its internal "Application Submission Tracker" for the Universities to which Dayo applied. A close review of Sidwell's Application Tracker reveals the "actual delivery status" regarding Dayo's mid-term transcript to McGill as "unknown."

71. McGill's website encourages applicants to electronically "upload" transcripts, placing the burden of untimely receipt upon the applicant, or its agent. Instead of electronically filing Dayo's mid-term transcript or submitting it to McGill via Federal Express or DHL, Sidwell intentionally employed the high risk, slow regular U.S./International mail, or "snail mail" system.

72. Sidwell is a member of the National Association of College Admission Counseling (NACAC). As such, Sidwell agreed to abide by the association's "Mandatory Practices," which mandates that its members "provide, in a timely manner, accurate, legible and complete transcripts for all students for admission or scholarships." Sidwell violated the Association's

Mandatory Practices, or other governing industry standards, by failing to provide Dayo's mid-term report to McGill in a "timely manner," or electronically, and/or by failing to provide a complete and accurate academic record by, *inter alia*, omitting Dayo's SAT II Chemistry test score from its submission to McGill. Upon information and belief, no other Sidwell student applying to McGill had such a similar experience to that of Dayo.

73. In retaliation, Sidwell, by and through its agents and employees, knowingly and intentionally submitted Dayo mid-term report, belatedly, and omitted Dayo's SAT II Chemistry test score (a critical requirement for an engineering applicant) in its submission to McGill. Solely and exclusively based upon Sidwell's actions and/or omissions, McGill rejected Dayo's application for admission. But for Sidwell's retaliatory, unlawful actions and omissions, Dayo would have been accepted at McGill University.

74. In May, 2014, while other students at Sidwell were celebrating their acceptance to various notable colleges and universities, Dayo was the only student in her graduating class of 126 students who had not received unconditional acceptance to any of the twelve (12) universities to which she applied and desired admission. Such a result is contrary to industry standards, expectations and norms for a Sidwell co-ed with Dayo's scholastic and extra-scholastic achievements. During 2013-2014, Sidwell boasted to colleges and universities that "100% of Sidwell Friends School graduates attend four-year institutions." Sidwell "blackballed" Dayo and/or otherwise made negative statements or comments about, or in retaliation blatantly failed to support, Dayo before admissions officers at

Yale, Harvard, Columbia, Cornell, Penn, Duke, Johns Hopkins, CalTech, MIT, and UVA.

75. During a meeting on April 14, 2014, when the Parents asked both Lauren Carter, the then newly appointed director of Sidwell's College Counseling, and Ms. Scattergood, Dayo's College Counselor, to name "one instance of advocacy on behalf of Dayo's applications" to said colleges, both Carter and Scattergood were mute—having neither answer nor response to the Parents' inquiry.

76. But for Sidwell's retaliatory, hostile, unlawful actions and omissions, Dayo (like her peers) would have been accepted at many of the universities to which she had applied.

77. On or about May 7, 2014, Dayo by her Parents filed her Intake for Complaint of Discrimination/ Reprisal alleging further claims of, *inter alia*, ongoing breach of the Settlement Agreement, ongoing disparate treatment, ongoing retaliatory (false) reporting of Dayo's grades internally and externally, and retaliatory failure to support Dayo's college applications to various colleges and universities.

78. Dayo continued to face disparate and retaliatory treatment up to the last day of attending Sidwell.

79. On or about May 26, 2014, Dayo observed unusual, non-verbal communications by her "Black Liberation in Americas" teacher, Shields Sundberg (white female), another Farquhar minion and disciple. Dayo then requested her final project grade to cross-check the computation of her anticipated grade. The initial email was submitted on May 26, 2014. Sundberg uncharacteristically failed to respond thereto. Then,

Dayo re-issued the grade request email on May 29, 2014. Sundberg similarly ignored the second request.

80. When the final grades were published on June 11, 2014, Dayo learned that Sundberg had wrongfully given Dayo a final grade of "B." Dayo followed-up finally commanding the attention of Sundberg, who claimed Dayo had submitted her final project late and thus earned a grade of "C-" on the final project bringing the overall final grade down to "B."

