

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JAMES TRACY,)
)
 Plaintiff,)) Case No. 9:16-cv-80655-RLR-JMH
)
 v.)
)
 FLORIDA ATLANTIC UNIVERSITY)) **PLAINTIFF'S MOTION TO COMPEL**
 BOARD OF TRUSTEES, a/k/a FLORIDA)) **DOCUMENTS AND RESPONSES TO**
 ATLANTIC UNIVERSITY, et al.)) **PLAINTIFF'S THIRD REQUEST FOR**
)) **PRODUCTION AND FIRST SET OF**
)) **INTERROGATORIES DIRECTED TO**
)) **DEFENDANT FAU**
 Defendants.)

Plaintiff JAMES TRACY, by and through the undersigned, hereby respectfully submits this Motion to Compel Documents and Responses to Plaintiff's Third Request for Production and First Set of Interrogatories Directed to Defendant Florida Atlantic University (hereinafter "Defendant FAU"). In support of his motion, Plaintiff states as follows:

1. This Motion is occasioned by the Defendant FAU's wholesale failure to provide meaningful responses to interrogatories, apart from sparse and woefully incomplete and evasive interrogatory responses and boilerplate, non-applicable objections. In sum, Defendant has failed to answer, or provide meaningful answers, to thirteen (13) of twenty-three (23) interrogatories propounded by Plaintiff to the Defendant FAU. Defendant FAU has also objected and refused to produce documents responsive to eleven (11) of Plaintiff's fourteen (14) requests for production. Plaintiff has diligently attempted to resolve these issues without Court intervention, having met and conferred with Defendant FAU's counsel both by telephone and in writing.

2. Attached as Exhibits "A" and "B" are copies of Plaintiff's First Set of Interrogatories Directed to Defendant FAU and Plaintiff's Third Request for Production Directed to Defendant FAU, served on April 6 and 7, 2017. The interrogatories at issue are Interrogatories

Nos. 1, 3, 6, 8, 10, 11, 13, 14, 15, 17, 21, 22 and 23. The requests for production at issue are Nos. 1, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14.

3. Attached as Exhibits "C", and "D" are the deficient discovery responses of the Defendant FAU, received on May 16, 2017.

4. During an initial meet and confer on Monday June 5, 2017, Plaintiff's counsel spoke with counsel for Defendant FAU at length about the deficiencies. Plaintiff's counsel also outlined the deficiencies in a letter sent to Defendant's counsel on June 9, 2017, in an effort to resolve the outstanding discovery dispute without judicial intervention. See Exhibit "E".

5. As an example of Defendant FAU's improper objections and complete refusal to respond to Plaintiff's requests, Interrogatory No. 8 asks Defendant FAU to identify any and all blogs, websites and/or social media of University personnel, including but not limited to officers, employees, agents and faculty members, which have been disclosed, monitored or subjected to the University's "Outside Activities/Conflict of Interest" Policy since the inception of the Policy. Defendant FAU completely refused to answer this interrogatory, and sets forth no legitimate grounds to withhold the relevant and material information sought.

6. Another example of Defendant FAU's stonewalling of material evidence is Defendant's refusal to respond to Interrogatory 17, which asks the Defendant University to set forth any raises or bonuses received by Defendant FAU's officers, employees, agents and/or representatives since Plaintiff's termination. Defendant objects and refuses to provide an answer to this request, claiming it is overbroad and not proportional to the needs of the case. However, the testimony obtained thus far in this case has established Plaintiff would have received a raise in 2016 had he not been terminated, which is certainly relevant to Plaintiff's damages claim. Without this information, it will be difficult, if not impossible for Plaintiff, or Plaintiff's

expert(s) to calculate damages. Thus, the withholding of this evidence by Defendant FAU may necessitate an extension of the expert disclosure and expert report deadline, which is currently June 30, 2016. Moreover, any raises or bonuses received by the FAU Defendants Kelly, Alperin and Coltman, and any other employees involved in Plaintiff's discipline following Plaintiff's termination is also relevant to motive and intent with respect to the discipline and termination at issue in this case.

