

**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)	
BOARD OF TRUSTEES, a/k/a FLORIDA)	
ATLANTIC UNIVERSITY, et al.)	
)	
)	
Defendants.)	

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT UNIVERSITY'S
CROSS MOTION FOR PROTECTIVE ORDER AND ADMONISHMENT**

Plaintiff JAMES TRACY, by and through the undersigned, hereby files this Response in Opposition to Defendant University's Cross Motion for Protective Order and Admonishment [DE 199], and states as follows:

1. Defendant University's Cross Motion for Protective Order and Admonishment attempts to exploit the undersigned's understandable and justified frustration with the evasive and non-responsive answers from Defendant University's 30(b)(6) designee, due to either purposeful evasion or lack of preparedness. The undersigned's frustration should not be mistaken for abusive or inappropriate conduct. The undersigned did not mock the witness, or point fingers into the witness' face, as alleged by the Defendant. The undersigned's use of voice inflection was both appropriate and warranted under the circumstances, particularly given the witness' refusal to answer questions directly and with responsive answers. Here's just some of the many examples of evasion and non-responsive testimony from the Defendant's 30(b)(6) designee:

Q. So a faculty member says that this [FAU's Policy affirmation] is not accurate, I'm not going to check that box, that's insubordination?

A. What continued was insubordination.

Q. I'm sorry? My question was a faculty member—

A. He was not –

Q. —says this check box, this affirmation is not correct, I'm not going to check it, that's insubordination? That's my question.

[Interruption by Defendant's counsel]

Q. Is, is the check box being challenged by a faculty member as being inaccurate, is that insubordination?

A. He was not terminated for insubordination in regard to the affirmation box.

...

Q. Where in Article 19 [part of FAU's Conflict of Interest/Outside Activities Policy] does it say anything about an employee's [academic] discipline and having to report blogging or an activity that involves an employee's [academic] discipline?

It's not in there, is it?

A. Again, I don't believe – and you've asked me before if we have a specific policy on blogging or microblogging – we don't have a policy on that. We are not concerned with the medium. We're talking about reportable outside activity.

Q. Was Plaintiff the only professor at FAU who was disciplined for not reporting a blogging activity that you . . . know about?

A. I'd have to think about that.

Q. As you sit here today, do you know of any other faculty member at FAU who you disciplined for not reporting a blogging activity?

A. Faculty have been terminated for insubordination. Most faculty—all faculty accept their assignments. We haven't gotten any, I have not heard any concerns about that.

Q. So you're not aware of any faculty member who hasn't turned in a blog, other than Plaintiff, and was disciplined for that?

A. Okay. I'm going to finish what I was going to say. There are faculty who we have found that they had not completed the form and they were asked to complete the form and then they did.

Q. So you disciplined Plaintiff for not reporting his blog on a form without determining if it even was a reportable activity?

Yes?

A. I believe the director and the dean were directing him to report.

Q. Is it that any directive that's not followed is insubordination; is that how it works at FAU?

A. I can't answer that.

See FAU Dep. Tr. 93:6-94:21; 177:9-178:17; 186:20-187:2; 188:6-8 [D.E. 194, Ex. B]

2. A review of the deposition record demonstrates the Defendant University's 30(b)(6) designee was either purposefully evasive, or could not respond to simple questions within the scope of the 30(b)(6) notice due to purposeful refusal to answer questions, and/or lack of knowledge due to lack of preparation.

3. Defendant cannot establish good cause to warrant a protective order or admonishment.

WHEREFORE, Defendant University's Cross Motion for Protective Order and Admonishment should be denied. Additionally, Plaintiff requests any and all further relief as is just and proper, including but not limited to awarding Plaintiff's attorneys' fees and costs incurred in connection with Defendant's Cross Motion.

Dated: August 3, 2017

/s/ Louis Leo IV
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 3rd 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.

SERVICE LIST

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