

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 9:16-cv-80655-RLR

JAMES TRACY,

Plaintiff,

vs.

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

Defendants.

VOLUME II

VIDEOTAPED DEPOSITION OF DOUG MCGETCHIN
APRIL 4, 2017
10:58 A.M. TO 5:07 P.M.

301 YAMATO ROAD
SUITE 1240
BOCA RATON, FLORIDA 33431

REPORTED BY:
JESSICA COOPER, FPR, COURT REPORTER
NOTARY PUBLIC, STATE OF FLORIDA



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<p style="text-align: right;">186</p> <p>1 APPEARANCES OF COUNSEL 2 ON BEHALF OF THE PLAINTIFF: 3 LOUIS LEO, ESQUIRE and 4 JOEL MEDGEBLOW, ESQUIRE 5 MEDGEBOW LAW, P.A. 6 4171 W HILLSBORO BLVD STE 9 7 COCONUT CREEK, FL 33073 8 954-478-4223 9 JOEL@MEDGEBOWLAW.COM 10 LOUIS@MEDGEBOWLAW.COM 11 12 MATT BENZION, ESQUIRE 13 MATT BENZION, P.A. 14 4171 W HILLSBORO BLVD STE 9 15 COCONUT CREEK, FL 33073 16 561-306-5949 17 MAB@BENZIONLAW.COM 18 ON BEHALF OF THE DEFENDANTS: 19 KATHERINE HEFFNER, ESQUIRE 20 CAIR FLORIDA 21 8076 N 56TH ST 22 TAMPA, FL 33617 23 813-514-1414 24 KHEFFNER@CAIR.COM 25 26 HOLLY GRIFFIN, ESQUIRE 27 GUNSTER 200 S ORANGE AVE STE 1400 28 ORLANDO, FL 32801 29 407-406-5246 30 SHUFF@GUNSTER.COM 31 32 ALSO PRESENT: 33 ANTHONY MAROUN, INTERN 34 35 JAMES TRACY, PLAINTIFF</p>	<p style="text-align: right;">188</p> <p>1 INDEX OF EXHIBITS 2 EXHIBIT DESCRIPTION PAGE 3 PM-1 ARTICLE 19 13 4 PM-2 COLLECTIVE BARGAINING AGREEMENT 14 5 PM-3 EMAIL 29 6 PM-4 EMAIL 29 7 PM-5 OUTSIDE ACTIVITY FORM 30 8 PM-6 NOTICE OF DISCIPLINE 33 9 PM-7 GRIEVANCE 66 10 PM-8 5.2(D). POLICY 75 11 PM-9 EMAIL MESSAGE 125 12 PM-10 EMAIL 126 13 PM-11 EMAIL 136 14 PM-12 EMAIL 165 15 PM-13 EMAIL 168 16 PM-14 NOTICE OF TERMINATION 169 17 PM-15 E-MAIL 181 18 PM-16 E-MAIL 214 19 PM-17 E-MAIL 218 20 21 22 23 24 25</p>
<p style="text-align: right;">187</p> <p>1 INDEX OF EXAMINATION 2 WITNESS: DOUG MCGETCHIN 3 4 DIRECT EXAMINATION 5 BY: MR. LEO 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">189</p> <p>1 VOLUME II 2 VIDEOTAPED DEPOSITION OF DOUG MCGETCHIN 3 APRIL 4, 2017 4 THEREUPON, 5 Q (By Mr. Leo) Do you recognize this exchange or 6 communication? 7 A So, that's the thing I was just reading. So, 8 they are talking about that passage right there, it 9 looks like -- 10 Q Let's just -- for the record PM-15, this is an 11 e-mail dated December 17th, 2015 at the top, right? 12 A Right. 13 Q Is this an e-mail that you received? 14 MS. HEFFNER: Objection as to form, you can 15 answer. 16 A I don't specifically remember it but that's 17 the right e-mail. 18 Q (By Mr. Leo) And then below that e-mail is an 19 e-mail dated December 16th also from the same party, in 20 this case it's president of UFF-FAU, so that would be 21 Zoeller, right? 22 A Right. 23 Q Do you recall this e-mail? Do you recall 24 seeing this e-mail? 25 A I don't remember it specifically but --</p>

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1 **Q Was this the -- was this the e-mail that you**
 2 **were responding to when you wrote to Zoeller later that**
 3 **day not too long after the time on this e-mail at the**
 4 **top?**
 5 A Yeah, because this is the end of the day.
 6 **Q Do you see at the top of the e-mail that e-**
 7 **mail is 6:00 in the morning on December 17th?**
 8 A Okay.
 9 **Q And then your e-mail looks like it's dated**
 10 **just about an hour and 40 minutes later?**
 11 A Yeah.
 12 **Q In the e-mail you say that Professor Tracy is**
 13 **kryptonite. Was that your response to Zoeller asking**
 14 **you if his strategy was one worth pursuing?**
 15 MS. HEFFNER: Objection as to form.
 16 A It looks like that's -- those are connected.
 17 **Q (By Mr. Leo) Okay. What did you mean by Jim**
 18 **Tracy as kryptonite?**
 19 A I was referring to the public out -- uproar
 20 media attention.
 21 **Q And going back to your e-mail if we can just**
 22 **take a look at the first statement after you said, "I**
 23 **don't want to represent him." You wrote, "He is a**
 24 **liability to the Union and FAU and/or world good**
 25 **riddance". How was Professor Tracy a liability to the**

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1 **Union?**
 2 MS. HEFFNER: Objection as to form, you can
 3 answer.
 4 A I guess I'd imagine if we -- the Union
 5 defended him then Union would be targeted with public
 6 scrutiny.
 7 **Q (By Mr. Leo) Knowing that the Union had**
 8 **defended Professor Tracy in 2013 under similar threats**
 9 **of discipline, can you point to any harm that was caused**
 10 **to the Union in 2013 or afterward as a result of the**
 11 **defending of Professor Tracy?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A I know faculty members who left the Union
 15 because of that.
 16 **Q (By Mr. Leo) How many?**
 17 A I don't know statistics. I know there are
 18 people.
 19 **Q Who?**
 20 A There is a faculty member in my department who
 21 left because of that. But I don't know about statistics
 22 across the university.
 23 **Q Other than one faculty member who left the**
 24 **Union because of Professor Tracy do you know if any**
 25 **other faculty member who left the Union because of**

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1 **Professor Tracy?**
 2 A I don't know specifically. I know -- yeah.
 3 **Q How about liability to FAU? How is Professor**
 4 **Tracy or how was Professor Tracy a liability to FAU?**
 5 A Negative press --
 6 **Q Negative press?**
 7 A -- attention which is not right for me to say.
 8 **Q It's not right for you to say what?**
 9 A I'm just saying if I -- Deandre Poole that
 10 Stomp on Jesus Incident is another example of negative
 11 press. Although that one yeah, provided itself I guess.
 12 THE COURT REPORTER: You said Deandre Poole
 13 what?
 14 THE WITNESS: Stomp on Jesus Incident.
 15 **Q (By Mr. Leo) Would you agree that your fears**
 16 **of representing Professor Tracy outweighed your**
 17 **responsibility to defend Professor Tracy?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A At this point the fears outweighed my duty to
 21 represent him.
 22 **Q (By Mr. Leo) Is that why the Union brought in**
 23 **a lawyer?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A I don't think so I mean because -- and Bob
 2 called me after this and said we need to represent him
 3 and talked me into it so I was ready to do that.
 4 **Q (By Mr. Leo) But did you represent Professor**
 5 **Tracy?**
 6 A I represent Tracy now, not long after that the
 7 lawyer was involved. So, it became -- so the grievance
 8 issue became moot.
 9 **Q What issue became moot?**
 10 A The -- this -- whether to represent or not
 11 so --
 12 **Q Earlier you testified that grievances can be**
 13 **filed by the chapter without the grievant being on**
 14 **board, is that an accurate --**
 15 MS. HEFFNER: Objection as to form.
 16 A I haven't --
 17 **Q (By Mr. Leo) -- characterization of what you**
 18 **said?**
 19 MS. HEFFNER: Objection as to form.
 20 A I haven't seen that. It's the reverse. The
 21 grievant can file either using their own representative
 22 or representing themselves.
 23 **Q (By Mr. Leo) Can the chapter file a grievance**
 24 **for a grievant without the authorization or permission**
 25 **of a grievant?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A I don't -- there is a place for the grievant
 4 to sign on a grievance form. So, I don't think that
 5 could happen although the chapter could -- could do a
 6 chapter grievance. So-- but then they like ran into
 7 this with the administration where they want names of
 8 particular people, but there is a way to do it I think.
 9 **Q (By Mr. Leo) So, for example, could Professor**
 10 **Tracy have been the subject of a chapter grievance**
 11 **signed by yourself or Zoeller on behalf of UFF-FAU?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A I guess if the -- if the issue like with the -
 15 - that April 19th, the one with the -- whatever it was
 16 about the -- if there is a chapter issue and it's part
 17 of certain class action kind of thing, yes, I think.
 18 **Q (By Mr. Leo) Like a class action?**
 19 A Basically, yeah, chapter grievance on behalf
 20 of everyone.
 21 **Q So, in December of 2015 going back to early**
 22 **December within that window of the 30 days after the**
 23 **November 10th, Notice of Discipline, UFF-FAU could have**
 24 **filed a chapter grievance in response to the Notice of**
 25 **Discipline against Professor Tracy, right?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A About this -- about like the issue of not
 4 submitting these outside employment forms whether that
 5 would be. So, for the whole chapter I supposed that
 6 could have happened.
 7 **Q (By Mr. Leo) Right. So for example in this**
 8 **case Professor Tracy was being directed to submit**
 9 **outside activities forms for his personal blogging. The**
 10 **chapter could have filed a chapter grievance in response**
 11 **to use of the outside activities policy to require**
 12 **personal blogging for example, be disclosed to the**
 13 **administration pursuant to Article 19, right?**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A I can see that, and I think that's basically
 17 what happened but later, not specifically from this but
 18 I think more from the -- that other activity that was
 19 going on.
 20 **Q (By Mr. Leo) Are you saying that the April**
 21 **2016 grievance had something to do with Professor**
 22 **Tracy's discipline?**
 23 MS. HEFFNER: Objection as to form, you can
 24 answer.
 25 A That I don't know. I mean I think it had to

