

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

DR. SABINA BURTON,

Plaintiff,

v.

Case No. 14-CV-274

BOARD OF REGENTS UNIVERSITY OF
WISCONSIN, et al.,

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFF'S ADDITIONAL PROPOSED
FINDINGS OF FACT

Defendant Board of Regents of the University of Wisconsin, by its attorneys, respond to the Plaintiff's Additional Proposed Findings of Fact, dated December 1, 2015, and reproduced verbatim as follows:

Jurisdictional Facts

1. Dr. Burton filed a timely charge of sex discrimination and retaliation with the Wisconsin Department of Workforce Development and the U.S. Equal Employment Opportunities Commission (EEOC) (EEOC Case No. 26G201301269) on August 13, 2013, on which she received a Notice of Right to Sue on February 26, 2014. (Dr. Sabina Burton Decl. ¶2, Ex. 1, Dkt. No. 54-1)

RESPONSE: Defendant OBJECTS to the word "timely" because it is a legal conclusion, and timeliness is related to when certain events occurred, and

thus an allegation of timeliness can only be admitted or denied in relation to a particular act or omission. Subject to and without waiving this objection, **no dispute** as to the remainder.

2. Dr. Burton filed an additional charge of sex discrimination and retaliation with the EEOC on December 5, 2014 (EEOC Charge No. 443-201500090) and a supplemental statement with the EEOC on July 21, 2015, on which she received a Notice of Right to Sue on July 31, 2015. (Burton Decl. ¶3, Ex. 2, Dkt. No. 54-2)

RESPONSE: No dispute.

3. Dr. Burton filed a timely charge of discrimination and retaliation, identifying conduct by Dr. Dalecki and Dean Throop, in EEOC Charge No. 443-201500090. (Burton Decl. ¶3, Ex. 2, Dkt. No. 54-2)

RESPONSE: Defendant OBJECTS to the word “timely” because it is a legal conclusion, and timeliness is related to when certain events occurred, and thus an allegation of timeliness can only be admitted or denied in relation to a particular act or omission. Subject to and without waiving this objection, **no dispute** as to the remainder.

The UW-Platteville Criminal Justice Department

4. At UW-Platteville, the CJ graduate program is only taught online and not in courses taught on campus. (Burton Dep., Dkt. No. 39, 437:16-21)

RESPONSE: No dispute.

5. In 2014, Dean Throop and Criminal Justice (CJ) Department (the Department) interim chair Dr. Michael Dalecki commissioned UW-Milwaukee Dean of the Helen Bader School of Social Welfare, Dr. Stan Stojkovic, to conduct of review of the Department for the purpose of their guidance and direction and to report on his findings. (Timothy E. Hawks Decl. ¶3(g), Ex. 10, Dkt. No. 53-10)

RESPONSE: Defendant OBJECTS that this fact is not material to any issue to be determined in this litigation. Subject to and without waiving this objection, **no dispute.**

6. Dr. Stojkovic reviewed documents (course syllabi and faculty vitae) and interviewed all CJ faculty and staff. (Hawks Decl. ¶3(g), Ex. 10, Dkt. No. 53-10 at 2)

RESPONSE: See response to #5.

7. In his May 10, 2014 report, Dr. Stojkovic found, as follows, that some CJ faculty and staff were concerned with the Department's failure to comply with various departmental and University policies and procedures:

Some faculty and staff expressed the point of view that while there are current university policies . . . regarding a host of issues and activities, e.g., personnel policies, disciplinary policies, and designated roles and responsibilities, with attendant levels of authority, many of the policies and procedures are not followed or simply dismissed. This is a theme raised by faculty and staff concerning a number of issues. In fact, many of the problems that have been generated in recent times can be traced back to a lack of adherence to extant policies and procedures.

(Hawks Decl. ¶3(g), Ex. 10, Dkt. No. 53-10 at 9)

RESPONSE: See response to #5.

8. Dr. Stojkovic coined the term "train wreck," in his report, referring to the FI program, writing:

To suggest the sole source of difficulty with the FI program and the criminal justice department in general lies in departmental leadership, however, misses the larger point that the FI major should not have been ever created in the first place. Departmental leadership is important to addressing the problematic nature of the FI major, but the consequential problems as a result of the creation and perpetuation of the FI program goes well beyond departmental leadership. Campus administration and the dean's office must shoulder some responsibility for the train wreck that occurred much later.

(Hawks Decl. ¶3(g), Ex. 10, Dkt. No. 53-10 at 12-13)

RESPONSE: Defendant OBJECTS to the characterization hat Stojkovic "coined the term train wreck" as unsupported and further objects that this proposed finding is not material to any issue to be determined in this litigation. Subject to and without waiving these objections, **no dispute.**

**Professional Advancement, Workload and
Compensation at UW-Platteville**

9. A full teaching load for faculty, including tenured faculty, at UW-Platteville is 12 credits. (Dr. Cheryl Banachowski-Fuller Dep., Dkt. No. 46, 12:3-11)

RESPONSE: No dispute.

10. Most online and on-campus courses are three credits, although independent study courses can provide from one to three academic credits. (Fuller Dep., Dkt. No. 46, 11:19-24)

RESPONSE: No dispute.

11. Faculty are typically contracted on a nine-month basis and not during the month of June. (Fuller Dep., Dkt. No. 46, 57:12-58:10)

RESPONSE: No dispute.

12. In the UW-Platteville College of Liberal Arts and Education (LA&E), faculty members are assessed in three areas: teaching, scholarship, and service to the University and wider community. (Dr. Elizabeth Throop Dep., Dkt. No. 42, 46:24-47:2)

RESPONSE: No dispute.

13. The CJ Department Review Board (DRB) makes retention, promotion and salary recommendations based on pertinent data in accordance with the Department's and the LA&E's approved plans, and pursuant to faculty bylaws. (Dr. Michael Dalecki Decl. Ex. B, Dkt. No. 34-1 at 8)

RESPONSE: No dispute.

14. The CJ DRB is comprised of at least three tenured CJ faculty members other than the Department chair. (Dalecki Decl. Ex. B, Dkt. No. 34-1 at 8)

RESPONSE: No dispute.

15. If there are not three tenured faculty eligible to serve on the DRB, the CJ faculty will approve the needed additional members from other LA&E departments. (Dalecki Decl. Ex. B, Dkt. No. 34-1 at 8)

RESPONSE: No dispute.

16. Conference travel, research expenses and professional development fall squarely into scholarship and are an expected part of a professor's job. (Throop Dep., Dkt. No. 42, 47:3-5)

RESPONSE: No dispute.

17. Professional advancement is enhanced by a professor's work on grants, which may provide release time from teaching to pursue potentially prestigious work and may lead to other opportunities down the road. (Burton Dep., Dkt. No. 38, 179:10-16, 179:23-180:3; Burton Dep., Dkt. No. 39, 179:23-180:3)

RESPONSE: No dispute. Fact immaterial.

18. Service on a Departmental faculty search and screen committee as a member and as the chair is considered a prestigious assignment that enhances one's DRB evaluation and can result in a DRB rating of outstanding for department or university service. (Burton Dep., Dkt. No. 38, 279:17-280:4; Burton Dep., Dkt. No. 39, 483:10-17)

RESPONSE: Defendant OBJECTS to the chair being considered a "prestigious assignment" as lacking foundation. Subject to and without waiving these objections, **no dispute** as to remainder.

19. Teaching in a graduate program increases a professor's chances for research opportunities and other professional opportunities. (Burton Dep., Dkt. No. 39, 432:20-25)

RESPONSE: Defendant OBJECTS that this finding is not material to any issue in this litigation. Subject to and without waiving this objection, **no dispute.**

20. One of the reasons Dr. Burton was attracted to the CJ Department was because it would provide Dr. Burton the opportunity to do research, but it is not a publish or perish place. (Burton Dep., Dkt. No. 38, 178:21-179:1)

RESPONSE: No dispute.

21. The Department chair assigns supervision of summer student interns to faculty members. (Throop Dep., Dkt. No. 42, 74:21-24)

RESPONSE: No dispute.

22. Because faculty members are compensated for their supervision of student interns, the chair of the Department is in a position to provide financial benefits to faculty members in the Department. (Throop Dep., Dkt. No. 42, 77:25-75:10)

RESPONSE: Defendant OBJECTS to this finding as unsupported by the record citation. Subject to and without waiving this objection, **no dispute** that the chair assigns interns to faculty. (Dkt. 36 ¶ 11.)

23. The payment per intern for supervision was a large percentage of a faculty member's salary, until budget cuts reduced the rate. (Burton Dep., Dkt. No. 38, 183: 19-184:2)

RESPONSE: Defendant OBJECTS to the characterization of payment per intern as a "large percentage" of a faculty member's salary as not justified by the citation to the record. Defendant also OBJECTS based upon a lack of personal knowledge under Fed. R. Evid. 602. Subject to and without waiving this objection, **disputed but immaterial.** Burton has testified she does not know whether all associate professors like Burton received the same base amount for interns regardless of their salary, and therefore cannot know the percentage of one's salary attributable to interns. (Dkt. 39 at 409:2-10.)