81. On June 13, 2014, Dayo emailed Sundberg and proved that her project was timely submitted. Then, Sundberg was forced to concede her self-pro-claimed "grave error" changing Dayo final grade from an undeserved, malicious "B," to an "A-." Upon information and belief, Sidwell had been notified of Dayo's Second Charge of Discrimination as this time.

82. In the Spring of 2014, Dayo served as a Captain of Sidwell's Girls Varsity Track and Field Team. Dayo lettered in Varsity track for her freshman, sophomore and senior years at Sidwell. On June 4, 2014, Dayo learned, however, that Sidwell published its 2013-2014 Yearbook omitting Dayo's name from the listing of team captains. When Dayo brought this matter to Sidwell's attention, the Upper School's Dean of Students, Michael Woods, belatedly answered nearly four (4) weeks later to the effect of a demurrer and refusal to assume any corrective action.

83. After being formally served with the Second Charge of Discrimination, Sidwell on August 29, 2014 filed a scathing, omnibus denial of wrongdoing claiming that, *inter alia*, Dayo was: (a) not an academically "competitive candidate" for institutions to which she applied; (b) "largely unqualified" for the institutions

she applied, including the University of Pennsylvania; (c) "unwilling to take responsibility for her studies and for her own academic results." Personally belittling and insulting Dayo and intending to support its contention that Dayo was academically inept and irresponsible, Sidwell attached excerpts from Dayo's official record with Sidwell, which included the 2012 Fall Semester Report containing the incorrect Calculus grade of "A-." Thus, as late as August 29, 2014 when Dayo had already graduated from Sidwell, and despite the representations repeatedly made in writing, Sidwell had knowingly and intentionally failed to correct Dayo's official internal record specifically respecting her 2012-2013 (Fall and Spring) Calculus grades and otherwise generally remains in abject, material breach of the Settlement Agreement.

84. On March 10, 2015, at the request of Dayo (by counsel), the OHR administratively dismissed without prejudice Dayo's Charge of Discrimination (Case No. 14-320), so the instant matter could be filed and adjudicated in civil court.

85. On March 31, 2015, without the active or negative statements, comments or involvement of Sidwell, Dayo was admitted to the University of Pennsylvania's prestigious School of Engineering and Applied Science, and to Williams College—the #1 ranked national liberal arts college.

86. On June 16, 2015, Dayo, by counsel, requested that the Petition pending before the OHR be withdrawn, as the same had been pending with before the OHR, for 25 months, *i.e.*, from November 6, 2013, without adjudication or advancement. Plaintiff requested that the Petition be withdrawn for purposes

of filing suit upon the breach of Settlement Agreement in civil court.

87. Complainant is a victim of Sidwell's ongoing, repeated and consistent acts and omissions of disparate treatment based upon race and national origin, harassment/hostile academic environment, retaliation and/or retaliatory harassment and fraud. Dayo has suffered embarrassment, humiliation, pain, suffering, emotional distress, and other non-pecuniary and pecuniary losses as a direct and proximate result of Sidwell's misconduct, which were foreseeable and contemplated in consequence of the actions/omissions of Sidwell. Thus, Complainant hereby seeks full compensatory, consequential and punitive damages as well as all forms of equitable relief.

88. Dayo has satisfied any and all necessary conditions precedent to filing this action.

Count I (Declaratory Judgment)

89. Plaintiff re-alleges each and every allegation contained in paragraphs Nos. 1-88, above.

90. Plaintiff and Defendant entered into a binding written Settlement Agreement.

91. In reliance upon the promises contained herein, Plaintiff agreed to forfeit then existing claims, actions, causes of actions against Defendant Sidwell for wrongdoing, including, but not limited to claims asserted in the Charge of Discrimination, OHR Case No. 13-246-EI.

92. In relying upon the Settlement Agreement, the Parents re-enrolled Plaintiff as a student at

Sidwell for the 2013-2014 scholastic year at a cost of not less than $35,288.00.

93. In relying upon the Settlement Agreement, Plaintiff agreed to and did attend Sidwell for the 2013-2014 scholastic year to her personal and academic detriment.

94. Sidwell materially breached the Settlement Agreement by refusing or failing to comport with its terms as alleged above.

