

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:16-cv-80655-RLR

JAMES TRACY,

Plaintiff,

v.

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES, a/k/a FLORIDA
ATLANTIC UNIVERSITY; JOHN W. KELLY,
President of Florida Atlantic University;
HEATHER COLTMAN, Dean of Florida Atlantic
University; DIANE ALPERIN, Associate Provost
of Florida Atlantic University; FLORIDA
EDUCATION ASSOCIATION; UNITED
FACULTY OF FLORIDA; ROBERT
ZOELLER, JR., President of United Faculty of
Florida, Florida Atlantic University; and
MICHAEL MOATS, Service Unit Director
of United Faculty of Florida.

Defendants.

**FAU DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

COMES NOW Defendants, FLORIDA ATLANTIC UNIVERSITY BOARD OF
TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY ("Defendant University"), JOHN W.
KELLY, President of Florida Atlantic University, HEATHER COLTMAN, Dean of the Dorothy
F. Schmidt College of Arts and Letters at Florida Atlantic University, and DIANE ALPERIN,
Senior Adviser to Academic Affairs (collectively, the "FAU Defendants") and answers Plaintiff,
James Tracy's Second Amended Complaint and state as follows:

Introduction

1. Plaintiff, Professor James Tracy, is an award-winning American academic who was wrongfully stripped of his tenured faculty position at Florida Atlantic University by senior FAU officials and administrators, with the help of officials and representatives from the University's faculty union, in retaliation for exercising his constitutionally protected freedom of speech and expression.

ANSWER: Denied.

2. Prior to Professor Tracy's termination, no FAU faculty member had ever been disciplined or terminated for failure to submit personal blogging or any other form of constitutionally protected uncompensated speech or expression to the Defendant University for approval or restriction.

ANSWER: Denied.

3. Through their collective actions, the Defendants violated Professor Tracy's constitutional rights to freedom of speech and expression, and also trampled on their own long-standing principles of academic freedom.

ANSWER: Denied.

4. Professor Tracy's prominent scholarship and excellent teaching credentials allowed him to obtain a lifetime-tenured Florida Atlantic University faculty position—the ultimate achievement for an academic. Professor Tracy has suffered severe economic and reputational damage as a result of the wrongful conduct of the Defendants.

ANSWER: Denied, except FAU Defendants admit that Defendant University granted Plaintiff tenure.

5. Professor Tracy has also, as a result of the Defendants' wrongful acts, been denied the opportunity to teach, is without tenure and his academic career has been destroyed.

Moreover, without his Florida Atlantic University affiliation, Professor Tracy suffers irreparable harm since, among other things, his ability to publish articles in academic journals and to present his scholarship to his colleagues is severely diminished.

ANSWER: Denied.

6. Plaintiff James Tracy brings this action under 42 U.S.C. §§ 1983 & 1985, 28 U.S.C. §§ 2201-2202, federal and state law. He seeks declaratory relief and other available forms of equitable relief, and monetary relief for violations of his civil rights and for breach of contract.

ANSWER: FAU Defendants deny any violations of law and deny Plaintiff is entitled to declaratory, equitable, or monetary relief, but admit that the Second Amended Complaint purports to state claims under 42 U.S.C. §§ 1983 & 1985, 28 U.S.C. §§ 2201-2202, federal and state law.

The Parties

7. Plaintiff JAMES TRACY is a resident of the State of Florida. At all times material to the Second Amended Complaint, Professor Tracy was a tenured Associate Professor at Florida Atlantic University's School of Communication and Multimedia Studies, Dorothy F. Schmidt College of Arts and Letters. Professor Tracy was also former President of the UFF-FAU Chapter of Defendants UFF and FEA between 2009-2011. Professor Tracy holds a Ph.D. in mass communications and taught courses at Florida Atlantic University in Communications, including a course entitled "Culture of Conspiracy".

ANSWER: Without knowledge of whether Plaintiff is currently a resident of the State of Florida. FAU Defendants admit the remaining allegations contained in Paragraph 7.

8. Defendant FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES, is a Florida public university, commonly referred to as Florida Atlantic University (hereinafter

sometimes “BOT”, “Board of Trustees”, “FAU” and/or the “Defendant University”). According to the Defendant University’s website, the Board of Trustees is “a thirteen member board of trustees, six of whom are appointed by the governor, five by the Board of Governors plus the student body president and the president of the University Faculty Senate.”

ANSWER: Admitted.

9. At all times relevant to the actions described in this Second Amended Complaint the Defendant University was acting under color of law.

ANSWER: This paragraph calls for a legal conclusion and therefore no response is required. However, to the extent a response is required, FAU Defendants deny the allegations in Paragraph 9.

10. The Defendant University is not protected by sovereign immunity for declaratory and other forms of equitable relief sought by Professor Tracy to end continuing violations of federal law, or for damages caused by the Defendant University’s breach of contract.

ANSWER: This paragraph calls for a legal conclusion and therefore no response is required. However, to the extent a response is required FAU Defendants deny the allegations in Paragraph 10.

11. According to Section 1.1 of the Defendant University’s Board Operations Policies and Procedures, the “Board of Trustees (“BOT”) is vested by law with all powers and authority to effectively govern and set policy for Florida Atlantic University....” [See Exhibit “A”].

ANSWER: The document speaks for itself and therefore no response is required.

12. According to Section 2.3 of the Defendant University’s Board Operations Policies and Procedures, the Board of Trustees “shall serve as the governing body of FAU” and “shall select the President of FAU to serve at the pleasure of the BOT and shall hold the President

responsible for the University's operation and management, performance, its fiscal accountability, and its compliance with federal and state laws, rules and regulations."

ANSWER: The document speaks for itself and therefore no response is required.

13. According to Section 4.6 of the Defendant University's Board Operations Policies and Procedures, the President and Chief Executive Officer of the University, is specifically responsible for, *inter alia*, the following duties:

"To be responsible for the organization, operation, and administration of the University . . ." Section 4.6(2);

"To execute all documents on behalf of the University and the BOT consistent with law . . ." Section 4.6(3);

"To serve as the principal liaison officer and official contact between the BOT and the faculty, staff and students of the university." Section 4.6(5);

"To establish and implement policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel, in accordance with regulations, rules or policies approved by the BOT and applicable collective bargaining agreements..." Section 4.6(10);

"To ensure [FAU's] compliance with federal and state laws, rules, regulations, and other requirements which are applicable to the University." Section 4.6(23).

ANSWER: The document speaks for itself and therefore no response is required.

14. At all times material to this Second Amended Complaint, Defendant JOHN W. KELLY, an individual and resident of Florida, is and was the President and Chief Executive Officer of Florida Atlantic University, designated by the Defendant University's Board of Trustees. Defendant Kelly supervised, facilitated, recommended and/or approved discipline and termination of Professor Tracy in retaliation in retaliation [sic] for engaging in his constitutionally protected speech and expression on his personal blog.

ANSWER: Denied, except FAU Defendants admit that Defendant Kelly is a resident of the state of Florida and that the Defendant University's Board of Trustees

appointed Defendant Kelly to the position of President of Defendant University in or around January 2014.

15. At all times material to the Second Amended Complaint, the Defendant University's Board of Trustees supervised, facilitated and approved the discipline and termination of Professor Tracy in retaliation for engaging in his constitutionally protected speech and expression on his personal blog.

ANSWER: Denied.

16. At all times material to this Second Amended Complaint, Defendant DIANE ALPERIN, an individual and resident of Florida, is and was Vice Provost of the Florida Atlantic University Boca Raton campus. Defendant Alperin supervised, facilitated, recommended and approved the discipline and termination of Professor Tracy in retaliation for engaging in his constitutionally protected speech and expression on his personal blog

ANSWER: Denied, except FAU Defendants admit that Defendant Alperin is a resident of the state of Florida and was the Vice Provost of the Defendant University's Boca Raton campus from August 2013 through June 2016.

17. At all times material to this Second Amended Complaint, Defendant HEATHER COLTMAN, an individual and resident of Florida, is and was Dean of the Dorothy F. Schmidt College of Arts and Letters at Florida Atlantic University. Defendant Coltman supervised, facilitated, recommended and approved the discipline and termination of Professor Tracy in retaliation for engaging in his constitutionally protected speech and expression on his personal blog.

ANSWER: Denied, except FAU Defendants admit that Defendant Coltman is a resident of the state of Florida and was Dean of the Dorothy F. Schmidt College of Arts and Letters at Defendant University.

18. Defendants KELLY, ALPERIN, and COLTMAN, all senior administrative officials at Florida Atlantic University, are each sued in his or her individual capacity for monetary relief for violating clearly established law which reasonable university officials knew or should have known by disciplining and terminating Professor Tracy in retaliation for engaging in his constitutionally protected speech and expression on his personal blog. Each acted under color of state law and in the scope of his or her employment while engaging in the actions alleged in this Second Amended Complaint.

ANSWER: Denied, except FAU Defendants admit that the Second Amended Complaint purports to state claims against Defendants Kelly, Alperin, and Coltman in their personal capacity for monetary relief.

19. The Defendant University is sued for declaratory relief and any and all other available forms of equitable relief to end continuing violations of federal law. The Defendant University is sued for monetary damages for breach of contract, which is not barred by sovereign immunity.

ANSWER: Denied, except FAU Defendants admit that the Second Amended Complaint purports to state claims for declaratory relief, equitable relief, and monetary damages.

20. Defendant FLORIDA EDUCATION ASSOCIATION (“FEA”) is a Florida corporation and labor union organization that has at all times material to the Second Amended Complaint existed and operated in Florida with its principal place of business located at 213

South Adams Street, Tallahassee, Florida 32301. The FEA is self-described, according to its website, as “the most powerful public education advocacy group, the largest professional organization and education association in [Florida]...” and purports to protect “the employment rights of members with both emergency and long-term legal services, the best and broadest representation of any professional union in the state.”

ANSWER: The allegations in Paragraph 20 are directed towards the Union Defendants and therefore no response is required of the FAU Defendants. However, to the extent any liability could be attributed to the FAU Defendants by Paragraph 20, it is denied.

21. Defendant UNITED FACULTY OF FLORIDA (“UFF”), whose principal place of business is 115 N. Calhoun Street, Suite 6, Tallahassee, Florida, is a “Member”, “Chapter” and “Local” of Defendant FEA, and purports to represent faculty and professionals at all eleven Florida universities, including Defendant Florida Atlantic University, through its United Faculty of Florida, Florida Atlantic University Chapter (“UFF-FAU”).

ANSWER: The allegations in Paragraph 21 are directed towards the Union Defendants and therefore no response is required of the FAU Defendants. However, to the extent any liability could be attributed to the FAU Defendants by Paragraph 21, it is denied.

22. At all times material to the Second Amended Complaint, Defendants UFF and FEA, by and through its agents and representatives at UFF-FAU, collected dues from tenured and non- tenured faculty at Florida Atlantic University, including Professor Tracy. Most of these dues went directly to Defendants UFF and FEA. At all times material to this Second Amended

Complaint, Professor Tracy was a dues paying member of UFF-FAU and Defendants UFF and FEA.

ANSWER: The allegations in Paragraph 22 are directed towards the Union Defendants and therefore no response is required of the FAU Defendants. However, to the extent any liability could be attributed to the FAU Defendants by Paragraph 22, it is denied.

23. At all times material to this Second Amended Complaint, Defendant MICHAEL MOATS, an individual and resident of Florida, was a union representative for Florida Atlantic University employees [a/k/a “Service Unit Director”], employed by and an agent of Defendants UFF and FEA.

ANSWER: The allegations in Paragraph 23 are directed towards the Union Defendants and therefore no response is required of the FAU Defendants. However, to the extent any liability could be attributed to the FAU Defendants by Paragraph 23, it is denied.

24. At all times material to the Second Amended Complaint, Defendant ROBERT ZOELLER, JR., an individual and resident of Florida, was a union representative for Florida Atlantic University employees and the President of UFF-FAU chapter of the Defendants UFF and FEA, and a representative and agent for Defendants UFF and FEA. In addition to his role as President of the UFF-FAU Chapter of the Defendants UFF and FEA, Defendant Zoeller is also an employee of the Defendant University.

ANSWER: The allegations in Paragraph 24 are directed towards the Union Defendants and therefore no response is required of the FAU Defendants. However, to the

extent any liability could be attributed to the FAU Defendants by Paragraph 24, it is denied.

25. At all times material to the Second Amended Complaint, Defendants UFF and FEA, and Defendant MOATS and Defendant ZOELLER, collectively are sometimes referred to herein as the “Union Defendants” actively purported to represent and otherwise safeguard the rights of Professor Tracy, and other similarly situated faculty members at the Defendant University.

ANSWER: The allegations in Paragraph 25 are directed towards the Union Defendants and therefore no response is required of the FAU Defendants. However, to the extent any liability could be attributed to the FAU Defendants by Paragraph 25, it is denied.