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1 do with the fall, tightening requirements for the -- for
 2 the disclosure, what did you say prior restraint that
 3 was issue in the senate.
 4 **Q (By Mr. Leo) Even though that April 2016**
 5 **grievance made no mention of freedom of speech or**
 6 **constitutional rights of faculty members?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A It does talk about outside activity, but it
 10 doesn't talk specifically about freedom of speech, but
 11 it does say changes which is a little -- which is vague
 12 and then it has some examples so there are -- that might
 13 have been part of it.
 14 **Q (By Mr. Leo) So, going back to my question**
 15 **about debility of the chapter, the file a chapter**
 16 **grievance in response to use of the outside activities**
 17 **policy in any way in early December 2015 that was**
 18 **possible.**
 19 MS. HEFFNER: Objection as --
 20 A I think so.
 21 **Q (By Mr. Leo) It was possible to file a chapter**
 22 **grievance the first week of December for example?**
 23 MS. HEFFNER: Objection as to form.
 24 A I don't know about that timing because --
 25 **Q (By Mr. Leo) Well, I'm saying within the 30-**

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1 **day window of the November 10th, 2015 Notice of**
 2 **Discipline?**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A Theoretically one could file a grievance any
 6 time --
 7 **Q (By Mr. Leo) It was possible.**
 8 MS. HEFFNER: Objection as to form.
 9 A So --
 10 **Q (By Mr. Leo) So, you would agree this Notice**
 11 **of Discipline was grievable not only by Professor Tracy**
 12 **on his own but also by the chapter?**
 13 MS. HEFFNER: Objection as to form, you can
 14 answer.
 15 A So, this was -- so the chapter could have
 16 grieved it. Sure.
 17 **Q Yes?**
 18 A Sure. Yes.
 19 MS. HEFFNER: Objection as to form.
 20 **Q (By Mr. Leo) Just so we're clear for the**
 21 **record UFF-FAU could have grieved as a chapter the**
 22 **November 10th, 2015 Notice of Discipline?**
 23 MS. HEFFNER: Objection as to form.
 24 A Well, if it was grievable -- if there is a
 25 determination that it was grievable and then chapter --

198	<p>1 usually there needs to be a couple cases, so usually</p> <p>2 it's not an individual and then a chapter grievance</p> <p>3 doesn't come from an individual case. And then the</p> <p>4 chapter grievance goes at the step 2, not the step 1</p> <p>5 also.</p> <p>6 Q (By Mr. Leo) So, the chapter could have filed</p> <p>7 a step 2 grievance on behalf of the entire chapter to</p> <p>8 protect the rights of all of the UFF-FAU members</p> <p>9 concerning the outside activities policy within 30 days</p> <p>10 of the November 10th, 2015 Notice of Discipline?</p> <p>11 MS. HEFFNER: Objection as to form.</p> <p>12 A That's potential.</p> <p>13 Q (By Mr. Leo) Yes?</p> <p>14 A I could see that happening, sure, yes.</p> <p>15 Q It was possible?</p> <p>16 MS. HEFFNER: Objection as to form, you can</p> <p>17 answer.</p> <p>18 A No, I don't know. I'm not clear if you're</p> <p>19 asking me on this, like -- I'm thinking more like --</p> <p>20 Q (By Mr. Leo) I'm just asking you whether it</p> <p>21 was possible, whether a chapter grievance could have</p> <p>22 been filed within 30 days of the November 10th Notice of</p> <p>23 Discipline?</p> <p>24 MS. HEFFNER: Objection as to form.</p> <p>25 A Sure. Yes.</p>	200	
199	<p>1 Q (By Mr. Leo) Your answer is yes?</p> <p>2 A Yes.</p> <p>3 Q Okay. Now, after the 30 days passes could a</p> <p>4 chapter grievance be filed in response to the November</p> <p>5 10th Notice of Discipline?</p> <p>6 MS. HEFFNER: Objection as to form, you can</p> <p>7 answer.</p> <p>8 A No, because the 30 days is the limit and now</p> <p>9 it's gone.</p> <p>10 Q (By Mr. Leo) Right. Now, looking at the</p> <p>11 December notice of proposed discipline termination,</p> <p>12 could a chapter grievance have been filed in response to</p> <p>13 the notice of proposed discipline termination issued on</p> <p>14 December 16th, 2015?</p> <p>15 MS. HEFFNER: Objection as to form.</p> <p>16 A Could a chapter grievance -- could a chapter</p> <p>17 grievance have been filed on this? I guess, I mean I</p> <p>18 don't know.</p> <p>19 Q (By Mr. Leo) You don't know?</p> <p>20 A Theoretically I suppose it violates this and</p> <p>21 everyone agrees then it could be filed. But I don't</p> <p>22 know. I don't know specifically if this is grievable.</p> <p>23 Q So, just so the record is clear --</p> <p>24 A If it's grievable --</p> <p>25 Q -- is it possible or --</p>	<p>1 A -- then --</p> <p>2 Q -- it is not possible?</p> <p>3 A One can file a grievance, a chapter grievance.</p> <p>4 One can file a chapter grievance so.</p> <p>5 Q In response to the notice of proposed</p> <p>6 discipline termination from December 16th, 2015?</p> <p>7 MS. HEFFNER: Objection as to form, you can</p> <p>8 answer.</p> <p>9 A Okay. So, the deadline would be January 16th.</p> <p>10 Q Would it?</p> <p>11 A 15th for that to file a grievance so it's 30</p> <p>12 days --</p> <p>13 Q Would it be 30 days -- would it be 30 days or</p> <p>14 would it be 10 days because of the discipline that's</p> <p>15 been chosen?</p> <p>16 A I would think it would 30 days -- I guess does</p> <p>17 this say 10 days? "You have 10 days to respond in</p> <p>18 writing". Then it says "It's subject to Article 20" and</p> <p>19 Article 20 has the timeline on it for 30 days. I don't</p> <p>20 know that there is an exception for that for the type of</p> <p>21 grievance that it is, I think it's just 30 days for any</p> <p>22 type of grievance. I mean that 10 days is just</p> <p>23 responding to the letter. And then Article 20 filing</p> <p>24 -- yeah, so 20.8(a) is, "In all cases a grievance must</p> <p>25 be filed within 30 days following the act or omission</p>	201

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1 MS. HEFFNER: Objection as to form.
 2 A He has to sign the form.
 3 **Q (By Mr. Leo) Who?**
 4 A Bob Zoeller.
 5 **Q Zoeller. So, Zoeller could have filed a**
 6 **grievance?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A He could have. I think I have to sign it too
 10 as a chair.
 11 **Q (By Mr. Leo) Okay. But you indicated back in**
 12 **December of 2015 that you didn't want to sign anything**
 13 **for Professor Tracy?**
 14 MS. HEFFNER: Objection as to form.
 15 A That was in that e-mail, so we get the letter.
 16 Bob sent the thing to me. I said I didn't want to do
 17 it. Then he called me saying we need to do it. So, at
 18 that point I could have gone forward and I was prepared
 19 to go forward with a grievance.
 20 **Q (By Mr. Leo) Let's talk about this e-mail that**
 21 **you're referring to. If you can go to the second page**
 22 **of that e-mail. And if you can look it towards the**
 23 **middle of the page you say after the issue at hand is**
 24 **termination just below that you say, "I think our first**
 25 **position should be it is not grievable." Why would you**