Dr. Burton's Academic Assignment and Cybersecurity Expertise

24. Dr. Burton was initially hired as an assistant professor in the Department for the 2009-2010 academic year and her assignment requires that Dr. Burton teach on campus and online courses. (Burton Decl. ¶¶4-5, Dkt. No. 54 at 2)

RESPONSE: Disputed that Burton was required to teach online courses. CJ faculty are given the opportunity to volunteer to teach online. Teaching online courses is not a typical part of a full-time faculty member's regular courseload (Dkt. 36 ¶¶ 6, 10.) Defendant OBJECTS to the extent Burton's assertion violates the Best Evidence Rule, as Burton has produced no contract indicating she is "required" to teach online courses. **No dispute** as to the remainder.

25. Dr. Burton's contracted assignment that she teach on campus and online courses reflects that 25% of her regular, contracted course load of four courses will be a minimum of one course online. (Burton Decl. ¶¶4-5, Dkt. No. 54 at 2; Hawks Decl. ¶10(e), Ex. 47, Dkt. No. 53-47; Burton Dep., Dkt. No. 39, 416:16, 429:17-430:14)

RESPONSE: Defendants OBJECT that the citations do not support the proposed fact, and require a legal conclusion as to the meaning of a contract. Subject to and without waiving, **Disputed but immaterial.** Burton's contract speaks for itself and nowhere in it does the contract state that 25% of her regular coursework is to be done online. (Dkt. 54-3.) Faculty may volunteer to teach online in addition to their regular on-campus courseload,

but teaching online courses is not a typical part of a full-time faculty member's regular course load. (Dkt. 36 ¶¶ 6, 10.)

26. As of January 19, 2012, Dr. Caywood recommended Dr. Burton's retention and promotion to associate professor on the grounds that she exceeded all requirements for promotion and was well liked by students, respected by her peers, and a solid performer. (Dr. Thomas Caywood Dep., Dkt. No. 40, 39:19-20:15)

RESPONSE: Defendant clarifies that the citation should be to Dkt. No. 40, 39:19-40:15; subject to this, **no dispute.**

27. Dr. Burton's background is in terrorism and Dr. Caywood considers Dr. Burton as having an expertise in cybercrime. (Burton Dep., Dkt. No. 38, 196:21-22; Caywood Dep., Dkt. No. 40, 113:9-14)

RESPONSE: No dispute.

28. Dr. Burton developed a graduate online course in cybercrime Cyber-Crime CJ7340 and taught it in the summer 2014 and spring 2014. (Burton Dep., Dkt. No. 39, 401:5-13, 404:2-405:4; Kieckhaver Decl. Ex. A, Dkt. No. 33-1, at 024, 025)

RESPONSE: No dispute.

29. From June 2013 to the present, Dr. Burton has been part of a Hacker Profiling Project with UNICRI, a research forum for the United Nations in Italy, eventually to develop tools to conduct deductive profiling of a cybercrime scene. (Burton Dep., Dkt. No. 38, 27:21-30:8; Anne M. Bensky Decl. Ex. FFFF at 002, Dkt. No. 43-8)

RESPONSE: No dispute.

30. From June 2013 to the present, Dr. Burton has also engaged in a joint research project between Platteville and the state of Brandenburg, Germany, regarding social networking as community policing tool in rural areas. (Burton Dep., Dkt. No. 38, 30:9-31:12; Bensky Decl. Ex. FFFF at 002, Dkt. No. 43-8)

RESPONSE: No dispute.

31. From November 2012 to the present, Dr. Burton has served as a consultant for the European Center for the Monitoring of Suspicious Online Activities. (Bensky Decl. Ex. FFFF at 002, Dkt. No. 43-8)

RESPONSE: No dispute.

32. Since the spring 2013, Dr. Burton has also been a consultant for Brandenburg Cyber-Crime at the European Union in Brussels. (Burton Dep., Dkt. No. 38, 31:13-32:8; Bensky Decl. Ex. FFFF at 002, Dkt. No. 43-8)

RESPONSE: No dispute.

33. From the 1980's until about 1993, and briefly in 2011, Dr. Burton worked for an intelligence agency in Germany regarding cybercrime aspects of profiling and counterintelligence. (Burton Dep., Dkt. No. 38, 32:12-40:8; Bensky Decl. Ex. FFFF at 002, Dkt. No. 43-8)

RESPONSE: Disputed but immaterial. Burton “never formally worked for” the agency in question after 1993 or 1994. (Dkt. No. 38 at 38:16-23.) **No dispute** as to the remainder.

34. Dr. Burton has given presentations on topics regarding various aspects of cybercrime at national professional conferences from 2011-2014 and in a lecture series at UW-Platteville. (Burton Dep., Dkt. No. 38, 40:10-44:6, 47:23-48:22; Hawks Decl. ¶6(d), Ex. 21, Dkt. No. 53-21; Bensky Decl. Ex. FFFF at 003-004, Dkt. No. 43-8)

RESPONSE: No dispute. Fact not material.

35. To assess Dr. Burton's expertise, Dean Throop examined Dr. Burton's publication record only within the University library's databases. (Throop Dep., Dkt. No. 42, 107:18-108:6)

RESPONSE: No dispute.

36. Dean Throop never heard an address to a group by Dr. Burton on the subject of cybersecurity. (Throop Dep., Dkt. No. 42, 135:11-12)

RESPONSE: No dispute.

37. Dean Throop never inquired of Dr. Burton whether Dr. Burton had attended classes or seminars in cybersecurity-related topics. (Throop Dep., Dkt. No. 42, 135:14-17)

RESPONSE: No dispute.

38. Similarly, Dean Throop never asked Dr. Burton about her professional contacts and in the field. (Throop Dep., Dkt. No. 42, 135:18-20)

RESPONSE: No dispute.

39. Dean Throop also never asked Dr. Burton about her work on internet crimes against children, cyber terrorism or online radicalism. (Throop Dep., Dkt. No. 42, 135:21-24)

RESPONSE: No dispute.

**Defendants' Support for Development of a Cybercrime Curriculum
and Dr. Burton's Request to AT&T for a Donation**

40. In about early to mid-February, 2012, Dr. Caywood held an initial, informal meeting with Dr. Burton and Bob Roberts, about developing a cybersecurity program which Mr. Roberts, with his expertise in grant writing and administrative tasks, would facilitate. (Burton Dep., Dkt. No. 38, 197:2-198:8, 209:21-210:3; Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 10, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 8)

RESPONSE: No dispute.

41. Dr. Caywood's initial idea was for an exciting forensic center, to be named the Joe Lomax Center, and the discussion at this preliminary meeting addressed Dr. Caywood as the official director, Mr. Dutelle working mainly on his fingerprint research and Dr. Burton as the cybersecurity program. (Burton Dep., Dkt. No. 38, 197:21-24, 210:4-16)

RESPONSE: No dispute.

42. When they asked Dr. Burton to be a part of forensics and to build the cybersecurity program, it did not take much persuasion to get her on board. (Burton Dep., Dkt. No. 38, 196:19-197:1)

RESPONSE: No dispute.

43. Dr. Burton's initial goals for the program were to broaden and update the CJ program for students to include cybercrime, as the curriculum had not been revised since the mid-1990's. (Burton Dep., Dkt. No. 38, 196:5-12; Hawks Decl.

¶3(g), Ex. 10, Dkt. No. 53-10 at 8-9, 11, 19)

RESPONSE: No dispute.

44. After the initial meeting, Dr. Burton began reviewing the cybercrime curricula of other academic programs. (Burton Dep., Dkt. No. 38, 198:9-24)

RESPONSE: No dispute.

45. Because Mr. Roberts monitored grant opportunities, he thought that Dr. Burton or Mr. Dutelle had the most promising chances to receive grants in the CJ Department, and he raised the possibility of applying for a grant from the National Science Foundation. (Burton Dep., Dkt. No. 38, 198:25-199:14)

RESPONSE: Defendant OBJECTS to this finding as calling for speculation as to what Roberts thought; **no dispute** that Roberts raised the possibility of applying for the NSF grant.

46. On March 27, 2012, three representatives of the Wisconsin Department of Justice (DOJ), Dr. Caywood, Mr. Dutelle, Mr. Roberts and Dr. Burton met to discuss development of a CJ cybercrime program. (Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 10, Hawks Decl.

¶2(a), Ex. 1, Dkt. No. 53-1 at 8; Burton Dep., Dkt. No. 38, 210:17-211:1)

RESPONSE: No dispute.

47. In March, 2012, Mr. Roberts, Dr. Burton and three UW-Platteville professors from computer science, business/accounting, and political science met to discuss development of a CJ cybercrime program. (Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 10, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 8)

RESPONSE: No dispute.

