

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 STATEMENT OF MATERIAL FACTS

Defendant, Florida Atlantic University Board of Trustees a/k/a Florida Atlantic University (“FAU”), pursuant to S.D. Fla. L.R. 56.1, files this Statement of Material Facts in Support of its Motion for Summary Judgment as to all counts against it in Plaintiff’s Second Amended Complaint (“Complaint”) and states:

I. The Parties

1. FAU is a Florida public university that employs approximately 3,300 employees, including approximately 1,000 faculty members. **Exhibit A, p. 25:11-13; Exhibit F, ¶ 8.**

2. Dr. Diane Alperin was the Vice Provost for FAU. **Exhibit A, p. 13:18-20.** As Vice Provost, Dr. Alperin was in charge of several academic departments. **Exhibit A, pp. 13:24-14:3, 25:17-26:6.** Dr. Alperin was responsible for decisions concerning termination of faculty members. **Exhibit A, p. 16:20-22.** Dr. Alperin delegated the duty to recommend discipline to each of the nine Deans. **Exhibit A, pp. 25:17-26:6.**

3. Dr. Heather Coltman was the Dean of the Dorothy F. Schmidt College of Arts and Letters. **Exhibit B, p. 8:12-16.** Dr. Coltman was responsible for recommending discipline for faculty in her College. **Exhibit B, pp. 30:4-31:24.**

4. Plaintiff was a tenured Associate Professor at FAU in the School of Communications and Multimedia Studies in the Dorothy F. Schmidt College of Arts and Letters. **Exhibit C, p. 44:9-25.** As part of his annual assignment with FAU, Plaintiff had assignments in areas of teaching, research, and service. **Exhibit A, p. 256:7-21; Exhibit D, p. 128:6-14; Exhibit C, p. 29:9-11.** Plaintiff taught courses including Public Opinion and Modernity, Introduction to Multimedia Studies, and Culture of Conspiracy. **Exhibit C, pp. 136:17-137:5.** Plaintiff conducted research

in areas including mass shootings, the JFK assassination, and the Sandy Hook Massacre. **Exhibit C, pp. 148:24-150:12, 153:3-154:23, 159:16-161:20, 194:7-196:5, 164:15-18, 165:20-167:19.**

II. Collective Bargaining Agreement and its Requirements

5. While employed at FAU, Plaintiff was a member of the collective bargaining unit for the FAU Chapter of the United Faculty of Florida (“Union”). **Exhibit C, p. 90:7-10.**

6. Plaintiff served as Chapter President for the Union from 2009 through 2011. **Exhibit E, pp. 9:22-10:16.** As Chapter President, Plaintiff signed the collective bargaining agreement for years 2009 through 2012. **Exhibit C, p. 90:17-21.** Plaintiff also voted in favor of ratifying the 2009-2012 collective bargaining agreement, which contained an identical definition of reportable outside activities to the definition in effect at the time of his termination from employment. **Exhibit C, pp. 94:24-96:6.** Plaintiff participated in bargaining over a nearly identical version of the mandatory grievance and arbitration procedure to the procedure in effect at the time of his termination from employment. **Exhibit C, p. 95:10-25; Exhibit E, pp. 9:22-10:16.**

7. The 2012-2015 Collective Bargaining Agreement by and between the Florida Atlantic University Board of Trustees and the United Faculty of Florida (the “CBA”) was in effect at the time of Plaintiff’s termination. **Exhibit F, ¶31.**

8. The CBA contains the terms and conditions which govern the relationship between in-unit faculty and FAU. **Exhibit F, p. 80, ¶1.**

9. Article 19 of the CBA, Conflict of Interest/Outside Activity (the “Policy”), requires in-unit faculty members to report all reportable outside activities, including the name of the recipient of services, the funding sources, the location where the activity will be performed, the nature and extent of the activity, and any intended use of University facilities, equipment or services, so conflicts of interest can be assessed. **Exhibit F, pp. 131-133.**