Jurisdiction and Venue

26. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Counts I, II, III, IV, and V of this action arise under federal law. The Court has supplemental jurisdiction over Plaintiff’s state law claim under 28 U.S.C. § 1337. This Court also has jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.

ANSWER: Denied, except FAU Defendants admit the Second Amended Complaint purports to state claims which arise under federal law.

27. Venue is proper under 28 U.S.C. 1331 because a substantial part of the events and violations complained of in this action occurred in this judicial district, and Defendants conduct business in this judicial district.

ANSWER: Denied.

28. This Court is authorized to award the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

ANSWER: This paragraph calls for a legal conclusion and therefore no response is required. However, to the extent a response is required, FAU Defendants deny the allegations in Paragraph 28.

General Allegations

Professor Tracy's Tenured Employment at Florida Atlantic University

29. On June 18, 2002, Florida Atlantic University offered Professor Tracy, whose expertise is in communications, media and conspiracy studies, a tenure-earning position as Assistant Professor of Communication in the Dorothy F. Schmidt College of Arts and Letters, which he accepted on June 30, 2002.

ANSWER: Denied, except FAU Defendants admit that on or about June 18, 2002, Defendant University offered Plaintiff a tenure-earning position as an Assistant Professor of Communication in the Dorothy F. Schmidt College of Arts and Letters and Plaintiff accepted the position on or about June 30, 2002.

30. On May 30, 2008, Professor Tracy was awarded tenure at Florida Atlantic University. [See Exhibit "B"].

ANSWER: Admitted.

31. At all times material to this Second Amended Complaint, Professor Tracy's employment at Florida Atlantic University was governed by the Florida Atlantic University Board of Trustees/United Faculty of Florida Collective Bargaining Agreement, a copy of which is attached hereto as Exhibit "C".

ANSWER: Admitted that Plaintiff's employment was governed by a Collective Bargaining Agreement.

The University's Espoused Commitment to Free Speech and Academic Freedom

32. Like most American universities, Florida Atlantic University holds itself out as committed to freedom of speech and principles of academic freedom. According to Section 1.2 of the FAU's Board Operations Policies and Procedures, it is "*vested by law with all powers and authority to effectively govern and set policy [for FAU] in accordance with the laws and constitution...*" and "*is committed to promoting "academic freedom and an atmosphere of free and open inquiry;" "provide equal access, equal rights and equal justice, and encourage mutual regard for the rights and liberties of all persons;" and "assure clear and open communication and sharing of information.*" (emphasis added). [See Exhibit "A"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent a response is required, FAU Defendants deny the allegations in Paragraph 32.

33. Section 1.3 of the Defendant Board of Trustees' Board Operations Policies and Procedures states that it "supports the principle of academic freedom and is committed to the search for new knowledge and to the effective dissemination of that which came before it. In furtherance of this commitment, the BOT will defend the right of faculty and students to pursue their academic goals free from constraints that hinder lawful intellectual inquiry and discourse, and will protect the freedom of faculty to teach and of students to learn from ideas that might be unpopular or not in the mainstream of accepted thought." (emphasis added).

ANSWER: The document speaks for itself and therefore no response is required.

34. Section 5.1 of the Florida Atlantic University Board of Trustees/United Faculty of Florida Collective Bargaining Agreement, which also sets forth and governs the operation of the

Defendant University, states, *inter alia*, “*The Board, the University and the UFF are committed to maintaining and encouraging full academic freedom. Academic freedom and academic responsibility are the twin guardians of the integrity of institutions of higher learning. The integrity is essential to the preservation of a free society and explains the willingness of society historically to accept the concept of academic freedom and, in addition, to protect it through the institution of academic tenure.*” (emphasis added) [See Exhibit “C”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent a response is required, FAU Defendants deny the allegations in Paragraph 34.

35. Section 5.2 of the Florida Atlantic University Board of Trustees/United Faculty of Florida Collective Bargaining Agreement, further provides that “[t]he principal elements of academic freedom include the freedom to:

- (a) Present and discuss academic subjects, frankly and forthrightly, without fear of censorship.
- (b) Speak freely on, and seek changes in, academic and institutional policies.
- (c) **Exercise constitutional rights without institutional censorship and discipline.**” (emphasis added)

ANSWER: The document speaks for itself and therefore no response is required. However, to the extent a response is required, FAU Defendants deny the allegations contained in Paragraph 35.

Professor Tracy’s Protected Speech

36. At all times material to the Second Amended Complaint, Professor Tracy maintained and operated a personal blog entitled “Memory Hole: Reflections on Media and

Politics" where Professor Tracy, for no compensation and on his own time, freely shares with the public his personal opinions and viewpoints on matters of public concern.

ANSWER: Without knowledge, except FAU Defendants admit that Plaintiff operated a blog.

37. At all times material to the Second Amended Complaint, the Defendants knew Professor Tracy operated his blog freely and independently from the Florida Atlantic University, on his own time, using his own internet service provider, domain and email address, to freely share online, and with the public, his personal opinions and viewpoints and other constitutionally protected speech on matters of public concern.

ANSWER: Denied, except FAU Defendants admit during Plaintiff's employment with Defendant University, FAU Defendants became aware that Plaintiff operated a blog.

38. At all times material to this Second Amended Complaint, Professor Tracy's blog clearly indicated that Professor Tracy's postings were his own personal views and opinions. In fact, his blog prior to and throughout most of 2013 included the following disclaimers:

"All items published herein represent the views of James Tracy and are not representative of or condoned by Florida Atlantic University or the State University System of Florida. James Tracy is not responsible for and does not necessarily agree with ideas or observations presented in the comments posted on memoryholeblog.com."

ANSWER: Denied.

39. Following initial threats of discipline by senior FAU officials in 2013, Professor Tracy agreed to remove any reference to "Florida Atlantic University" from his blog's disclaimer, and instead incorporated the following language requested by the FAU Administration:

"The views expressed in the posts and comments of this blog do not reflect the opinions or positions of any institution or entity. They should be

understood as the personal opinions of the author. No information of this blog will be understood as official."

ANSWER: Denied, except FAU Defendants admit Defendant University issued Plaintiff a Notice of Discipline for his failure to include an appropriate disclaimer on his personal blog in accordance with the terms of the Collective Bargaining Agreement.

40. At all times material to the Second Amended Complaint, the Defendants knew Professor Tracy was an independent journalist and blogger, sharing freely with the world his research and analysis on various matters of public concern.

ANSWER: Denied, except FAU Defendants admit that they knew Plaintiff operated a blog.

41. At all times material to the Second Amended Complaint, the Defendants knew that Professor Tracy's personal blogging and other constitutionally protected online speech was uncompensated, non-professional activity, which was not operated or conducted in furtherance of his duties and employment at Florida Atlantic University. Defendants also knew that Professor Tracy's personal blogging and online speech did not reflect the views or opinions of Florida Atlantic University.

ANSWER: Denied.

42. At all times material to the Second Amended Complaint, the Defendants knew that Professor Tracy's blog was not affiliated with the Defendant University, and that the content therein was fully protected as free speech guaranteed by the First Amendment of the U.S. Constitution.

ANSWER: Denied.

43. At all times material to the Second Amended Complaint, the Defendants knew that Professor Tracy's blogging and constitutionally protected online speech was outside the scope of the Defendant University's "Conflict of Interest/Outside Activities" Policy.

ANSWER: Denied.

FAU's Initial Attempts to Discipline Professor Tracy For His Personal Blogging

44. In December 2012, national and international media frenzy ensued after a school shooting at Sandy Hook Elementary School in Newtown, Connecticut. Following the incident, countless independent bloggers, journalists, and concerned citizens around the world, including Professor Tracy, blogged about questionable video and photographic evidence surfacing from Newtown, in addition to inconsistencies and anomalies in the official findings and reports ignored by national media.

ANSWER: Denied, except FAU Defendants admit that a shooting occurred at Sandy Hook Elementary School in Newtown, Connecticut in December 2012.

45. At all times material to the Second Amended Complaint, Professor Tracy's constitutionally protected speech included his personal blogging and personal opinions about the incomplete national media coverage of the Newtown incident and how it has and continues to be used by politicians, legislators, lobbyists and others to misappropriate massive amounts of public tax dollars and charitable donations from sympathizers and unsuspecting Americans, and to promote and install irrational and unconstitutional reforms upon the American public.

ANSWER: Denied, except that FAU Defendants admit that Plaintiff wrote on the Newtown incident.

46. At all times material to the Second Amended Complaint, Professor Tracy shared on his personal blog his own uncompensated opinions and viewpoints on matters of public concern. In his blog, Professor Tracy challenges official narratives, national reporting on mass

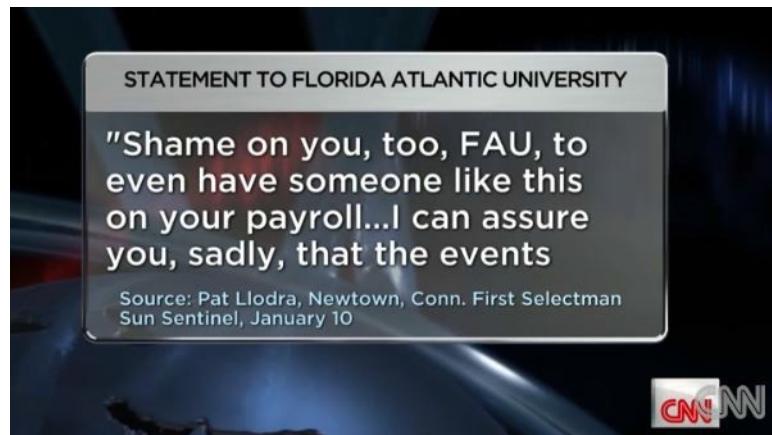
casualty events and encourages citizens to think critically and investigate further. Most controversially, due to lack of evidence, and inconsistencies and anomalies contradicting official findings and reports, Professor Tracy has questioned whether anyone actually died in Sandy Hook and other mass casualty events as reported by CNN and other “mainstream” media.

ANSWER: Denied, except that FAU Defendants admit that Plaintiff questioned whether anyone died in Sandy Hook.

47. In January 2013, the Sun Sentinel, began publishing opinion columns publicly demonizing, disparaging, shaming and defaming Professor Tracy, and openly inviting the Defendant University to terminate Professor Tracy’s employment because of his blogging.

ANSWER: Denied, except FAU Defendants admit the Sun Sentinel has published articles regarding Plaintiff.

48. On January 11, 2013, during CNN’s “Keeping Them Honest”, Anderson Cooper condemned Professor Tracy and his personal blogging on national television, reading out-of-context statements from his blog and disparaging Professor Tracy and his personal blogging as “beyond crazy”. During the segment CNN also aired an interview of Professor Tracy at FAU’s campus, video of Professor Tracy’s home address, as well as public statements shaming Florida Atlantic University, like the following:



ANSWER: Denied, except FAU Defendants admit Anderson Cooper discussed Plaintiff on his show in or around January 2013.

49. After the initial media onslaught against Professor Tracy's blogging, Florida Atlantic University began to receive hundreds of requests to terminate Professor Tracy for his blogging. In response, senior FAU officials and representatives, including Defendants Coltman and Alperin, immediately began planning how they would "ethically discipline" Professor Tracy for his blogging.

ANSWER: Denied, except FAU Defendants admit that Defendant University received complaints from the public related to Plaintiff.

50. In January 2013, Defendants Coltman, Alperin, and other senior FAU officials and representatives, including FAU General Counsel Larry Glick, also began planning how to use the public controversy surrounding Professor Tracy's blog to not only discipline Professor Tracy for his blogging, but also to undermine FAU faculty union membership and representation.

ANSWER: Denied.

51. Defendants Alperin, Coltman and other senior FAU administrative officials and representatives, including FAU General Counsel Glick, internally labeled Professor Tracy "a black eye on all faculty", a "one man argument against tenure" and "poster-child" to "quit UFF membership". [See Exhibit "AK"].

ANSWER: Denied.

52. Notes from January 2013 meetings show Defendant Coltman, Defendant Alperin ("DA"), and other senior officials and representatives of the Defendant University, including former President Mary Jane Saunders ("MJ"), Assistant Vice President for Communications and

Marketing at FAU Scott Silversten, Director of Human Resources Jim Acton, Chief Press Officer Lisa Metcalf and FAU General Counsel Glick were concerned Professor Tracy was not going to stop blogging, so they needed to “read his stuff” and “find winning metaphors” to overcome the First Amendment in disciplining Professor Tracy for his personal blogging. They also prepared a strategy in responding to negative press and public criticism concerning Professor Tracy’s blogging. [See Exhibit “AK”].

ANSWER: Denied.

