

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) **ANSWERS TO PLAINTIFF'S REQUESTS**
 ATLANTIC UNIVERSITY, et al.) **FOR ADMISSIONS DIRECTED TO**
) **FLORIDA ATLANTIC UNIVERSITY**
)
 Defendants.)

COMES NOW, Plaintiff JAMES TRACY, files this Motion to Compel Answers to Plaintiff's Request for Admissions Directed to Defendant Florida Atlantic University ("FAU"), and states as follows:

1. On June 26, 2017, Plaintiff served on Defendant FAU Requests for Admission. *See* Exhibit "A".
2. Defendant FAU's Responses to Plaintiff's Requests for Admissions set forth a litany of improper and baseless objections to 67 out of 100 Requests for Admissions, specifically Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 64, 65, 67, 68, 74, 82, 83, 85, 99 and 100, all of which should be overruled and Defendant FAU should be ordered to answer immediately. *See* Exhibit "B".
3. Whether Defendant FAU's Conflict of Interest/Outside Activities Policy ("the Policy") was selectively enforced against Plaintiff in an unlawful manner is at the center of Plaintiff's claims in the above-referenced action. Plaintiff alleges that the Policy was improperly used to demand that Plaintiff report personal blogging on forms to the Defendant FAU for approval of

the blogging activity, and that his blogging activity of other faculty members is not a reportable outside activity at the Defendant University, and other FAU faculty members are not required to report their blogging activity for evaluation or approval pursuant to the Policy. Moreover, Plaintiff alleges Defendant FAU has not disciplined any other similarly situated FAU faculty members for failing to report blogging activities pursuant to the Policy. Defendant FAU disputes that the Policy was selectively enforced against Plaintiff, claiming the Policy was “neutral” and applied evenly to all similarly situated faculty members.

4. The Requests for Admissions at issue largely seek confirmation of whether or not other similarly situated FAU faculty members, who are known to have blogs, reported their blogging activities pursuant to the Policy, and whether or not Defendant FAU disciplined those similarly situated faculty members for failure to report their blogging activities.

5. Plaintiff sets forth nearly identical requests for admissions in Requests Nos. 3—59, but refers to different FAU faculty members with blogging activities in each request. Defendant FAU’s objections to each of these requests are nearly identical and improper. In response to Plaintiff’s Request for Admissions Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, and 49, Defendant FAU asserts the same objection asserted in response to Request for Admission No. 3:

3. Admit that the FAU Dean Heather Coltman did not report her Facebook page located at <https://www.facebook.com/heather.coltman.58> to the Defendant University pursuant to the “Conflict of Interest/Outside Activities” Policy.

FAU RESPONSE: Objection, this Request is vague and overbroad because it is unlimited in time. Defendant University further objects to this Request because it assumes that the Facebook page located at <https://www.facebook.com/heather.coltman.58> is reportable outside activity under the Conflict of Interest/Outside Activity Policy in the Collective Bargaining Agreement or that Heather Coltman was asked by Defendant University to report such activity in accord with the Conflict of Interest/Outside Activity Policy in the Collective Bargaining Agreement.

6. The Requests at issue ask Defendant FAU to confirm whether or not the blogging activity was reported. They do not assume any activity is reportable under the Policy. Defendant FAU's objection is really an argument to be made in response to Plaintiff's use of the admission or denial. Likewise, Plaintiff repeats nearly identical requests to Defendant FAU in Requests Nos. 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50. Defendant FAU's objections in the same improper manner as its response to Plaintiff's Request No. 4, which is as follows:

4. Admit that FAU Dean Heather Coltman was not disciplined for failure to report <https://www.facebook.com/heather.coltman.58> to the Defendant University pursuant to the "Conflict of Interest/Outside Activities" Policy.

FAU RESPONSE: Objection, this Request is misleading, vague, overbroad, and is intended to confuse. The Request is vague and overbroad because it is unlimited in time. Further, this Request does not define the word "failure." If failure is intentional, it is one thing (i.e. insubordination) but if it includes mistakes, or unknowing actions (e.g. "accidents"), it is quite another. The distinction is a material matter to this case. Therefore, Defendant University objects to this Request because it assumes that the Facebook page located at <https://www.facebook.com/heather.coltman.58> is reportable outside activity under the Conflict of Interest/Outside Activity Policy in the Collective Bargaining Agreement and that any failure to report the page would be a knowing, intentional refusal to comply warranting disciplinary action. Further, this Request seeks information that is irrelevant and not proportional to the needs of the case because Plaintiff was terminated for his insubordinate refusals to report reportable outside activities upon request.