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1 **say that? After what you just testified to particularly**
 2 **-- I'm a little confused so maybe you can help me**
 3 **understand that.**
 4 A I don't know.
 5 **Q If you continue reading after that line, you**
 6 **write, "I started filling out the step 2 draft and I**
 7 **can't see a cause to push back against the termination**
 8 **letter. I guess those arguments would need to come from**
 9 **James Tracy." What do you mean by that?**
 10 A So -- so, I didn't see reasons for that to do
 11 the grievance.
 12 **Q You didn't see reasons for what?**
 13 A So, I guess, I didn't understand or see the
 14 reasons to file grievance.
 15 **Q You didn't see a reason to file a chapter**
 16 **grievance or a grievance for Tracy individually?**
 17 A We never talked about chapter grievance but --
 18 so individual grievance.
 19 **Q Okay. I just want to be clear also on how**
 20 **this window -- a grievability window works. After 30**
 21 **days from the November 10th, 2015 Notice of Discipline**
 22 **you said after 30 days the ship is sailed on being able**
 23 **to grieve?**
 24 MS. HEFFNER: Objection as to form.
 25 A It says, yeah, 30 days then you can't grieve

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1 it.
 2 **Q (By Mr. Leo) Does that mean that no faculty**
 3 **member after that 30-day window could grieve the use of**
 4 **the outside activities policy in the way in which it was**
 5 **being used against Professor Tracy?**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A Unless there was another case of it so. But
 9 you're asking me about this specific.
 10 **Q (By Mr. Leo) I'm saying in general. Professor**
 11 **Tracy is asked to submit outside activities forms for**
 12 **his personal blogging. He had 30 days from the Notice**
 13 **of Discipline dated November 10th, 2015 to grieve that.**
 14 **Did the entire faculty also have 30 days to grieve as a**
 15 **chapter?**
 16 MS. HEFFNER: Objection as to form.
 17 **Q (By Mr. Leo) In the same respect?**
 18 MS. HEFFNER: Objection as to form.
 19 A No, I don't think so.
 20 **Q (By Mr. Leo) You see what I'm asking?**
 21 A Not entirely but --
 22 **Q What I'm asking is, is the failure to file a**
 23 **chapter grievance by UFF-FAU in response to the November**
 24 **10th, 2015 Notice of Discipline, did that also cause a**
 25 **waiver of the rights of other UFF-FAU members with**

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1 **respect to use of the policy in this way?**
 2 MS. HEFFNER: Objection as to form, you can
 3 answer.
 4 A I would think -- I would think if there were
 5 other people, if other violations occurred then one
 6 could object so I don't think --
 7 **Q (By Mr. Leo) Other violations of what?**
 8 A Of -- of -- what article 19 I guess, so -- so
 9 if this is a violation then other violations could come
 10 up and then you could object, you could file grievances
 11 for future.
 12 **Q But this directive to have personal blogging**
 13 **be submitted to the University pursuant to the outside**
 14 **activities policy, that's this directive that's issued**
 15 **November 2015. Once no grievance is filed by Professor**
 16 **Tracy or the chapter, are you saying that it's grievable**
 17 **if it happens again later?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 **Q (By Mr. Leo) Use of the policy in this way, is**
 21 **that grievable after you missed the window to file as a**
 22 **chapter on the November 10th notice?**
 23 A If it's a violation of a contract then,
 24 yeah --
 25 **Q For example, let's say the same exact letter.**

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1 **Submit your forms. Let's say it goes to you, for your**
 2 **Twitter. Submit the forms for your personal online**
 3 **activities. Have your rights been waived because nobody**
 4 **grieved a directive that was identical back in November**
 5 **of 2015?**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A So I guess for that to be the case then if
 9 that happened and then I agree the Twitter situation and
 10 then the administration says, "No, you don't have a
 11 right to object to that because there was this prior
 12 case and no one objected to it." So, you're saying
 13 there is a build of case law for it?
 14 **Q (By Mr. Leo) That's exactly what I'm asking**
 15 **you. If the failure to grieve a directive is precedent**
 16 **setting for your chapter and for all faculty at the**
 17 **university.**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 **Q (By Mr. Leo) If you know.**
 21 A I don't think so because it seems like -- I
 22 mean it's the contract that matters the most and
 23 precedent doesn't seem to be a factor in that. I
 24 don't --
 25 **Q Are you saying you don't know?**

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1 A I don't think so. I mean precedent doesn't
 2 seem to come up.
 3 **Q What if tomorrow FAU sent a directive just**
 4 **like that to every single faculty member and said,**
 5 **"Submit your blog, your Twitter, your Facebook page",**
 6 **all of that. Do you have the right to challenge it now**
 7 **that Professor Tracy was disciplined and terminated**
 8 **without any opposition from your chapter in any way**
 9 **within any timetable, any window, not within the 30-day**
 10 **window from November 10th, not within the 30-day window**
 11 **from December 16th, 2015, if you know.**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A My understanding was there was a lawyer from
 15 the Union defending him, that's why there was a
 16 grievance on the termination letter.
 17 **Q (By Mr. Leo) I'm sorry.**
 18 A So --
 19 **Q Are you -- are you answering my question?**
 20 A Okay, so --
 21 **Q The question is whether you know if the**
 22 **chapter has waived everybody's rights at UFF-FAU by**
 23 **failing to grieve this directive from November 2010?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A I would not think so. I would think --
 2 **Q (By Mr. Leo) I'm not asking what you think.**
 3 **I'm asking whether you know.**
 4 A So I don't know.
 5 **Q Okay. So, it's possible that UFF-FAU by**
 6 **failing to file a chapter grievance with respect to**
 7 **directives that were made to one of their members it's**
 8 **possible that there could have been a waiver of all of**
 9 **the member's rights to challenge future directives that**
 10 **are identical or nearly identical?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A I don't -- I don't think. I'm not quite sure
 14 how the case law aspect of it works. How much --
 15 **Q (By Mr. Leo) So you don't know?**
 16 A -- that impacts -- I know I don't -- yeah, I
 17 basically don't know but --
 18 **Q Has anybody ever asked you about that before**
 19 **today?**
 20 A I don't think so. I know it's important to
 21 protect the contract umm--
 22 **Q Let's stop right there. Did you protect the**
 23 **contract with respect to Professor Tracy?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A I don't know.
 2 **Q (By Mr. Leo) Did you do anything to protect**
 3 **the contract?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 **Q (By Mr. Leo) When it came to Professor Tracy's**
 7 **rights under the contract did you do anything to protect**
 8 **the contract?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A Did I do anything? Not very much, so no, I
 12 guess.
 13 **Q (By Mr. Leo) To your knowledge did anybody at**
 14 **UFF-FAU do anything to protect the contract with respect**
 15 **to Professor Tracy's rights under the contract?**
 16 MS. HEFFNER: Objection as to form, you can
 17 answer.
 18 A So, to my knowledge there was a UFF state
 19 level attorney working on this issue of the termination
 20 so --
 21 **Q (By Mr. Leo) Do you know if whether that**
 22 **attorney did anything to protect the contract concerning**
 23 **Professor Tracy?**
 24 A I don't know the details of his interaction
 25 with Professor Tracy, but my understanding was they were