48. On March 28, 2012, Michael Gay, Director of the Center for New Ventures at UW-Platteville, wrote to Edward Wall at the DOJ, following-up on his visit, outlining proposals for expanding the CJ program and seeking a letter of support from the DOJ for the University's application for National Science Foundation (NSF) funding for a three-year cyber scholar project to develop an undergraduate cybercrime curriculum. (Hawks Decl. ¶6(b), Ex. 19, Dkt. No. 53-19)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any issue in this litigation; subject to and without waiving this objection, **no dispute.**

49. The DOJ was interested in development of a cybercrime program because the program would educate and train UW-Platteville students in a field that they had great use for. (Burton Dep., Dkt. No. 38, 239:12-15)

RESPONSE: Defendant OBJECTS to this finding as calling for speculation regarding the DOJ's interest in the program and as hearsay and immaterial. Subject to these objections, **no dispute.**

50. Following a meeting in about April 2012, with Mr. Roberts, Dr. Caywood and Mr. Gay, Mr. Roberts thought that cybercrime would be the most

compelling idea to attract grants and that Dr. Burton would have the greatest chance to attract grants in this area. (Burton Dep., Dkt. No. 38, 199:3-200:1, 210:17-22; 211:6-11)

RESPONSE: Defendant OBJECTS to this finding as speculation regarding Roberts thoughts about what proposals would attract grants and who would have the greatest chance to attract grants. **No dispute** that a meeting was held in April 2012.

51. Two legislators also met with Dr. Burton, Mr. Gay, Dr. Caywood, Mr. Roberts, Mr. Dutelle, and Rose Smyrski, special assistant to the chancellor, to continue and pursue discussions about a cybercrime program. (Burton Dep., Dkt. No. 38, 211:23-212:9)

RESPONSE: No dispute.

52. A DOJ representative wrote letters of support for the NSF proposal. (Burton Dep., Dkt. No. 38, 239:12-15)

RESPONSE: No dispute.

53. The NSF proposal was attached to a transmittal form and signed on April 20, 2012, by Dr. Burton, Dr. Caywood, and Kory Wein, and stated:

The University of Wisconsin – Platteville, through a funded National Science Foundation project, intends to develop a multi-disciplinary curriculum designed to streamline partnerships between the private sector, government, and academic institutions with the objective of educating students in the interests of establishing a safe, secure and resilient cyber ecosystem.

(Hawks Decl. ¶10(g), Ex. 49, Dkt. No. 53-49).

RESPONSE: Defendant OBJECTS to the proposed finding as hearsay.

Subject to and without waiving this objection, **no dispute.**

54. The proposal identified Dr. Burton as the principal investigator and “expert on international terrorism,” whereas Dr. Caywood’s signature, as department chair, bore the following certification, in pertinent part: “I certify that I have reviewed the proposal and found it to be complete, including required clearances, budget and commitments involving space, faculty/staff time, and matching funds. In addition, I certify that all resources and other provisions of any award will be fulfilled.” (Hawks Decl. ¶10(g), Ex. 49, Dkt. No. 53-49)

RESPONSE: Defendant OBJECTS to the proposed finding related to Burton’s expertise as hearsay. Subject to and without this objection, **no dispute.**

55. On April 5, 2012, Dr. Caywood, Mr. Dutelle, Dr. Burton, Mr. Roberts, Mr. Gay, and two U.S. House of Representatives legislative assistants met to discuss development of a CJ cybercrime program. (Answers and Resps. of Pl. to Defs.’ First Set of Disc., Answer to Interrog. No. 10, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 8)

RESPONSE: No dispute.

56. In April 2012, at the direction of Dr. Caywood, the University information technologies staff created an electronic cyber-scholar workgroup folder for all working on the cyber scholar activity and provided access to Dr. Burton. (Burton Dep., Dkt. No. 38, 211:2-5; Hawks Decl. ¶6(c), Ex. 20, Dkt. No. 53-20)

RESPONSE: No dispute.

57. On July 30, 2012, Kory Wein, LA&E associate dean, emailed an urgent request to Dr. Burton and others seeking immediate project ideas to support grant requests through the Center for New Ventures. (Burton Decl. ¶7, Ex. 4, Dkt. No. 54-4)

RESPONSE: Defendant OBJECTS to this finding as hearsay. Defendant further OBJECTS to this finding as immaterial to any issue in this litigation, notes that the cited source does not even mention cybercrime or the criminal justice department in particular. This fact is immaterial.

58. Between August 10 and 17, 2012, Ms. Smyrski emailed Dr. Burton and three others an NSF update on Secure and Trustworthy Cyber space (SaTC), closing with this funding opportunity notice: “In addition, the SaTC program seeks proposals addressing Cybersecurity Education with total budgets limited to \$300,000 and durations of up to two years.” In the email exchange, Ms. Smyrski agreed with Engineering, Mathematics and Science Dean William Hudson that they might find opportunities in the investigation of cybercrimes, which is why she sent the notice to Dr. Burton. (Burton Decl. ¶8, Ex. 5, Dkt. No. 54-5)

RESPONSE: Defendant OBJECTS to this finding as hearsay. Defendant further OBJECTS to Burton’s characterization as to why Smyrski transmitted the message as speculation. **No dispute** that the material is accurately quoted or that Smyrski and Burton exchanged emails between August 10 and 17, 2012.

59. Mr. Roberts conducted another meeting in the fall 2012, inviting people from various departments in all of the UW-Platteville schools, including the associate dean of engineering, and discussed that Dr. Burton's cybercrime idea would be the best project for grant funding. (Burton Dep., Dkt. No. 38, 200:2-9)

RESPONSE: Defendant OBJECTS to the statement that Burton's cybercrime idea would be the best project for grant funding as hearsay; **no dispute** as to the remainder.

60. During the spring or summer 2012, Mr. Roberts identified about three or four grants that he wanted to pursue for the potential cybercrime program, although the NSF grant was the largest one. (Burton Dep., Dkt. No. 38, 200:19-25)

RESPONSE: No dispute.

61. On August 21, 2012, on learning that the April 2012 NSF proposal would not be funded, Mr. Smyrski encouraged Dr. Burton to use the NSF information to prepare another proposal. (Burton Decl. ¶9, Ex. 6, Dkt. No. 54-6)

RESPONSE: No dispute.

62. Mr. Roberts was also encouraging in an August 31, 2012 email, because NSF funding is rare and most larger universities are funded only after having made three to five prior funding submissions, and because the NSF feedback indicated that the funds sought will not provide for initial curriculum development. On the same day, Dr. Burton forwarded his encouragement to the three other UW-Platteville professors who contributed to the NSF application, along with a copy of

the NSF proposal reviews and the original proposal. (Burton Decl. ¶10, Ex. 7, Dkt. No. 54-7)

RESPONSE: Disputed. Roberts' message speaks for itself and reads, in full, "As you know the NSF Cyber Proposal was not funded in this last cycle. I would not be discouraged by this news as their funding percentile is less than 18% and typically PIs from large universities make 3-5 submissions before they receive funding. We are considered to be a very small institution. The evaluation pressure has grown more rigorous in the last 12 months as they are seeing high numbers of applications.

The feedback from NSF is based on the impact and merit criteria and is the same criteria they use from all of their proposals. Typically when a project is not funded the reviews range from good to fair to poor. Often people will review the feedback and assume that if all of the reviews are "good" that the project funds; however, in the last year I have seen proposals which were marked as "good" and did not receive funding. It is often difficult to understand what to take away from these reviews; however, in this case I see two areas of improvement:

1. They want an approved curriculum and do not want to fund a curriculum development process through this solicitation. Their curriculum development solicitation is a \$50,000 to \$100,000 maximum award and the application is due in December. Although \$50,000 to \$100,000 sounds like a healthy amount of dollars to develop a curriculum it is important to remember that one must subtract a 44% indirect indirect (This is calculated against the salary and fringe rate Ex: 10,000 in salary and fringe is 4400.00 in direct)—which brings down the staff time that can be invested.
2. Outcome measurement against the curriculum implementation is also necessary. The curriculum design that is often preferred is one dictated by institutional policies. The outcome measurements that are linked to it are also linked to these policies. I have been doing some work on some measurement systems that would be used for grant applications; however, they are not systems that are supported by institutional policy as historically curriculum development processes have varied widely between the three colleges. We would need to discuss this more specifically as it would likely require some form of approval and likely require a series of meetings.

Please feel free to share this email with your project team as well as the NSF reviews. (Dkt. 54-7)

63. On learning that NSF would not fund a program from the bottom up,

Mr. Roberts had two or three funding sources in mind that would allow them funds

to build a cybercrime program and he even traveled to Washington, D.C. to talk to interested contacts. (Burton Dep., Dkt. No. 38, 201:22-202:10)

RESPONSE: Defendant OBJECTS to Roberts' reasoning for travel to Washington, D.C. and his thoughts regarding resources as speculation and hearsay; **no dispute** subject to these objections.