53. During their initial meetings about Professor Tracy’s blogging in 2013, Defendant Coltman, Defendant Alperin, FAU General Counsel Glick and other senior FAU officials and representatives, were directed not to communicate by e-mail, which could be discovered through public records requests. They also agreed to monitor and evaluate the personal blogging of Professor Tracy (“JT”), and to “centrally handle” the controversy surrounding the blog. The following are excerpts from Defendant Coltman’s notes recorded during the January 2013 meetings, attached as Exhibit “AK”:

1/8/13 Lary Glick, Scott Silversten, Jim Acton
Diane Alperin, Lisa Metcalf

MJ - no email on this

communications issue at this point

centrally handled - no comments

JT not going to stop publishing
read his stuff

1st. Amendment -
find winning metaphors

ANSWER: Denied.

54. On January 9, 2013, the former President and Chief Executive of the Defendant University issued a public video response to the media stating, "I want to make it clear that [Professor Tracy's] views and opinions are not shared by Florida Atlantic University...."

ANSWER: Denied as phrased.

55. Immediately following Anderson Cooper's nationally televised broadcast shaming Professor Tracy and FAU, Defendants Alperin and Coltman held further meetings with FAU General Counsel Glick where they outlined objectives to "explore potential misconduct" against Professor Tracy and plotted to use the controversy around Professor Tracy's blogging to undermine the FAU faculty's union membership and tenure.

ANSWER: Denied, except FAU Defendants admit that Defendants Alperin and Coltman assessed whether Plaintiff violated Defendant University's policies.

56. On January 18, 2013, Defendants Alperin and Coltman summoned Professor Tracy to a meeting about his blogging. During this meeting, Defendants Alperin and Coltman strongly discouraged Professor Tracy from blogging or making any further public statements about the Newtown incident. Defendants Alperin and Coltman also directed Professor Tracy to

complete “Outside Activities” forms for his personal blogging and constitutionally protected speech.

ANSWER: Denied, except FAU Defendants admit that a meeting occurred between Plaintiff and Defendants Alperin and Coltman, and that Defendants Alperin and Coltman directed Plaintiff to complete Report of Outside Employment or Professional Activity forms in accordance with Defendant University’s policies.

57. During the January 18 meeting with Defendants Alperin and Coltman, Professor Tracy and his representative from Defendants UFF and FEA at the time, UFF-FAU’s Grievance/Contract Enforcement Chair Douglas Broadfield, as advised and counseled by Defendant Moats, denied the directive to submit “Outside Activity” forms for his blog, on grounds that Professor Tracy’s personal blogging and online speech was not outside employment and constituted constitutionally protected free speech which was not a reportable outside activity that could be evaluated, monitored or restricted using the Defendant University’s “Conflict of Interest/Outside Activities” Policy.

ANSWER: Denied, except FAU Defendants admit that Plaintiff objected to submitting Report of Outside Employment or Professional Activity forms.

58. On January 28, 2013, Defendant Coltman, wrote Professor Tracy denying that he faced any “issues related to freedom of speech”, outlining purported concerns of the Defendant University and then issuing Professor Tracy another official directive to complete and submit an “Outside Activities” form for his personal blogging and constitutionally protected speech by February 1, 2013 (hereinafter sometimes the University’s “January 28, 2013 Directive”):

“I asked you whether or not you had completed and filed the “Report of Outside Employment/Activity Form” required by the BOT/UFF Collective Bargaining Agreement (“CBA”). You replied that you had not. You should complete this

required form and return it to the Director of SCMS for her approval by February 1, 2013.” [See Exhibit “D”]

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself, therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 58.

59. Attached as Exhibit “E” is a copy of FAU’s “Outside Activities” form Defendant Coltman directed Professor Tracy to complete for his personal blogging and constitutionally protected speech.

ANSWER: Denied, except FAU Defendants admit that Exhibit “E” is a copy of Defendant University’s Report of Outside Employment or Professional Activity form and Defendant Coltman directed Plaintiff to submit Report of Outside Employment or Professional Activity forms in accordance with Defendant University’s policies.

60. Prior to and following the Defendant University’s January 28, 2013 Directive, Professor Tracy sought advice and counsel from his union representatives at the UFF-FAU chapter of Defendants United Faculty of Florida and Florida Education Association, regarding whether his personal blogging should be submitted to the Defendant University for evaluation, monitoring and restriction pursuant to the Defendant University’s “Conflict of Interest/Outside Activities” Policy.

ANSWER: Without knowledge.

61. Both prior to and following the University’s January 28, 2013 Directive, Professor Tracy was advised and instructed by Defendant Moats, that Professor Tracy’s personal blogging and uncompensated online speech was constitutionally protected and not subject to the Defendant University’s “Conflict of Interest/Outside Activities” Policy.

ANSWER: Without knowledge.

62. Immediately following the Defendant University's January 2013 Directive to fill out OA forms for blogging, Defendants UFF and FEA, by and through its Service Unit Director, Defendant Moats, counseled and instructed Professor Tracy not to complete the "Outside Activities" forms, insisting that Professor Tracy's personal blogging and uncompensated online postings were constitutionally protected, fell outside the scope of FAU's "Conflict of Interest/Outside Activities" Policy and thus should not be reported on FAU's "Outside Activities" forms. Defendant Moats also advised Professor Tracy that if he did not stand up for his rights to express his views in his personal time, he could not expect to exercise such freedom in the classroom.

ANSWER: Without knowledge.

63. Defendant Moats, as an agent and representative of Defendants UFF and FEA, counseled Professor Tracy and directed him to prepare a response to the University's January 28, 2013 Directive denying any obligation of Professor Tracy to submit "Outside Activities" forms for his personal blogging and constitutionally protected speech.

ANSWER: Without knowledge.

64. Attached as Exhibit "F" is copy of the letter Professor Tracy drafted pursuant to the counsel, advisement and directions of Defendant Moats and Defendants UFF and FEA. In response to FAU's January 28, 2013 Directive to submit his constitutionally protected personal blogging on "Outside Activity" forms, Professor Tracy wrote exactly what Defendant Moats told him to write, which included the following denial of any obligation to submit his personal blogging to FAU for evaluation, monitoring or approval:

"You have recommended that I complete a "Report of Outside Employment/Activity Form" in accordance with the BOT/UFF Collective Bargaining Agreement. This form is not required because my activities on a social medium such as a personal blog do not constitute professional practice and thus

do not fall within the CBA's definition of "Reportable outside activity." "Reportable outside activity," according to CBA Article 19.2(a) "shall mean any compensated or uncompensated professional practice, consulting, teaching or research, which is not part of the employee's assigned duties and for which the University has provided no compensation."

ANSWER: Without knowledge, except FAU Defendants admit Exhibit F is a letter from Plaintiff. FAU Defendants deny Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the remaining allegations in Paragraph 64.

65. On or about March 28, 2013, the Defendant University, by and through Defendant Coltman issued Professor Tracy a "Notice of Discipline" for his personal blogging. The Defendant University abandoned any allegation that Professor Tracy should be disciplined for refusal to submit "Outside Activities" forms for his personal blogging. Defendant Coltman alleged:

"You have ignored your obligations... You may, of course, blog in your personal time. You must stop dragging FAU into your personal endeavors. Your actions continue to adversely affect the legitimate interests of the University and constitute misconduct... If you continue to fail to meet your professional obligations and respond to directives from your supervisor, you will face additional disciplinary action. [See Exhibit "G"].

ANSWER: Denied. FAU Defendants further deny Plaintiff's characterization of the document; the document speaks for itself and no further response is required. However, to the extent further response is required, FAU Defendants deny the remaining allegations in Paragraph 65.

66. On April 3, 2013, Union Defendant Moats, on behalf of Defendants UFF and FEA, emailed Professor Tracy, again insisting that the Defendant University has no right to

discipline Professor Tracy for his personal blogging and constitutionally protected speech, or the disclaimer on his personal blog. Defendant Moats stated:

“...I think the union should file a grievance on grounds as we discussed before that the blog is not work-related, does not express the views of FAU and states so in the disclaimer, and is not done on work-time. Therefore, the University has no right to discipline you. We previously discussed several arguments applicable to this.” [See Exhibit “H”].

ANSWER: Without knowledge.

67. On April 7, 2013, Professor Tracy proposed a new undergraduate course at FAU entitled “Media, War and Crisis” which was approved by the Defendant University for Fall of 2013 and offered on FAU’s website.

ANSWER: Denied, except FAU Defendants admit that Plaintiff proposed a course titled “Media, War and Crisis.”

68. On April 16, 2013, the American Association of University Professors (“AAUP”) issued a public letter to the President of Florida Atlantic University asking that the Defendant University’s disciplinary action against Professor Tracy be rescinded, pointing to the fact that it set a precedent for “chill[ing] the spirited exchange of ideas—however unpopular, offensive, or controversial—that the academic community has a special responsibility to protect.” [See Exhibit “I”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself, therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 68.

69. On April 23, 2013, the Foundation for Individual Rights in Education (“FIRE”) also appealed to the President of the Defendant University, asking that the University’s March 2013 “Notice of Discipline” be rescinded based on academic freedom and constitutional grounds. [See Exhibit “J”].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself, therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 69.

70. On April 24, 2013, Defendant Alperin held a meeting with senior FAU officials to discuss Professor Tracy's personal blogging. The next day, without explanation, the Defendant University canceled Professor Tracy's approved and scheduled course, "Media, War and Crisis". Professor Tracy, who always taught night classes due to his parental responsibilities, was then reassigned to an undergraduate course he had not previously taught, at times of the day that conflicted with his child care schedule.

ANSWER: Denied, except FAU Defendants admit that Plaintiff was assigned courses based upon the needs of his department.

71. On April 26, 2013, UFF-FAU's Grievance/Contract Enforcement Chair, as advised and directed by Defendant Moats and Defendants UFF and FEA, filed a formal grievance on behalf of Professor Tracy concerning the University's March 28, 2013 unconstitutional Notice of Discipline.

ANSWER: Denied, except FAU Defendants admit that a grievance was filed concerning the March 28, 2013 Notice of Discipline.

72. On April 28, 2013, an unidentified party with access to the University's secure faculty mailroom distributed a copy of a letter to the press, entitled "Why James Tracy, FAU's Conspiracy Theorist Should Resign," authored and signed by senior FAU faculty members and administrative officials, disparaging Professor Tracy and attempting to pressure him to resign. [See Exhibit "K"].

ANSWER: Denied.

73. At all times material to this Second Amended Complaint, officials at the Defendant University failed to investigate the April 28, 2013 harassment and other retaliatory and abusive conduct by Florida Atlantic University personnel against Professor Tracy for his personal blogging and constitutionally protected speech, despite repeated efforts by Professor Tracy to bring such misconduct to their attention.

ANSWER: Denied.

74. On July 23, 2013, in response to Professor Tracy's grievance to FAU's March 2013 Notice of Discipline, Defendant Coltman wrote, "Dr. Tracy has the same rights as any private citizen to write up his opinions and post them on the web. The university has [the] right to require [Professor Tracy] to clearly indicate that his opinions are not the University's positions." She did not include Professor Tracy's refusal to submit "Outside Activities" forms, as directed in January 2013, as a concern or ground for discipline by FAU. [See Exhibit "L"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself, therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 74.

75. In September 2013, the Defendant University, Defendants UFF and FEA, and Professor Tracy entered into a settlement agreement concerning Professor Tracy's personal blogging. It was agreed that Professor Tracy would remove "Florida Atlantic University" from his blog disclaimer, and the Defendant University would retract its disciplinary action against Professor Tracy and remove the Notice of Discipline from his personnel file. Professor Tracy was not required to submit "Conflict of Interest/Outside Activity" forms for his personal blogging. [See Exhibit "M"].

ANSWER: Denied, except FAU Defendants admit Plaintiff and Defendant University reached a settlement of his grievance of the March 28, 2013 Notice of Discipline. Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 75.

76. At all times material to the Second Amended Complaint, it was known and understood by Defendants Alperin, Coltman, Moats, and other senior officials and representatives of the Defendant University and Defendants UFF and FEA, that Professor Tracy's uncompensated personal blogging was constitutionally protected, and could not be restricted by the Defendant University.

ANSWER: Denied.

77. At all times material to the Second Amended Complaint, Defendants Alperin, Coltman, and other officials and representatives of the Defendant University, nonetheless monitored and evaluated Professor Tracy's personal blogging and other constitutionally protected uncompensated online speech, obviating any administrative justification for disclosure of Professor Tracy's blog.

ANSWER: Denied.

78. The Defendant University failed to remove the March 28, 2013 Notice of Discipline from Professor Tracy's personnel file, as was agreed by Defendant Alperin and the Defendant University.

ANSWER: Denied.

79. During the 2013-2014 school year, no disciplinary action was sought against Professor Tracy for failure or refusal to submit forms for his uncompensated personal blogging,

and senior administrative officials at the Defendant University, including but not limited Defendants Coltman and Alperin never requested or directed Professor Tracy to submit “Outside Activities” forms for his personal blogging and constitutionally protected speech.