7. Defendant also refuses to respond to several requests concerning Defendant FAU's "Outside Activities/Conflict of Interest" Policy (hereinafter "the Policy"), the primary FAU policy at issue in this case. For example, Interrogatory 23, which asks the Defendant University to identify the date when the Policy first went into effect, the individual(s) who drafted and/or adopted the Policy, and any and all documents, including written notes, or memoranda relating to the intent, creation and/or implementation of the Policy. Defendant FAU again refuses to answer this request, inappropriately claiming the request is overbroad or seeks information that is irrelevant and not proportional to the needs of the case. Such objections are clearly improper, as this case involves both facial and as applied challenges to the Policy, thus when the Policy went into effect and was applied at the Defendant University is certainly relevant, in addition to the identities of any individuals who drafted the policy and any and all documents concerning the intent, creation and/or implementation of the Policy.

8. Another example of improper stonewalling by the Defendant FAU, is Defendant FAU's response to Request to Produce No. 5, which seeks all documents, ESI, communications, tangible things and other records relating to any instructions given to FAU personnel concerning the submission of online activities, including but not limited to Facebook, Twitter, blogging and other forms of social media activity, pursuant to the University's "Outside Activities/Conflict of Interest" Policy. Defendant FAU again refuses to respond to this request, or produce any responsive

documents whatsoever, objecting on the grounds of relevance, overbroad and not proportional to the needs of this case. This request is narrowly tailored to only documents concerning instructions given to FAU personnel relating to the submission of online activities like blogging, pursuant to the Policy that was used to discipline and terminate Plaintiff in this case. Thus, the requested documents are clearly relevant to Plaintiff's First Amendment claims, including retaliation, and Defendant FAU's defense alleging Plaintiff was treated no differently than any other employee at the Defendant University. If Plaintiff was the only faculty member who was given instructions on submitting his online activities pursuant to the University's "Outside Activities/Conflict of Interest" Policy, then Defendant FAU should amend its response and state so. If other FAU employees have been required to report online activities, like the Plaintiff was in this case, FAU Defendant must produce the documents concerning such instructions and online activities which were required to be reported, so Plaintiff can determine if in fact the Policy was applied evenly, as claimed by the Defendant FAU.

9. Request to Produce 10 seeks Plaintiff's FAU personnel file, in its entirety, to date. Defendant FAU initially represented that Plaintiff's personnel file was only 100 documents, then later claimed the personnel file was only 240 total documents. This clearly contradicts Defendant's records from 2016 which indicate Plaintiff's personnel file, as of April 2016, was approximately 953 documents in addition to 34 "double sided" documents, including approximately 700 documents produced to various media outlets. See Exhibit "F". Accordingly, Defendant FAU should be ordered to produce Plaintiff's entire personnel file, as requested.

10. Plaintiff's counsel has also repeatedly requested a privilege log setting forth the basis for the Defendant FAU's claims of privilege. To date, Defendant has produced a log identifying only one (1) document that has been withheld. It is believed, based on representations made by Defendant's counsel during telephone conversations, and Defendant's objections (i.e.

Defendant's objection to Request to Produce No. 14) there are other documents and communications which are also being withheld, but have not been logged as required.

11. A more detailed discussion beyond the matters set forth in Plaintiff's counsel's letter detailing deficiencies will be provided to the Court, at a hearing on the Motion, if necessary.

12. Given the intolerable failure of the Defendant FAU to provide meaningful discovery responses and produce documents and material evidence in this case, Plaintiff hereby seeks judicial intervention to resolve this matter.

13. This Motion has been made in good faith and not for purpose of delay and no party will be prejudiced by the relief sought.

WHEREFORE, Plaintiff requests that this Court enter an order overruling Defendant FAU's improper objections and order FAU Defendant to produce documents and respond to Plaintiff's discovery requests accordingly, and award all other relief as is necessary and proper, including awarding Plaintiff's attorney's fees incurred in making this Motion.

LOCAL RULE 7.1 (A)(3) CERTIFICATION

Pursuant to Local Rule 7.1(A)(3), undersigned counsel certifies that his office has conferred with Defendant FAU's counsel in a good faith effort to resolve the issues raised in this Motion and has been unable to do so. Counsel for Plaintiff has made multiple attempts to further confer and discuss the issues pertaining to Defendant's objections and responses to discovery requests. Defendant FAU has, to date, refused to respond to or cure the deficiencies in the Defendant FAU's discovery responses at issue.

Dated: June 14, 2017

/s/ Louis Leo IV.
Louis Leo IV, Esq

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 14th day of June, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF to be served this day per the attached Service List.

/s/ Louis Leo IV.
Louis Leo IV, Esq.

SERVICE LIST

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