<p style="text-align: right;">210</p> <p>1 working on it. So, state level was defending him.</p> <p>2 Q Did this attorney -- do you know his name?</p> <p>3 A I know there is a McKee. I don't know if</p> <p>4 that's the attorney. Bob was the one who was relaying</p> <p>5 this information.</p> <p>6 Q You're saying Zoeller?</p> <p>7 A Right. I don't know if it was McKee but there</p> <p>8 was another, it might have been a different attorney,</p> <p>9 but I know he, Tracy had representation.</p> <p>10 Q How do you know that he had representation?</p> <p>11 A President of the Union said he did.</p> <p>12 Q Zoeller? Zoeller told you that he was being</p> <p>13 represented?</p> <p>14 A Right.</p> <p>15 Q Did Zoeller tell you what was being done to</p> <p>16 represent Tracy?</p> <p>17 MS. HEFFNER: Objection as to form, you can</p> <p>18 answer.</p> <p>19 Q (By Mr. Leo) Or to defend Tracy?</p> <p>20 A That Tracy was in contact with this lawyer,</p> <p>21 and I -- we didn't really talk about the details of. I</p> <p>22 would assume that he was figuring out to do the</p> <p>23 grievance or a lawsuit or some sort of --</p> <p>24 Q Would you agree that Zoeller followed your</p> <p>25 advice and letting the lawyer -- Tracy's lawyer deal</p>	<p style="text-align: right;">212</p> <p>1 chapter members or to the officers of the chapter or the</p> <p>2 senators of the chapter, we should be monitoring Tracy's</p> <p>3 defense or response to the discipline?</p> <p>4 MS. HEFFNER: Objection as to form, you can</p> <p>5 answer.</p> <p>6 A I never said that.</p> <p>7 Q (By Mr. Leo) Did anybody at the chapter</p> <p>8 suggest that or say that they were monitoring, for</p> <p>9 example, the whole process?</p> <p>10 MS. HEFFNER: Objection as to form.</p> <p>11 A I didn't hear anything like that.</p> <p>12 Q (By Mr. Leo) Would you agree that that would</p> <p>13 be something that the chapter should do?</p> <p>14 MS. HEFFNER: Objection as to form.</p> <p>15 Q (By Mr. Leo) I'll rephrase.</p> <p>16 A Yeah.</p> <p>17 Q Should the chapter monitor the members, former</p> <p>18 members, you know, any faculty members grievance process</p> <p>19 even if they've handed it off to a lawyer?</p> <p>20 MS. HEFFNER: Objection as to form, you can</p> <p>21 answer.</p> <p>22 A Now, monitor, we -- I can think of like</p> <p>23 Kajuirra and Babbar have private grievances going on.</p> <p>24 So, monitoring I have no like docking or tracking system</p> <p>25 really they will sometimes contact but usually they</p>
<p style="text-align: right;">211</p> <p>1 with this grievance process or this issue?</p> <p>2 MS. HEFFNER: Objection as to form, you can</p> <p>3 answer.</p> <p>4 A I don't know what he specifically. Bob was</p> <p>5 doing, that was my understanding was the lawyer was</p> <p>6 handling it so it's --</p> <p>7 Q (By Mr. Leo) And that's what you told Zoeller,</p> <p>8 right?</p> <p>9 A It's kind of out of our hands or it's --</p> <p>10 Q Didn't you tell Zoeller, "let him figure it</p> <p>11 out with his lawyers", you're referring to Tracy?</p> <p>12 A Right.</p> <p>13 Q I'm referring to your e-mail dated 12/17 at</p> <p>14 10:15.</p> <p>15 MS. HEFFNER: Objection as to form.</p> <p>16 MS. HEFFNER: Objection.</p> <p>17 A So, I guess -- I guess he had lawyers at that</p> <p>18 point.</p> <p>19 Q (By Mr. Leo) Right.</p> <p>20 A So --</p> <p>21 Q And you said, "Let him figure it out with his</p> <p>22 lawyers." So, was that the end of it for you as far as</p> <p>23 Professor Tracy was concerned?</p> <p>24 A I would -- yeah, I mean --</p> <p>25 Q So, you never said to the -- any of the other</p>	<p style="text-align: right;">213</p> <p>1 don't. So, if we happen to bump into them then I'll see</p> <p>2 how it's going or we'll get news but no, we don't have</p> <p>3 like a tracking monitoring system. So --</p> <p>4 Q (By Mr. Leo) Those two examples you gave,</p> <p>5 they're represented by Union lawyers or do they have</p> <p>6 private counsel?</p> <p>7 A I think they have private because the Union is</p> <p>8 the grievance so they have their own private counsel.</p> <p>9 Q So, who at UFF or UFF-FAU or FEA is involved</p> <p>10 in dealing with Union lawyers that are brought into a</p> <p>11 faculty member's disciplinary action grievance process?</p> <p>12 MS. HEFFNER: Objection as to form, you can</p> <p>13 answer.</p> <p>14 A So, who at the chapter, at the local --</p> <p>15 Q (By Mr. Leo) Anywhere up the ladder. Starting</p> <p>16 at your chapter going all the way up to UFF and FEA?</p> <p>17 A As far as I know, president and then Michael</p> <p>18 Moats. But I don't know the other chapter members would</p> <p>19 have, I guess if they have reason to consult but I don't</p> <p>20 know about any of those.</p> <p>21 Q Were other chapter members concerned about the</p> <p>22 way that Professor Tracy's grievance was being handled?</p> <p>23 MS. HEFFNER: Objection as to form.</p> <p>24 A I haven't heard any complaints about that or</p> <p>25 concerns.</p>

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1 **Q (By Mr. Leo) Do you recall Mike Budd's**
 2 **concerns about the way the grievance was being handled?**
 3 MS. HEFFNER: Objection as to form.
 4 A No.
 5 MR. LEO: Let me just mark this.
 6 THE COURT REPORTER: This is 16.
 7 MR. LEO: 16?
 8 (Thereupon, Plaintiff's Exhibit PM-16 was
 9 entered into the record.)
 10 **Q (By Mr. Leo) This is PM 16 for today. I**
 11 **believe this may have been another e-mail that you've**
 12 **already seen. Does this refresh your recollection as to**
 13 **whether other chapter members expressed concerns about**
 14 **the way Professor Tracy's grievance was being handled?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A So, it looks like he is expressing concern.
 18 **Q (By Mr. Leo) And when he says, "Hi, Bob, Doug**
 19 **and Chris," is he talking to you?**
 20 A Yes, I think so.
 21 **Q Did you receive this message?**
 22 A I don't -- it doesn't ring a bell.
 23 **Q Looking at what he said in this message today**
 24 **when he says here at the end, "I bring this up because**
 25 **the dean and the admin may go after him further and try**

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1 **to fire a tenured faculty member regardless of what**
 2 **happens with the SPE. Are we okay with that?" You**
 3 **don't remember this statement?**
 4 A I don't -- I don't remember it.
 5 **Q And looking at the date of this e-mail, this**
 6 **is dated December 2nd, 2015, that was within the window**
 7 **to respond to the November 10th Notice of Discipline,**
 8 **right?**
 9 A Yeah.
 10 **Q But you're saying you don't remember receiving**
 11 **this e-mail?**
 12 A I don't remember that.
 13 **Q Did you ever respond to this e-mail?**
 14 A This is before this the other e-mail I sent
 15 but I don't -- I don't remember responding.
 16 **Q And looking at what he's saying today and**
 17 **after all of the things that we've talked about, are you**
 18 **okay with what the university did with respect to**
 19 **Professor Tracy's tenured employment?**
 20 MS. HEFFNER: Objection as to form, you can
 21 answer.
 22 A I guess I would want everyone to look at it
 23 closely.
 24 **Q (By Mr. Leo) You would want everyone, who?**
 25 A The University lawyers, Union, everyone to

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1 look at it.
 2 **Q Today? When you say, "Look at it," I'm just**
 3 **trying to understand --**
 4 A Well, I guess review it.
 5 **Q -- you're saying you would want them to look**
 6 **at it?**
 7 A -- review it, right.
 8 **Q Are you familiar with the University and the**
 9 **Union's position in this case?**
 10 MS. HEFFNER: Objection as to form, you can
 11 answer.
 12 A That it's what not -- that it's justified
 13 right.
 14 **Q (By Mr. Leo) I'm asking if you know.**
 15 A I think that's the position. I understand --
 16 **Q Have you talked to anybody about this case**
 17 **since the termination?**
 18 A Bob Zoeller I've talked to.
 19 **Q What has Zoeller told you about the case?**
 20 A That it's the conspiracy, I think the -- that
 21 it's alleging that there is a conspiracy between the
 22 administration. I think -- I would say, what's his
 23 name? Glick and him.
 24 **Q Zoeller told you that he was involved in the**
 25 **conspiracy?**

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1 MS. HEFFNER: Objection as to form.
 2 A That's the allegation I believe.
 3 **Q (By Mr. Leo) Okay. So, he told you what was**
 4 **alleged. Did Zoeller ever tell you that he ever met**
 5 **with Larry Glick before?**
 6 A Not -- no, he didn't. He said he did not.
 7 **Q Did Zoeller indicate that he ever talked to**
 8 **Glick about Professor Tracy prior to the termination?**
 9 A No, he said he did not do that.
 10 **Q Did Zoeller ever indicate that he talked to**
 11 **anybody else at the University within the administration**
 12 **about Professor Tracy?**
 13 A No.
 14 **Q Such as the president of the university?**
 15 A He didn't mention that to me.
 16 **Q Did Zoeller ever tell you not to talk to**
 17 **anybody about your role or involvement in Professor**
 18 **Tracy's disciplinary action?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A No, other than grievances are inherently
 22 private, you know, you don't -- I don't talk to people
 23 about them.
 24 **Q (By Mr. Leo) Did Zoeller ever tell you not to**
 25 **talk to Professor Tracy?**

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1 A No. I think -- yeah, I don't think he told me
 2 not to talk to him.
 3 **Q Did he ever tell anybody else at United**
 4 **Faculty of Florida not to communicate with Professor**
 5 **Tracy about his grievance?**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A So, did he talk to other people and say not to
 9 talk to about it?
 10 **Q (By Mr. Leo) Are you aware of any directive**
 11 **issued by Defendant Zoeller not to talk to Professor**
 12 **Tracy about anything?**
 13 MS. HEFFNER: Objection as to form, you can
 14 answer.
 15 A That I'm not -- I'm not aware of that.
 16 **Q I'm going to show you one more thing.**
 17 (Thereupon, a short discussion was held off
 18 record.)
 19 (Deposition resumed.)
 20 (Thereupon, Plaintiff's Exhibit PM-17 was
 21 entered into the record.)
 22 **Q (By Mr. Leo) I'm going to show you what's been**
 23 **marked as PM-17 for today. Just take a look at that and**
 24 **let me know if this rings a bell.**
 25 A What about it?