10. The Policy defines “reportable outside activity” as “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.” **Exhibit F, p. 132, ¶19.4.** The Policy ensures the University is in compliance with its obligations under the Florida Code of Ethics for public employee conflicts of interest and work hours (Chapter 112, Part II, Florida Statutes). **Exhibit D, pp. 16:17-17:19.** The disclosures required by the Policy are often required as a condition of the University’s receipt of research grants. **Exhibit A, pp. 31:23-32:11; 214:7-13.**

11. Although the Policy applies to both compensated and uncompensated activity, when a faculty member has an expectation that money will be paid for an outside activity, the faculty member should report the proposed activity before engaging in it. **Exhibit F, p. 210, ¶4; Exhibit C, pp. 232:10-233:12.** The purpose of reporting is to allow the University to assess whether a conflict of interest exists to avoid potential conflicts of interest. **Exhibit F, pp. 131-133.**

12. The Policy prohibits the use of University resources for outside activities: “[a]n 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.” **Exhibit F, p. 133, ¶19.6.** Faculty are required to report their use of University equipment with their annual Report of Outside Employment or Professional Activity. **Exhibit F, p. 132, ¶19.4.**

13. The Policy provides an expedited grievance procedure if the proposed outside activity is determined to constitute a conflict of interest and the employee disagrees with the determination. **Exhibit F, p. 133, ¶19.5.**

14. The CBA contains a mandatory grievance and arbitration procedure for all claims concerning the interpretation or application of the CBA’s specific terms or provisions. **Exhibit F, pp. 133-142.**

15. Article 20.1 of the CBA provides that “[t]he procedure hereinafter set forth shall be the sole and exclusive method for resolving the grievances of employees as defined in this Article.” **Exhibit F, p. 133, ¶20.1.**

16. If there is any inconsistency between the CBA and University policies, the language of the CBA applies. **Exhibit F, p. 81, ¶1.1.**

III. Plaintiff’s Outside Activities

17. In 2012, Plaintiff began working with Global Research, an alternative news or media aggregator. **Exhibit C, p. 145:3-5.**

18. In March 2012, Plaintiff began a blog titled “Memory Hole Blog: Reflection on Media and Politics.” **Exhibit C, p. 213:9.** Plaintiff established the blog as a way to bridge a divide between his scholarly endeavors and contemporary political issues and events. **Exhibit C, pp. 226:4-22, 228:24-229:7; Exhibit S, p. 1, ¶3.** There is significant overlap between the topics Plaintiff addressed in his blog and his scholarly work for FAU. **Exhibit G, pp. 99:18-100:16, 102:4-106:10; Exhibit C, pp. 153:3-154:23, 159:16-161:20, 164:15-18, 165:20-167:19, 194:7-196:5; Exhibit H, pp. 92:15-93:15.** Indeed, Plaintiff notified Dr. Coltman in February 2013 that

his work on Memory Hole Blog and with Global Research may lead to scholarly endeavors. **Exhibit F, p. 188, ¶1.**

19. Plaintiff solicited money on his blog, through a “Donate” button that solicited donations for research. **Exhibit C, p. 229:17-230:20; Exhibit T, p.2; Exhibit I, p. 5, ¶5 – p. 6, ¶1; Exhibit G, p. 94:23-96:1.** Plaintiff received \$2,211.84 in donations. **Exhibit I, p. 6, ¶1.** Plaintiff also sought advertising income for “clicks” through his websites. **Exhibit G, pp. 94:23-96:1.**

20. Plaintiff also operated a weekly podcast through Truth Frequency Radio. **Exhibit C, pp. 57:24-59:13.**

21. Plaintiff used University resources for his blog articles as well as his weekly podcast. **Exhibit C, pp. 189:3-190:4; Exhibit F, pp. 279-282.**

IV. The Aftermath of the Sandy Hook Massacre

22. In late 2012 and early 2013, Plaintiff began writing about a mass shooting that occurred at Sandy Hook Elementary School in Newtown. **Exhibit C, p. 110:1-11.** Plaintiff’s writings on the Sandy Hook massacre received international media attention. **Exhibit A, pp. 281:20-283:14.**