95. Specifically, Sidwell materially breached the Settlement Agreement by failing to act in "good faith" as expressly mandated by the terms of the Settlement Agreement.

96. Sidwell furthermore materially breached and remains in material breach of the Settlement Agreement in, *inter alia*, the following particulars: (a) failing to timely re-compute Dayo's Calculus 2012-2013 and Math II 2011-2012 grades by September 30, 2013; (b) failing to accurately and completely re-compute Dayo's Calculus 2012-2013 and Math II grades by September 30, 2013; (c) failing to timely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (d) failing to accurately and completely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (e) failing to modify Dayo's official Sidwell record and transcript to reflect grade increases in her Calculus 2012-2013 and Math II grades by September 30, 2013; (f) falsely representing on or about November 15, 2013, and at other times, that Dayo's "official record and transcript with [Sidwell]" regarding her Fall 2012 Calculus was changed from "A-" to "A."

97. Furthermore, Sidwell materially breached the Settlement Agreement by engaging in a program and policy comprised of discriminatory and/or retaliatory acts or omissions vis-a-vis Dayo in the following particulars: (a) failing to timely re-compute Dayo's Calculus 2012-2013 and Math II 2011-2012 grades by September 30, 2013; (b) failing to accurately and completely re-compute Dayo's Calculus 2012-2013 and Math II grades by September 30, 2013; (c) failing to timely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (d) failing to accurately and completely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (e) failing to modify Dayo's official Sidwell record and transcript to reflect grade increases in her Calculus 2012-2013 and Math II grades by September 30, 2013; (f) failing to properly support and complete Dayo's applications as a student or student-athlete submitted by Defendant Sidwell to the various colleges and universities aforestated during the 2013-2014 scholastic year; (g) failing to timely and properly submit Dayo's mid-year transcript to McGill University, and other universities, in 2013-2014; (h) failing to timely and properly submit Dayo's SAT II Chemistry test scores to McGill University, and other universities, in 2013- 2014;(i)interfering with Dayo's applications and acceptance to Brown, Princeton, Columbia and other colleges and universities; (j) submitting SSRs with false, inconsistent and malicious ratings of Dayo's "Academic Achievement" and other performance measures to colleges and universities to which Dayo applied in 2013-2014; (k) falsely representing on or about November 15, 2013, and at other times, that Dayo's "official record and transcript with [Sidwell]" regarding her Fall 2012

Calculus was changed from "A-" to "A"; (l) tendering false, misleading and incorrect transcripts and other academic records to various colleges and universities to which Dayo had applied; (m) harassing Dayo by refusing to accurately assess her course work in Black Liberation in Americas, originally giving Plaintiff a "B," instead of the "A-" she rightfully earned; (n) issuing false official report of Dayo's academic performance in Black Liberation in Americas; and, only correcting the same after repeated contacts demanding modification and review; (o) making negative comments, or remaining mute, during the 2013-2014 admissions process respecting Dayo; (p) excluding Dayo from the 2013-2014 Sidwell Friends School Yearbook as Girls Varsity Track and Field Captain; (q) impugning Dayo's intellectual ability in stating to the National Achievement Scholarship Program on October 11, 2013 that Dayo was intellectually incapable of performing well in advanced courses; and/or (r) other retaliatory actions or omissions.

98. Sidwell remains in breach of the Settlement even though Plaintiff's formally brought Sidwell's violative acts and omissions to Sidwell's attention by way of the Petition filed in the OHR and the Second Charge of Discrimination.

99. Sidwell's representations of compliance are false and misleading.

100. Sidwell continued its effort to retaliate against Plaintiff by refusing to comport with the terms of the Settlement Agreement well after its noncompliance was repeatedly brought to its attention.

101. Sidwell continued its effort to retaliate against and

102. Sidwell otherwise remains in breach of the Settlement Agreement.

103. Sidwell's violation of the Settlement Agreement and refusal to comport therewith has caused and will continue Plaintiff to sustain injury that is subject to redress by this Court.

104. Plaintiff is entitled to a declaratory judgment, pursuant to D.C. Superior Court Rule 57 and 28 U.S.C. Section 2201, declaring Defendant Sidwell in breach of the Settlement Agreement.