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1 **Q Were you included on this exchange?**
 2 A I don't specifically remember it but I may
 3 have been.
 4 **Q Does this refresh your recollection as to**
 5 **whether Defendant Zoeller instructed anybody at UFF-FAU**
 6 **not to communicate with Professor Tracy?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A I'm not really clear on what the relationship
 10 was between Jim's friends from when he was president. I
 11 don't know of --
 12 **Q (By Mr. Leo) My question is whether or not**
 13 **this communication, do you see what it says there at the**
 14 **top?**
 15 A "Should not be discussed".
 16 **Q Does this refresh your recollection as to**
 17 **whether or not Zoeller gave any directives to UFF-FAU**
 18 **not to communicate with Professor Tracy?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A Well, that says that they shouldn't discuss
 22 them so -- it's right there.
 23 **Q (By Mr. Leo) So, that refreshes your**
 24 **recollection as to directives issued by Zoeller?**
 25 MS. HEFFNER: Objection as to form, you can

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1 answer.
 2 A Yes, it looks like he is saying do not
 3 communicate with Jim Tracy.
 4 **Q (By Mr. Leo) Okay. Do you have a problem with**
 5 **how Zoeller and Moats handled Professor Tracy's**
 6 **discipline?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A Do I have a problem with it? I think as far
 10 as I know I don't really have a problem with it, no.
 11 So, I don't have a problem.
 12 **Q (By Mr. Leo) You don't have a problem with the**
 13 **failure of UFF-FAU to file a grievance within 30 days of**
 14 **the November 10th Notice of Discipline?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A Let's see. So, my understanding was that was
 18 not was not grievable so he is supposed to sign those
 19 forms. So, they advised that he sign the forms. That
 20 was my understanding.
 21 **Q (By Mr. Leo) Right. My question was --**
 22 A So --
 23 **Q -- do you have a problem with the chapter's**
 24 **failure to file a grievance within 30 days of that**
 25 **Notice of Discipline?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A Okay, so you're asking me if --
 4 **Q (By Mr. Leo) I'm asking you how you feel about**
 5 **it.**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A If -- so it seems for not filing a form, I
 9 could see how you say that was a petty thing to fire
 10 someone for. So --
 11 **Q (By Mr. Leo) Right. But my question is more**
 12 **direct to that the failure of the chapter and Zoeller**
 13 **and Moats to file a grievance for Professor Tracy after**
 14 **he receives a Notice of Discipline on November 10th.**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A I think --
 18 **Q (By Mr. Leo) Do you see a problem with that?**
 19 MS. HEFFNER: Objection as to form.
 20 A -- we considered it and then determined that
 21 it wasn't so I don't --
 22 **Q (By Mr. Leo) When you say we, when you say we,**
 23 **earlier you testified that --**
 24 A Collectively yes.
 25 **Q Earlier you testified that it was Zoeller and**

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1 **Moats who made that decision and you just went along**
 2 **with it.**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 **Q (By Mr. Leo) Is -- which one is it? Is it**
 6 **what you said earlier or was it "we" who -- were you**
 7 **involved in that decision?**
 8 MS. HEFFNER: Objection as to form.
 9 A I was at the meeting. I don't think I had the
 10 much to say and or much input into determining whether
 11 it would be objectable or not.
 12 **Q (By Mr. Leo) Was it Zoeller or Moats who was**
 13 **the first to say it wasn't grievable?**
 14 A I'm not sure which.
 15 **Q During this discussion about the grievability**
 16 **of the November 2015 Notice of Discipline, was there any**
 17 **discussion about Professor Tracy's blogging?**
 18 A I don't remember specifically talking about
 19 that.
 20 **Q Did anybody say they didn't like Professor**
 21 **Tracy?**
 22 A No.
 23 **Q Did anybody express a complaint or problem**
 24 **that they had with Professor Tracy?**
 25 A I remember Bob saying, "He has kids, why is he

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1 doing this?" that kind of thing.
 2 **Q Why is he blogging?**
 3 A No, why is this an issue, I guess. Why is --
 4 **Q Can you elaborate?**
 5 A Why is -- should sign the form and then not
 6 have it become a discipline problem.
 7 **Q Is it safe to say that Zoeller was instructing**
 8 **Professor Tracy to comply with FAU's directives?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A I think that was -- that was the consensus out
 12 of the meeting, it was for him to sign -- that was the
 13 advice to sign the form.
 14 **Q (By Mr. Leo) Did Zoeller have any intention of**
 15 **filing grievance --**
 16 MS. HEFFNER: Objection as to form.
 17 MS. HEFFNER: Objection as to form.
 18 **Q (By Mr. Leo) -- that you know of?**
 19 A That I don't know and I would -- if the
 20 grievant -- coming out of that meeting it was putting
 21 the ball back in Tracy's court. So --
 22 **Q How was that putting the ball in his court?**
 23 A To decide to sign the form or I guess to
 24 pursue a grievance if he wanted to.
 25 **Q Would you agree with me that Zoeller gave**

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1 **Professor Tracy an ultimatum?**
 2 MS. HEFFNER: Objection as to form, you can
 3 answer.
 4 **Q (By Mr. Leo) And it's the same ultimatum that**
 5 **FAU gave Professor Tracy?**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A I don't -- I wouldn't call it an ultimatum, I
 9 would say it was advice.
 10 **Q (By Mr. Leo) The advice was to fill out the**
 11 **form --**
 12 A And then file a grievance afterwards.
 13 **Q Is that not an ultimatum?**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A An ultimatum would be the last part of an
 17 interaction so he could come back with the counter I
 18 guess to that.
 19 **Q (By Mr. Leo) According to the internet it's "A**
 20 **demand whose fulfillment is requested in a specified**
 21 **period of time which is backed up by a threat to be**
 22 **followed through in case of noncompliance."**
 23 MS. HEFFNER: Objection as to form.
 24 **Q (By Mr. Leo) Using that definition would that**
 25 **be an ultimatum?**

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1 MS. HEFFNER: Objection as to form.
 2 A I don't see a -- I don't see a threat there.
 3 **Q (By Mr. Leo) Do you see conditions in that**
 4 **advice?**
 5 A Conditions that he should sign it, that's
 6 the --
 7 **Q As -- or a condition that we're not going to**
 8 **grieve unless you sign the forms that are being demanded**
 9 **by the administration?**
 10 MS. HEFFNER: Objection as to form.
 11 A I don't think that's part of it.
 12 **Q (By Mr. Leo) You don't think that that's a**
 13 **conditional -- conditional advice or he is not being**
 14 **given a take or leave it type of choice?**
 15 MS. HEFFNER: Objection as to form.
 16 A I think that's the -- that's the advice given
 17 to sign the form and then to grieve it after signing.
 18 **Q (By Mr. Leo) Is that bad advice?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A Well, I guess it -- I know the Weingarten
 22 Rights, you're not supposed to leave the meeting. So, I
 23 know there is -- there is other situations where you
 24 don't want to -- don't want to be in violation or -- you
 25 don't want to - what's the word? Um --

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1 **Q (By Mr. Leo) I'm not sure what Weingarten is.**
 2 **Tell me what's Weingarten is.**
 3 A It's a case for -- if there is ever a
 4 disciplinary, potential of a disciplinary agreement or a
 5 situation with one supervisor, employee or faculty
 6 member can invoke the Weingarten Rights, which means
 7 there needs to be a Union representative there if it's a
 8 different--
 9 **Q Okay. How does that have any connection with**
 10 **the directive that was or advice that was issued by**
 11 **Zoeller concerning the Notice of Discipline in 2015?**
 12 A I think the -- well, the advice to not be
 13 insubordinate, I think that's the term to comply with
 14 it, but then if you disagree with it then grieve against
 15 that later so not -- not to directly disobey but to
 16 comply with the orders and then later go against or file
 17 a grievance against it. So, I don't see that as an
 18 ultimatum really. I mean --
 19 **Q You don't see the conditioning a grievance on**
 20 **the compliance with an unlawful directive as like a**
 21 **threat or a condition?**
 22 MS. HEFFNER: Objection as to form.
 23 A No, because then -- sign the form and then you
 24 can grieve later.
 25 **Q (By Mr. Leo) Where is that rule in UFF-FAU,**