64. Dr. Caywood's and Mr. Roberts's interest in the cybercrime program continued after the NSF grant was not approved, with both Mr. Roberts and Dr. Caywood expressing positive thoughts about trying for additional opportunities. (Burton Dep., Dkt. No. 38, 212:10-19)

RESPONSE: Defendant OBJECTS to this finding as speculation with regard to the state of mind of Caywood and Roberts; **no dispute** that Caywood and Roberts suggested trying for other opportunities after the NSF denial.

65. Dr. Burton had a green light from the chancellor to go out and look for donations because of the budget cuts. (Burton Dep., Dkt. No. 38, 244:13-18)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context, as it related to funding for speaking at conferences and not developing a full-scale curriculum. Burton's testimony is as follows:

Q. So instead of, for example, seeking approval for these individual uses of the funds, for example, bringing in police or sending people to conferences or structuring a curriculum, you thought it best to get the money first and then seek approval later?

A. You don't have to have approval for going to a conference. This is something we're always encouraged to do. Nobody ever had to get approval. When it's during—if it's on a weekend, you can go. When it's during the week, you get approval from the chair, which the chair happily gives. And this is actually encouraged and it's been—at convocation it's been very strongly encouraged. The chancellor himself encouraged us to go out there and look for

donation. So we had green light to do these kind of things because of the budget cuts. (Dkt. No. 38 244:3-18.)

66. When it came to applying for a research grant, any grant application would have to be cleared with Dr. Caywood. (Burton Dep., Dkt. No. 38, 177:23-178:1)

RESPONSE: No dispute.

67. If they had won the \$320,000 NSF grant in 2012, they would not have needed to pursue other opportunities right away because their first goal would have been to meet the requirements of the NSF grant, and that would have been sufficient at least to start the cybercrime program. (Burton Dep., Dkt. No. 38, 201:18-25, 205:19-206:4)

RESPONSE: No dispute.

68. Mr. Roberts did pursue other grant opportunities in October 2012, but his department was overworked and understaffed, with great demand from engineering, math and sciences, and from the business college, and he did a lot of last minute work on the grants, giving others a very small window to provide the information needed for completion. (Burton Dep., Dkt. No. 38, 202:11-203:25)

RESPONSE: Defendant OBJECTS to the state of Roberts' department and reasons for doing last minute work as speculation and immaterial. Subject to these objections, **no dispute.**

69. Due to the limited time to obtain the Dean's approval, in October 2012, Dr. Burton, Mr. Roberts and all agreed to put on hold possible cybercrime grant

opportunities that Mr. Roberts wanted to pursue in October. (Burton Dep., Dkt. No. 38, 203:7-204:14)

RESPONSE: No dispute.

70. Dr. Burton understood the logistics of getting a program like cybercrime started, for which, one usually would want to start with manageable plans, including to have people who can teach the courses, once they are established. (Burton Dep., Dkt. No. 38, 206:5-15)

RESPONSE: Defendant OBJECTS to this finding as violating the rule of completeness. Burton testified that the logistics of getting a program started included getting approvals from the chair of the CJ department, the college curriculum committee, the university curriculum committee, and, if for a minor or major, the regents and the UW system. (Dkt. No. 38 at 206:11-208:18.) Defendant does not dispute that Burton understood the logistics of getting a cybercrime program started.

71. Since there was no CJ curriculum committee in 2012, Dr. Burton knew that a proposal for a new CJ undergraduate cybercrime course would first need the chair's approval and then go to the LA&E curriculum committee, where the proponent would present a completed syllabus with books to be assigned and would articulate, among other things, how the course would be staffed, the teaching rotation it would be on (whether it would be taught in one semester or year-round) and the anticipated number of students. The committee would determine whether it fits the LA&E catalog. (Burton Dep., Dkt. No. 38, 206:13-24, 244:19-245:5)

RESPONSE: See response to #70.

72. If the LA&E curriculum committee approved a new undergraduate course, Dr. Burton knew that the next step would be approval by the University curriculum committee. (Burton Dep., Dkt. No. 38, 207:9-13)

RESPONSE: No dispute.

73. For a graduate course, the process is different and one needs permission to develop the course. (Burton Dep., Dkt. No. 38, 246:6-13)

RESPONSE: Defendant OBJECTS that the cited source does not support the proposed finding of fact; **no dispute** that permission is required to develop a graduate course.

74. To propose a new emphasis, a program, a major, or a minor, Dr. Burton knew that the Department chair or the Dean would know the procedure for approval, which would ultimately require Board of Regents approval. (Burton Dep., Dkt. No. 38, 208:7-18)

RESPONSE: See response to #70.

75. Dr. Caywood and Mr. Roberts assessed whether there were programs related to cybersecurity elsewhere in the UW System, so that a program at Platteville would not be in direct competition with them. (Burton Dep., Dkt. No. 38, 208:17-25)

RESPONSE: No dispute.

76. For Dr. Burton, it was important to get something going so that, if it works, they could grow from there and Mr. Roberts and Dr. Caywood handled the

approvals needed for the AT&T grant application. (Burton Dep., Dkt. No. 38, 209:6-18)

RESPONSE: Defendant OBJECTS to this finding as vague and immaterial. Defendant further OBJECTS that the proposed finding is unsupported by the cited source and therefore moves to strike.

77. In the summer, 2012, Dr. Burton told Dr. Caywood that, having no initial funding from NSF, she would seek private funding and Dr. Caywood was encouraging. (Burton Dep., Dkt. No. 38, 236:17-237:1)

RESPONSE: Defendant OBJECTS to Burton's characterization of Caywood's reaction as encouraging as speculation; **no dispute** as to the remainder.

78. Dr. Burton met with State Rep. Travis Tranel, of Grant County, and informed him that they needed funding to get started on planning a cybercrime program. (Burton Dep., Dkt. No. 38, 232:19-233:2)

RESPONSE: No dispute.

79. Rep Tranel liked Dr. Burton's ideas, talked to the Wisconsin Technology Council, and informed Dr. Burton that representatives of AT&T would contact her. (Burton Dep., Dkt. No. 38, 233:3-8)

RESPONSE: Defendant OBJECTS to Tranel's impression of Burton's ideas as speculation and to Burton's statement that Tranel discussed with the Wisconsin Technology Council for lack of personal knowledge. **No dispute** as to the remainder.

80. On September 11 and 12, 2012, Dr. Burton and James Jermain, AT&T Regional Vice President, corresponded regarding “Funding Cyber-Crime program at UW-Platteville, Dr. Burton sent him a summary of the NSF proposal, and Mr. Jermain considered it “very exciting plans for a cyber security program at UW Platteville” and AT&T offered to help with a donation for some moderate beginnings, after, at Dr. Caywood’s suggestion, the University office of sponsored programs helped Dr. Burton with the required paperwork. (Burton Dep., Dkt. No. 38, 233:9-235:12, 237:9-238:11; Hawks Decl. ¶3(e), Ex. 8, Dkt. No. 53-8)

RESPONSE: No dispute that Burton and Jermain corresponded, that Burton sent Jermain a summary of the NSF proposal, and that AT&T made the donation. Defendant OBJECTS that the remainder of the finding is not supported by the cited source material and therefore **disputes**.

81. In September 2012, Dr. Burton forwarded to Dr. Caywood emails from an AT&T representative to notify Dr. Caywood that she had secured a donation from AT&T of between \$5,000-\$7,000 for funding a cybercrime program at UW-Platteville. (Hawks Decl. ¶3(e), Ex. 8, Dkt. No. 53-8)

RESPONSE: No dispute.

82. The AT&T funding would facilitate Dr. Burton preparing a curriculum proposal. (Burton Dep., Dkt. No. 38, 243:1-4)

RESPONSE: Defendant OBJECTS to this finding as calling for speculation.

83. Dr. Burton envisioned using the AT&T donation to allow CJ faculty and students to visit schools with cybersecurity programs, to talk to other

instructors, to learn about job prospects in cybersecurity and to attend conferences. (Burton Dep., Dkt. No. 38, 243:6-10)

RESPONSE: No dispute.

84. Dr. Burton and three CJ undergraduate students had applied and been accepted to give a cybercrime presentation at the American Academy of Forensic Scientists, the biggest forensics conference in the United States. (Burton Dep., Dkt. No. 38, 243:11-17)

RESPONSE: Defendant OBJECTS to this finding as vague as to time.