ANSWER: Denied, except admit Plaintiff was not disciplined for his failure to comply with Defendant University’s Employee Ethical Obligations and Conflict of Interest policy in the 2013-2014 academic year.

80. During the 2014-2015 school year, no disciplinary action was sought against Professor Tracy for failure or refusal to submit forms for his uncompensated personal blogging, and senior officials at the Defendant University, including but not limited Defendants Kelly, Alperin and Coltman, never requested or directed Professor Tracy to submit “Outside Activities” forms for his personal blogging and constitutionally protected speech.

ANSWER: Denied, except admit Plaintiff was not disciplined for his failure to comply with Defendant University’s Employee Ethical Obligations and Conflict of Interest policy in the 2014-2015 academic year.

81. Prior to Professor Tracy’s termination in January of 2016, no tenured faculty members at the Defendant University had ever been required to submit forms reporting uncompensated personal blogging or online speech for evaluation, monitoring or restriction, even though most of FAU’s faculty use online social media, blog and/or communicate online outside of the Defendant University.

ANSWER: Denied.

82. Prior to Professor Tracy’s termination in January of 2016, no faculty members at the Defendant University had ever been disciplined or terminated for failure or refusal to submit uncompensated personal blogging or online speech to the Defendant University for approval.

ANSWER: Denied.

The Unconstitutional Firing of Professor Tracy

83. In 2015, senior FAU officials began requiring faculty members to electronically agree to the following affirmation and agreement as a condition precedent to assignment submission:

“I affirm that I am required to report any outside activity (compensated or uncompensated) and any financial interest on Florida Atlantic University’s Report of Outside Employment or Professional Activity as required in FAU regulations and policies. Questions regarding this requirement are explained at http://www.fau.edu/hr/OEguidelines_final.php, and the form is available at <http://www.fau.edu/hr/files/OutsideBusinessV2.pdf>.

ANSWER: Denied, except admit that faculty were required to electronically acknowledge compliance with Defendant University’s policies on conflict of interest to accept a teaching assignment.

84. On October 20, 2015, Defendant Coltman sent an email to Professor Tracy’s department chairperson, David Williams (hereinafter “Williams”). This email was forwarded to Professor Tracy and stated, “Just a friendly reminder that if you have outside employment income, you will need to fill out the linked *outside employment form*.” (emphasis added) [See Exhibit “N”]. This message included a link to FAU’s “Outside Activities” form. [See Exhibit “E”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 84.

85. After receiving the Defendant University’s new electronic “Conflict of Interest/Outside Activities” Policy affirmation and instructions, Professor Tracy contacted Defendant Zoeller and other representatives of Defendants UFF and FEA, to express his fears

and concerns with FAU's new directives. On October 28, 2015, Defendant Zoeller emailed Professor Tracy admitting, "As you observe, this is part of a larger problem. And just one of many lately!" [See Exhibit "O"].

ANSWER: Without knowledge.

86. Professor Tracy responded to Williams and Defendant Coltman's October 2015 instructions, submitting his annual assignment and indicating he could not in good faith affirm compliance with the Defendant University's "Conflict of Interest/Outside Activities" Policy with respect to his personal blogging. Professor Tracy also indicated he would be more comfortable signing an affirmation if the FAU Administration or its counsel first confirmed that his personal blogging could not be considered a "conflict of interest" or "outside activity". [See Exhibit "N"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 86.

87. On October 27, 2016, just hours before representing to Professor Tracy that FAU's faculty assignment submission policy had not changed [See Exhibit "AL"], Williams emailed Defendant Coltman something completely opposite: "as far as I can tell, the 'affirm and check' box is new" ... and "I do not know the legal definitions and restrictions on 'conflict of interest'. Might we get an opinion from legal on this?" [See Exhibit "AM"].

ANSWER: Denied as to Plaintiff's characterization of the documents; the documents speak for themselves and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 87.

88. In meetings held in October and November of 2015 at the Defendant University, Defendants Alperin, Coltman and FAU Counsel Glick, and other unknown senior administrative officials and representatives met to discuss Professor Tracy's renewed objection to submitting his personal blogging to FAU officials for approval.

ANSWER: Denied.

89. On November 2, 2015, after receiving Professor Tracy's annual assignment without any affirmation or agreement to the Defendant University's "Conflict of Interest/Outside Activities" Policy with respect to his personal blogging, Williams emailed Defendant Coltman, "I don't suppose we can do anything with that?" [See Exhibit "AN"]. Williams was in turn referred to FAU General Counsel Glick.

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. To the extent further response is required, FAU Defendants deny the allegations in Paragraph 89.

90. FAU General Counsel Larry Glick responded to Williams' emails regarding Professor Tracy's objections to FAU's new affirm and check box, indicating that he was referring "the issue" to Defendant Alperin. [See Exhibit "AO"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. To the extent further response is required, FAU Defendants deny the allegations in Paragraph 90.

91. In November and December 2015, Defendants Alperin, Coltman, and other senior FAU officials and representatives, including FAU General Counsel Larry Glick, once again planned to discipline Professor Tracy in retaliation for his personal blogging, this time under the supervision and with the approval of Defendant Kelly. Upon information and belief, in

furtherance of their unlawful objectives, FAU's General Counsel Glick met with Defendant Zoeller and reached an understanding and agreement that Defendants UFF and FEA would not contest the discipline and termination of Professor Tracy.

ANSWER: Denied.

92. After submitting his annual assignment, Professor Tracy again wrote Williams outlining his concerns with the Defendant University's coercive maneuver to force tenured faculty members to affirm compliance with a vague and problematic policy. Professor Tracy also highlighted Williams' conflicting representations and insistence that the "Outside Activity" form should "only be completed in situations where 'outside employment income' is being received by the employee." [See Exhibit "P"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. To the extent further response is required, FAU Defendants deny the allegations in Paragraph 92.

93. On November 9, 2015, Professor Tracy again sought advice from Defendant Zoeller, regarding the Defendant University's "Conflict of Interest/Outside Activities" Policy and new electronic affirmation. Defendant Zoeller advised Professor Tracy to comply with the Defendant University's instructions, assuring Professor Tracy that the Union Defendants, including Defendants UFF and FEA, would file a grievance on his behalf afterward.

ANSWER: Without knowledge.

94. On November 10, 2015, Defendant Zoeller emailed Professor Tracy stating: "I'm also in consultation with Michael Moats to see if we can address this in others forums such as a grievance.... Did you sign the outside activity portion or not? I've always been advised [by] those more experienced in these matters to sign now and fight after." [See Exhibit "Q"].

ANSWER: Without knowledge.

95. On November 10, 2015, Defendant Coltman issued a “Notice of Discipline” to Professor Tracy (hereinafter sometimes referred to as FAU’s “November 2015 Notice of Discipline”) directing Professor Tracy to submit “Outside Activities” forms for his personal blogging and constitutionally protected speech for 2013-2016 and to complete the electronic affirmation of compliance to the Defendant University’s “Conflict of Interest/Outside Activities” Policy. [See Exhibit “R”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. To the extent further response is required, FAU Defendants deny the allegations in Paragraph 95.

96. On November 19, 2015, Professor Tracy wrote Defendant Zoeller informing the Union Defendants of FAU’s November 2015 Notice of Discipline and seeking counsel and representation. Defendant Zoeller responded to Professor Tracy advising Professor Tracy to “...sign the current Conflict of Interest form (under duress) and then we fight it.” [See Exhibit “S”].

ANSWER: Without knowledge.

97. On November 22, 2015, Professor Tracy responded to FAU’s November 2015 Notice of Discipline objecting to unconstitutional threats of disciplinary action, and requesting that the reprimand be removed from his personnel file. This correspondence was also sent to Defendant Zoeller and other current and former representatives of the Union Defendants. [See Exhibit “T”].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. To the extent further response is required, FAU Defendants deny the allegations in Paragraph 97.

98. On November 24, 2015, Professor Tracy contacted Defendant Zoeller and other representatives of the Union Defendants requesting that the Union Defendants file a grievance in response to FAU's November 2015 Notice of Discipline. [See Exhibit "U"].

ANSWER: Without knowledge.

99. On December 1, 2015, Defendant Zoeller denied Professor Tracy right to file a grievance, referencing a November 30, 2015 meeting held, without Professor Tracy's knowledge or participation, between Defendant Zoeller, Defendant Moats and other representatives of the Defendant University and Defendants UFF and FEA. Defendant Zoeller wrote:

"We met with Michael Moats yesterday and discussed your situation at length. It was our collective decision that your situation is not grievable." [See Exhibit "V"].

ANSWER: Without knowledge.

100. On December 10, 2015, the Sun Sentinel published another defamatory and disparaging article targeting Professor Tracy and his employment, falsely accusing Professor Tracy of "harassment" and "extracurricular misconduct", and shaming the Defendant University and calling for Professor Tracy's firing: "It is time FAU reassess if their priorities properly reflect the best interests of their staff, donors and — most importantly — their students." *Sandy Hook Massacre 3rd Anniversary: Two parents target FAU conspiracy theorist*, Sun Sentinel (Dec. 10, 2015).

ANSWER: Denied, except FAU Defendants admit that the Sun Sentinel published an article about Plaintiff on or about December 10, 2015.

101. Following the December 10 Sun Sentinel publication, Defendant University received more complaints and requests to terminate Professor Tracy for his personal blogging.

ANSWER: Denied, except FAU Defendants admit that Defendant University received complaints from the public regarding Plaintiff.

102. On December 11, 2015, in response to the controversy surrounding Professor Tracy's personal blogging, senior administrative officials at the Defendant University, including Defendant Kelly and Anthony Barbar, Chairman of the Defendant University's Board of Trustees, met and electronically communicated to coordinate the Defendant University's response to new complaints about Professor Tracy's blogging.

ANSWER: Denied.

103. On December 11, 2015, Defendant Kelly emailed Stacy Volnick, the Vice President Administrative Affairs and Chief Administrative Officer of Florida Atlantic University, and other senior FAU officials, in response to an email from an individual named Paul Stern claiming to be a "friend of someone whose daughter lost her life in Sandy Hook". Defendant Kelly wrote, "Please ask Mr. Stern to put the parents of the child in direct contact with me. I intend to deal with this personally." [See Exhibit "AP"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 103.

104. On December 12, 2016, Anthony Barbar, Chairman of the Defendant University's Board of Trustees responded to Defendant Kelly's email thanking him. [See Exhibit "AQ"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 104.

105. On December 11, 2015, Defendant Coltman again directed Professor Tracy to submit four (4) years of "Outside Activity/Conflict of Interest" forms for his personal blogging or "receive further disciplining up to and including termination." [See Exhibit "W"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 105.

106. In response to Defendant Coltman's December 11 email, and as directed by Defendants Zoeller and Moats, Professor Tracy, under duress, submitted "Outside Activity/Conflict of Interest" forms for his personal blogging. [See Exhibit "X"]. Defendant Coltman in turn forwarded Professor Tracy's completed forms to Defendant Alperin, FAU General Counsel Larry Glick and Vice President & General Counsel David Kian.

ANSWER: Denied, except FAU Defendants admit that after multiple opportunities to comply with Defendant University's Employee Ethical Obligations and Conflict of Interest policy, Plaintiff belatedly submitted Report of Outside Employment or Professional Activity forms reflecting some of Plaintiff's outside activities from 2013 through 2015. Those documents speak for themselves.

107. The following day, December 16, 2015, the Defendant University, by and through Defendant Alperin issued FAU's Notice of Intent to Terminate Professor Tracy, indicating

Professor Tracy was being terminated for his alleged failure to timely submit “Activity Forms” or “Activity Reports” for his personal blogging. The Notice claimed:

“By simply submitting the completed Activity Forms, you would have been compliant with no further discipline. However, you again refused the Dean’s clear directive and did not submit the forms by the new deadline.”

“You again failed to submit any Activity Reports for the three years in question for your blog, which you clearly spend time and resources maintaining and contributing to. You have yet again deprived the University of the forms needed to assess if a conflict exists for the blog activity” [See Exhibit “Y”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore requires no further response. To the extent further response is required, FAU Defendants deny the allegations in Paragraph 107.

108. Following FAU’s Notice of Intent to Terminate Professor Tracy, Stacy Volnick forwarded Defendant Kelly a December 18, 2016 article written by the Sun Sentinel Editorial Board entitled “Tenure be damned, Professor James Tracy embarrasses FAU”. Volnick’s email proclaimed, “Amen!!!” [See Exhibit “AR”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 108.

109. On or about December 16, 2015, Professor Tracy again sought representation and counsel from the Union Defendants, including Defendant Moats, Defendants UFF and FEA, and Defendant Zoeller, requesting that a grievance be filed on his behalf. Defendant Zoeller responded, “Michael [Moats] contacted me last night. Feel free to call me today. We need to start on the grievance process ASAP.” [See Exhibit “Z”].

ANSWER: Without knowledge.