23. In or around early January 2013, Plaintiff’s blog was brought to the attention of Drs. Alperin and Coltman. **Exhibit A, p. 280:10-13; Exhibit B, p. 157:17-25.**

24. In January 2013, Drs. Alperin and Coltman met with Plaintiff to discuss concerns over Plaintiff’s safety, the safety of his family and students, and the impact of the nationwide media attention. **Exhibit A, pp. 80:18-81:3; Exhibit B, pp. 212:15-213:3, 214:3-10.** Drs. Alperin and Coltman reminded Plaintiff of his obligations under the CBA for outside activities, including that he had an obligation to report outside activities pursuant to the Policy and to add an appropriate disclaimer to his blog to make it clear that his comments represented his personal opinions and were not official positions of FAU. **Exhibit A, pp. 80:22-81:3; Exhibit B, p. 220:10-16; Exhibit F, p. 184, ¶3.** Dr. Coltman instructed Plaintiff to report his activity for Memory Hole Blog. **Exhibit A, pp. 87:22-88:1; Exhibit F, p. 184, ¶5.**

25. Drs. Alperin and Coltman never told Plaintiff that he could not speak and did not restrict Plaintiff’s speech. **Exhibit E, p. 165:8-15; Exhibit G, p. 68:2-11.** Dr. Coltman specifically told Plaintiff he could blog in his personal time, but cautioned that he “must stop dragging FAU into [his] personal endeavors” by including an appropriate disclaimer. **Exhibit F, p. 190, ¶ 1.**

26. At this time, Plaintiff’s Union representative, Douglas Broadfield, advised Plaintiff to report his outside activities and, if FAU took any action that he disagreed with, he could grieve

in accordance with the terms of the CBA. **Exhibit J, p. 44:12-19.** In fact Dr. Broadfield's advice to any employee at FAU was that if an activity fell in a "gray area" and they were unsure whether to fill out the form, they should fill it out "and be done with it." **Exhibit J, p. 55:4-12.** Union official Michael Moats also told Plaintiff that if he intended to use his blog for future research, it opens the door for FAU to require him to report it. **Exhibit K, pp. 188:23-189:11.**

27. Plaintiff represented to Dr. Coltman that his outside activities did not involve the University and that he did not use University resources. **Exhibit F, p. 188, ¶1-2, p. 324, ¶3.**

28. In March 2013, Dr. Coltman disciplined Plaintiff for his failure to comply with his obligations under Article 5.3(d) of the CBA, which requires that "[w]hen speaking on any matter of public interest," the faculty member must "make clear when comments represent personal opinions and when they represent official University positions." **Exhibit B, pp. 152:12-153:4, 154:1-155:2; Exhibit F, p. 87, ¶(d); Exhibit F, pp. 189-190.** Plaintiff grieved the discipline and reached a settlement agreement with FAU in September 2013 (the "Settlement Agreement"). **Exhibit A, pp. 81:22-82:2; Exhibit F, p. 205.** Through the Settlement Agreement, Plaintiff agreed not to use his work title in any of his public postings or communications, unless the statements made were those of the University, and to publish a disclaimer approved by the Vice Provost to satisfy the provisions of Article 5.3(d) of the CBA. **Exhibit F, p. 205, #1-2.**

IV. Plaintiff's Continued Employment

29. After the January 2013 meeting, Plaintiff continued to post to his blog about other mass casualty events reported in the media, such as the 2013 Boston Marathon bombing. **Exhibit C, pp. 110:1-111:2.** Plaintiff continued to operate his Memory Hole Blog, from its inception through late 2016. **Exhibit C, pp. 62:2-63:3.** Plaintiff did not submit any Report of Outside Activity or Professional Activity forms or University Equipment, Facilities and Services forms in 2013 or 2014. **Exhibit B, p. 329:9-20; Exhibit F, p. 219, ¶3.**