Prayer for Relief

WHEREFORE, PLAINTIFF prays for judgement and relief as follows:

105. A declaration that Defendant Sidwell Friends School has violated its legal obligations under the Settlement Agreement and therefore is in material breach thereof.

106. Such other and further relief as this Court deems just, meet and proper.

Count II (Breach of Settlement Agreement)

107. Plaintiff re-alleges each and every allegation contained in paragraphs Nos. 1-106, above.

108. Plaintiff and Sidwell entered into a binding Settlement Agreement.

109. Sidwell materially breached the Settlement Agreement by refusing or failing to comport with its terms as alleged above.

110. Specifically, Sidwell materially breached the Settlement Agreement by failing to act in "good

faith" as expressly mandated by the terms of the Settlement Agreement.

111. Sidwell furthermore materially breached and remains in material breach of the Settlement Agreement in, *inter alia*, the following particulars: (a) failing to timely re-compute Dayo's Calculus 2012-2013 and Math II 2011-2012 grades by September 30, 2013; (b) failing to accurately and completely re-compute Dayo's Calculus 2012-2013 and Math II grades by September 30, 2013; (c) failing to timely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (d) failing to accurately and completely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (e) failing to modify Dayo's official Sidwell record and transcript to reflect grade increases in her Calculus 2012-2013 and Math II grades by September 30, 2013; (f) falsely representing on or about November 15, 2013, and at other times, that Dayo's "official record and transcript with [Sidwell]" regarding her Fall 2012 Calculus was changed from "A-" to "A."

112. Furthermore, Sidwell materially breached the Settlement Agreement by engaging in a program and policy comprised of discriminatory and/or retaliatory acts or omissions vis-a-vis Dayo in the following particulars: (a) failing to timely re-compute Dayo's Calculus 2012-2013 and Math II 2011-2012 grades by September 30, 2013; (b) failing to accurately and completely re-compute Dayo's Calculus 2012-2013 and Math II grades by September 30, 2013; (c) failing to timely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (d) failing to accurately and completely re-compute

with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (e) failing to modify Dayo's official Sidwell record and transcript to reflect grade increases in her Calculus 2012-2013 and Math II grades by September 30, 2013; (f) failing to properly support and complete Dayo's applications as a student or student-athlete submitted by Defendant Sidwell to the various colleges and universities aforestated during the 2013-2014 scholastic year; (g) failing to timely and properly submit mid-year transcript to McGill University, and other universities, in 2013-2014; (h) failing to timely and properly submit Dayo's SAT II Chemistry test scores to McGill University, and other universities, in 2013-2014; (i)interfering with Dayo's applications and acceptance to Brown, Princeton, Columbia and other colleges and universities; (j) submitting SSRs with false, inconsistent and malicious ratings of Dayo's "Academic Achievement" and other performance measures to colleges and universities to which Dayo applied in 2013-2014; (k) falsely representing on or about November 15, 2013, and at other times, that Dayo's "official record and transcript with [Sidwell]" regarding her Fall 2012 Calculus was changed from "A-" to "A"; (l) tendering false, misleading and incorrect transcripts and other academic records to various colleges and universities to which Dayo had applied; (m) harassing Dayo by refusing to accurately assess her course work in Black Liberation in Americas, originally giving Plaintiff a "B," instead of the "A-" she rightfully earned; (n) issuing false official report of Dayo's academic performance in Black Liberation in Americas; and, only correcting the same after repeated contacts demanding modification and review; (o) making negative comments, or remaining mute, during the 2013-2014

admissions process respecting Dayo; (p) excluding Dayo from the 2013-2014 Sidwell Friends School Yearbook as Girls Varsity Track and Field Captain; (q) impugning Dayo's intellectual ability in stating to the National Achievement Scholarship Program on October 11, 2013 that Dayo was intellectually incapable of performing well in advanced courses; and/or (r) other retaliatory actions or omissions.

113. Sidwell remains in breach of the Settlement even though Plaintiff's formally brought Sidwell's violative acts and omissions to Sidwell's attention by way of the Petition filed in the OHR and the Second Charge of Discrimination.

114. Sidwell's representations of compliance are false and misleading.

115. Sidwell continued its effort to retaliate against Plaintiff by refusing to comport with the terms of the Settlement Agreement well after its non-compliance was repeatedly brought to its attention.