110. The following day, December 17, 2015, Defendant Zoeller met with FAU General Counsel Glick at the Defendant University and agreed Defendants UFF and FEA would help the Defendant University, and Defendants Kelly, Alperin and Coltman in securing Professor Tracy's termination, or resignation in lieu of termination.

ANSWER: Denied.

111. During telephone consultations with Professor Tracy on December 17 and 18, 2015, Defendant Moats condemned Professor Tracy for not previously submitting his personal blogging and constitutionally protected speech for administrative evaluation and censorship. Defendant Moats also attempted to pressure Professor Tracy into resigning to avoid a termination and instructed Professor Tracy not to speak to anyone other than his "defense" team. Attached as Exhibit "AA" is an email sent by Defendant Moats to Professor Tracy after his December 17, 2015 telephone consultation, stating:

"I have asked for an extension of the ten day response time for you until at least January 6, 2016. While I do not expect your response to make any difference..." and "...as I suggested on the telephone, you need to seriously consider an agreement to resign to avoid the termination."

ANSWER: Without knowledge.

112. On December 18, 2015, Defendant Moats again emailed Professor Tracy notifying him that Defendants UFF and FEA, had retained another representative for Professor Tracy in Hillsborough County, Florida (more than 200 miles from FAU) on Professor Tracy's behalf. Defendant Moats also represented that Defendants UFF and FEA *would* respond to the Defendant University, on Professor Tracy's behalf, within the response period required by the Florida Atlantic University Board of Trustees/United Faculty of Florida Collective Bargaining Agreement. [See Exhibit "AB"].

ANSWER: Without knowledge.

113. On December 20, 2015, Defendant Moats again rebuked Professor Tracy for exercising his constitutional rights and tried to legitimize his discipline and termination. He wrote:

“I would think you would understand the very first rule in such a situation is to talk to no one but your defense team. You are quickly limited if not eliminating any chance that the university would or could entertain a resignation. I advised you not to talk to the media and I am reiterating that advice now. More importantly, you know that the university is not terminating you over free speech issues. Your refusal to properly complete required documents gave them another – likely valid – reason to terminate.” [See Exhibit “AC”].

ANSWER: Without knowledge.

114. In response to Defendant Moats’ December 20 email, Professor Tracy emailed Defendants Moats and Zoeller, attaching his February 2, 2013 Response to the University’s January 28, 2013 Directive [See Exhibit “F”], which Defendant Moats had helped Professor Tracy prepare in 2013, wherein freedom of speech was asserted in defense of previous attempts by FAU officials to discipline Tracy for his personal blogging.

ANSWER: Without knowledge.

115. Nonetheless, the Union Defendants, including Defendant Moats, Defendant Zoeller, and other representatives and agents of Defendants UFF and FEA, refused to respond as promised to FAU’s Notice of Intent to Terminate. Defendants UFF and FEA also refused to file a grievance against the unconstitutional disciplinary action.

ANSWER: Without knowledge.

116. Unbeknownst to Professor Tracy, in November and December of 2015, Defendants Zoeller, Moats, and other representatives and agents of Defendants UFF and FEA, had entered into an understanding and agreement amongst themselves, and with officials and representatives of the Defendant University to subject Professor Tracy to disciplinary action and termination in retaliation for his personal blogging. As a result of the unlawful conspiracy to

interfere with Professor Tracy's civil rights, he was terminated by default for failure to respond to the Notice of Intent to Terminate by January 6, 2016. Had the Defendants UFF and FEA responded and grieved the disciplinary action in a timely manner, Professor Tracy's termination could have been deferred pending grievance proceedings.

ANSWER: Denied, except FAU Defendants admit Plaintiff did not grieve the Notice of Discipline—Termination, and was terminated on January 6, 2016.

117. Defendants UFF and FEA, by and through the representative they hired for Professor Tracy, provided Professor Tracy with the following dubious reasoning for the decision of Defendants UFF and FEA not to respond to FAU's Notice of Intent to Terminate on Professor Tracy's behalf as promised: "Nothing we could have said would have satisfied them, so there was no reason to put anything on the record to use against us later." [Exhibit "AD"].

ANSWER: Without knowledge.

118. After Professor Tracy's termination, Defendants UFF and FEA, by and through Defendant Moats and Defendant Zoeller attempted to pressure and coerce Professor Tracy into accepting a meager severance package offered by the Defendant University. The Union Defendants also discouraged Professor Tracy from taking any legal action against the Defendant University, claiming that any challenge to the termination would be unsuccessful.

ANSWER: Without knowledge.

119. Defendant Alperin's January 6, 2016 Notice of Termination claimed that Professor Tracy had been terminated for failing to timely submit forms or reports for four (4) years of uncompensated personal blogging, as previously directed by Defendant Coltman. However, this was a pretextual basis for termination because Professor Tracy was actually

terminated in response to and in retaliation for the constitutionally protected speech and expression in his blog postings. [See Exhibit "AI"].

ANSWER: Denied. FAU Defendants further deny Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, FAU Defendants deny the allegations in Paragraph 119.

120. Professor Tracy's constitutionally protected speech, including his uncompensated opinions and viewpoints expressed on his personal blog, played a substantial part and was a motivating factor in the decision of Defendants Alperin, Coltman, Kelly, and the Defendant University to terminate Professor Tracy's tenured employment.

ANSWER: Denied.

121. Prior to Professor Tracy's discipline and termination, no other tenured faculty member had ever been disciplined, or terminated for failure or refusal to submit uncompensated personal blogging or any other form of constitutionally protected speech and expression to the Defendant University for approval or restriction.

ANSWER: Denied.

COUNT I – 42. U.S.C. § 1983
Retaliation in Violation of Professor Tracy's Rights to Free Speech
Under the First and Fourteenth Amendments
Against Defendant University and Defendants Kelly, Alperin and Coltman

122. Professor Tracy repeats and realleges Paragraphs 1 – 121 of this Second Amended Complaint as if fully set forth herein.

ANSWER: FAU Defendants repeat and restate the answers to Paragraphs 1-121 of this Answer as if fully set forth herein.

123. Through this count, the Defendant University, and FAU officials, Defendants Alperin, Coltman and Kelly are sued in their personal capacities for terminating Professor Tracy in retaliation for his constitutionally protected speech, including but not limited to the postings on his uncompensated personal blog.

ANSWER: Denied, except that FAU Defendants admit the Second Amended Complaint purports to sue Defendants Kelly, Alperin, and Coltman in their personal capacities.

124. At all times material to the Second Amended Complaint, Professor Tracy engaged in constitutionally protected speech and expression, which included his uncompensated personal opinions and viewpoints on matters of public concern expressed on his personal blog and online.

ANSWER: Denied.

125. Professor Tracy's constitutionally protected speech online and in his blog postings, played a substantial part and was a motivating factor in the decision of the Defendant University, and Defendants Alperin, Coltman, Kelly, to discipline Professor Tracy.

ANSWER: Denied.

126. Professor Tracy's constitutionally protected speech played a substantial part and was a motivating factor in the decision of the Defendant University, and Defendants Alperin, Coltman, Kelly, to terminate Professor Tracy's tenured employment.

ANSWER: Denied.

127. The Defendant University, and Defendants Alperin, Coltman, Kelly, and other FAU officials and representatives acted unconstitutionally and unlawfully in disciplining and terminating Professor Tracy in order to restrict his, and other similarly situated faculty member's expression and freedom of speech.

ANSWER: Denied.

128. The Defendant University, and Defendants Kelly, Alperin and Coltman had no legitimate government interest in disciplining or terminating Professor Tracy for his constitutionally protected personal blogging and online speech and expression.

ANSWER: Denied.

129. Professor Tracy would not have been disciplined or terminated in the absence of his constitutionally protected personal blogging.

ANSWER: Denied.

130. The retaliatory actions of officials at the Defendant University, including but not limited to Defendants Kelly Alperin and Coltman, in response to Professor Tracy's constitutionally protected speech, have had a chilling effect that acts as a deterrent to free speech.

ANSWER: Denied.

131. Defendants Alperin, Coltman, Kelly, and other officials and representatives at the Defendant University acted intentionally, knowingly, willfully, wantonly, and in reckless disregard of Professor Tracy's federally-protected constitutional rights and violated clearly established constitutional rights of which all reasonable college administrators and staff should have known, rendering them liable to Professor Tracy under 42 U.S.C. § 1983.

ANSWER: Denied.

132. Defendants Alperin, Coltman, Kelly, and other officials and representatives at the Defendant University who aided and abetted the unlawful discipline and termination of Professor Tracy acted intentionally, knowingly, willfully, wantonly, and in reckless disregard of Professor Tracy's federally-protected constitutional rights, and without regard to the significant emotional and reputational damage such actions would cause.

ANSWER: Denied.

133. The denial of a tenured faculty member's constitutional right to freedom of speech is irreparable injury *per se*, and Professor Tracy is entitled to declaratory and injunctive relief, including but not limited to reinstatement.

ANSWER: Denied.

134. The Defendant University and Defendant Kelly have the power to reinstate Professor Tracy.

ANSWER: Admitted that Defendant University, through Defendant Kelly, has the authority to reinstate Plaintiff.

135. The retaliatory termination of Professor Tracy's tenured employment at FAU directly resulted in substantial and irreparable harm to Professor Tracy, including lost income, reputational disparagement, the loss of a tenured appointment at Florida Atlantic University and out of pocket expenses, including but not limited to attorneys' fees and costs, as a consequence of being denied his First and Fourteenth Amendment rights.

ANSWER: Denied.

136. As a legal consequence of the violation of Professor Tracy's First and Fourteenth Amendment rights, Professor Tracy is entitled to injunctive relief, including reinstatement by the Defendant University and Defendant Kelly, and all further relief as is just and proper, and permitted by law against the Defendant University, including the reasonable costs of this lawsuit, including but not limited to reasonable attorneys' fees. Professor Tracy also hereby requests an order enjoining the Defendants and their officers, agents, servants, employees, representatives, and all other persons, firms, or corporations in active concert or participation with them, from

violating Professor Tracy's constitutional rights, including but not limited to his freedom of speech and expression.

ANSWER: Denied.

137. As a legal consequence of the violation of Professor Tracy's First and Fourteenth Amendment rights, Professor Tracy is entitled to compensatory damages, punitive damages, and the reasonable costs of this lawsuit, including but not limited to reasonable attorneys' fees against Defendants Kelly, Alperin and Coltman in their personal capacities.

ANSWER: Denied.

Count II – 42 U.S.C. § 1983 and 1985
Conspiracy to Interfere With Professor Tracy's Civil Rights
*Against Defendants Alperin, Coltman, Kelly, Zoeller, Moats,
Defendants UFF and FEA and Defendant University*

138. Professor Tracy repeats and realleges Paragraphs 1 – 137 of this Second Amended Complaint as if fully set forth herein.

ANSWER: FAU Defendants repeat and restate the answers to Paragraphs 1-137 of this Answer as if fully set forth herein.

139. Through this count, the Defendant University, and Defendants Alperin, Coltman and Kelly, in their personal capacities only, are sued for conspiring to interfere with Professor Tracy's civil rights, which included disciplining and terminating Professor Tracy in retaliation for his constitutionally protected speech, including but not limited to the postings on his uncompensated personal blog and online.

ANSWER: Denied, except that FAU Defendants admit the Second Amended Complaint purports to sue Defendants Kelly, Alperin, and Coltman in their personal capacities.

140. Through this count, Defendants Zoeller and Moats, in their individual and personal capacities, and Defendants UFF and FEA are sued because in 2015 and 2016 they were intertwined in a symbiotic relationship with the Defendant University, which involved conspiring with FAU officials and/or representatives to violate the constitutional rights of Professor Tracy, rendering them liable as state actors under 42 U.S.C. §§ 1983 and 1985.

ANSWER: Denied, except FAU Defendants admit that the Second Amended Complaint purports to sue Defendants Zoeller and Moats in their personal capacities.

141. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, and in retaliation for Professor Tracy's personal blogging, Defendants Alperin, Coltman, and Kelly each acted intentionally, knowingly, willfully, wantonly, and in reckless disregard of Professor Tracy's federally-protected constitutional rights and violated clearly established constitutional rights of which all reasonable college administrators and staff should have known, rendering them liable to Professor Tracy under 42 U.S.C. § 1983.

ANSWER: Denied.

142. Defendants Alperin, Coltman, Kelly, Zoeller, and Moats and other officials and/or representatives of the Defendant University and Defendants UFF and FEA, conspired to interfere with and deprive Professor Tracy of his constitutional rights, including his right to freedom of speech. In this manner, each co-conspirator, acting alone or in concert with others, conspired to accomplish an unlawful purpose by an unlawful means.

ANSWER: Denied.

143. In furtherance of the conspiracy, each of the co-conspirators committed overt acts and was an otherwise willful participant in joint activity.

ANSWER: Denied.

144. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, and in retaliation for Professor Tracy's personal blogging, Defendant Alperin, Defendant Coltman and other senior administrative officials and representatives of the Defendant University, including FAU General Counsel Glick, began planning in January 2013 how they could violate Professor Tracy's civil rights.

ANSWER: Denied.

145. In furtherance of the conspiracy, Defendants Alperin, Coltman and FAU General Counsel Glick internally labeled Professor Tracy the "poster child" to "quit UFF membership", and planned to use the controversy surrounding his personal blogging to undermine Professor Tracy's representation by Defendants UFF and FEA. [See Exhibit "AK"].

ANSWER: Denied.

146. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, and in retaliation for Professor Tracy's personal blogging, the Defendant University, through Defendant Alperin canceled Professor Tracy's course, "Media, War and Crisis" and reassigned Professor Tracy to an undergraduate course he had not previously taught, at times of the day that conflicted with his child care schedule.

ANSWER: Denied.

147. After initial efforts to discipline Professor Tracy for his personal blogging failed in 2013, Defendants Alperin and Coltman once again, in furtherance of the conspiracy to interfere with Professor Tracy's civil rights, attempted to unlawfully discipline Professor Tracy for his personal blogging in November and December of 2015.

ANSWER: Denied.

148. At all times material to the Second Amended Complaint, Defendant Kelly personally supervised and approved FAU officials and representatives efforts in 2015 to discipline and dismiss Professor Tracy in retaliation for his personal blogging, with acknowledgement and approval of the Chairman of the Defendant University's Board of Trustees.

ANSWER: Denied.

149. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, in November and December of 2015, including December 17, 2015, Defendants Zoeller, individually and on behalf of the Defendants UFF and FEA, met with FAU General Counsel Larry Glick, acting on behalf of the Defendant University and Defendants Kelly, Alperin and Coltman. During these meetings, which occurred in person at FAU's campus, an understanding and agreement was reached to sabotage Professor Tracy's defense against FAU's unlawful discipline, and to secure Professor Tracy's termination or resignation in lieu of termination.

ANSWER: Denied.

150. Although Defendant Moats and Defendants UFF and FEA previously advised and instructed Professor Tracy not to submit personal blogging to the Defendant University for approval or restriction when faced with identical unlawful directives and threats of discipline for his personal blogging, in 2015, in furtherance of the conspiracy, Defendants Moats and Defendants UFF and FEA about-faced Professor Tracy and aided and abetted Professor Tracy's unlawful discipline and termination for his personal blogging. Defendant Moats and Defendants UFF and FEA agreed not to file a grievance or respond to the Defendant University's Notices of Discipline on Professor Tracy's behalf, while actively deceiving Professor Tracy into believing that a timely response and grievance would be filed by Defendants UFF and FEA.

ANSWER: Denied.

151. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendants Kelly, Alperin, Zoeller and other officials and representatives of the Defendant University and Defendants UFF and FEA, disregarded and dismissed multiple faculty complaints and requests for FAU officials to cease and desist infringing upon constitutionally protected faculty speech and expression.

ANSWER: Denied.

152. In October, November and December of 2015, and in furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendants Kelly, Alperin, Zoeller, Moats and other officials and representatives of the Defendant University and Defendants UFF and FEA ignored Professor Tracy's complaints that his uncompensated, constitutionally protected personal blogging could not be subjected to restriction by the Defendant University.

ANSWER: Denied.

153. In November 2015, in furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendant Coltman demanded Professor Tracy submit four (4) years of personal blogging to FAU officials for evaluation.

ANSWER: Denied, except FAU Defendants admit that Defendant Coltman directed Plaintiff to submit Report of Outside Employment or Professional Activity forms in compliance with Defendant University's policies.

154. In response to and in support of Defendant Coltman's demands, and in furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendants Zoeller and Moats coerced Professor Tracy into submitting four (4) years of constitutionally protected blogging to Defendant Coltman and the Defendant University.

ANSWER: Denied.

155. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, in 2015, Defendants Alperin, Coltman, Kelly and other senior administrative officials and representatives of the Defendant University, including FAU General Counsel Glick, acted unconstitutionally and unlawfully in disciplining Professor Tracy in retaliation for his personal blogging.

ANSWER: Denied.

156. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendants Zoeller, Defendant Moats and officials and/or representatives of Defendants UFF and FEA purposefully failed to file a grievance or contest the Defendant University's retaliatory discipline of Professor Tracy for his personal blogging.

ANSWER: Denied.

157. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, in 2015, Defendants Alperin, Coltman, Kelly and the Defendant University, acted unconstitutionally and unlawfully in issuing FAU's Notice of Intent to Terminate Professor Tracy in retaliation for his personal blogging.

ANSWER: Denied.

158. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendant Zoeller and Defendant Moats, and other representatives of Defendants UFF and FEA purposefully failed to respond or grieve FAU's Notice of Intent to Terminate, as promised to Professor Tracy, which could have deferred and prevented Professor Tracy's termination.

ANSWER: Denied as to the existence of a conspiracy and without knowledge of the remaining allegations in Paragraph 158.

159. In furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendant Moats and Defendant Zoeller misadvised and attempted to mislead Professor Tracy into believing the unlawful and unconstitutional discipline by FAU was "valid" and lawful. [See Exhibit "AA" and "AC"].

ANSWER: Denied.

160. In December 2015, in furtherance of the conspiracy to interfere with Professor Tracy's civil rights, Defendants Moats and Defendant Zoeller also repeatedly instructed Professor Tracy not to exercise his constitutional rights, including his freedom of speech and expression.

ANSWER: Denied as to the existence of a conspiracy and without knowledge of the remaining allegations in Paragraph 160.

161. In furtherance of the conspiracy, the Union Defendants, including Defendants Moats, Defendant Zoeller, and other representatives of the Defendants UFF and FEA attempted to pressure and coerce Professor Tracy into resigning from his tenured position.

ANSWER: Denied as to the existence of a conspiracy, without knowledge as to the remaining allegations in Paragraph 161.

162. In furtherance of the conspiracy, the Union Defendants, including Defendants Moats, Defendant Zoeller, and other representatives of the Defendants UFF and FEA attempted to discourage Professor Tracy from taking any legal action against the Defendant University, falsely claiming that any challenge to his termination would be unsuccessful.

ANSWER: Denied as to the existence of a conspiracy, without knowledge as to the remaining allegations in Paragraph 162.

163. Willful failure to file a timely response or grievance by representatives and agents of Defendants UFF and FEA, including but not limited to Defendant Zoeller and Moats resulted in Professor Tracy's discipline and termination by the Defendant University.

ANSWER: Denied.

164. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Professor Tracy's constitutional rights.

ANSWER: Denied.

165. As a direct and proximate result of the illicit agreement and conspiracy described in this Count, Professor Tracy's rights were violated and he suffered substantial and irreparable harm, including lost income, the loss of a tenured appointment at Florida Atlantic University and out of pocket expenses, including but not limited to attorneys' fees and costs.

ANSWER: Denied.

166. As a legal consequence of the conspiracy to violate Professor Tracy's civil rights, Professor Tracy is entitled to injunctive relief, including reinstatement by the Defendant University and Defendant Kelly, and all further relief as is just and proper, and permitted by law against the Defendant University, including the reasonable costs of this lawsuit, including but not limited to reasonable attorneys' fees. Professor Tracy also hereby requests an order enjoining the Defendants and their officers, agents, servants, employees, representatives, and all other persons, firms, or corporations in active concert or participation with them, from violating Professor Tracy's constitutional rights, including but not limited to his freedom of speech and expression.

ANSWER: Denied.

167. As a legal consequence of the conspiracy to violate Professor Tracy's constitutional rights, Professor Tracy is entitled to compensatory damages, punitive damages and

the reasonable costs of this lawsuit, including but not limited to reasonable attorneys' fees, from Defendants Kelly, Alperin, Coltman, Zoeller, and Moats in their personal capacities, and Defendants UFF and FEA.

ANSWER: Denied.

COUNT III – 42 U.S.C. § 1983
Facial Challenge to FAU's "Conflict of Interest/Outside Activities" Policy
Under the First and Fourteenth Amendments
Against Defendant University Only

168. Professor Tracy repeats and realleges Paragraphs 1 - 121 of this Second Amended Complaint as if fully set forth herein.

ANSWER: Defendant University repeats and restates the answers to Paragraphs 1-121 of this Answer as if fully set forth herein.

169. Article 19 of the FAU BOT/UFF Agreement, which governs the Defendant University, entitled "Conflict of Interest/Outside Activities" (hereinafter sometimes, "the Policy"), states:

19.1 Policy. In all official acts, an employee is bound to observe the highest standards of ethics consistent with the code of ethics of the State of Florida (Chapter 112, Part III, Florida Statutes and related advisory opinions) and Board and University regulations.

Nothing in this Article is intended to discourage an employee from engaging in outside activity in order to increase the employee's professional reputation, service to the community, or income, subject to the conditions stated herein.

19.2 Definitions.

(a) "Reportable Outside Activity" shall mean any compensated or uncompensated professional practice, consulting, teaching or research, which is not part of the employee's assigned duties and for which the University has provided no compensation.

(b) "Conflict of Interest" shall mean

(1) any conflict between the private interests of the employee and the public interests of the University, the Board of Trustees, or the State of Florida, including conflicts of interest specified under Florida Statutes;

(2) any activity which interferes with the full performance of the employee's professional or institutional responsibilities or obligations; or

(3) any outside teaching employment with any other educational institution during a period in which the employee has an appointment with Florida Atlantic University, except with written approval of the Dean.

19.3 Conflicts of Interest Prohibited. Conflicts of interest are prohibited and employees are responsible for resolving them by working with their supervisors and other University officials.

19.4 Reportable Outside Activity. An employee who proposes to engage in outside activity shall provide his or her supervisor a detailed written description of the proposed activity. The report shall include where applicable, the name of the employer or other recipient of services; the funding source; the location where such activity shall be performed; the nature and extent of the activity; and any intended use of University facilities, equipment, or services. A new report shall be submitted for outside activity previously reported at the beginning of each academic year for outside activity of a continuing nature and whenever there is a significant change in an activity (nature, extent, funding, etc.)... Any outside activity which falls under the provisions of this Article and in which the employee is currently engaged but has not previously reported, shall be reported within sixty (60) days of the execution of this Agreement and shall conform to the provisions of this Article."

19.5 Expedited Grievance Procedure. In the event the proposed outside activity is determined to constitute a conflict of interest, and the employee disagrees with that determination, the employee may file a grievance under the expedited grievance procedure contained in Article 20, Section 20.15.

19.6 Use of University Resources. An employee engaging in any outside activity shall not use the facilities, equipment, or services of the University in connection with such outside activity without prior approval of the President or representative. Approval for the use of University facilities, equipment, or services may be conditioned upon reimbursement for the use thereof.

19.7 No University Affiliation. As specified in Article 5.3(d), an employee engaging in outside activity shall indicate that he/she is not an institutional representative unless specifically authorized as such. The employee will take reasonable precautions to ensure that the outside employer or other recipient of services understands that the employee is engaging in such outside activity as a private citizen and not as an employee, agent, or spokesperson of the University.

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 169.

170. At all times material to the Second Amended Complaint, the term "uncompensated professional practice" in Section 19.2(a) was not defined by the Policy or by the Defendant University. The term has never been defined by the Defendant University.

ANSWER: Denied.

171. Attached as Exhibit "AF" is a copy of a document posted on FAU's website, entitled "FLORIDA ATLANTIC UNIVERSITY REPORT of OUTSIDE EMPLOYMENT or PROFESSIONAL ACTIVITY FORM ADDITIONAL EXPLANATION", authored by FAU Deputy Counsel Jack Ludin, FAU Office Administrator and Interim University Agency Clerk Suzanne Prescott, and FAU Assistant Vice President for Research Integrity Elisa Gaucher (hereinafter FAU's "November 2015 Explanation"). The document changed the Article 19.2(a) definition of "Outside Activity" as follows:

"Outside Activity" is defined as private practice, private consulting, additional teaching or research for someone or an entity that is not FAU, or other professional activity, compensated or uncompensated, which is not part of the faculty member's assigned duties and for which the University has provided no compensation.

ANSWER: Defendant University denies Plaintiff's characterization of the document; the document speaks for itself therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 171.

172. FAU's November 2015 Explanation also changed the Policy's 19.2(b) definition of "Conflict of Interest" as follows:

“Conflict of Interest” is defined as any conflict between the private interests of the employee and that employee’s obligations to FAU, the public interests of FAU, or the interests of the State of Florida. This includes conflicts of interest specified under Florida Statutes (Section 112.313), federal regulations, or University policy (see FAU’s Report of Outside Employment available online or from Human Resources). It also includes any activity that interferes with the full performance of the employee’s professional or institutional responsibilities or work obligations.

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 172.