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1 **and the grievance chair Doug Broadfield, they**
 2 **immediately filed a grievance in response to a Notice of**
 3 **Discipline that was issued. So, I'll ask you again,**
 4 **when did the "fill out of the form and then we'll grieve**
 5 **it," when did that come into the picture at UFF-FAU**
 6 **since in 2013 that was not the advice that they gave**
 7 **Professor Tracy or any other faculty member that that we**
 8 **know of?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A I don't know when that -- if there was a
 12 change. I don't know. I can't answer that.
 13 **Q (By Mr. Leo) Do you know if it came from**
 14 **somebody above Michael Moats?**
 15 MS. HEFFNER: Objection as to form.
 16 A I don't know where that's coming from.
 17 **Q (By Mr. Leo) If what I just said is true about**
 18 **the advice that was given to Professor Tracy in 2013**
 19 **that led to a grievance that was successfully filed and**
 20 **resolved in 2013. Would that change your testimony**
 21 **about whether the advice that was given by Zoeller and**
 22 **Moats in 2015 was bad advice?**
 23 MS. HEFFNER: Objection as to form.
 24 A If it's exactly the same, I don't know if
 25 there are other conditions that would affect it. As you

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1 **UFF-FEA where is this advice, where is this coming from**
 2 **other than Zoeller or Moats, where did this come from?**
 3 MS. HEFFNER: Objection as to form.
 4 **Q (By Mr. Leo) Who made it up?**
 5 A I guess Moats is the main source. I don't
 6 know if there is a portion of the collective bargaining
 7 agreement in subordination.
 8 **Q Why didn't anybody at UFF-FAU tell Professor**
 9 **Tracy that advice in 2013?**
 10 MS. HEFFNER: Objection as to form, you can
 11 answer.
 12 A To sign the form?
 13 **Q (By Mr. Leo) Right. In 2013 --**
 14 A See, I don't know.
 15 **Q -- they didn't give that advice, did they?**
 16 MS. HEFFNER: Objection as to form.
 17 A I don't know what they did. So I guess I
 18 would expect them to say sign the form but then he
 19 grieved but I guess in that case he never signed the
 20 forms and then they had a dispute --
 21 **Q (By Mr. Leo) In 2013 Professor Tracy was given**
 22 **the same exact directive from FAU, sign these outside**
 23 **activities forms or complete them with your personal**
 24 **blog and submit them to your supervisor. And when it**
 25 **went to Moats and to the UFF-FAU president then was Robe**

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1 just described it it sounds like one should object all,
 2 file a grievance although --
 3 **Q (By Mr. Leo) Without waiting for the forms to**
 4 **be filled out?**
 5 MS. HEFFNER: Objection as to form.
 6 A If that was the precedent --
 7 **Q (By Mr. Leo) In your Collective Bargaining**
 8 **Agreement that you got there and the outside activities**
 9 **policy all of that, where in the Collective Bargaining**
 10 **Agreement does it say you have to submit anything before**
 11 **filing a grievance? And if you want you can take a**
 12 **minute so you can look through it.**
 13 (Thereupon, a short discussion was held off
 14 record.)
 15 (Deposition resumed.)
 16 **Q (By Mr. Leo) Where we left off you were**
 17 **looking for wherein in the CBA it says that you should**
 18 **submit outside activities forms before grieving?**
 19 A No, that was the 19. I think you were asking
 20 if the sign -- sign it now grieve it later that policy.
 21 **Q Sure.**
 22 A And I am not finding it in here other than
 23 maybe responsibilities --
 24 **Q Would you --**
 25 A -- so I'd have to look.

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1 **Q Would you agree that it's not a policy that's**
 2 **in the collective bargaining agreement?**
 3 MS. HEFFNER: Objection as to form.
 4 A I don't -- I don't know if it is in there.
 5 **Q (By Mr. Leo) Let me just say this, if it's not**
 6 **in the collective bargaining agreement would you agree**
 7 **that it's not part of your agreement or a condition of**
 8 **employment at UFF -- I'm sorry, FAU?**
 9 MS. HEFFNER: Objection as to form. You can
 10 answer.
 11 A There's the faculty policy. There is
 12 university regulations that talk about insubordination
 13 or some of the reasons for being terminated right --
 14 misconduct that kind of thing and that list in detail
 15 all the various kinds of misconducts so some of those
 16 are the insubordination. It's part of that and I think
 17 that's -- that's what that advice is trying to avoid
 18 appearing insubordinate.
 19 **Q (By Mr. Leo) Okay. Does it say anywhere in**
 20 **the collective bargaining agreement that if a directive**
 21 **is grievable one must comply with the directive before**
 22 **being able to grieve?**
 23 MS. HEFFNER: Objection as to form. You can
 24 answer.
 25 A Let's see. So, Article 20 talks about the

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1 grieving -- the process of grieving and that would be a
 2 logical place for something like that to be -- it does
 3 talk about working towards resolving it informally
 4 before the formal grievance is necessary. I don't know
 5 if -- so that I mean that may not be part of the
 6 agreement or the collective bargaining agreement.
 7 **Q (By Mr. Leo) Right.**
 8 A So that might just be advice to avoid to
 9 getting in this situation in the first place that you
 10 would then need to grieve it.
 11 **Q Is this advice that is given to all faculty**
 12 **members by UFF-FAU?**
 13 MS. HEFFNER: Objection as to form. You can
 14 answer.
 15 A That's consistent to not put one self in a
 16 position to being insubordinate. But --
 17 **Q (By Mr. Leo) And this is advice that you**
 18 **learned of when?**
 19 A There were a couple grievances, Sunil Babbar's
 20 grievance with the evaluation files.
 21 **Q So, Babbar was advised to submit something or**
 22 **to follow a directive?**
 23 A Well, he had meetings with his chair and then
 24 there is a recent one -- am I allowed to talk about
 25 grievances currently? So, there is a current grievance

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1 where he's supposed to go to a workshop and -- so that
 2 same issue comes up that should he go to workshop or
 3 should he grieve, because he doesn't agree with the
 4 disciplinary letter.
 5 **Q So, in this example, Babbar was given a**
 6 **directive to go somewhere?**
 7 A Exactly.
 8 **Q And what was UFF-FAU's advice?**
 9 A Go to the workshop.
 10 **Q And then grieve?**
 11 A And then grieve it if -- if he think it's
 12 grievable --
 13 **Q But could Babbar or whoever this professor is**
 14 **could he grieve without waiting to comply with the**
 15 **directive?**
 16 MS. HEFFNER: Objection as to form. You can
 17 respond.
 18 **Q (By Mr. Leo) Under his agreement, I'm**
 19 **referring to the collective bargaining agreement. Does**
 20 **he have the right, does Babbar have the right to grieve**
 21 **before the directive is complied with?**
 22 A That's a good question. I don't think so.
 23 **Q You don't think so what?**
 24 A To not -- I mean he can -- if he doesn't go
 25 then I think he would be subjected to further

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1 discipline.
 2 **Q If he does agree or if he didn't agree?**
 3 A If he doesn't do the action.
 4 **Q What if he filed a grievance before the**
 5 **workshop, in this example, are you saying that he would**
 6 **be deemed insubordinate for not --**
 7 A I think --
 8 **Q -- for grieving or for not going to the**
 9 **workshop?**
 10 MS. HEFFNER: Objection as to form. You can
 11 answer.
 12 A Well, there's a -- that should be in here but,
 13 yeah what happens to like the status of say a suspension
 14 or some sort of disciplinary procedure to somebody.
 15 That's it. I think in the cases they have had they've
 16 all -- they've been evaluations which are already done.
 17 Then there is altercation between chair and faculty
 18 member and then there was a suspension and so a fine
 19 like a one day and a fine and that was imposed -- that
 20 that was -- that wasn't something that faculty member
 21 had to do. So, I can't think of a case where there was
 22 this kind of situation --
 23 **Q Where a directives --**
 24 A -- voluntarily not complying with it I guess.
 25 **Q Where a directives been issued for a future**

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1 event?

2 A And then the choice of whether to comply with

3 it or not --

4 **Q What about Wagner?**

5 A Okay -- that never got to be a grievance.

6 **Q In Wagner's case was Wagner advised to fill**

7 **out an outside activity form before grieving?**

8 MS. HEFFNER: Objection as to form. You can

9 answer.