Subject to and without waiving this objection, **no dispute.**

85. In the AT&T funding application and in Dr. Burton's correspondence to AT&T regarding funding for cybersecurity in the CJ Department, Dr. Burton sought to develop a program, and she did not state that a program had been approved. (Burton Dep., Dkt. No. 38, 229:21-230:5; Throop Decl. Ex. GGG at 002, Dkt. No. 37-1; Burton Decl. ¶12, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to the extent the proposed fact is not supported by the evidence. Subject to and without waiving, **Disputed.** The application stated, in part, "Our cyber-security curriculum *will be designed* to educate our students in recognizing cyber-criminals, understanding their modus operandi, identifying and articulating what evidence should be seized, and preparing reports that will hold up in court. The curriculum *will include* the vulnerabilities of our public and private sectors, identifying security concerns and illicit activity, and methods to provide better private and public

community and security agency services.” (Dkt. No. 37 ¶ 9, Ex. GGG.)
(emphasis added).

86. In the summer of 2012, Dr. Burton, Mr. Jermain, Dr. Caywood and Mr. Roberts all understood (and Mr. Roberts planned) from the beginning that they would seek the AT&T donation first and then seek approval for a cybersecurity program later. (Burton Dep., Dkt. No. 38, 245:14-246:7)

RESPONSE: Defendant OBJECTS to this finding as calling for speculation. Subject to and without waiving this objection, **disputed.** Caywood felt comfortable putting the cart before the horse for a six-figure donation like the NSF grant, but there is no evidence in the record that Caywood or the others expressed to Burton that they would seek the \$7,000 AT&T donation first and then seek necessary approvals approval later. (Dkt. No. 36 ¶33.)

87. Dr. Caywood, Dean Throop and Mr. Roberts told Dr. Burton they were happy about the AT&T donation for the cybersecurity program. (Burton Dep., Dkt. No. 38, 234:20-21, 236:1-9)

RESPONSE: No dispute.

88. The AT&T donation could not be used for faculty release time. (Burton Dep., Dkt. No. 38, 232:13-18)

RESPONSE: No dispute.

89. In about September 2012, at a Department meeting, Dr. Caywood encouraged Dr. Burton to maintain their contacts with the DOJ representatives. (Burton Dep., Dkt. No. 38, 240:12-241:4)

RESPONSE: No dispute.

90. On October 3, 2012, Dr. Burton and Dean Throop met to discuss the opportunities that developing a cybercrime curriculum will provide to UW-Platteville students, given the wide-ranging nature of cybercrimes and the need for private sector involvement with government in identifying and reporting cybercrime and reporting cybercrime, and Dean Throop was 100% on board, as Dr. Burton reported to Mr. Gay. (Burton Dec. ¶13, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to Dean Throop being “encouraging, 100% on board” as speculation and to the entire finding as based on inadmissible hearsay.

91. On October 6, 2012, Dr. Burton emailed to Dr. Caywood and Dean Throop her eight-part proposal for cybersecurity/homeland security at UW-Platteville, in which she proposed that CJ: create cybersecurity and criminal justice journals; create an undergraduate and graduate course for cybersecurity; create an undergraduate and graduate course for homeland security; form workshops as a community outreach program; create more homeland security and cybersecurity courses in the next years; develop an emphasis in homeland and cybersecurity within CJ; turn emphasis into a major in homeland & cybersecurity in the next years; build a UW-Platteville cybersecurity center. (Hawks Decl. ¶10(b), Ex. 44, Dkt. No. 53-44)

RESPONSE: Defendant OBJECTS to the mischaracterization of the October 6, 2012 email as a formal “eight-part proposal.” Subject to and without

waiving this objection, **no dispute** that Burton sent the email and that it included this language.

92. Dr. Burton's October 6, 2012 proposal stated that she had "already developed a Special Topics in CJ: Domestic Terrorism course that could easily be turned into an elective course for CJ offered at least once a year." (Hawks Decl. ¶10(b), Ex. 44, Dkt. No. 53-44 at 2)

RESPONSE: Defendant OBJECTS to the mischaracterization of the October 6, 2012 email as a formal "proposal." Subject to and without waiving this objection, **no dispute**.

93. Dr. Burton's October 6, 2012 proposal included her thoughts on possible funding sources for the program and notice that she had acquired a \$7,000 donation from AT&T. (Hawks Decl. ¶10(b), Ex. 44, Dkt. No. 53-44 at 2)

RESPONSE: Defendant OBJECTS to the mischaracterization of the October 6, 2012 as a formal "proposal." Subject to and without waiving this objection, **no dispute**.

94. Dr. Burton's October 6, 2012 proposal also stated that she owns two internet sites for a journal of criminal justice and a journal of cybersecurity, providing the URLs for both sites, stating: "These sites will become open access journals for peer-reviewed articles." (Hawks Decl. ¶10(b), Ex. 44, Dkt. No.53-44 at 2)

RESPONSE: Defendant OBJECTS to the mischaracterization of the October 6, 2012 as a formal “proposal.” Subject to and without waiving these objections, **no dispute.**

95. Independently, Dr. Burton notified Dr. Caywood by email on October 8, 2012, that she had established the online CJ journal and she again provided him the URL for the journal. (Hawks Decl. ¶6(e), Ex. 22, Dkt. No. 53-22)

RESPONSE: No dispute.

96. Dr. Caywood did not criticize or object to Dr. Burton’s intention to create cybersecurity and criminal justice journals. (Caywood Dep., Dkt. No. 40, 119:2-7)

RESPONSE: Defendant OBJECTS to this finding as vague as to time.

Subject to and without waiving this objection, **disputed.** Caywood expressed serious concerns on January 24, 2013, upon receiving the press release, about statements in the release and on websites that Burton owned. (Dkt. 36 ¶36.)

97. Dr. Caywood did not object to Dr. Burton’s intention to create an undergraduate or graduate course for cybersecurity. (Caywood Dep., Dkt. No. 40, 119:9-14)

RESPONSE: No dispute.

98. Dr. Caywood did not criticize or object to Dr. Burton’s intention to develop an emphasis in homeland and cybersecurity within CJ or to turn that emphasis into a major within the next years. (Caywood Dep., Dkt. No. 40, 119:21-120:7)

RESPONSE: No dispute.

99. Nor did Dr. Caywood criticize or object to Dr. Burton's intention to build a UW cybersecurity center. (Caywood Dep., Dkt. No. 40, 120:8-12)

RESPONSE: No dispute.

100. On October 10, 2012, Dr. Burton and Dean Throop exchanged emails regarding "proposal," and the October 14 deadline for a renewed NSF cybersecurity proposal grant application. (Hawks Decl. ¶6(f), Ex. 23, Dkt. No. 5-23)

RESPONSE: Defendant OBJECTS to the mischaracterization of the October 6, 2012 as a formal "proposal." Subject to and without waiving this objection, **no dispute.**

101. On October 15, 2012, Dean Throop and Dr. Burton met again to discuss cybersecurity and the possible uses of the AT&T donation that would move forward the CJ cybersecurity project. (Burton Decl. ¶17, Dkt. Nos. 54 and 54-10)

RESPONSE: Defendant OBJECTS to this finding as it is unsupported by the cited evidence. The cited source material itself indicates that the meeting concerned application for the NSF Cyber-Corps proposal, not the uses of the AT&T donation that would move forward the CJ cybersecurity project. (Dkt. 54-10)

102. At their October 15th meeting, Dr. Burton again provided Dean Throop the URLs for the two open sources journal pages that Dr. Burton had created, Dean Throop typed the URLs onto her computer and she reviewed favorably the two web pages. (Burton Decl. ¶17, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to Burton's characterization of Throop's alleged reaction as "favorabl[e]" as based on speculation and for lack of personal knowledge. See also response to #101.

103. Prior to October 10, 2012, Dr. Caywood expressed support for submitting an NSF proposal for a cyber scholar capacity building project. (Caywood Dep., Dkt. No. 40, 12:13-17)

RESPONSE: No dispute.

104. On November 14, 2012, Dr. Burton emailed a request to meet with Dr. Caywood and Dean Throop, at Dean Throop's request, regarding the cybercrime proposal, and Dr. Caywood did not reply. (Caywood Dep., Dkt. No. 40, 120:21-123:1; Hawks Decl. ¶10(f), Ex. 48, Dkt. No. 53-48)

RESPONSE: Defendant OBJECTS that this proposed finding is unsupported by the cited record evidence. The cited testimony describes two emails, one between Throop and Burton for which Caywood had no foundation to testify, and the other showing that Caywood did, in fact, reply to Burton. For these reasons, Defendant **disputes** the finding.

105. Dr. Burton received comments from the WiSys Technology Advancement Grant on her applied research grant and applied research-WiTAG pre-proposal for an applied research grant for 2013-14, which stated that the CJ Department "is in the process of developing a curriculum for cyber-security," in consultation with other University faculty and experts in the field. (Hawks Decl. ¶10(d), Ex. 46, Dkt. No. 53-46 at 1)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any dispute in the litigation, as it does not reflect that any of the named defendants ratified the use of this language or that they were otherwise aware of it. Defendant also OBJECTS to this finding as hearsay. Subject to and without waiving these objections, **no dispute.**

106. One commentor wrote “The AR-WiTAG program promotes academic technology transfer and economic development. To that end, program and curriculum development in cyber security may address deficiencies in Wisconsin’s workforce, but it doesn’t appear that any intellectual property will be generated. In light of this, we highly encourage you to also submit your proposal to the UW System’s Grown Agenda for Wisconsin grant program.” (Hawks Decl. ¶10(d), Ex. 46, Dkt. No. 53-46 at 1)

RESPONSE: See response to #105.