173. FAU’s November 15 Explanation did not define “practice” or “uncompensated professional practice” or clarify the scope and application of the Policy with respect to uncompensated outside activities, including but not limited to uncompensated blogging and online speech.

ANSWER: Denied.

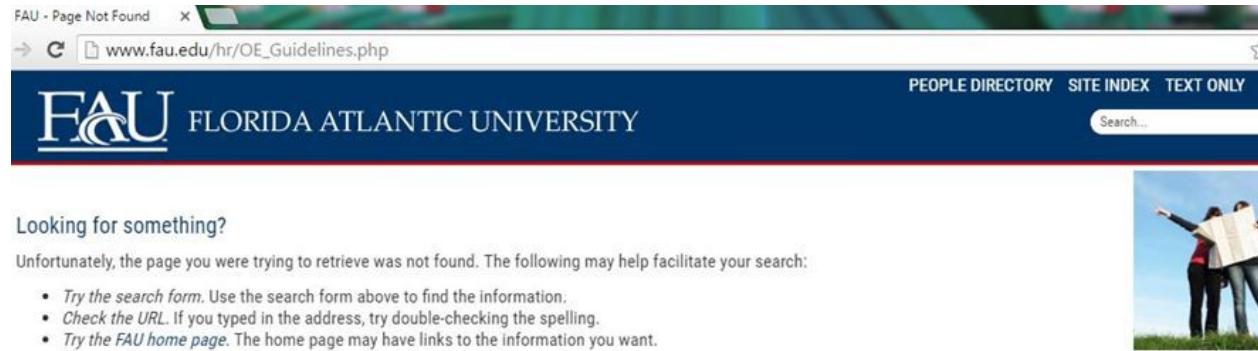
174. FAU’s “Outside Employment Guidelines” posted on the Defendant University’s website is attached as Exhibit “AG”. It states:

The department of Human Resources is responsible for maintaining a record of Outside Employment and Professional Activity of FAU employees. The “Report of Outside Employment or Professional Activity” form is to be completed by FAU employees who are or may become engaged in outside employment/professional activity. Any outside employment/professional activity must be reported. The obligation of the employee is to report outside employment annually in accordance with the Code of Ethics of the State of Florida, Chapter 112, Part III of Florida Statutes. The reporting period is July 1 through June 30 of each year. Those needing assistance in filling out this form can visit the following online guide: http://www.fau.edu/hr/OE_Guidelines.php

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the

extent further response is required, Defendant University denies the allegations in Paragraph 174.

175. The following is a screenshot of the “online guide” provided by the Defendant University to assist faculty with filling out the Form at all times material to the Second Amended Complaint:



ANSWER: Denied.

176. Attached as Exhibit “AH” is a copy of another document also made available on the Defendant University’s website entitled, “Florida Atlantic University Monitoring Plan for Potential Conflicts of Interest”. The nine (9) page form and agreement appears to be used by the Defendant University in connection with the Policy.

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 176.

177. Attached as Exhibit “E” is the “Conflict of Interest/Outside Activities” form (hereinafter sometimes the “Form”) used by the Defendant University at all times material to the Second Amended Complaint.

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 177.

178. The Form is entitled "REPORT of OUTSIDE EMPLOYMENT or PROFESSIONAL ACTIVITY for FAU EMPLOYEES". [See Exhibit "E"].

ANSWER: The document speaks for itself and therefore requires no response. However, to the extent a response is required, Defendant University denies the allegations in Paragraph 178.

179. The first inquiry on the Form asks faculty members for a "Description of the Employment Activity". [See Exhibit "E"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 179.

180. The terms "employment activity", "professional activity" and "uncompensated professional practice" are not defined by the Defendant University anywhere. [See Exhibit "E"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 180.

181. In March of 2016, the Defendant University distributed to FAU faculty a memorandum attempting to clarify the Policy (hereinafter “FAU’s March 2016 Memo”). [See Exhibit “AJ”].

ANSWER: Denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 181.

182. FAU’s March 2016 Memo states “Uncompensated activities and financial interests (including financial interests of an employee’s spouse/ immediate family member) *may* also need to be reported” if they fall within twelve (12) listed categories outlined in the memorandum (emphasis added). One such category is as follows: “l) Outside activities, both compensated and uncompensated, that require a time commitment that could interfere with obligations related to employment at the University.” No listed category included uncompensated blogging or any other form of uncompensated faculty speech or expression online, and thus fails to put anyone on notice that as a condition of employment, personal blogging must be reported to the Defendant University for evaluation, monitoring, approval or restriction prior to engagement.

ANSWER: Denied. The allegations in Paragraph 182 are further denied as to Plaintiff’s characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 182.

183. FAU’s March 2016 Memo, much like Article 19 and all other communications sent to FAU faculty members about the Policy, uses vague, overbroad, inconsistent and

conflicting language, uses non-synonymous terms interchangeably, and circular definitions, for example, using a vague term like “outside activities” to define “outside activities”.

ANSWER: Denied.

184. The Policy is on its face unconstitutionally overbroad and vague, does not serve a significant governmental interest, is not narrowly drawn, and impermissibly restricts faculty expression and freedom of speech.

ANSWER: Denied.

185. There is no set of circumstances that exist under which the Defendant University’s “Conflict of Interest/Outside Activities” Policy would be valid.

ANSWER: Denied.

186. The Policy is so vague and overbroad, persons of common intelligence must necessarily guess at its meaning and differ as to its application.

ANSWER: Denied.

187. As a direct result of the Policy, faculty at the Defendant University are deprived of the right to freedom of speech and expression under the First and Fourteenth Amendments to the Constitution, one of whom was Professor Tracy.

ANSWER: Denied.

188. The Policy deters or chills persons of ordinary firmness from engaging in constitutionally protected speech, and will continue to do so in the future.

ANSWER: Denied.

189. Without intervention from this Court, employees and faculty at Florida Atlantic University will be deterred or chilled from exercising their constitutional rights, including but not limited to personal blogging and other forms of constitutionally protected speech and expression.

ANSWER: Denied.

190. As a legal consequence of the Defendant University's facially unconstitutional "Conflict of Interest/Outside Activities" Policy, Professor Tracy is entitled to declaratory relief invalidating the Policy as facially unconstitutional, and injunctive relief, including reinstatement by the Defendant University and any other equitable relief that is just and proper and permitted by law, and the reasonable costs of this lawsuit, including but not limited to reasonable attorneys' fees.

ANSWER: Denied.

COUNT IV – 42. U.S.C. § 1983
"As-Applied" Violation of Professor Tracy's Rights to Free Speech
Under the First and Fourteenth Amendments
Against Defendant University Only

191. Professor Tracy repeats and realleges Paragraphs 1 – 121; and 169 – 188 of this Second Amended Complaint as if fully set forth herein.

ANSWER: Defendant University repeats and restates the answers to Paragraphs 1-121 and 169-188 of this Answer as if fully set forth herein.

192. The Defendant University's "Conflict of Interest/Outside Activities" Policy is unconstitutional as it was applied to Professor Tracy's personal blogging and constitutionally protected speech and expression.

ANSWER: Denied.

193. The Policy is so vague and overbroad, persons of common intelligence must necessarily guess at its meaning and differ as to its application. Even senior FAU officials and representatives tasked with enforcement of the Policy, cannot understand its scope and application. [See Exhibits "AM", "AN" and "AO"].

ANSWER: Denied.

194. On September 4, 2015 a FAU Senate Faculty meeting was held at the Defendant University, where Defendants Kelly, Alperin and Zoeller were in attendance and participated. During the recorded meeting, many of the Defendant University's faculty members complained about the Policy.

ANSWER: Denied, except Defendant University admits a faculty senate meeting occurred on or about September 4, 2015 and Defendants Kelly, Alperin, and Zoeller attended some or all of the meeting.

195. At the September 4, 2015, FAU Faculty Senator and Professor of Constitutional Law, Timothy Lenz, vividly described the "fear and uncertainty" shared by other FAU faculty members. His initial remarks were met with applause and support by many other faculty members, and were as follows:

"Please call off your dogs... The Administration has been sending faculty members who are engaged in outside activity nasty letters, letters of discipline or letters that threaten faculty members who are engaged in outside activity with discipline, and this should stop until the Administration gets its act together...we're supposed to increase outside activity, increase faculty engagement with the community...but the very actions that I've been describing are discouraging this activity. There's a lot of fear and uncertainty, and if you read the language in our collective bargaining [agreement] about outside activity, it says that, like the collective bargaining agreements at other universities in the state, that we have to report all professional-related activity paid or unpaid if it's not part of our assignments. No one knows what that means. The deans don't know what this means. Faculty supervisors don't know what this means. And until there's some clarity about what outside activity has to be reported I would recommend, as a good piece of advice, that any new faculty member who asks their supervisor or their peer about what kind of outside activity they should engage in, I would say, do nothing, because any outside activity exposes you to risk, and that risk includes discipline up to dismissal from the University. This is serious, and no one knows what outside activity the University is targeting. There has been a change in the language in the collective bargaining agreement.... For you to come to us asking for more faculty engagement and outside activity, while some other arm of the University is sending these nasty letters, that's a problem. And it's a problem that eventually will probably have to be addressed with a Freedom of Information Act request because there's a great deal of suspicion that you can say, or write, or

do something, but **if you say, write, or do something that the Administration disagrees with you're going to get one of these nasty letters put in your personnel file and that's untenable....**" (emphasis added)

ANSWER: Denied.

196. Another FAU Constitutional Law Professor, Marshall DeRosa, agreed with Professor Lenz, proclaiming:

"I've chaired the Academic Freedom and Due Process Committee, this going on my third year, and this is a very serious matter. I have a couple of questions, one of which is by what authority is the Vice President for Public Affairs writing letters to faculty members? ...I agree with the Provost, absolutely, that we issue a disclaimer when not speaking on behalf of the University. I mean that's almost a no-brainer. **But we have to get prior approval? I consider this a form of prior restraint of academic freedom for academics engaged in the community without getting a permission note from the Administration.** I have a colleague that was taken into the woodshed because he wrote an op-ed letter to the local newspaper. This is highly inappropriate. I don't think we need a committee for community engagement when it comes to academic freedom. **To be quite frank I don't care what the collective bargaining agreement says. We have certain rights as academics to engage in the community, to speak our minds, to engage and participate in the marketplace of ideas...we need to have a cease and desist order for this Vice President, who is not an academic, to stop writing letters to professors. I don't want to get a permission note before I write something on the internet, or go to a meeting someplace that's unrelated to the University. This is absurd. It's insane.... Would somebody please explain to me, perhaps the President could, why this Vice President is writing letters to academics, to professors, and more or less chastising them for engaging in their First Amendment rights?"**

ANSWER: Denied.

197. Other faculty members at the Defendant University, including Faculty Senate President and FAU Trustee Christopher Beetle (hereinafter "FAU Trustee Beetle"), went on record during the September 4, 2015 FAU Senate Faculty meeting.

ANSWER: Denied.

198. They agreed with Professor Lenz and Professor DeRosa and other concerned faculty. FAU Trustee Beetle stated, "**Senator [Lenz], I share your opinion about this.... I'm**

still trying to figure out exactly what the policy is at the moment, and I'm not sure that I understand....”

ANSWER: Denied.

199. Despite his obvious confusion, however, FAU Trustee Beetle denied multiple requests by various FAU Faculty Senators to refer the matter to the FAU Faculty Senate's Academic Freedom and Due Process Committee for formal investigation or redress.

ANSWER: Denied.

200. Attached as Exhibit “AE” is a copy of the September 4, 2015, FAU Faculty Senate Meeting Minutes and Attendance Record. The only reference to the lengthy discussion and concerns expressed by the Defendant University's faculty members is as follows:

Dr. Beetle opens up the floor for questions. A concern is brought up about faculty engaging in outside community activities and being reprimanded for such activity via letter or email. A discussion follows regarding the faculty's ability to engage in the community and violation of Academic Freedom. Dr. Beetle brings the discussion to a close, suggesting that there is more conversation to be had. He requests that the discussion be tabled at the moment and approached at a later meeting.

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 200.

201. In response to the concerns expressed about the Policy being used improperly to threaten discipline against faculty members, and requests for a formal review of the Defendant University's application of the Policy, Defendant Alperin acknowledged and agreed there needed to be clarity in the Policy, and admitted FAU officials had been trying to change the Policy and Form for years.

ANSWER: Denied.

202. Notwithstanding, in response to the expressed fear and uncertainty and acknowledged confusion about the meaning, scope, and application of the Policy, FAU Provost Gary Perry denied that there was any problem with the Policy and instructed FAU faculty to read and follow the Policy.

ANSWER: Denied.

203. Despite various complaints at the September 4, 2015 Faculty Senate Meeting that the Policy violated clearly established constitutional law and was being used by University officials to unlawfully infringe upon constitutional rights of FAU faculty members, the complaints were ignored by Defendants Kelly, Alperin, and other officials at the Defendant University.

ANSWER: Denied.

