

**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 STATEMENT OF DISPUTED FACTS AND ADDITIONAL
MATERIAL FACTS IN OPPOSITION TO FAU’S STATEMENT OF MATERIAL
FACTS**

Plaintiff Tracy submits this Response to FAU Defendant’s Statement of Material Facts:

1. Undisputed.
2. Disputed. The “fact” suggests Defendant Alperin (“Alperin”) was solely “in charge” of several academic departments. Defendant Kelly (“Kelly”) is in charge and responsible for the entire University. Ind. Exh. B [DE 243-2], 27:15-28:2; 89:18-20; *infra* ¶56.
3. Disputed. The “fact” suggests Defendant Coltman (“Coltman”) was only responsible for recommending discipline. In 2013, Coltman was responsible for finding discipline as noted in her “objectives” during meetings with her superiors, including Alperin, concerning Tracy’s blog, one of which was to “explore misconduct” and find “Winning Metaphors” to overcome “1st Amendment”. Pl. SOF Exh. G, pg. 3-4 [DE 250-10].
4. Disputed. The “fact” fails to distinguish between Tracy’s “pedestrian” and “scholarly” research. Ind. Exh. E [DE 243-5], 150:13-153:2; 153:25-154:2; 162:19-163:8; 195:3-9; 229:3-7.
5. Disputed. The “fact” suggests Tracy participated in “bargaining”, negotiating or reading the specific terms of the CBA for the Union, which was not included in Tracy’s duties as UFF-FAU President. Ind. Exh. E [DE 243-5], p. 90:17-91:21.
6. Disputed to the extent the “fact” suggests Tracy participated in “bargaining”, negotiating or reading the terms of the CBA for the Union, which were not Tracy’s duties as

UFF-FAU President. Ind. Exh. E [DE 243-5], p. 90:17-91:21. Disputed that “reportable outside activities” has been fully defined by the CBA, or that the CBA contains a “mandatory” grievance and arbitration procedure, it does not. Ind. Exh. A [243-1], p. 133, Article 20.2.

7. Undisputed.

8. Disputed. The “fact” implies the terms and conditions of the CBA are the only terms which govern the relationship between faculty and FAU. Pl. SOF Exhs. AA [DE 250-32], AB [DE 250-33], AC [DE 250-34], AD [DE 250-35], N [DE 250-18], AE [DE 250-36], AF [DE 250-37] Sec. 08, and BS [DE 249-19] Art. 5d; U.S. Const. amend. I.

9. Disputed as to what the CBA requires of faculty members at FAU. Article 19 of the CBA does not state to “report all reportable outside activities”. Article 19 does not define terms like “professional practice, consulting, teaching or research”, and “conflict between the private interests of the employee and the public interests of the University, the Board of Trustees, or the State of Florida . . .” Pl. SOF Exh. AA [DE 250-32]. Defendants’ “fact” also omits that Article 19 states faculty reports shall include “name of the employer”. [Id at 19.4]

10. Disputed. The CBA does not provide a definition for “reportable outside activity”, as alleged. The confusing Policy, encompassed by more than just the CBA, does not define all reportable outside activities. Pl. SOF [DE 248] ¶11. The Policy also fails to define or explain important terms such as “professional practice, consulting, teaching or research”, and “conflict between the private interests of the employee and the public interests of the University, the Board of Trustees, or the State of Florida . . .” Pl. SOF Exh. AA [DE 250-32].

11. Disputed. Defendants’ “fact” relies upon undefined and confusing terms at issue in this case, such as “outside activity” and disputed that faculty members should or do report all compensated activities. Pl. SOF [DE 248] ¶¶ 42, 44, 45. Also disputed that the purpose of the Policy is to allow the University to assess whether a conflict of interest exists to avoid potential conflicts of interest. Ind. Exh. D [DE 243-4] 69:13-69:20.

12. Disputed that the Policy prohibits the use of University resources for all outside activities or that FAU faculty are required to, or in fact do report use of University equipment annually. Pl. SOF [DE 248] ¶ 43.

13. Disputed to the extent that Defendants’ “fact” implies “the Policy” provided Tracy with a procedure to dispute his discipline. CBA Article 19.5 states that faculty members “may file a grievance” “in the event the proposed outside activity is determined to constitute a

conflict of interest, and the employee disagrees with that determination”. Pl. SOF Exh. AA, [DE 250-32], at 19.5. FAU did not determine that Tracy’s blogging activities constituted a “conflict of interest”. Ind. Exh. C [DE 243-3] 184:11-22; *infra* ¶59.