107. Because a cybercrime program had been discussed for as long as eight months prior to the application to AT&T for funds, Dr. Caywood thinks that Dr. Burton may have used the same language that other people in the Department were using about the project when she described the project to AT&T. (Caywood Dep., Dkt. No. 40, 59:4-12)

RESPONSE: Defendant OBJECTS to the proposed finding as unsupported by the cited testimony and therefore moves to strike the proposed finding as unsupported by any admissible evidence.

108. Before Christmas 2012, Jim Jermain of AT&T delivered the check in person and Dr. Burton immediately took the check to the UW-Platteville Foundation, which was the recipient of the donation. (Burton Decl. ¶20)

RESPONSE: No dispute.

109. Mr. Jermain promised that AT&T would provide more money the following year. (Burton Dep., Dkt. No. 38, 241:13-16, 242:8-11)

RESPONSE: Defendant OBJECTS to this finding as hearsay.

110. Mr. Jermain requested a photo opportunity for a check presentation involving a representative of the chancellor's office, the dean's office, someone from CJ, and, at Dr. Burton's suggestion, Rep. Tranel. (Burton Dep., Dkt. No. 38, 241:20-25)

RESPONSE: Immaterial but no dispute.

111. Dr. Burton suggested, and Mr. Jermain agreed, that the presentation could be scheduled in January 2013, at the beginning of the spring semester, when she would be teaching a cybercrime class. (Burton Dep., Dkt. No. 38, 241:25-242:4)

RESPONSE: No dispute.

112. The spring 2013 cybercrime class was a stand-alone class, having not gone through LA&E curriculum review, which Dr. Burton had planned for Spring 2013. (Burton Dep., Dkt. No. 38, 242:12-22)

RESPONSE: No dispute.

113. Dr. Fuller encouraged and worked with Dr. Burton to start cybersecurity online, where they could get adjunct faculty because the Department

did not have enough faculty with that expertise. (Fuller Dep., Dkt. No. 46, 69:22-70:7)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context, as it referred to a single course and not a cybersecurity program or emphasis and therefore **disputes**. The complete testimony at issue provides:

Q. Support her interest in building a, first a course in cyber security.
A. I think a course. She may have mentioned that to me, but I think we just didn't have enough faculty at that point with that expertise to be able to do that. It was very vague. I will add, for the record, because of that and the lack of staff that I encouraged her to possibly start something online where we'd get adjunct faculty, and I really worked with her on that. (Dkt. 46 69:22-70:7.)

114. On January 15, 2013, Dr. Burton sent to Mr. Roberts a copy of the proposal regarding development of a cybersecurity program in the CJ Department, which she had sent to Mr. Spakowitz at the DOJ. (Hawks Decl. ¶10(h), Ex. 50, Dkt. No. 53-50)

RESPONSE: Immaterial but no dispute.

115. In the proposal, Dr. Burton stated that her "short term goal" would be "to create a criminal justice emphasis in cyber-security or at least a cyber-security certificate." (Hawks Decl. ¶10(h), Ex. 50, Dkt. No. 53-50)

RESPONSE: Defendant OBJECTS to the finding as hearsay, but **no dispute** that the cited source is correctly quoted.

116. In the proposal, Dr. Burton also stated that in Spring 2013, she would teach an undergraduate class on current topics, addressing cybercrime, and will

propose in 2013 to the LA&E curriculum committee that her cybercrime course be approved as an annual, elective course. (Hawks Decl. ¶10(h), Ex. 50, Dkt. No. 53-50 at 2)

RESPONSE: See objection in response to #115. Subject to objection, **no dispute.**

Dr. Burton's Assistance in Furtherance of the Student's Rights Under Title IX and Dr. Caywood and Dean Throop's Retaliation

117. On October 10, 2012, Dr. Gibson handed a female student, Alexandra Zupec, a disturbing note in his class, and Ms. Zupec saw Dr. Burton and asked Dr. Burton for her help regarding the note. (Alexandra Zupec Decl. ¶¶4-8, 11-17, Dkt. No. 51; Zupec Decl. Ex. A, Dkt. No. 51-1; Burton Dep., Dkt. No. 38, 252:13-254:2; Caywood Decl. Ex. WW at 001-002, Dkt. No. 36-5)

RESPONSE: No dispute.

118. Ms. Zupec was shocked and embarrassed by the note. (Zupec Decl. ¶¶9-12, Dkt. No. 51)

RESPONSE: Defendant OBJECTS to this finding because it is immaterial to any dispute at issue in this litigation; subject to and without waiving this objection, **no dispute.**

119. Dean Throop also recommended that the student consult with Jeanne Durr, the human resources director, because such Title IX issues were Ms. Durr's responsibility at the time. (Throop Dep., Dkt. 42, 19:8-25)

RESPONSE: No dispute.

120. After informing Dr. Caywood about the student's complaint, Dr. Burton walked to the Office of Student Affairs and notified the Assistant Dean of Students, Kate Demarse, of the student's complaint against Dr. Gibson. (Burton Decl. ¶14, Dkt. No. 54; Burton Dep., Dkt. No. 38, 256:18-24)

RESPONSE: No dispute.

121. At Ms. Demarse's request, Dr. Burton gave her the student's name and a copy of the note. (Burton Decl. ¶15, Dkt. No. 54)

RESPONSE: No dispute.

122. The Student Affairs office asked Dr. Burton to tell the student that they would take very seriously her discomfort in class and would like to talk to her and help make her comfortable, however they can. (Burton Dep., Dkt. No. 38, 256:19-24)

RESPONSE: No dispute.

123. Dr. Burton later notified the student that the Student Affairs office would hear her concerns about Dr. Gibson's harassment and a person from that office contacted Ms. Zupec. (Zupec Decl. ¶¶20-21, Dkt. No. 51)

RESPONSE: No dispute.

124. Also on October 11, 2012, Dr. Burton emailed Dean Throop that Dr. Burton feared a reprimand by Dr. Caywood for having rightly notified the Dean and student affairs about the note. (Burton Decl. ¶16, Dkt. Nos. 54 and 54-9)

RESPONSE: Defendant OBJECTS to the characterization of having "rightly" notified the Dean and student affairs and to Burton's feelings as

immaterial, especially in light of the fact that no reprimand had been threatened; subject to and without waiving this objection, **no dispute.**

125. Dr. Burton asked Dean Throop, “What shall I tell a student who comes to me with a problem because she trusts me and is afraid to bring up such a sensitive matter to someone else next time? Shall I just tell her it’s not up to me and send her to the chair? I just wanted to help a student who was upset.” (Burton Decl. ¶16 & Ex. 9, Dkt. Nos. 54, 54-9)

RESPONSE: No dispute.

126. Dr. Caywood had written to Dr. Burton earlier that same day, refusing Dr. Burton’s request that he notify faculty of future experiments like Dr. Gibson’s, on the basis of Dr. Caywood’s concern that such disclosure to faculty might “bias” the experiment. Dr. Caywood wrote that he would sort out any problem a student might have with a faculty member. (Burton Decl. ¶16 & Ex. 9, Dkt. Nos. 54, 54-9)

RESPONSE: Defendant OBJECTS to the cited source material as violating the rule of completeness and taken out of context, as only portions of emails are included in the exhibit, and therefore **disputes but immaterial.** The email reads, in full, “I don’t think we need to do that. That in and of itself could bias the results of the experiment. If a student is having a problem with a faculty member he or she needs to come see me and let me sort it out.” Burton then forwarded the email and falsely and without basis told Throop that Caywood may reprimand Burton for reporting the student complaint incident. (Dkt. 54-9 at 2.)

127. On October 11, 2012, Dean Throop wrote to Dr. Caywood that she was disturbed by Dr. Gibson's note and Dr. Caywood's response because "[i]t could well be a significant HR and Title IX issue." (Hawks Decl. ¶6(g), Ex. 24, Dkt. No. 53-24 at 3-4)

RESPONSE: Defendant OBJECTS to the characterization of Dean Throop's reaction as "disturbed"; subject to and without waiving this objection, **no dispute** as to the remainder.

128. Dean Throop was concerned, as she wrote Dr. Caywood, because "[s]uch a note could be rightly interpreted as sexual harassment regardless of intent." (Hawks Decl. ¶6(g), Ex. 24, Dkt. No. 53-24 at 4)

RESPONSE: No dispute.