116. Sidwell continued its effort to retaliate against Dayo.

117. Plaintiffs engaged in protected activity by complaining of discrimination based upon Dayo's race and national origin and retaliation as alleged herein and at other times, including, but not limited to when Plaintiffs filed and prosecuted their First and Second Charges of Discrimination, entered into and negotiated the Settlement Agreement before the OHR, complained to Sidwell officials formally and/or informally of Sidwell's retaliatory and/or discriminatory breach of the Settlement Agreement, and filed and prosecuted their Petition for Breach of Settle-

ment Agreement (containing new allegations of retaliation and discrimination).

118. Sidwell's retaliatory actions and/or omissions respecting Dayo were illegitimate and would dissuade a reasonable student from alleging discrimination or retaliation, or asserting her rights under the Settlement Agreement and/or her Civil Rights.

119. Sidwell's retaliatory actions and/or omissions occurred on the heels of Dayo's assertions of her protected rights under the Settlement Agreement and/or her protected Civil Rights, or within close temporal proximity thereof.

120. Sidwell otherwise remains in breach of the Settlement Agreement.

121. Dayo has suffered pecuniary and non-pecuniary damages in the nature of emotional distress, pain and suffering, embarrassment, humiliation, inconvenience, and physical sickness as a direct and proximate result of Defendant's actions and omissions.

122. As a direct and proximate result of Sidwell's breach of the Settlement Agreement, Plaintiff has suffered legally cognizable injuries, which were reasonably foreseeable at the time Sidwell entered into the Settlement Agreement, for which Plaintiffs are entitled to incidental, consequential and/or compensatory damages of not less than $1,000,000.00 (ONE MILLION DOLLARS), or according to proof.

Prayer for Relief

WHEREFORE, PLAINTIFF prays for judgement and relief as follows against:

123. Defendant Sidwell Friends School for incidental, consequential and/or compensatory damages of not less than $1,000,000.00 (ONE MILLION DOLLARS), or according to proof, plus pre-judgment and post-judgment interest from the date of breach.

124. Such other and further relief as this Court deems just, meet and proper.

Count III (Violation of 42 U.S.C. Section 1981(b))

125. Plaintiff re-alleges each and every allegation contained in paragraphs Nos. 1-124, above.

126. Plaintiffs engaged in activity protected under federal law including 42 U.S.C. Section 1981(b) by complaining of discrimination based upon Dayo's race and retaliation as alleged herein and at other times, including, but not limited to when Plaintiffs filed and prosecuted their First and Second Charges of Discrimination, entered into and negotiated the Settlement Agreement before the OHR, complained to Sidwell officials formally and/or informally of Sidwell's retaliatory, hostile and/or discriminatory breach of the Settlement Agreement, and filed and prosecuted their Petition for Breach of Settlement Agreement (containing new allegations of retaliation and discrimination).

127. Sidwell materially breached the anti-retaliation provision of the Settlement Agreement and/or otherwise violated 42 U.S.C. Section 1981(b) by engaging in a program and policy comprised of discriminatory and/or retaliatory acts or omissions vis-a-vis Dayo in the following particulars: (a) failing to timely re-compute Dayo's Calculus 2012-2013 and Math II 2011-2012 grades by September 30, 2013; (b) failing

to accurately and completely re-compute Dayo's Calculus 2012-2013 and Math II grades by September 30, 2013; (c) failing to timely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (d) failing to accurately and completely re-compute with written explanation Dayo's Calculus and Math II grades by September 30, 2013; (e) failing to modify Dayo's official Sidwell record and transcript to reflect grade increases in her Calculus 2012-2013 and Math II grades by September 30, 2013; (f) failing to properly support and complete Dayo's applications as a student or student-athlete submitted by Defendant Sidwell to the various colleges and universities aforestated during the 2013-2014 scholastic year; (g) failing to timely and properly submit mid-year transcript to McGill University, and other universities, in 2013-2014; (h) failing to timely and properly submit Dayo's SAT II Chemistry test scores to McGill University, and other universities, in 2013-2014; (i) interfering with Dayo's applications and acceptance to Brown, Princeton, Columbia and other colleges and universities; (j) submitting SSRs with false, inconsistent and malicious ratings of Dayo's "Academic Achievement" and other performance measures to colleges and universities to which Dayo applied in 2013-2014; (k) falsely representing on or about November 15, 2013, and at other times, that Dayo's "official record and transcript with [Sidwell]" regarding her Fall 2012 Calculus was changed from "A-" to "A"; (l) tendering false, misleading and incorrect transcripts and other academic records to various colleges and universities to which Dayo had applied; (m) harassing Dayo by refusing to accurately assess her course work in Black Liberation in Americas, originally giving Plaintiff a "B," instead of the "A-"

