

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

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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.)	
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**PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
RESPONSIVE TO PLAINTIFF’S SECOND AND FOURTH REQUESTS FOR
PRODUCTION AND BETTER RESPONSES TO PLAINTIFF’S FIRST SET OF
INTERROGATORIES DIRECTED TO DEFENDANT UNIVERSITY**

Plaintiff JAMES TRACY, by and through the undersigned, hereby respectfully submits this Motion to Compel Documents Responsive to Plaintiff’s Second and Fourth Requests for Production and Better Responses to the Plaintiff’s First Set of Interrogatories Directed to Defendant University. In support of his motion, Plaintiff states as follows:

1. As outlined below, this Motion is occasioned by Defendant University’s failure to comply with Federal Rules of Civil Procedure in withholding from Plaintiff documents responsive to discovery requests, and providing incomplete responses to discovery requests.

2. At the hearing on Plaintiff’s last Motion to Compel [DE 144] held on June 20, 2017, the Court Ordered the Defendant University to search for donor and/or prospective donor complaints. Defendant University has indicated that pursuant to the Order, a subsidiary of the University, called FAU Foundation Inc., searched for complaints about Plaintiff and discovered eleven (11) complaints. However, Defendant University refuses to produce those complaints or identify documents relating to those complaints. See Defendant University’s Second Amended

Answer to Interrogatory No. 13 of Plaintiff's First Set of Interrogatories, attached as Exhibit "A".

3. Attached as Exhibit "B" is Plaintiff's Second Request for Production directed to the Defendant University. Request No. 1 requests all documents related to complaints about the Plaintiff made to the Defendant University concerning Plaintiff since January 2011. Attached as Exhibit "C" is Defendant University's Responses to Plaintiff's Second Request for Production, indicating Defendant would produce responsive documents after conducting a search.

4. Additionally, Plaintiff also seeks responsive documents withheld by the Defendant University pursuant to objections raised in response to Plaintiff's Fourth Request for Production Directed to the Defendant University. See Exhibits "D" and "E".

Complaints About Plaintiff in Defendant University's Possession/Custody/Control

5. Request No. 1 of Plaintiff's Second Request for Production seeks complaints made to the Defendant University concerning Plaintiff since January 2011, which are relevant and material to the claims and defenses in this case, including the motivation behind Plaintiff's termination. The records are in Defendant University's possession, custody and control, and thus the request is not only proportionate to the needs of the case, but the responsive documents are readily available and can and should be produced immediately.

6. FAU Foundation Inc. is housed in the administrative offices of the Defendant Florida Atlantic University ("FAU"), utilizes FAU's web and email server and is operated by FAU. (See Exhibit "F"). The complaints sought are undeniably within the possession, custody and control of the Defendant University, since they were found during a search directed by the Defendant University pursuant to the Court's Order. Furthermore, any claim by the Defendant University that the complaints are non-responsive to Plaintiff's discovery requests is not only

without merit, but also wholly inconsistent with notes and testimony of FAU Defendants reflecting donor complaints made to Defendant University. (See Exhibit “G”).

7. Moreover, Defendant University’s Amended Response to Interrogatory No. 13 is non-responsive by failing to identify the Defendant University’s donors, or prospective donors, who complained about Plaintiff, or Plaintiff’s blogging, and all documents and communications, correspondence, e-mails, text messages or notes of conversations relating to such complaints. Defendant University’s objection is grounded on an inapplicable Florida Statute and meritless claim that the information sought is not proportional to the needs of the case. See Exhibit “H”. Complaints made to the Defendant University, and documents and communications relating to such complaints, for example, if the complaints were forwarded to the FAU Defendants, or other FAU officials who were involved in the discipline and termination of the Plaintiff, would be both proportional to the needs of the case, and relevant to the claims and defenses, including but not limited to Plaintiff’s claim of First Amendment Retaliation, and the Defendants’ defenses and claims, i.e. qualified immunity and “neutral” policy application.

Copies of Records Relating to Plaintiff’s Personnel File Produced to Media by FAU

8. Request No. 3 of Plaintiff’s Fourth Request for Production seeks documents concerning requests made by media outlets and other third parties to the Defendant University’s Custodian of Public Records in 2016 for Plaintiff’s personnel record, including a copy of each request, documents produced, and any and all invoices created by the Defendant’s Division of Public Records for each request. Defendant University has objected claiming the documents are not relevant to the case. However, the documents sought are both relevant and material to the claims and defenses in this case because there is a question of fact as to whether the Defendant University removed a disciplinary notice from Plaintiff’s personnel record, as required by a 2013

settlement agreement concerning disciplinary action at issue in this case. Defendant University has asserted that the 2013 disciplinary notice was removed from Plaintiff's personnel record, however, it is believed that the notice was produced to the media along with hundreds of other documents collectively labeled, Plaintiff's "personnel file". If true, this would be clear evidence of retaliation against the Plaintiff by the Defendant University, in addition to a breach of the 2013 settlement agreement between the parties, which is central to the claims and defenses in this case.

Calendars of FAU Defendants and Co-Conspirators

9. Request No. 6 of Plaintiff's Fourth Request for Production seeks the calendars of FAU Defendants Coltman, Alperin and Kelly, as well as two other material witnesses and alleged co-conspirators, including FAU General Counsel Lawrence Glick for the limited and relevant time period of November 1, 2015 through January 5, 2016. The calendars are both relevant and necessary because the above-referenced defendants and witnesses were unable to recall dates of meetings and events which took place which are central to the claims and defenses in this case. Defendant University has objected, claiming that the calendars are not relevant or proportional to the needs of the case, and has refused to produce any of the requested calendars.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order compelling Defendant University to produce the complaints about Plaintiff in the Defendant University's possession, custody and control, and provide complete response to Interrogatory No. 13; to produce documents relating to media requests for Plaintiff's personnel file, and the calendars of FAU Defendants Kelly, Alperin, Coltman, David Williams and Lawrence Glick for the relevant time period requested, and any other documents responsive to the above-outlined discovery requests. Plaintiff also respectfully requests any and all further

relief as is just and proper, including attorneys' fees and costs incurred by Plaintiff in connection with the present 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. To date, Defendant University has stood on its objections, and refuses to produce the documents at issue or amend the deficient and incomplete interrogatory response at issue.

Dated: July 21, 2017

/s/ Louis Leo IV .
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 21st day of July, 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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