7. Again, Plaintiff's Request does not require the assumption of any facts, and it is not vague, overbroad, or misleading. Defendant FAU can argue the effect of an admission or denial if Plaintiff uses the response at trial. Again Defendant's objections to Request for Admissions Nos. 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50 are baseless and improper.

8. Plaintiff's Request for Admissions Nos. 51–57 are objected to by Defendant FAU in nearly identical fashion, as seen with Request No. 52 as follows:

52. Admit that prior to Plaintiff's termination, no faculty member at the Defendant University was terminated for failure to adhere to the Defendant University's "Conflict of Interest/Outside Activities" Policy.

FAU RESPONSE: Objection, this Request is vague, overbroad, misleading, and intended to confuse. The Request is overbroad because it is unlimited in time and asks for information about all faculty members over decades of time. Further, this Request does not define the word "failure." If failure is intentional, it is one thing (i.e. insubordination) but if it includes mistakes, or unknowing actions (e.g. "accidents"), it is quite another. The distinction is a material matter to this case. Defendant University further objects to this Request as it assumes that Plaintiff was terminated for failure to adhere to the Conflict of Interest/Outside Activities Policy. The Request also seeks information that is irrelevant and not proportional to the needs of the case. Whether or not other faculty members were terminated for a failure to adhere to the Conflict of Interest/Outside Activities Policy is irrelevant and not proportional to the needs of the case where Plaintiff was terminated for his insubordinate refusals to report reportable outside activities upon request.

9. Plaintiff was disciplined and terminated for non-compliance with FAU's "Conflict of Interest/Outside Activities" Policy, and through this action alleges the Policy is unconstitutional both facially and as applied. Defendant FAU cannot limit the issue by attempting to recast this case as a case wherein Plaintiff was only terminated for the reasons FAU Defendants claim. Moreover, Requests Nos. 51–57 are not vague, overbroad or misleading. Finally, the requests are obviously relevant and proportional to the needs of the case because Defendant FAU has repeatedly alleged that the Policy is neutrally applied to all FAU faculty members.

10. Defendant FAU's Objections to Requests for Admission 58 and 59 are also improper. Defendant FAU disingenuously claims that it would have to speculate to admit or deny whether the Policy and the forms used in connection with the Policy are referred to by FAU faculty members by different titles, rather than their actual titles, which has lead to confusion at FAU. Through discovery, Defendant FAU has produced emails that provide FAU with the knowledge to Answer this Request, and there has been deposition testimony on this subject from individual FAU Defendants.

11. FAU's objections set forth in 64, 65, 67 and 68, are also baseless. The requests are not overbroad, do not require speculation and are proportionate to the needs of the case. Defendant FAU is well aware of several FAU faculty members who maintain blogs and webpages and can confirm whether these individuals have reported that online activity.

12. FAU's objections to Request Nos. 74, 85 and 100 are also improper. These requests are not overbroad, and are certainly proportionate to the needs of the case. They also do not require Defendant FAU to assume any facts, or to interview thousands of employees, as alleged.

13. FAU's objections to Request for Admissions Nos. 82 and 83 are baseless. The requests are not vague, overbroad and are also clearly proportionate to the needs of the case. FAU Defendants are well aware of multiple requests from faculty about the Policy, many of which were recorded at a FAU Senate Faculty meeting in September 2015, which is in Defendant FAU's possession and has been testified to by multiple witnesses and parties in this case.

14. The purpose of Requests for Admissions is "to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial." *Perez v. Aircom Management Corp*, 2013 WL 45895 (S.D.FL. 2013). FAU Defendants have the requisite knowledge to Answer the above-referenced Requests for Admissions and should be compelled to do so. The Requests are relevant and proportionate to the needs of the case.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order Compelling Answers to Requests for Admissions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 64, 65, 67, 68, 74, 82, 83, 85, 99 and 100. Plaintiff also respectfully requests any and all further relief as is just and proper, including an award fees and costs incurred by Plaintiff in connection with 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 the Defendant University's counsel in a good faith effort to resolve the issues raised in this motion, and has been unable to do so. Plaintiff's counsel has requested Defendant FAU amend its deficient discovery responses and withdraw its improper objections, and Defendant has refused.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 1st day of August, 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, Esq.

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