she rightfully earned; (n) issuing false official report of Dayo's academic performance in Black Liberation in Americas; and, only correcting the same after repeated contacts demanding modification and review; (o) making negative comments, or remaining mute, during the 2013-2014 admissions process respecting Dayo; (p) excluding Dayo from the 2013-2014 Sidwell Friends School Yearbook as Girls Varsity Track and Field Captain; (q) impugning Dayo's intellectual ability in stating to the National Achievement Scholarship Program on October 11, 2013 that Dayo was intellectually incapable of performing well in advanced courses; and/or (r) other retaliatory actions or omissions.

128. Sidwell's retaliatory actions and/or omissions respecting Dayo were illegitimate and would dissuade a reasonable student from alleging discrimination based upon race or retaliation, or asserting her rights under the Settlement Agreement and/or her protected Civil Rights.

129. Sidwell's retaliatory actions and/or omissions occurred on the heels of Dayo's assertions of her rights under the Settlement Agreement and/or her protected Civil Rights, or within close temporal proximity thereof.

130. Sidwell has otherwise retaliated against Dayo and remains in breach of the Settlement Agreement.

131. Dayo has suffered pecuniary and non-pecuniary damages in the nature of emotional distress, loss of enjoyment of life, pain and suffering, embarrassment, humiliation, inconvenience, and physical sickness as a direct and proximate result of Defendant's actions and omissions.

Prayer for Relief

WHEREFORE, PLAINTIFF prays for judgement and relief as follows against:

132. Defendant Sidwell Friends School for compensatory damages amounting to not less than $1,000,000.00 (ONE MILLION DOLLARS), plus pre-judgment and post judgment interest.

133. Defendant Sidwell Friends School for punitive damages amounting to not less than $1,000,000.00 (ONE MILLION DOLLARS), plus pre-judgment and post judgment interest.

134. Attorney's fees, costs and expenses according to proof.

135. Such other and further relief as this Court deems just, meet and proper.

Count IV (Violation of District of Columbia Human Rights Act)

136. Plaintiff re-alleges each and every allegation contained in paragraphs Nos. 1-135, above.

137. Plaintiffs engaged in activity protected under District of Columbia law including, District of Columbia Human Rights Act, D.C. Code Section 2-1402.41 and 1402.61, by complaining of discrimination based upon Dayo's race and national origin and/or retaliation as alleged herein and at other times, including, but not limited to when Plaintiffs filed and prosecuted their First and Second Charges of Discrimination, entered into and negotiated the Settlement Agreement before the OHR, complained to Sidwell officials formally and/or informally of Sidwell's retaliatory and/or discriminatory breach of the Settle-

ment Agreement, and filed and prosecuted their Petition for Breach of Settlement Agreement (containing new allegations of retaliation and discrimination).

138. Sidwell materially breached the anti-retaliation provision of the Settlement Agreement and/or otherwise violated D.C. Code Section 2-1402.61 by engaging in a program and policy comprised of myriad discriminatory and/or retaliatory acts or omissions vis-a-vis Dayo in the particulars set forth in paragraph Nos. 126-127, and as otherwise alleged in this Complaint.

139. Sidwell's retaliatory actions and/or omissions respecting Dayo were illegitimate and would dissuade a reasonable student from alleging discrimination based upon race or retaliation, or asserting her rights under the Settlement Agreement and/or her protected Civil Rights.

140. Sidwell's retaliatory actions and/or omissions occurred on the heels of Dayo's assertions of her rights under the Settlement Agreement and/or her protected Civil Rights, or within close temporal proximity thereof.