14. Disputed the CBA has a “mandatory” grievance and arbitration procedure for “all claims concerning the interpretation or application of the CBA’s specific terms or provisions” or FAU’s “Conflict of Interest/Outside Activities” Policy. [Cite CBA] Undisputed Tracy did not need to exhaust administrative remedies. Exh. CH; Individual SOF Exh. A [DE 243-1] pg. 133.

15. Undisputed that Article 20.1 states that it “shall be the sole and exclusive method for resolving the grievances of employees as defined in this Article”. Also, undisputed that “grievance” is defined as “a dispute filed on a form . . . concerning the interpretation or application of a specific term or provision” of the CBA and is subject to “exclusions”. Individual SOF Exh. A [DE 243-1] pg. 133. Disputed, Defendant’s “fact” implies that a grievance must be filed to remedy First Amendment violations. Exh. CH.

16. Disputed. Defendants’ citation does not support Defendants’ “fact”, but 1.2 of the CBA states “if there is an inconsistency between an existing University regulation or policy or Board regulation or policy and an express provision of this Agreement, the Board agrees to follow the language of the Agreement.” Disputed that the FAU or its Board of Trustees apply or adhere the language of the CBA, or its policies. Pl. SOF Exh. BR [DE 249-18], *infra* ¶59

17. Disputed to the extent that this paragraph suggest Tracy was employed or compensated monetarily by Global Research—a website over which Tracy has no editorial control—which has republished some of Tracy’s uncompensated blog postings. Ind. SOF Exh. E [243-5], 144:23-145:2; 145:9-11; 159:16-23; 197:14-19.

18. Disputed Tracy’s blogging was a scholarly endeavor. Ind. SOF Exh. E [243-5], 150:13-153:2; 153:25-154:2; 162:19-163:8; 195:3-9; 229:3-7. Disputed to extent the “fact” suggests FAU faculty members are supposed to report blogging when they do not. Pl. SOF [DE 248], ¶¶ 42, 44. Disputed to the extent the “fact” suggests Tracy was employed with or received compensation for blog postings, and mischaracterizes Tracy’s 2013 statement to Coltman, which reads: “as I previously articulated . . . this work [Tracy’s blog] does not constitute formal scholarship or research . . .”. Ind. Exh. A [DE 243-1], p. 188, ¶1.

19. Disputed. Defendants’ “fact” suggests Tracy received income from donations received through a “Donate” button on Tracy’s blog, however Tracy received no income from

his blogging activities, did not ask readers or require readers to provide donations, and did not use the paltry donations received over the years for research, but to pay for hosting the site. Ind. SOF Exh. E [DE 243-5], 79:12-80:6. While Tracy experimented in the past with advertising to raise money to cover website maintenance costs, the website was free of charge to the public, and Tracy received no income. Ind. Exh. H [DE 243-8], 94:2-16.

20. Undisputed that Tracy operated a podcast which was distributed free of charge to the public on his personal blog. Id. at 106:12-108:4, 224:3-12.

21. Disputed to the extent the fact” suggests Tracy’s use of his FAU work computer or FAU’s internet connection incidentally for writing and recording protected speech on his personal time was improper or required permission, it did not. Pl. SOF [DE 248] ¶43.

22. Undisputed.

23. Undisputed. *See also* Tracy’s SOF at ¶7.

24. Disputed that Coltman and Alperin met with Tracy to discuss safety concerns, as the intent of the Defendants and other FAU administrators in January 2013 expressed in Coltman’s meeting minutes include finding “Winning Metaphors” to overcome the “1st Amendment”. Pl. SOF Exh. G [DE 250-10].

25. Disputed. Alperin and Coltman suggested in 2013 Tracy run future blog posts by FAU that may be controversial. Ind. Exhs. H [DE 243-8] 157:5-18, G [DE 243-7] 76:10-79:3. FAU also restricted Tracy from posting his job title at FAU on his blog, which is not restriction by the CBA or FAU policy. Pl. SOF Exhs. U [DE 250-26], BS [DE 249-19].

26. Disputed that Broadfield advised Tracy to report his blogging activities, as Broadfield actually agreed with Tracy’s argument that the CBA was being applied to him improperly, and Defendant Moats (“Moats”) advised both Broadfield and Tracy in 2013, that Tracy should not report his constitutionally protected blogging activities under the Policy. Ind. Exh. K [DE 243-11] 34:4-23, 45:19-46:5; *infra* ¶64; Exh. CP.