204. Despite repeated requests at the September 4, 2015 Faculty Senate Meeting that the Defendant University officials clarify the Policy and stop using the Policy as a prior restraint on constitutionally protected speech and expression, these requests were denied.

ANSWER: Denied.

205. Prior to directives made to Professor Tracy to submit his personal blogging on the Form pursuant to the Policy, the Policy and Form had never been used by the Defendant University to require FAU faculty members, including Professor Tracy, to submit uncompensated personal blogging and constitutionally protected online speech and expression for administrative evaluation, monitoring or restriction.

ANSWER: Denied.

206. Professor Tracy and other FAU faculty members repeatedly expressed confusion, uncertainty and fear about the meaning, scope, and application of the Policy to the Defendant

University's senior administrative officials, including but not limited to Defendants Kelly, Alperin and Coltman.

ANSWER: Denied.

207. Although officials at the Defendant University repeatedly acknowledged faculty and administrative confusion, uncertainty and fear about the meaning, scope, and application of the Policy, these well-founded concerns were disregarded.

ANSWER: Denied.

208. At all times material to this Second Amended Complaint, Professor Tracy attempted to, but could not understand the Policy. Professor Tracy also repeatedly requested clarification of the Policy from the Defendant University, as to its meaning, scope, and application to his personal blogging and constitutionally protected speech and expression online.

ANSWER: Denied.

209. At all times material to this Second Amended Complaint, both faculty and administrative officials tasked with enforcement of the Policy could not understand it, and needed an opinion from FAUs' legal department to clarify the Policy's meaning, scope, and application. [See Exhibits "AM", "AN" and "AO"].

ANSWER: Denied. Defendant University further denies Plaintiff's characterization of the documents; the documents speak for themselves.

210. Accordingly, the Policy causes persons of common intelligence to necessarily guess as to its meaning and differ to its application.

ANSWER: Denied.

211. The Policy, as applied to Professor Tracy's constitutionally protected speech, directly resulted in substantial and irreparable harm to Professor Tracy, including lost income,

reputational disparagement, the loss of a tenured appointment at Florida Atlantic University and out of pocket expenses, including but not limited to attorneys' fees and costs.

ANSWER: Denied.

212. To prevent further violation of constitutional rights of the Defendant University's faculty members, including Professor Tracy, it is appropriate and proper that this Court issue an Order declaring that the Defendant University's "Conflict of Interest/Outside Activities" Policy is unconstitutional as applied to Professor Tracy's personal blogging and constitutionally protected speech and expression.

ANSWER: Denied.

213. As a legal consequence of FAU's "Conflict of Interest/Outside Activities" Policy, as applied to constitutionally protected speech and expression, in violation of Professor Tracy's First and Fourteenth Amendment rights, which is irreparable injury *per se*, Professor Tracy is entitled to declaratory relief declaring that the Policy is unconstitutional as applied to Professor Tracy's personal blogging and other forms of constitutionally protected speech; injunctive relief, including reinstatement by the Defendant University, any other equitable relief that is just and proper and permitted by law, and the reasonable costs of this lawsuit, including but not limited to reasonable attorneys' fees.

ANSWER: Denied.

Count V – 28 U.S.C. §§ 2201-2202
Declaratory Judgment & Injunction
Against Defendant University Only

214. Professor Tracy repeats and realleges Paragraphs 1 – 121; 169 – 190; and 192 – 213 of this Second Amended Complaint as if fully set forth herein.

ANSWER: Defendant University repeats and restates the answers to Paragraphs 1-121, 169-190, and 192-213 of this Answer as if fully set forth herein.

215. An actual controversy has arisen and now exists between Professor Tracy, other similarly situated faculty members at the Defendant University, and the Defendant University concerning the rights of Professor Tracy and other similarly situated faculty members at FAU, under the United States Constitution.

ANSWER: Denied.

216. Professor Tracy desires a judicial determination of his rights and the rights of other similarly situated tenured faculty members to speak without being unlawfully retaliated against and disciplined for exercising constitutional rights.

ANSWER: Denied.

217. To prevent further violation of constitutional rights of the Defendant University's faculty members, including Professor Tracy, it is appropriate and proper that this Court issue a declaratory judgment declaring that FAU's "Conflict of Interest/Outside Activities" Policy is unconstitutionally vague, overbroad, and not narrowly tailored to serve a substantial government interest.

ANSWER: Denied.

218. To prevent further violation of constitutional rights of tenured FAU faculty members, including Professor Tracy, it is appropriate and proper that this Court issue a declaratory judgment invalidating the Policy as facially unconstitutional, and/or declaring that the Policy cannot be used by FAU as a prior restraint, or to discipline tenured faculty members, like Professor Tracy, for personal blogging and other forms of constitutionally protected speech and expression.

ANSWER: Denied.

219. To prevent further violation of constitutional rights of tenured FAU faculty members, including Professor Tracy, it is appropriate and proper that this Court issue an order enjoining the Defendant University and its officers, agents, servants, employees, representatives, and all other persons, firms, or corporations in active concert or participation with them, from violating Professor Tracy's constitutional rights.

ANSWER: Denied.

220. To prevent further violation of constitutional rights of tenured FAU faculty members, including Professor Tracy, it is appropriate and proper that this Court issue an order enjoining the Defendant University and its officers, agents, servants, employees, representatives, and all other persons, firms, or corporations in active concert or participation with them, from requiring tenured faculty members to report uncompensated personal blogging and other forms of constitutionally protected online speech for administrative approval or restriction.

ANSWER: Denied.

221. This Court is authorized, pursuant to 28 U.S.C. §§ 2201-2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure, to award all requested declaratory and injunctive relief against the Defendant University, including but not limited to Professor Tracy's reinstatement by the Defendant University.

ANSWER: Denied, except Defendant University admits that 28 U.S.C. §§ 2201-2202 generally authorize the Court to enter declaratory and injunctive relief.

Count VI – State Law
Breach of Contract
Against Defendant University Only

222. Professor Tracy repeats and realleges Paragraphs 1 – 121; 123 – 135; 139 – 165; and 171 and 172 of this Second Amended Complaint as if fully set forth herein.

ANSWER: Defendant University repeats and restates the answers to Paragraphs 1-121, 123-135, 139-165, and 171-172 of this Answer as if fully set forth herein.

223. At all times material to this Second Amended Complaint, there was a valid and enforceable contract between Professor Tracy and the Defendant University. [See Exhibit "C"].

ANSWER: This paragraph calls for a legal conclusion and therefore no response is required. However, to the extent a response is required, Defendant University denies the allegations in Paragraph 223.

224. Article 5 of the BOT/UFF Agreement sets forth various duties and obligations owed by the Defendant University to Professor Tracy, including but not limited to, the duty to safeguard and protect the "principal elements of academic freedom", which included Professor Tracy's freedom to "exercise constitutional rights without institutional censorship or discipline." [See Exhibit "C"].

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 224.

225. Article 1.2(b) of the BOT/UFF Agreement states, "No new, existing or amended Board of University regulation, policy, or resolution shall apply to employees if it conflicts with the express term of the Agreement."

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 225.

226. Article 1.2(c) provides that the Defendant University, by and through the Board, “shall provide to the UFF advance copy of any proposed regulation or policy changing a term or condition of employment contained in this Agreement... The advance copy of a policy shall be provided to the UFF, at least two (2) weeks in advance of its effective date...”

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 226.

227. Article 16.5 of the BOT/UFF Agreement provides that a tenured appointment may be terminated only for just cause.

ANSWER: Denied as to Plaintiff's characterization of the document; the document speaks for itself and therefore no further response is required. However, to the extent further response is required, Defendant University denies the allegations in Paragraph 227.

228. The Defendant University breached the FAU BOT/UFF Agreement, including but not limited to, Sections 5.3(c) and (d), by attempting to censor Professor Tracy, and prevent him from exercising his constitutional rights, including but not limited to the exercise of his freedom of speech online and on his personal blog.

ANSWER: Denied.

229. In addition to violating Professor Tracy's constitutional rights, the Defendant University breached the FAU BOT/UFF Agreement by changing the Defendant University's “Conflict of Interest/Outside Activities” Policy without providing proper advance notice to FAU's faculty as required by the Agreement.

ANSWER: Denied.

230. Furthermore, the Defendant University breached the FAU BOT/UFF Agreement by disciplining and terminating Professor Tracy in retaliation for his constitutionally protected personal blogging.

ANSWER: Denied.

231. The Defendant University also breached the FAU BOT/UFF Agreement by wrongfully disciplining and terminating Professor Tracy's tenured employment at FAU without just cause.

ANSWER: Denied.

232. As a result of the breach of the FAU BOT/UFF Agreement by the Defendant University, Professor Tracy has suffered damages, including but not limited to monetary damages, lost income and benefits, the loss of a tenured position at the Florida Atlantic University, reputational damage, in addition to attorneys' fees and costs.

ANSWER: Denied.

As to any allegation in paragraphs 1-232 above, if it is not specifically referred and responded to above, it is denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's claim fails to state a cause of action upon which relief can be granted.
2. Plaintiff's claim against the Defendant University is barred by sovereign immunity and the Eleventh Amendment to the U.S. Constitution.
3. Plaintiff's claim against the individual FAU Defendants is barred by the doctrine of qualified immunity.

4. Plaintiff's claim is barred, in whole or in part, because he failed to exhaust administrative remedies under the applicable collective bargaining agreement.

5. Plaintiff's claims fail because any actions or decisions in connection with Plaintiff's employment were based on legitimate, non-retaliatory reasons, and would have been taken even in the absence of any alleged protected speech. Plaintiff was repeatedly warned that his failure to follow policy would result in disciplinary action, including possible termination. Plaintiff flaunted Defendant University's policy by refusing to comply. Plaintiff's belligerent, rebellious conduct was deliberate and intentional. While Plaintiff appeared to embrace his nonconformist behavior thinking it would publicize his interests in the light he deemed helpful, the Defendant University's policy and intent were unrelated to such interests and were intended to provide Defendant University with necessary information for various legitimate and proper reasons. While Defendant University embraces and endorses free-speech, Defendant University maintains policies applicable to all employees (not just to Plaintiff), which do not inhibit free speech and are designed to ensure that the Defendant University is able to address and anticipate in a reasonable manner potential conflicting circumstances which include, among other things, business and personal interests outside of the Defendant University that create conflicts of interest or commitment on the part of Defendant University's personnel.

6. Plaintiff's claims are barred or otherwise fail because at all relevant times the FAU Defendants (i) published, disseminated, and enforced an internal and neutral policy requiring disclosure of outside activities and conflicts of interest, (ii) Plaintiff unreasonably failed to follow the FAU Defendants' policy, and (iii) Plaintiff unreasonably failed to take advantage of the due process rights afforded to him by the FAU Defendants or to otherwise avoid harm.

7. Plaintiff's claims fail or are limited to the extent Plaintiff has failed in any respect to mitigate or minimize his alleged damages. Any earnings by Plaintiff and any amounts earnable with reasonable diligence by Plaintiff will reduce damages otherwise allowable to Plaintiff.

8. Plaintiff's claims are barred or are limited to the extent Plaintiff's damages resulted from his own actions.

9. Plaintiff's conspiracy claim fails against the individual FAU Defendants on the grounds of the intra-corporate conspiracy doctrine.

10. Plaintiff's claims for punitive damages are barred by sovereign immunity and the Eleventh Amendment to the U.S. Constitution.

11. Plaintiff's claims for punitive damages are barred or limited because the FAU Defendants did not have knowledge that they may be acting in violation of federal or state law (which conduct the FAU Defendants deny).

12. Plaintiff's claims for punitive damages are barred or limited because any alleged retaliation (which the FAU Defendants deny) was contrary to the FAU Defendants' good faith efforts to comply with the requirements of applicable law.

13. Plaintiff's claims for punitive damages are barred or limited because the FAU Defendants did not act with malice or reckless indifference to Plaintiff's protected rights. Further, the FAU Defendants did not act in a manner that was willful, wanton, or intentional with regard to Plaintiff's protected rights.

14. Plaintiff cannot recover punitive damages because a managing agent of the Defendant University did not act with willful, reckless indifferences, or malicious intent with regard to the Plaintiff's protected rights.

15. Plaintiff's claims are barred by the doctrine of estoppel and waiver.

The FAU Defendants reserve the right to amend any current affirmative defenses or add additional affirmative defenses that may become known during the course of discovery.

WHEREFORE, the FAU Defendants respectfully request that judgment be entered in its favor against Plaintiff, and that it be awarded its costs incurred in this action, as well as all other relief this Court deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by email on this 28th day of February, 2017, on all counsel or parties of record on the attached Service List.

/s/ Holly L. Griffin
Holly L. Griffin

SERVICE LIST

**Tracy v. Florida Atlantic University Board of Trustees, *et al.*
Case No. 16-cv-80655-ROSENBERG/HOPKINS**

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