30. In 2014, Plaintiff taught his course, "Culture of Conspiracy" again. **Exhibit B, p. 203:3-9; Exhibit C, p. 140:7-12.**

31. Plaintiff's annual assignment in 2014 included his work for Project Censored, an organization educating students about investigative journalism and news censorship. **Exhibit C, p. 164:5-14, 168:22-169:12, 170:14-18.** Several of Plaintiff's scholarly articles written for Project Censored relied on his own Global Research articles as resources. **Exhibit C, p. 170:14-173:13; 190:5-192:1.**

32. Plaintiff's annual assignment in 2015 included his work editing a book titled "Governing by Crisis," which was anticipated to include articles by Plaintiff and others on the Sandy Hook Massacre. **Exhibit C, pp. 165:20-167:19.**

V. Plaintiff's Refusal to Accept the Electronic Acknowledgment and Comply with his Obligations under the CBA

33. In 2014, FAU added an electronic reminder of the Policy that required all faculty to check a computer prompt acknowledging their obligations to report outside activities and the use of University resources for outside activities. **Exhibit A, pp. 35:19-36:10, Exhibit H, p. 34:6-21.** The prompt served as a reminder to all faculty to submit required forms in compliance with the Policy. **Exhibit A, pp. 36:21-37:7; Exhibit D, pp. 88:15-89:3; Exhibit F, ¶83.**

34. Despite having checked it in the past, in October 2015, Plaintiff refused to accept his annual assignment by clicking the electronic acknowledgment affirming his obligation to comply with the Policy. **Exhibit B, p. 80:1-14, 154:1-24; Exhibit F, pp. 219-220, ¶1; Exhibit L, ¶1.**

35. Plaintiff refused multiple directives from his supervisor to electronically accept his annual assignment and click a simple acknowledgment of his obligation to report under the Policy. **Exhibit A, p. 75:19-24; Exhibit F, pp. 219-220.** In fact, after multiple requests, Plaintiff delivered a hard copy signed annual assignment, to avoid checking the acknowledgment box. **Exhibit A, p. 75:11-18; Exhibit B, p. 81:16-18; Exhibit F, p. 217.**

36. Plaintiff was also directed by his supervisor, among others, to submit Report of Outside Employment or Professional Activity forms in compliance with his obligations under the Policy. **Exhibit F, pp. 206-209.** Robert Zoeller, President of the Union, directed Plaintiff to submit the required forms and comply with the policy first, so he would not be insubordinate, and then file a grievance if FAU took action against him based upon the content that was disclosed. **Exhibit H, pp. 43:2-44:8, 81:6-10; Exhibit F, p. 217, ¶5.** Indeed, as multiple members of the Union have testified, it is "Union 101" to comply with directives so as not to be insubordinate, and fight if adverse action is taken the faculty member does not agree with—"comply then fight." **Exhibit H, pp. 43:20-44:8, 46:2-11; Exhibit M, p. 226:9-18; Exhibit N, pp. 28:18-29:1, 52:21-53:3; Exhibit J, pp. 43:15-44:16; Exhibit U, p. 47:11-18.**

37. Rather than take the sound advice of his Union representatives, Plaintiff refused multiple directives from his supervisor, Dean, and other personnel to submit Report of Outside Employment or Professional Activity forms in compliance with the requirements that applied to

him and all other in-unit faculty members under the CBA. **Exhibit A, pp. 88:23-89:8; Exhibit E, pp. 113:25-114:4, Exhibit N, pp. 52:21-53:9; Exhibit H, p. 81:6-16.**