129. Later on October 11, 2012, Dr. Burton forwarded Dr. Caywood an email from Ms. Zupec so he would better understand how Dr. Gibson's note and email explanation to students had affected Ms. Zupec, who wrote that she doesn't think the incident was "funny" but Dr. Gibson does. (Hawks Decl. ¶6(h), Ex. 25, Dkt. No. 53-25)

RESPONSE: Defendant OBJECTS to the finding to the extent it speculates upon Gibson's thoughts regarding the incident; **no dispute** as to the remainder.

130. On October 11, 2012, Dr. Burton kept Dean Throop informed that the student felt violated by Dr. Gibson's experiment and Dr. Burton forwarded to Dean Throop recent emails with Dr. Caywood, including Dr. Burton's cautionary message

that because sexual harassment is a very sensitive matter, it is not the best choice for a breach experiment. (Hawks Decl. ¶6(i), Ex. 26, Dkt. No. 53-26; Zupec Decl. ¶¶22-32, Dkt. No. 51)

RESPONSE: No dispute.

131. Dean Throop took measures to address the situation, notifying Human Resources, the Provost and the Chancellor, and asking Dr. Burton to reassure the student. (Hawks Decl. ¶6(i), Ex. 26, Dkt. No. 53-26)

RESPONSE: No dispute.

132. Ms. Zupec was uncomfortable talking with Dr. Caywood about the note and felt worse about it on receipt of Dr. Gibson's dismissive email, which made her feel like an idiot. (Zupec Decl. ¶¶18-19, 22-32, Dkt. No. 51)

RESPONSE: Defendant OBJECTS to the characterization of Gibson's email as "dismissive"; defendant further OBJECTS to this finding as immaterial to any fact at issue in this litigation. Subject to and without waiving these objections, **no dispute.**

133. On October 12, 2012, Dr. Burton emailed the student to assure her that she had appropriately come forward to disclose the disturbing note and that the University is concerned about her emotional well-being. (Hawks Decl. ¶6(k), Ex. 28, Dkt. No. 53-28)

RESPONSE: No dispute. Fact immaterial.

134. On October 17, 2012, Dr. Caywood sought from Dr. Burton a time line and specifically when and how the student first contacted Dr. Burton, when Dr.

Burton notified Dean Throop, Mr. Dutelle, and possibly others, and whether Dr. Burton had tried to contact Dr. Gibson about his note to the student. (Hawks Decl. ¶6(L), Ex. 29, Dkt. No. 53-29)

RESPONSE: Defendant OBJECTS to this finding as violating the rule of completeness. Caywood's email, in full, read "Would like a time line concerning Lorne's research class. What time did A. Zupec first contact you? Was it by phone or in person? What time did you call Aric? At what time did you notify the dean and possibly others about the note? At any time did you contact or attempt to contact Lorne to ask about the note?" (Dkt. 53-29.)

135. On the same day, the UW-Platteville Director of Human Resources, Jeanne Durr, admonished Dr. Caywood to stop his continuing communications with Dr. Burton over the student complaint and told Dr. Caywood that Dr. Burton had handled the incident properly and had advocated properly for the student, protecting the student's interests. (Hawks Decl. ¶6(m), Ex. 30, Dkt. No. 53-30)

RESPONSE: Defendant OBJECTS to the characterization of "admonishment" and that Burton had "handled the incident properly and had advocated properly for the student, protecting the student's interests" as unsupported by the cited material. The email indicates that "*We* are following up appropriately and believe that the interests of both the student and the faculty member involved *are being* properly protected," referring to human resources' actions, not Burton's. (Dkt. 53-30) (emphasis added).

136. In admonishing Dr. Caywood, Ms. Durr wrote: “I do not want there to be any perception that we are retaliating against one of our employees for advocating for, or protecting the interests of our students.” (Hawks Decl. ¶6(m), Ex. 30, Dkt. No. 53-30)

RESPONSE: Defendant OBJECTS to the characterization of the email as “admonishing” and as taking the statement out of context in violation of the rule of completeness; the email in its entirety is reproduced at Dkt. 53-30 and speaks for itself. **No dispute** that this statement is contained in the email.

137. Dr. Caywood thinks that Dr. Gibson acted appropriately when he gave the female student a handwritten note that asked her to call him on his cell phone after class. (Caywood Dep., Dkt. No. 40, 39:4-16)

RESPONSE: Defendant OBJECTS to this statement as violating the rule of completeness and taken out of context. **Disputed.** Caywood testified that he “believe[d] [Gibson] was in his right as an instructor of that course to talk about that particular type of experiment during the course” and that the note was appropriate only “as part of this type of experiment.” (Dkt. 40 39:4-16)

138. Dr. Caywood was upset with Dr. Burton because she had bypassed him by notifying the Dean and conveying the student’s complaint to the Office of Student Affairs. (Burton Dep. Dkt. No. 38, 231:10-21)

RESPONSE: Defendant OBJECTS to this finding as speculative as to Caywood’s state of mind or motivation and inadmissible based on Burton’s lack of personal knowledge. Subject to and without waiving these objections,

no dispute but immaterial. To the extent Caywood was upset, it was because he believes that if he had been informed about the student note first, he could have quickly contacted Gibson and directed him to apologize to the student before the problem got out of hand. As it was handled, Gibson was not aware that there was a misunderstanding until the next day. (Dkt. 36 ¶ 32.)

139. Dr. Caywood hated to be chewed out by three women, meaning the human resources director, Jeanne Durr, Dean Throop and the provost, Dr. Mittie Nimocks Den Herder. (Burton Dep., Dkt. No. 38, 261:6-7)

RESPONSE: Defendant OBJECTS to this finding as speculative as to Caywood's state of mind or motivation and inadmissible based on Burton's lack of personal knowledge.

140. Dr. Caywood had exacerbated the problem and had publicly chastised Dr. Burton for going around him. (Throop Dep., Dkt. No. 42, 107:2-5)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any dispute in this litigation. **No dispute** that this was Throop's opinion.

141. In the absence of written instructions on how to handle an event such as the student's complaint about Dr. Gibson's harassment, Dr. Caywood also would probably have talked to the Dean. (Caywood Dep., Dkt. No. 40, 48:16-19)

RESPONSE: Defendant OBJECTS to this finding as an incomplete hypothetical and as immaterial as to what Caywood might have done. Subject to and without waiving these objections, **no dispute.**

142. Dr. Caywood did not have the responsibility to create a procedure for handling a student's Title IX complaint. (Caywood Dep., Dkt. No. 40, 49:7-16)

RESPONSE: No dispute.

143. Nevertheless, on October 16, 2012, Dr. Caywood emailed the CJ faculty with his instructions to the CJ faculty that complaints such as the student's should first be reported to him for his investigation. (Caywood Dep., Dkt. No. 40, 62:3-7, 65:4-6; Caywood Dep. Ex. 18, Hawks Decl. ¶3(c), Ex. 6, Dkt. No. 53-6; Burton Dep., Dkt. No. 38, 261:8-263:15).

RESPONSE: Defendant OBJECTS that the cited material does not demonstrate that the instructions were emailed to the CJ department or to anyone in it; **no dispute** that Caywood drafted the proposed instructions on October 16, 2012.

144. At the faculty meeting, on presenting his instructions, Dr. Caywood explained that he stands up for his men and made it appear to her colleagues that Dr. Burton had inappropriately gone over his head to report Dr. Gibson's note. (Burton Dep., Dkt. No. 38, 137:18-138:15)

RESPONSE: No dispute but immaterial to Burton's remaining claims. Burton abandoned her sex discrimination claim for lack of evidence. Caywood created and distributed the policy at the meeting in October because he realized that part of the problem was lack of policy that instructed what everyone was to do in similar situations first. (Dkt. 36 ¶ 31.)

145. Over a month after the incident, on November 15, 2012, Dr. Caywood reiterated his instructions that “student issues” must be taken up by the student first “with the faculty member involved, or to the department chair” and they should “follow the chain of command,” and he made very strong comments, with all eyes on Dr. Burton, that someone had violated his policy and taken a very harmless matter all the way to the provost. (Burton Decl. ¶38, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as unsupported by any evidence because the cited material states Burton’s belief that Dalecki refused a request to serve on a curriculum committee in fall of 2014 and has nothing whatsoever to do with student issues. The finding is therefore not supported by any admissible evidence and should be stricken.

146. On reiterating his instructions on the chain of command for student “issues,” Dr. Caywood reminded the assembled faculty that somebody overreacted and brought a student complaint all the way to the provost and everything got out of hand. (Burton Decl. ¶18, Ex. 12, Dkt. No. 54-12)

RESPONSE: Defendant OBJECTS to this finding as unsupported by any evidence because the cited material concerns a visit from an Iowa news team and has nothing whatsoever to do with the process for student complaints. The finding is therefore not supported by any admissible evidence and should be stricken.