27. Disputed that Tracy told Coltman that his outside activities did not involve the University and that Defendants’ Exhibit supports their “fact” as the Exhibit demonstrates Tracy told Coltman some of his blogging was possibly going to be part of a research assignment in the future. Plaintiff’s SOF [DE 248] ¶43. Tracy does not mention the use of University resources and disputed to the extent Defendants’ “fact” implies the incidental use of University resources must be reported to the University. Pl. SOF [DE 248] ¶43.

28. Disputed that Tracy failed to comply with Article 5.3(d) of the CBA or that Tracy “grieved” the discipline. Ind. Exh. I [DE 243-9] 169:12-170:6. Tracy’s representative Broadfield grieved the discipline, not Tracy on his own, as the Defendants’ implies. Ind. Exh. K [DE 243-11] 10:7-11:7; 13:21-14:21. Disputed that FAU honored its 2013 Settlement Agreement, as the March 28, 2013, Notice of Discipline was produced to multiple media outlets in response to requests for Tracy’s personnel file. Plaintiff’s SOF [DE 248] ¶17. Following the September 2013 Settlement, Tracy did not use his work title in his public blog postings and communications. Ind. Exh. H [DE243-8] 66:15-67:3.

29. Undisputed.

30. Undisputed.

31. Disputed to the extent Defendants’ “fact” suggests Tracy was employed by Project Censored, or that Tracy “relied on” or otherwise improperly used his unscholarly blog postings Tracy’s in scholarly works written for Project Censored. Ind. SOF Exh. J [243-10] ¶2; Exh. E [DE 243-5] 191:1-23. Also disputed to the extent Defendants’ “fact” suggests Tracy’s blog postings were “scholarly” or needed to be reported merely because Tracy cited a blog posting in a scholarly work. Ind. SOF Exh. E [DE 243-5] 150:13-153:2; 153:25-154:2; 162:19-163:8; 195:3-9; 229:3-7; Pl. SOF [DE 248] ¶41.

32. Disputed to the extent Defendants’ “fact” mischaracterizes Tracy’s 2015 annual assignment, or suggests there was anything improper about Tracy’s annual assignment or scholarly work. Ind. SOF Exh. E [DE 243-5] 167:12-19.

33. Disputed as to when the electronic acknowledgment of the Policy was added by FAU to the assignment submission process, and disputed as to FAU Administration’s intent in changing the assignment submission process as the electronic acknowledgment required faculty to affirm their understanding of and compliance with the Policy, which was misstated in the electronic acknowledgment, and widely misunderstood and complained of by faculty. Exh. CL, Pl. SOF Exh. AU [DE 250-52] pg.1-3; Exh. BY [DE 249-24]; [DE 248] ¶¶24, 45.

34. Disputed that Tracy refused to accept his annual assignment or checked the box prior to 2015. Exh. CL; Ind. Exh. E [DE 243-5] 177:16-178:16; 231:22-232:9.

35. Disputed that Tracy refused to “click a simple acknowledgement of his obligation to report under the Policy” as the acknowledgment misstated the Policy, or that Tracy “refused multiple directives” to accept his annual assignment, as FAU Defendants admit Tracy actually

printed and submitted his assignment, and Tracy's supervisors repeatedly failed to clarify the scope and application of the Policy despite multiple requests. Exh. CL, Pl. SOF Exh. AU [DE 250-52] pg.1-3; BY [DE 249-24]; Pl. SOF [DE 248] ¶¶23-24.

36. Disputed that Tracy failed to comply with the Policy, or that Tracy's supervisors, or Union representatives, including Defendant Zoeller ("Zoeller"), understood how to comply with the Policy, or that the Defendants lawfully applied the Policy. Ind. SOF Exh. I [DE 243-9] 56:24-57:3. Also disputed that it is "Union 101" to comply with unlawful directives, or that Zoeller "directed" Tracy to submit forms when he advised Tracy to report constitutionally protected speech on "Outside Employment" forms and that Tracy's November 10, 2015 Notice of Discipline was "not grievable", when in reality, "you can file a grievance on anything". Ind. Exh. I [DE 243-9], 44:9-20; 45:20-22; 56:6-23; 319:2-10; *infra* ¶58.

37. Disputed that Tracy did not take the advice of his Union, or that Tracy's Union gave "sound" advice or that Tracy refused multiple directives or failed to comply with the Policy. *infra* ¶64. Disputed that Tracy did not take the advice of his Union, or that Tracy's Union representatives gave "sound" advice or that Tracy refused multiple directives or failed to comply with the Policy. *See infra* ¶¶ *infra* ¶ 69; Plaintiff Response to Individual SOF ¶63.