10 A So, you've said that I believe he got -- there

11 were these letters -- there were these letters issued

12 -- letter to him I think, which was kind of muzzling or

13 caution -- cautionary letter, it is again informal

14 disciplinary letter but that it never went to the

15 grievance that it was never grieved. I think he handled

16 it with the senate.

17 **Q (By Mr. Leo) It was resolved without**

18 **disciplinary action by FAU?**

19 MS. HEFFNER: Objection as to form. You can

20 answer.

21 A Right.

22 **Q (By Mr. Leo) And without the need for a**

23 **grievance?**

24 A Exactly.

25 **Q Unlike Professor Tracy's case?**

235

1 MS. HEFFNER: Objection as to form.

2 A Right.

3 **Q (By Mr. Leo) But there is no provision in the**

4 **collective bargaining agreement particularly Article 20**

5 **pertaining to grievances which requires a grievant to do**

6 **anything before filing a grievance?**

7 MS. HEFFNER: Objection as to form. You can

8 answer.

9 A Not that I'm aware of.

10 **Q (By Mr. Leo) And so just so we are clear**

11 **Professor Tracy didn't have to submit outside activities**

12 **forms before grieving a directive that was issued to him**

13 **by the university to submit outside activities forms?**

14 MS. HEFFNER: Objection as to form. You can

15 answer.

16 **Q (By Mr. Leo) He could have grieved right away**

17 **after the directive?**

18 MS. HEFFNER: Objection as to form. You can

19 answer.

20 **Q (By Mr. Leo) Right?**

21 A Yeah, I would think you get the letter and

22 then you grieve it I think, wasn't there an issue of not

23 receiving the letter. I think there was a gap of time I

24 don't know --

25 **Q Maybe --**

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1 A -- but --

2 **Q Going back to 2013 that's exactly what UFF-FAU**

3 **did for Professor Tracy. So, you didn't tell him to**

4 **fill out paperwork as you're being directed to they**

5 **filed a grievance and resolved it?**

6 MS. HEFFNER: Objection as to form. You can

7 answer.

8 **Q (By Mr. Leo) Right? You're not against it?**

9 A That's interesting. Okay, so that looks like

10 a difference.

11 **Q You agree that there was no advice in 2013,**

12 **like the advice that was given to Professor Tracy in**

13 **2015?**

14 MS. HEFFNER: Objection as to form.

15 A I don't know. I have no idea what happened in

16 2013.

17 **Q (By Mr. Leo) Because you didn't ask anybody?**

18 MS. HEFFNER: Objection as to form.

19 A No.

20 **Q (By Mr. Leo) Do you believe that Professor**

21 **Tracy was disciplined for his blogging?**

22 MS. HEFFNER: Objection as to form.

23 A So, you're asking me what the intent of the

24 administration was?

25 **Q (By Mr. Leo) I'm asking what your personal**

237

1 **knowledge is and your beliefs based upon what you**

2 **reviewed not only here today but in the past?**

3 MS. HEFFNER: Objection as to form. You can

4 answer.

5 **Q (By Mr. Leo) Do you believe that Professor**

6 **Tracy was disciplined by Florida Atlantic University**

7 **because of his personal blogging?**

8 MS. HEFFNER: Objection as to form..

9 **Q (By Mr. Leo) Yes or no?**

10 A That was not on the letter. Maybe --

11 **Q Regardless of what was on paper I'm asking**

12 **about your own beliefs. Do you have an opinion on this?**

13 A I guess it would have -- maybe it might have

14 some impact.

15 **Q Professor Tracy in 2015 was being asked to**

16 **submit outside activities form for his blogging, right?**

17 MS. HEFFNER: Objection as to form.

18 A Was it -- I think there were, blogging was one

19 of the things because it was related to professional

20 activities and then I don't know if there was a

21 financial exchange --

22 **Q (By Mr. Leo) I'm not asking -- I'm not asking**

23 **you about what FAU put into their self-serving letters.**

24 **I'm asking you about what your opinion is as to whether**

25 **FAU was actually disciplining Professor Tracy for his**

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1 **blog?**
 2 MS. HEFFNER: Objection as to form. You can
 3 answer.
 4 **Q (By Mr. Leo) Is that a fair question?**
 5 MS. HEFFNER: Objection as to form.
 6 A What's the reason behind the question?
 7 **Q (By Mr. Leo) I'm asking you if you have an**
 8 **opinion about whether Professor Tracy was being**
 9 **disciplined for his blogging?**
 10 MS. HEFFNER: Objection as to form. You can
 11 answer.
 12 A That had -- there was pressure from the
 13 community and I've seen that pressure have an impact in
 14 other cases so I think it would be reasonable to see a
 15 connection that there would more pressure to discipline
 16 him specifically. I don't know if there was, but --
 17 **Q (By Mr. Leo) Do you recall in December 10th**
 18 **publication in the Sunset Mall about Professor Tracy's**
 19 **blogging?**
 20 MS. HEFFNER: Objection as to form. You can
 21 answer.
 22 A There was an arti-- I think I remember reading
 23 an article about potential discipline against him. That
 24 sounds familiar.
 25 **Q (By Mr. Leo) You remember an article that**

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1 **disciplinary action that we've talked about today?**
 2 MS. HEFFNER: Objection as to form. You can
 3 respond.
 4 A It doesn't talk about that.
 5 **Q (By Mr. Leo) I'm not talking about letters.**
 6 **I'm talking about the disciplinary action. Was the**
 7 **basis for this disciplinary action was it Professor**
 8 **Tracy's blogging?**
 9 MS. HEFFNER: Objection as to form.
 10 A My understanding it's specifically the letters
 11 that lead to it, not the blogging. The blogging -- I
 12 mean there was the animosity and the earlier, the 2013.
 13 So, that that is a big part of the whole animosity I
 14 guess. So there is a longer history there.
 15 **Q (By Mr. Leo) Had Professor Tracy not been**
 16 **blogging do you think FAU would have disciplined him?**
 17 MS. HEFFNER: Objection as to form.
 18 A I guess. Yeah, I would wonder have others
 19 been fired for not filing these forms. And actually
 20 there was in the biology the Kajaira case he was getting
 21 -- he was disciplined for not filing forms for his -- he
 22 had a separate business and they went back in time on
 23 that one too. So, I have seen other cases of that.
 24 But --
 25 **Q (By Mr. Leo) Have you ever seen an example of**

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1 **said, "FAU should fire Professor Tracy" around that**
 2 **time?**
 3 MS. HEFFNER: Objection as to form.
 4 A I think there were articles about that, yeah.
 5 **Q (By Mr. Leo) And would you agree that within a**
 6 **week of that publication Professor Tracy was going to be**
 7 **terminated?**
 8 MS. HEFFNER: Objection as to form.
 9 A So -- yes, he would have that, the letter of
 10 termination.
 11 **Q (By Mr. Leo) So, in your opinion, was**
 12 **Professor Tracy fired for his speech?**
 13 A I would say it played a part -- it may have
 14 played a part in it but it doesn't look like it on the
 15 surface.
 16 **Q It doesn't look like it on paper?**
 17 A Right.
 18 **Q Would you agree that Florida Atlantic**
 19 **University wrote self-serving letters to make it look**
 20 **like he was being fired for something other than his**
 21 **blogging?**
 22 MS. HEFFNER: Objection as to form.
 23 A I supposed someone could do that.
 24 **Q (By Mr. Leo) Is there any question in your**
 25 **mind whether or not the blog was the subject of this**

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1 **somebody being fired for uncompensated activity or being**
 2 **disciplined for uncompensated activity by Florida**
 3 **Atlantic University?**
 4 A I haven't seen that. I don't know.
 5 **Q Do you know if any other professors have been**
 6 **sent letters concerning their online activities by**
 7 **Florida Atlantic University?**
 8 MS. HEFFNER: Objection as to form. You can
 9 answer.
 10 A Kevin Wagner, and currently there were others
 11 who got these letters, which were I think it was unclear
 12 who was sending them some -- from which office, some
 13 communication vice president. So there were letters
 14 there sent out, but none of those came to grievances. I
 15 think that forms a basis of that chapter grievance.
 16 **Q (By Mr. Leo) For April 2016.**
 17 A Right. That - that kind of informs the
 18 chapter grievance although because I believe that was
 19 mostly resolved.
 20 **Q Now, all these letters that you're talking**
 21 **about, letters to faculty members or and concerns about**
 22 **the outside activities policy, did all of these begin**
 23 **after President Kelly took office or was this going on**
 24 **before President Kelly took office?**
 25 MS. HEFFNER: Objection as to form. You can

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1 answer.

2 A I think it's after he took over because MJ was

3 the president before him, and there was several

4 incidents that were embarrassing for the university.