V. Plaintiff's Discipline and Termination for Insubordination

38. Dr. Coltman reprimanded Plaintiff for his insubordination on November 10, 2015, through a Notice of Discipline. **Exhibit B, pp. 152:12-153:9; Exhibit F, pp. 219-220.** It required Plaintiff to electronically accept his annual assignment and submit the required forms to comply with his obligations under the CBA. **Exhibit F, p. 219, ¶5.** The Notice of Discipline provided Plaintiff another opportunity to comply or face further discipline. **Exhibit F, p. 219, ¶6 – p. 220, ¶1.** At the end, the Notice of Discipline notified Plaintiff that “[t]his action, a reprimand, is subject to Article 20” of the CBA. **Exhibit F, p. 220 ¶1.**

39. Plaintiff failed to comply with the directive to submit the required forms, choosing instead to submit a lengthy response detailing why he believed he was exempt from the requirements of the CBA. **Exhibit B, p. 237:22-25; Exhibit F, pp. 222-268.**

40. Plaintiff reached out to the Union to see if they would grieve the Notice of Discipline on his behalf. **Exhibit C, pp. 89:20-90:5.** Plaintiff acknowledged that if the Union did not represent him in grieving the Notice of Discipline, he would have to file a grievance himself. **Exhibit F, p. 272.** Union officials determined they would not pursue a grievance on his behalf because they believed he was in violation of the CBA. **Exhibit H, pp. 47:1-17, 55:10-56:16.**

41. Although not required by the CBA, on December 11, 2015, Dr. Coltman gave Plaintiff one last opportunity to comply with his obligations under the CBA and file the required Report of Outside Employment or Professional Activity forms. **Exhibit A, p. 313:10-25; Exhibit F, ¶105, p. 273.**

42. Plaintiff did not timely respond. **Exhibit A, pp. 236:25-231:22; Exhibit B, p. 251:19-25.** When Plaintiff did respond, he attempted to submit materially incomplete forms. **Exhibit A, pp. 236:23-237:1; Exhibit F, pp. 274-282.** They included a disclosure that, contrary to his prior representations, Plaintiff had been using University resources to support his outside activities. **Exhibit F, pp. 279-282.**

43. Plaintiff never submitted a report of his activity for Memory Hole Blog to FAU under the Policy. **Exhibit F, pp. 274-282.** Plaintiff has offered no explanation for why he did not report his blogging activity but reported Global Research, which he claims mirrors articles from his blog. **Exhibit C, pp. 144:23-145:2; Exhibit G, pp. 98:4-11, 220:18-223:6.**

44. Dr. Alperin made the decision to terminate Plaintiff's employment with FAU. **Exhibit A**, pp. **20:4-22:6, 23:14-15**. Dr. Alperin consulted with the Senior Associate General Counsel regarding her decision and the procedure for carrying it out and advised the Provost about her decision. **Exhibit A, p. 18:9-16**. Dr. Alperin decided to terminate Plaintiff's employment for his repeated gross insubordination. **Exhibit A, pp. 249:9-15, 321:9-20; Exhibit D, pp. 92:18-93:1, 132:14, 132:24, 133:9, 134:5-8, 162:2-5, 164:11-12, 187:3-13, 188:14-16, 189:11-18, 201:15-25, 203:17-21**. Despite multiple requests from the Union representatives and his supervisors, progressive discipline, and repeated opportunities to comply, Plaintiff steadfastly refused to meet his obligations and was terminated for cause. **Exhibit F, pp. 209, 211, 323-325, 340**.

45. On December 16, 2015, Dr. Alperin issued Plaintiff a Notice of Proposed Discipline – Termination, notifying him of the decision to terminate his employment. **Exhibit F, pp. 283-285**. Had Plaintiff submitted the Report of Outside Employment or Professional Activity forms as required, he would not have been terminated. **Exhibit A, p. 21:15-16, Exhibit B, p. 250:11-18; Exhibit H, p. 217:13-21**. The Notice of Proposed Discipline – Termination confirmed, “[b]y simply submitting the completed Activity Forms, you would have been compliant with no further discipline.” **Exhibit F, p. 283, ¶4**. The Notice of Proposed Discipline – Termination ended by notifying Plaintiff that he had “10 days in which to respond in writing” and that “[t]his proposed disciplinary action is subject to CBA Article 20, Grievance Procedure.” **Exhibit F, p. 284, ¶1**.