38. Disputed that Tracy was "insubordinate" or failed to comply with the Policy, or that Coltman provided Tracy with any opportunities to avoid discipline. Pl. SOF [DE 248] ¶¶24-26, 30; Exh. BC [DE 249-3], pg. 1-3. Also disputed to the extent this "fact" suggests the voluntary Article 20 grievance procedure was mandatory. *See Infra* ¶58.

39. Disputed that Tracy failed to comply with directives, as Tracy did comply with directives and requested clarification from Coltman about the Policy, but received no additional explanations or clarification, while internally, Tracy's supervisors were requesting clarification about the Policy. Pl. SOF [DE 248] ¶¶24-26, 30 & 32; Exhs. BC [DE 249-3], pg. 1-3; AZ [DE 250-57]; AS [DE 250-50]; AT [DE 250-51]; AU [DE 250-52]; BF [DE 249-6].

40. Disputed that Tracy acknowledged in 2015 that he "would have to file" a grievance on his own, or challenge the unlawful discipline administratively. *infra* ¶59. Undisputed Tracy's Union representatives told him to initially comply then grieve. *infra* ¶ 69; Plaintiff Response to Individual SOF ¶63. Then, when Tracy asked the Union to grieve on his behalf, his Union representatives advised him that his "situation" was "not grievable." *infra* ¶69; Plaintiff Response to Individual SOF ¶63. Undisputed that Tracy's Union misadvised Tracy.

Undisputed that the Union did not explain their reasoning for refusing to file a grievance on Tracy's behalf, or on behalf of the UFF-FAU Chapter in response to unlawful application of the "Conflict of Interest/Outside Activities" Policy to constitutionally protected activities. *Id.* Undisputed that Zoeller testified in this action that he decided not to grieve because he opined there was not a "clear violation of the CBA". Individual SOF Exh. I [DE 243-9] 223:8-14.

41. Disputed that Tracy failed to comply with his obligations under the CBA, or that Coltman gave Tracy any opportunity to avoid further discipline as Tracy's requests for clarification were purposefully ignored and Coltman and Alperin were circulating Tracy's Termination Notice before allegedly giving him "one last opportunity". Pl. SOF [DE 248] ¶30; Exh. BC [DE 249-3], pg. 1-3. Ind. SOF D [DE 243-4] 399:21-300:9.

42. Disputed that Tracy's forms were incomplete, untimely or contradicted Tracy's "prior representations", as no instructions on how to complete the form were ever provided to Tracy, nor any other faculty at Defendant University. Pl. SOF Exhs. AS [DE 250-50]; BF [DE 249-6]. Disputed to the extent Defendants' "fact" suggests Tracy's use of his work computer or FAU internet service was improper. Pl. SOF [DE 248] ¶43.

43. Disputed that Tracy was obligated to report Memory Hole Bog or Global Research under the Policy, despite Tracy (while under duress) unnecessarily reporting Global Research, which was not Tracy's employer, and merely republished some of Tracy's blog postings at Memory Hole Blog. *Supra* 16, 17; Pl. SOF [DE 248] ¶26.

44. Disputed as to the motivation for, or decision maker behind Tracy's termination, or that Tracy "steadfastly refused to meet his obligations" or that FAU had just cause to terminate Tracy's tenured employment. Pl. SOF [DE 248] ¶34, Exh. BF [DE 249-6].

45. Disputed that had Tracy submitted forms he would not have been terminated. *Id.*; Pl. SOF [DE 248] ¶30.

46. Disputed that the Union Defendants "immediately" hired Tracy an attorney, or that the Union Defendants hired an "independent" attorney to assist in "utilizing" the grievance procedure. Exh. CO; *see infra* ¶71; Plaintiff Response to Individual SOF ¶65. The Union waived Tracy's right to grieve the charge of insubordination, such that he could only grieve the punishment. *See infra* ¶70; Plaintiff Response to Individual SOF ¶64.

47. Disputed that Tracy had ten days to respond to the Notice of Proposed Discipline-Termination. Exhs. CK, CL; *see infra* ¶68; Plaintiff Response to Individual SOF ¶62.

48. Disputed that Union officials at FAU met for a “routine” meeting in December of 2015. [cite evidence meeting was to discuss Tracy’s termination]. Disputed that Zoeller met with FAU general counsel to ask for an extension of time. *see infra* ¶71; Tracy Response to Individual SOF ¶65. Disputed that Alperin “did not say anything about” Tracy to Zoeller or FAU General Counsel Glick, or that the meeting on December 18, 2015 was the “only conversation to occur between” Zoeller and FAU General Counsel regarding Tracy.