5 So, I think they're in response to that. There was some

6 more of a tighter control on people. So, it's in under

7 Kelly's.

8 **Q So, in your opinion would you state that**

9 **President Kelly has been more controlling of faculty**

10 **expression in speech than his predecessors?**

11 MS. HEFFNER: Objection as to form.

12 A Up to that the senate pushed back? Yes, up to

13 that but then that seemed to have gone away.

14 **Q (By Mr. Leo) You're referring to the senate**

15 **faculty meeting 2015?**

16 A Right.

17 **Q President Kelly was at that meeting, right?**

18 A Yeah, I guess he was.

19 **Q Could you see him on the video conference?**

20 A Yeah, I think he addressed people.

21 **Q He gave a speech?**

22 A I believe so.

23 **Q Okay. But that's shortly before Professor**

24 **Tracy's terminated under the outside activities policy?**

25 A Right.

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1 **Q Since Tracy's termination have you heard of**

2 **any continued use of this policy in a way which has been**

3 **problematic to the faculty?**

4 MS. HEFFNER: Objection as to form. You can

5 answer.

6 A I have not heard that. That problem seems to

7 have gone away as far as my awareness of it. I haven't

8 seen any grievances or rumblings of it.

9 **Q (By Mr. Leo) Was there any quid pro quo so to**

10 **speak between faculty and administration concerning**

11 **Professor Tracy's employment --**

12 MS. HEFFNER: Objection --

13 **Q (By Mr. Leo) -- or loss of employment?**

14 MS. HEFFNER: Objection as to form. You can

15 answer.

16 A I don't know. What would that be, I don't

17 know. I don't know of any.

18 **Q (By Mr. Leo) Has the faculty received raises**

19 **since Professor Tracy has been fired?**

20 MS. HEFFNER: Objection as to form. You can

21 answer.

22 A There was a raise by the new agreement, the

23 new collective bargaining agreement occurred. I'm not

24 sure when that was but, and I don't know the timing of

25 that if it was before or after Tracy. So, that was

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1 December 2015, and this one goes through '15 but I think

2 the bargaining was after so that may have been after --

3 **Q (By Mr. Leo) And what was the increase in**

4 **salary for the faculty members?**

5 A I believe it was like 3% a couple of times

6 over, so I think it's like 10% over a couple of years I

7 think. 10% over a couple of years I think.

8 **Q It's pretty good?**

9 A I might -- I might be wrong about that.

10 MS. HEFFNER: Objection as to form.

11 **Q (By Mr. Leo) Is that a pretty good raise?**

12 MS. HEFFNER: Objection as to form. You can

13 answer.

14 A Well, FAU is very underpaid so umm -- it's --

15 historically speaking that's good for FAU.

16 **Q (By Mr. Leo) When was the last time before**

17 **2016 that the faculty at FAU got raised?**

18 A I'm not sure if five years.

19 **Q Five years?**

20 A I'm guessing, I don't know.

21 **Q Before the raise in 2016 which you said was**

22 **what, 3%?**

23 A I think it was. I think it's 3% over a couple

24 of years. I'm not quite sure with the numbers.

25 **Q Prior to that five years before that or**

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1 whenever it was, what was the percentage of raise that

2 faculty received then?

3 A I think it was less, I believe-- I think it's

4 a couple percentages, I'm not quite sure.

5 **Q So, this last raise was the highest raise that**

6 **the faculty has seen over the years?**

7 MS. HEFFNER: Objection as to form. You can

8 answer.

9 A Since I've been here at FAU.

10 **Q (By Mr. Leo) Is there any concern at FAU that**

11 **the university is trying to get rid of UFF-FAU?**

12 MS. HEFFNER: Objection as to form.

13 A The state legislature seems to be, but then

14 there's some bills in the senate to try to raise the

15 membership requirement to 50% --

16 **Q (By Mr. Leo) Which would be a problem?**

17 A -- the senate and the house -- well--

18 MS. HEFFNER: Objection as to form.

19 A -- statewide then requires recertification and

20 then that will hurt the organization across the state

21 because some universities, I think FAU would be able to

22 certify but it would be tough and it's another hurdle.

23 **Q (By Mr. Leo) Was there any concern expressed**

24 **by Zoeller about Professor Tracy's affect on the**

25 **existence of UFF-FAU?**

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1 MS. HEFFNER: Objection as to form.
 2 A No, I never heard that.
 3 **Q (By Mr. Leo) He never told you that?**
 4 MS. HEFFNER: Objection as to form.
 5 A Yes.
 6 **Q (By Mr. Leo) How about if anybody else at UFF-**
 7 **FAU? Did anybody else say, "You know what? Professor**
 8 **Tracy is going to be the end of UFF-FAU --**
 9 A No.
 10 **Q -- if we don't -- do not do something.?"**
 11 MS. HEFFNER: Objection as to form.
 12 A No, never, no.
 13 **Q (By Mr. Leo) Nothing like that?**
 14 A No.
 15 MR. LEO: I think I have no more. You guys
 16 have any?
 17 MS. HEFFNER: I don't have any questions.
 18 (Thereupon, a short discussion was held off
 19 record.)
 20 (Deposition resumed.)
 21 THE COURT REPORTER: You have the option to
 22 read this transcript or waive it and just trust
 23 that I took down everything correctly. If they do
 24 order it we would give you an option, you can just
 25 come down to our office if we call you. You would

247

1 have to tell me right now if you want to have that
 2 option to read it or waive it.
 3 THE WITNESS: I guess I'll keep the option.
 4 THE COURT REPORTER: To read it. Okay. A
 5 phone number I can contact you?
 6 THE WITNESS: 561-222-4861.
 7 (Deposition concluded at 5:07 p.m.)
 8 (Reading and signing of the deposition by the
 9 witness has been reserved.)
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1 DATE: APRIL 17, 2017
 2 TO: Doug McGetchin
 3 561-222-4861
 4 IN RE: James Tracy v. Florida Atlantic University
 5 CASE NO: 9:16-cv-80655-RLR
 6 Dear DOUG MCGETCHIN,
 7 Please take notice that on APRIL 4TH, 2017 you gave
 8 your deposition in the above-referenced matter. At that
 9 time, you did not waive signature. It is now necessary
 10 that you sign your deposition. You may do so by
 11 contacting your own attorney or the attorney who took
 12 your deposition and make an appointment to do so at
 13 their office. You may also contact our office at the
 14 below number, Monday - Friday, 9:00 AM - 5:00 PM, for
 15 further information and assistance.
 16 If you do not read and sign your deposition within
 17 thirty (30) days, the original, which has already been
 18 forwarded to the ordering attorney, may be filed with
 19 the Clerk of the Court.
 20 If you wish to waive your signature, sign your name
 21 in the blank at the bottom of this letter and promptly
 22 return it to us.
 23 Very truly yours,
 24 _____
 25 Jessica Cooper
 Universal Court Reporting
 (954)712-2600
 I do hereby waive my signature.

 DOUG MCGETCHIN
 Cc: via transcript: LOUIS LEO, ESQUIRE
 KATHERINE HEFFNER, ESQUIRE
 HOLLY GRIFFIN, ESQUIRE

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1 CERTIFICATE OF REPORTER
 2 STATE OF FLORIDA
 3 COUNTY OF PALM BEACH
 4
 5 I, JESSICA COOPER, Court Reporter and Notary Public
 6 for the State of Florida, do hereby certify that I was
 7 authorized to and did digitally report and transcribe
 8 the foregoing proceedings, and that the transcript is a
 9 true and complete record of my digital notes.
 10 I further certify that I am not a relative,
 11 employee, attorney or counsel of any of the parties, nor
 12 am I a relative or employee any of the parties' attorney
 13 or counsel connected with the action, nor am I
 14 financially interested in the action.
 15 Witness my hand and official seal this 17TH day of
 16 APRIL, 2017.
 17
 18
 19
 20 _____
 JESSICA COOPER, FPR, COURT REPORTER
 NOTARY PUBLIC, STATE OF FLORIDA
 21 Commission No.: FF 943563
 Commission Exp: 12/15/19
 22
 23
 24
 25

1 CERTIFICATE OF OATH
 2 STATE OF FLORIDA
 3 COUNTY OF PALM BEACH
 4
 5 I, JESSICA COOPER, the undersigned authority,
 6 certify that DOUG MCGETCHIN personally appeared before
 7 me and was duly sworn.
 8 Witness my hand and official seal this 4TH day of
 9 APRIL, 2017.

10
 11
 12
 13 _____
 JESSICA COOPER, FPR, COURT REPORTER
 14 NOTARY PUBLIC, STATE OF FLORIDA
 Commission No.: FF 943563
 15 Commission Exp: 12/15/19

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1 ERRATA SHEET
 2 I wish to make the following changes, for the following
 reasons:
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