141. Sidwell's actions and omissions as alleged herein were executed knowingly, maliciously and with reckless indifference towards Plaintiffs' rights protected under District of Columbia law; and, furthermore: (a) after Sidwell entered into the Settlement Agreement promising not to retaliate against Dayo; (b) in many instances during the pendency of Plaintiffs' Petition for Breach of Settlement Agreement filed with the OHR; (c)after Plaintiffs' their May 7, 2014 Intake Complaint of Discrimination with the D.C. OHR.

142. Sidwell otherwise remains in breach of the Settlement Agreement.

143. Dayo has suffered pecuniary and non-pecuniary damages in the nature of emotional distress, pain and suffering, embarrassment, humiliation, inconvenience, loss of enjoyment of life, and physical sickness as a direct and proximate result of Defendant's actions and omissions.

Prayer for Relief

WHEREFORE, PLAINTIFF prays for judgement and relief as follows against:

144. Defendant Sidwell Friends School for compensatory damages amounting to not less than $1,000,000.00 (ONE MILLION DOLLARS), plus prejudgment and post judgment interest.

145. Defendant Sidwell Friends School for punitive damages amounting to not less than $1,000,000.00 (ONE MILLION DOLLARS), plus prejudgment and post judgment interest.

146. Attorney's fees, costs and expenses according to proof.

147. Such other and further relief as this Court deems just, meet and proper.

Count V (Breach of the Implied Covenant of Good Faith and Fair Dealing)

148. Plaintiff re-alleges each and every allegation contained in paragraphs Nos. 1-147, above.

149. Plaintiff entered into the Settlement Agreement in good faith.

150. Defendant, Sidwell, engaged in various and sundry actions or omissions alleged in this Complaint including, but not limited to, paragraph Nos. 126-127 (above), which had the effect of destroying or injuring Plaintiffs' rights to receive the material fruits of the Settlement Agreement.

151. For the reasons stated in this Complaint, Defendant Sidwell's actions or omissions were unfair, evasive, malicious, arbitrary and capricious and/or undertaken with artifice and/or in bad faith.

152. Sidwell otherwise remains in violation of the covenant of good faith and fair dealing.

153. As a direct and proximate result of Sidwell's violation of the covenant of good faith and fair dealing, Plaintiff has suffered legally cognizable injuries, which were reasonably foreseeable at the time Sidwell entered into the Settlement Agreement, for which Plaintiffs are entitled to incidental, consequential and/or compensatory damages of not less than $1,000,000.00 (ONE MILLION DOLLARS), or according to proof.

154. Dayo has suffered pecuniary and non-pecuniary damages in the nature of emotional distress, pain and suffering, loss of enjoyment of life, embarrassment, humiliation, inconvenience, and physical sickness as a direct and proximate result of Defendant's actions and omissions.

Prayer for Relief

WHEREFORE, PLAINTIFF prays for judgement and relief as follows against:

155. Defendant Sidwell Friends School for compensatory damages amounting to not less than $1,000,000.00 (ONE MILLION DOLLARS), plus pre-judgment and post judgment interest.

156. Defendant Sidwell Friends School for punitive damages amounting to not less than $1,000,000.00 (ONE MILLION DOLLARS), plus pre-judgment and post judgment interest.

157. Attorney's fees, costs and expenses according to proof.

JURY TRIAL IS HEREBY DEMANDED.

Verification

I, Tola Adetu, do swear or affirm under the penalties of perjury that the foregoing facts set forth in this Complaint are true and correct to the best of my knowledge and belief, and those facts which are not of my personal knowledge and belief, I believe them to be true and correct.

/s/

Tola Adetu
2105 Parkside Drive
Mitchellville, Maryland 20721

Dated: 11/7/16

I, Nike Adetu, do swear or affirm under the penalties of perjury that the foregoing facts set forth in this Complaint are true and correct to the best of my knowledge and belief, and those facts which are

not of my personal knowledge and belief, I believe them to be true and correct.

/s/
Nike Adetu
2105 Parkside Drive
Mitchellville, Maryland 20721

Dated: 11/7/16

DAYO ADETU, ET AL.,
By Counsel

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Dated: November 7, 2016