49. Disputed that FAU granted Tracy an extension of time “to provide him time to hire and consult legal counsel”. *See infra* ¶69; Plaintiff Response to Individual SOF ¶63.

50. Disputed that Tracy had an obligation to report or disclose a book written by other authors that contained reprints of his blog postings or that Tracy had editorial control over a book he did not author, publish, or distribute. Pl. SOF [DE 248] ¶¶9, 45, 17; Exh. AO 1-2 [250-46]. Disputed that FAU or the CBA required honorariums to be reported or that failing to report an honorarium would be a violation of the CBA. Pl. SOF Exh. AO 1-2 [250-46].

51. Disputed that Tracy did not “respond” to the Notice of Proposed Discipline – Termination. Pl. SOF [DE 248] ¶26 Exh. AZ [250-57]. Also, Tracy filed the above-captioned action in response to the unlawful termination. Disputed that the CBA required this dispute to be resolved through the grievance procedure. Exh. CH; Plaintiff Response to Individual SOF ¶¶59-60.

52. Disputed Tracy was required to file a grievance in response to unlawful discipline and termination. Exh. CH; Exh. A [243-1]; Plaintiff Response to Individual SOF ¶¶59-60.

53. Disputed that Tracy was required to file a grievance in response to his unlawful discipline and termination. Exh. CH; Ind. SOF Exh. A [243-1]; Plaintiff Response to Individual SOF ¶¶59-60, or that Tracy had “grievance rights” under the CBA that would have redressed his First Amendment injury, or that Tracy had the right to grieve the charge of insubordination after the Union missed the Nov. 10 Notice of Discipline response deadline, an act in furtherance of the conspiracy. *See infra* ¶70; Plaintiff Response to Individual SOF ¶64.

54. Disputed. Johnson terminated the representation upon discovery that Tracy had retained another attorney. Tracy acknowledged the end of the representation. Exh. CO.

55. Disputed that Tracy had “enough time” to “utilize” the optional grievance procedures of the CBA. Tracy’s ability to grieve the charge of insubordination was waived by his Union representatives. *See infra* ¶70; Plaintiff Response to Individual SOF ¶64. Also, Tracy was

advised by his union representatives that he could not “grieve” his discipline, and was advised by his union appointed counsel to file a lawsuit, which Tracy subsequently did. [Cite]

56. Disputed that Tracy “filed several prior grievances against FAU” to the extent this fact implies Tracy filed grievances on his own. *See infra* ¶28; Individual Exh. K [DE 243-11] 10:7-11:7; 13:21-14:21. Tracy’s 2013 grievances were filed by his union representatives. *Id.* Tracy did not know how to file a grievance on his own. *Id.*

57. Undisputed.

58. Disputed. Tracy unnecessarily reported Global Research and Truth Frequency, which centered around his blog. Pl. SOF Exh. BF [DE 249-6]. Disputed that Tracy’s speech was never restricted by FAU. Pl. SOF [DE 248] ¶ 17, Exh. U [DE 250-26].

59. Disputed as to the characterization of Tracy’s conspiracy allegations, or that “all Tracy offers in support of his allegations of conspiracy” is what is cited by Defendants. *See infra* ¶68-73; Plaintiff Response to Individual SOF ¶62-67.

60. Disputed that the Defendants “did not deviate” from the purported “consultation” “meeting agenda” or that “not one single person mentioned Tracy at the meeting”. *See infra* ¶68-73; Plaintiff Response to Individual SOF ¶62-67.

61. Disputed Eason did not have personal knowledge of the conspiracy to terminate Tracy’s tenured professorship, or that “the only evidence” Tracy has to support his conspiracy claim is the testimony of Eason. *See infra* ¶68-73; Plaintiff Response to Individual SOF ¶62-67.

62. Disputed. Tracy’s attorneys’ fees are estimated to exceed \$1,000,000, are ongoing and continue to accrue. Ind. SOF Exh. J [DE243-10] pg.5, no.1.

63. Disputed, to the extent Defendant’s “fact” mischaracterizes Tracy’s allegations. Also disputed Tracy “fired his Union appointed counsel”. The representation was terminated by Johnson upon discovery Tracy had retained another attorney. Tracy acknowledged the end of the representation. Exh. CO

64. Disputed. Tracy was ordered by the Court to produce Tracy’s privileged communications and did so on August 24, 2017. [DE 258].