VI. The Union Hires Plaintiff an Independent Attorney to Represent Him

46. The Union immediately hired Plaintiff an independent attorney to assist him with utilizing the grievance procedure. **Exhibit C, pp. 102:10-11; 105:13-19; Exhibit F, p. 290**.

47. Under the CBA, Plaintiff had ten days to respond to the Notice of Proposed Discipline – Termination. **Exhibit F, p. 285**.

48. On December 18, 2015, Union officials met with FAU for a routine collective bargaining meeting. **Exhibit O, p. 16, ¶5**. As the meeting attendants were either preparing to go on break or just following a break, Dr. Zoeller approached Senior Associate General Counsel Glick and asked to see him. **Exhibit P, pp. 19:3-20:10**. Dr. Zoeller told Senior Associate General Counsel Glick that the Union was in the process of getting an attorney for Plaintiff and may need an extension of time to respond to the Notice of Proposed Discipline – Termination. **Exhibit P, pp. 17:19-18:2**. The conversation lasted only one or two minutes. **Exhibit P, pp. 19:20-20:2**. While Dr. Alperin may have come in at the tail end of the conversation to signal the meeting was

restarting, she did not say anything about the Plaintiff. **Exhibit P, pp. 19:22-20:20.** This was the only conversation to occur between Senior Associate General Counsel Glick and Dr. Zoeller regarding Plaintiff. **Exhibit P, p. 21:12-23.**

49. FAU granted Plaintiff an extension to respond to the Notice of Proposed Discipline – Termination to provide him time to hire and consult legal counsel. **Exhibit P, pp. 68:11-69:13.**

50. Dr. Alperin subsequently learned that Plaintiff did not disclose his contribution to a book titled “Nobody Died at Sandy Hook,” which included his affiliation with FAU, but did not include an appropriate disclaimer as required by the Settlement Agreement. **Exhibit A, pp. 342:19-343:24.** Plaintiff also never reported his contribution to “Nobody Died at Sandy Hook.” **Exhibit F, pp. 274-282.** He has testified that he received an honorarium for his contribution to “Nobody Died at Sandy Hook.” **Exhibit C, p. 125:23-126:11; Exhibit G, p. 117:11-20; 119:17-120:6.** Dr. Alperin sent Plaintiff another letter regarding this violation. **Exhibit A, p. 9:7-21.**

51. Plaintiff did not respond to the Notice of Proposed Discipline – Termination. **Exhibit C, pp. 102:10-104:21.** Dr. Alperin sent Plaintiff a Notice of Termination on January 5, 2016. **Exhibit C, p. 244:14-21; Exhibit F, pp. 323-325.** The Notice of Termination notified Plaintiff that this “action is subject to CBA Article 20, Grievance Procedure.” **Exhibit F, p. 325, ¶2.**

V. Plaintiff Did Not Grieve

52. Each disciplinary action issued to Plaintiff stated “This disciplinary action, [] is subject to Article 20 of the BOT/UFF Collective Bargaining Agreement.” **Exhibit F, pp. 220, 325.**

53. As a former Union President himself, Plaintiff was well aware of the grievance process and his grievance rights under the CBA. **Exhibit C, p. 95:10-25; Exhibit E, pp. 9:22-10:16; Exhibit F, p. 272.** Despite previously acknowledging his ability to grieve on his own, Plaintiff did not grieve the Notice of Discipline. **Exhibit C, pp. 103:8-104:10; Exhibit F, p. 272.** Under this procedure, Plaintiff knew he had the opportunity to grieve his termination from employment but did not do so. **Exhibit E, p. 70:3-6.**

54. Plaintiff fired his Union appointed counsel in January 2016. **Exhibit C, p. 101:15-18; Exhibit E, p. 57:19-21; Exhibit F, p. 294-297; Exhibit G, pp. 26:21-27:5, 28:5-19.**

55. Plaintiff hired his own legal counsel with enough time to utilize the grievance procedure, but failed to do so. **Exhibit C, pp. 101:15-102:9; Exhibit G, pp. 26:21-27:5.**

56. Despite having filed several prior grievances against FAU and serving as Chapter President of his Union for three years, Plaintiff claims he did not know how to file a grievance.

