**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**Case No. 16-cv-80655-ROSENBERG/HOPKINS**

JAMES TRACY,

Plaintiff,

v.

FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY; et al.

Defendants.
_____ /

**DEFENDANT UNIVERSITY'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS DIRECTED TO FLORIDA ATLANTIC UNIVERSITY**

Defendant, FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY ("Defendant University") responds to the Motion to Compel Answers to Plaintiff's Request for Admissions Directed to Florida Atlantic University filed by the Plaintiff on August 1, 2017 as follows:

Plaintiff's requests are worded in such a manner that Defendant University cannot either admit or deny the statements because each request contains material terms which are intentionally vague and also many contain intentionally misleading and false assumptions. Rather than simply deny the requests as is its right, Defendant University responded as best it could despite flawed questions.

For example, for requests 3-50, the requests ask whether an activity was reported "pursuant to the Conflict of Interest/Outside Activity Policy." However, the request necessarily assumes that the activity qualifies as reportable outside activity under the Conflict of Interest/Outside Activity Policy that is subject to reporting. Similarly, with Plaintiff's request for

disciplinary action for the "failure to report," it necessarily assumes that the activity was a reportable outside activity under the Conflict of Interest/Outside Activity Policy. Further, and most importantly, Plaintiff's use the phrase "failure" throughout their requests in a manner that is vague and potentially misleading. There is an obvious and material distinction between a failure which is the product of unknowing or otherwise "innocent" mistake and an intentional omission or refusal to submit. The requests intentionally suggest that even an accident or innocent mistake would be subject to disciplinary action upon a first offense. These are all assumptions that underlie the requests and which an "admit" or "deny" cannot adequately and truthfully address. *See Lewis v. Michaels Stores, Inc.*, 2007 WL 2021833 (M.D. Fla. July 12, 2007)("[A] party demanding admissions is required to set forth its requests simply [and] directly, not vaguely or ambiguously [.] Statements that are vague, or statements susceptible of more than one interpretation, defeat the goals of Rule 36 and are properly objectionable.")(internal citations omitted). Plaintiff's case is destined for summary judgment because there is no other employee who refused to certify compliance or fill out the disclosure forms. Plaintiff deserved to be fired for blatant and repeated insubordination and he was. So, Plaintiff is desperately seeking to create a situation that they can suggest is similarly situated, but they cannot.

Requests 51-57 suffer from the same false assumption and lack of definition for the term "failure." Plaintiff is making a false equivalence which is misleading and is not adequately based in fact. The request also necessarily includes false assumptions regarding Plaintiff's termination. By starting a request with "prior to Plaintiff's termination," the request necessarily assumes that Plaintiff's termination was for the same reasons as identified in the remainder of the request. Such assumption makes a simple "admit" or "deny" misleading and will create confusion.

With respect to requests 58 and 59, there are thousands of employees at present and Plaintiff's requests are unlimited in time. Defendant University cannot reasonable know every term used by faculty members to describe the Report of Outside Employment or Professional Activity forms.

With respect to requests 64, 65, 67, and 68, Plaintiff's suggestion that Defendant University "is well aware of several FAU faculty members who maintain blogs and webpages" does not address the speculation that would be required. The individuals deposed in this case denied knowledge of other blogs reported to Defendant University.

With respect to requests 74, 85, and 100, the requests would require interview of employees responsible for disciplinary action—e.g. department chairs and deans—for an unlimited period of time to determine whether any other faculty member was ever disciplined. Additionally, the request that Defendant University to admit that "not all FAU faculty members submit forms for online actions, including blogging, Facebook, Twitter, and other forms of social media" would again require review of all faculty members' files and interviews to determine which faculty members maintain such social media accounts. Request 100 makes the same false assumption that the article identified would be a reportable outside activity and that a failure to report would warrant disciplinary action and is therefore improper.

Finally, the objections to requests 82 and 83 are valid given the broad nature of the requests and the lack of factual predicate to respond.

Plaintiff cites case law for the proposition that requests for admissions are intended to expedite trial. However, as discussed in the objections and herein, Plaintiff's requests are based on false assumptions and, instead of expediting trial, would prove only as a hindrance as they are worded in a manner that is intended to confuse. The request Plaintiff's counsel should be asking

is whether any other faculty member refused to report a reportable activity pursuant to the Conflict of Interest/Outside Activity Policy, as was the case with Plaintiff, despite many requests by Defendant University, his union, and his counsel. Despite their efforts to dress this up as a First Amendment case, it is not. Defendant University's employee refused his supervisor's repeated requests and lost his job. Rather than pursue those issues as required by the Collective Bargaining Agreement, Plaintiff is on his soapbox in federal Court. Accordingly, Defendant University requests this Court deny Plaintiff's Motion to Compel.

Defendant University objects to the short time frame for response to Plaintiff's motion and requests additional time for further briefing. Given other commitments for this and other litigation, twenty-four hours was insufficient time to adequately brief this response.

WHEREFORE, Defendant, Florida Atlantic University Board of Trustees a/k/a Florida Atlantic University, respectfully requests that the Court deny Plaintiff's Motion to Compel Answers to Plaintiff's Requests for Admissions Directed to Florida Atlantic University, and to grant such other relief as the Court deems just and appropriate.

Respectfully submitted,

*/s/ Holly L. Griffin*

G. Joseph Curley
Florida Bar No. 571873
Email: gcurley@gunster.com
Keith E. Sonderling
Florida Bar No. 57386
Email: ksonderling@gunster.com
Holly L. Griffin, Esq.
Florida Bar No. 93213
Email: hgriffin@gunster.com
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
Telephone: 561-655-1980
Facsimile: 561-655-5677
*Attorneys for FAU Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 3, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

*/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**

Louis Leo IV, Esq.
Email: louis@floridacivilrights.org
Florida Civil Rights Coalition, P.L.L.C.
4171 W. Hillsboro Blvd., Suite 9
Coconut Creek, FL 33073
Telephone: 954-478-4226
Facsimile: 954-239-7771
*Attorney for Plaintiff, James Tracy*

Joel Medgebow, Esq.
Email: joel@medgebowlaw.com
Medgebow Law, P.A.
4171 W. Hillsboro Blvd., Suite 9
Coconut Creek, FL 33073
Telephone: 954-478-4226
Facsimile: 954-239-7771
*Attorney for Plaintiff, James Tracy*

Steven N. Blickensderfer, Esq.
Email: sblickensderfer@carltonfields.com
Richard J. Ovelmen, Esq.
Email: rovelmen@carltonfields.com
Carlton Fields Jorden Burt, P.A.
100 SE Second Street, Suite 4200
Miami, Florida 33131
Telephone: (305) 530-0050
Facsimile: (305) 530-0055
*Co-Counsel for Plaintiff, James Tracy*

Robert F. McKee, Esq.
Email: yborlaw@gmail.com
1718 E. 7th Avenue, Suite 301
Tampa, FL 33605
Telephone: 813-248-6400
Facsimile: 813-248-4020
*Attorney for Florida Education Association, United Faculty of Florida, Robert Zoeller, Jr., and Michael Moats*

G. Joseph Curley, Esq.
Florida Bar No. 571873
Email: gcurley@gunster.com
Keith E. Sonderling, Esq.
Florida Bar No. 57386
Email: ksonderling@gunste.com
Holly L. Griffin, Esq.
Florida Bar No. 93213
Email: hgriffin@gunster.com
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
Telephone: 561-655-1980
Facsimile: 561-655-5677
Attorneys for *FAU Defendants*

WPB_ACTIVE 7870835.1