65. Disputed Tracy waited “eighteen months” to search for comparable employment, and to the extent that Defendants’ “fact” suggests Tracy’s wait to search for comparable jobs following his traumatic widely publicized termination. Pl. SOF [DE 248] ¶ 48.

66. Disputed that Tracy did not immediately search for jobs after his traumatic termination because it would have been pointless. While Tracy reasonably believes his reputation has been so harmed by FAU's pretextual termination that he will not be hired by another University ever again, Tracy testified that there are many reasons behind his decision to await reinstatement. Ind. Exh. E [DE 243-5], 81:5-83:19.

ADDITIONAL MATERIAL FACTS

67. Tracy incorporates by reference the following paragraphs by reference the Paragraphs 7-8, 13-17, 19-20, 25-28, 29-35, 37-38, 42, 44-45, 47 from Plaintiff's Statement of Material Facts in Support of his Motion for Partial Summary Judgment [DE 248].

68. On November 10, 2015, after Tracy received the Notice of Discipline, Zoeller advised him to comply then grieve. Exh. CL, CJ. Zoeller confirmed the Policy affirmation check box was new. *Id.* On November 19, 2015, Zoeller gave Tracy the same advice to comply then grieve. Exh. CK. On November 24, 2015, Tracy asked the Union to prepare a grievance. Exh. CR.

69. On November 30, 2015, the Moats and Zoeller met with Kelly, Alperin and FAU General Counsel Larry Glick ("Glick") to discuss several things, including the "status of tenure." Exh. CW; Individual SOF Exh. I [DE 243-9] 64:9-65:13; 105:12-21. Zoeller and Glick also discussed Tracy during meeting downtimes. Tracy's SOF Exh. Q [DE 250-21], 94:16-18, 87:6-15; 91:23-92:1, pg. 72. Following this meeting, Zoeller advised Tracy that his "situation" was "not grievable," despite his earlier advice and even though he truly believed that "anything is grievable." Individual SOF Exh. I [DE 243-9] at 56:6-23; 319:2-10; Exh. CS. This advice also contrasted with Moats' earlier advice in 2013, that Tracy should not report his personal blogging. Exh. CP.

70. Union Defendants believed that by not grieving the November 10, 2015 Notice of Discipline, Tracy had waived the right to challenge the insubordination decision. Ind. SOF Exh. L [DE 243-12], 291:21-23; 293:19-23. Going forward, they believed Tracy could only challenge his punishment through the grievance process. *Id.* at 294:5-14.

71. On December 16, 2015, thirty-six days after the November 10 Notice of Discipline letter, Zoeller advised Tracy that he should start the grievance process "ASAP." Exh. CU. Also around this time, the Union hired Tracy a lawyer, Thomas Johnson, Esq. Exh. CN. After hiring the lawyer, Moats told his Union colleagues: "don't let Jim respond." Exh. CT.

72. On December 17, 2015, Moats told Tracy they got an extension of time to respond, the Union would respond, and that he should consider a settlement whereby he would resign. Exh. CM; Tracy's SOF Exh. BG [DE 249-7]. The next day, Kelly, Alperin, Moats, and Zoeller attended a meeting at which Zoeller and Glick met and spoke privately. Ind. SOF Exh. C [DE 243-3], 328:16-329:6; FAU's SOF Exh. P [DE 246-16] 16:24-17:6.

73. The Union did not file a grievance after the December 18 meeting, nor did they tell Tracy that they were not going to filing a grievance in advance of January 5, when Tracy was officially terminated. Tracy's SOF Exh. BJ [DE 249-10]; Exh. CO, pg. 1-3. Tracy's Union-hired lawyer would later explain that no grievance was filed because he did not believe anything would have satisfied FAU, and because "there was no reason to put anything on the record to use against us later." Exh. CO at pg. 1. Believing the Union-hired lawyer was not acting in his best interests, Tracy subsequently hired private counsel. *Id.* at pg. 2-3.

74. In January and February 2016, FAU's purported decision to fire Tracy for "insubordination" was widely reported in media outlets nationwide, including the *New York Times* (www.nytimes.com/2016/01/07/us/florida-professor-who-cast-doubt-on-mass-shootings-is-fired.html) and the *Huffington Post* (www.huffingtonpost.com/entry/james-tracy-fired_us_568c533de4b0a2b6fb6db915) (last viewed Aug. 28, 2017).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 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 per the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

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