Exhibit C, pp. 104:16-105:11, 106:7-21.

VI. This Litigation

57. Plaintiff alleges that he was required to submit his blogging “for administrative evaluation, monitoring or restriction.” **Exhibit F, ¶ 205.**

58. Plaintiff never submitted his blog to FAU under the policy. **Exhibit A, p. 184:7-22; Exhibit F, p. 324, ¶4, pp. 751-759.** Plaintiff’s speech was never restricted by FAU. **Exhibit E, p. 165:8-15.**

59. Plaintiff alleges that FAU conspired with the Union to deprive Plaintiff of his constitutional rights by failing to grieve Plaintiff’s termination of employment. **Exhibit F, ¶ 163.** All Plaintiff offers in support of his allegations of a conspiracy are that on November 30, 2015, FAU President John Kelly participated in a periodic “consultation” with the Union as prescribed by the CBA and that on December 17, 2015 FAU’s Senior Associate General Counsel Larry Glick met with the Union Defendants during a routine annual collective bargaining meeting. **Exhibit C, p. 88:11-89:14; Exhibit E, pp. 27:9-28:2; Exhibit F, ¶149.**

60. On November 30, 2015, President Kelly, Senior Associate General Counsel Glick, and FAU Provost Gary Perry met with members of the Union, including Mr. Moats and Dr. Zoeller, for the CBA prescribed “consultation.” **Exhibit H, pp. 64:14-68:21.** These meetings are planned in advance, with an agenda, and last approximately one hour. **Exhibit H, pp. 66:4-7, 68:14.** The parties do not deviate from the meeting agenda and not a single person mentioned Plaintiff at the meeting. **Exhibit H, p. 68:7-9.**

61. The only evidence Plaintiff has to support that the routine collective bargaining meeting on December 18, 2015 resulted in an alleged agreement is the testimony of Shane Eason, who testified repeatedly that while he told Plaintiff that Dr. Zoeller and Senior Associate General Counsel Glick conspired against him, Mr. Eason did not have any personal knowledge of an agreement and was only speculating and speaking in hypotheticals. **Exhibit Q, pp. 61:3-5, 64:6-9, 68:16-70:10, 80:10-81:10, 88:15-23, 95:14-96:6.**

62. Plaintiff claims \$1,000,000 for attorneys’ fees. **Exhibit I, p. 5, ¶3.**

63. Plaintiff alleges the Union, “by and through the representative they hired for Professor Tracy,” provided Plaintiff with “dubious reasoning for the decision” not to respond to the Notice

of Proposed Discipline -- Termination. **Exhibit F, ¶ 117.** Plaintiff fired his Union appointed counsel because he questioned his independence from the Union. **Exhibit E, pp. 58:7-23.**

64. FAU requested communications between Plaintiff and his Union appointed counsel. **Exhibit R, p. 2, ¶5.** Plaintiff objected on the grounds of privilege and refused to produce the documents. **Exhibit R, p. 2, ¶5.** Plaintiff prevailed on his arguments. **Exhibit V, p. 1.**

65. Plaintiff did not search for any work, comparable or otherwise, for more than 18 months following his termination from employment at FAU. **Exhibit C, p. 84:4-9; Exhibit I, pp. 6-7.**

66. For a year and a half after his termination, Plaintiff assumed that a job search would have been pointless, allegedly because he believed his reputation has been so harmed he would not be hired anyway. **Exhibit C, pp. 84:12-85:8; Exhibit I, p. 6.**

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 21, 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/ G. Joseph Curley
G. Joseph Curley

SERVICE LIST
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Case No. 16-cv-80655-ROSENBERG/HOPKINS

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