147. On April 17, 2013, the complaints and grievances committee wrote to Chancellor Shields an addendum to the Burton-Caywood Grievance, regarding its

concerns about Dr. Gibson’s “egregious” actions of October 10, 2012. (Hawks Decl. ¶6(o), Ex. 32, Dkt. No. 53-32)

RESPONSE: Defendant OBJECTS to this finding as hearsay and violating the rule of completeness and notes that the entirety of the communication is available at Dkt. No. 53-32. Subject to and without waiving these objections:

No dispute. Fact immaterial.

148. The committee was concerned about Dr. Gibson’s use of his poor judgment using his personal number on the note, as that had no relevance to the alleged purpose. (Hawks Decl. ¶6(p), Ex. 33, Dkt. No. 53-33 at 1)

RESPONSE: Defendant OBJECTS to this finding as hearsay and violating the rule of completeness and notes that the entirety of the communication is available at Dkt. No. 53-32. Subject to and without waiving these objections:

No dispute. Fact immaterial.

149. The committee was also concerned that Dr. Gibson’s email to the class on the day following the note failed to debrief his class about the nature of the experiment. (Hawks Decl. ¶6(p), Ex. 33, Dkt. No. 53-33 at 1)

RESPONSE: Defendant OBJECTS to this finding as hearsay and violating the rule of completeness and notes that the entirety of the communication is available at Dkt. No. 53-32. Subject to and without waiving these objections:

No dispute. Fact immaterial.

150. The committee was concerned that Dr. Gibson’s “beyond reprehensible” email rang hollow, and “effectively ‘outed’” the young woman who complained

about having received his note in class. (Hawks Decl. ¶6(p), Ex. 33, Dkt. No. 53-33 at 1)

RESPONSE: Defendant OBJECTS to this finding as hearsay and violating the rule of completeness and notes that the entirety of the communication is available at Dkt. No. 53-32. Subject to and without waiving these objections:

No dispute. Fact immaterial.

151. The committee was concerned that Dr. Gibson's email was a version of "slut-shaming," and suggested that the young woman who received his note was "too stupid" and "over-reactive" and that Dr. Gibson "lacks even a fundamental understanding of structural sexism." (Hawks Decl. ¶6(p), Ex. 33, Dkt. No. 53-33 at 1)

RESPONSE: Defendant OBJECTS to this finding as hearsay and violating the rule of completeness and notes that the entirety of the communication is available at Dkt. No. 53-32. Subject to and without waiving these objections:

No dispute. Fact immaterial.

152. After the fact, having learned the appropriate response, Dr. Caywood admits that Dr. Burton acted correctly in how she handled the student's complaint. (Caywood Dep., Dkt. No. 40, 50:25-51:2)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context. Caywood's testimony is as follows:

Q. All right. Do you think Dr. Burton acted inappropriately in any way with regard to the breach experiment?

A. I'm not sure.

Q. What makes you unsure?

A. Well, as I said previously, there was no guidelines that I was aware of of how this should be handled. She contacted-my understanding is that she

contacted the dean. I'm not sure whether she contacted HR. I'm not sure. But after the fact I learned that that's the appropriate response, so I think she acted correctly." (Dkt. No. 40 50:16-51:2)

153. However, Dr. Caywood never let go of his anger that Dr. Burton had reported the student complaint outside of the Department and he kept bringing it up. (Burton Dep., Dkt. No. 38, 228:21-229:5)

RESPONSE: No dispute for the purposes of summary judgment but immaterial. Federal civil rights law does not forbid anger, and there is no evidence Caywood took any actions against Burton *because of* his anger.

154. After the student complaint, Dr. Caywood's tone and interactions with Dr. Burton changed considerably and he did not want to talk to Dr. Burton, which is how he handles conflicts with female colleagues. (Burton Dep., Dkt. No. 38, 148:5-149:6, 260:25-261:1, 264:3-7)

RESPONSE: Defendant OBJECTS to Burton's characterization of how Caywood handles conflicts with female colleagues as speculative and lacking in first hand knoweldge. Subject to and without waiving this objection, **disputed but immaterial.** The record is replete with examples of Burton communicating with Caywood about—and receiving—additional income opportunities as a result of Caywood signing various forms for conference travel and related expenses as well as the development of graduate coursework after October 10, 2012. (*See, e.g.*, Dkt. 45 ¶¶ 236-241, 243, 257, 270.) Caywood also remained supportive of Burton, reviewing and approving

her proposed projects and voting for tenure for her in 2013, the earliest she could be considered. (Dkt. 36 ¶¶ 20-25.)

155. After the student complaint, Dr. Caywood was unsupportive of Dr. Burton, including her recruitment of students and her public relations efforts on behalf of the Department, having failed to respond to Dr. Burton's notice to him, on October 16, of television coverage of Dr. Burton that later resulted in Dean Throop admonishing Dr. Burton because Dean Throop had not known of the University's publicity. (Burton Dep., Dkt. No. 38, 230:17-25; Burton Decl. ¶18, Ex. 12, Dkt. No. 54-12)

RESPONSE: Defendant OBJECTS to and **disputes** the characterization of Throop's request to be informed of media events prior to the day of as an "admonishment" and notes that Throop also stated "I'm delighted that your expertise is being tapped." (Dkt. 54-12.) **No dispute** that Caywood did not respond to an October 16 email from Burton; **disputes** the remainder. See response to #154 regarding Caywood's continuing support of Burton.

156. On January 23, 2013, an AT&T representative contacted Dr. Burton days before the formal check presentation and asked her to review an AT&T draft press release, which they needed revised the next day. (Burton Dep., Dkt. No. 38, 247:4-18)

RESPONSE: Defendant OBJECTS to this finding under the best evidence rule. Subject to and without waiving this objection, **no dispute**.

157. Dr. Burton had a class to prepare for, so she made a few minor changes, took the draft to Dr. Caywood the next morning before her class, and replied to the AT&T representative with her changes to the draft, copying Dean Throop and Dr. Caywood on the email. (Burton Dep., Dkt. No. 38, 247:17-249:4; Hawks Decl. ¶5(a), Ex. 16, Dkt. No. 53-16)

RESPONSE: No dispute.

158. On receipt of the draft press release, on January 24, 2013, Dean Throop responded by email to Dr. Burton, Dr. Caywood and the AT&T representative, stating:

All,

This press release concerns me deeply. There are a number of highly inaccurate – indeed, misleading – statements regarding the status of cyber-security curricula at the University of Wisconsin Platteville.

I am not confident that the ceremony being planned is wise given this.

(Hawks Decl. ¶5(a), Ex. 16, Dkt. No. 53-16)

RESPONSE: No dispute.

159. Dr. Burton was shocked to read Dean Throop's email and Dr. Burton felt that the remarks Dean Throop made were offensive and defamatory towards Dr. Burton. (Burton Dep., Dkt. No. 38, 249:5-250:4)

RESPONSE: Defendant OBJECTS that Burton's personal feelings about Throop's concerns are immaterial to any issue in this litigation; subject to and without waiving this objection, **no dispute.**

160. Similarly, hours later January 24, 2013, Dr. Caywood wrote to criticize Dr. Burton for language in the draft AT&T press release regarding the development of a cybersecurity program as “bordering on false claims,” stating that wasn’t he “aware the CJ Department approved a cyber security program or the development of one.” (Hawks Decl. ¶3(a), Ex. 4, Dkt. No. 53-4 at 1)

RESPONSE: Defendant OBJECTS to the characterization of Caywood’s comments as “criticiz[ing]” Burton rather than the language in the release; subject to and without waiving this objection, **no dispute.**

161. Dr. Caywood wrote in his January 24, 2013 message that Dr. Burton is wrong and erroneous to “advertis[e] in press releases and websites that the department and university are supportive of what you are doing,” and that the journal websites should not recite a proposal for cybersecurity/homeland security program at UW-Platteville. (Hawks Decl. ¶3(a), Ex. 4, Dkt. No. 53-4 at 2)

RESPONSE: No dispute.

162. Nobody had ever told Dr. Burton that in applying for the AT&T grant she had put the University and its reputation at risk because there was not a cybersecurity program in place. (Burton Dep., Dkt. No. 38, 229:15-20)

RESPONSE: Defendant OBJECTS to this finding as vague as to time.

Assuming that Burton refers to dates prior to the inaccurate January 24, 2013 draft release, **no dispute.**

163. Nobody had ever told Dr. Burton that she had put the University and its reputation at risk because a cybersecurity program had yet to be approved.

(Burton Dep., Dkt. No. 38, 229:21-230:5)

RESPONSE: See response to #162.

164. Dr. Caywood's abrupt withdrawal of support for development of the CJ cybercrime program caused Dean Throop to wrongly portray to AT&T and the University community that Dr. Burton had made mistakes and misrepresentations in acquiring the AT&T donation. (Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 11, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 8-9)

RESPONSE: Defendants OBJECT as unsupported speculation and in violation of Fed. R. Evid. 602. Throop, who did not see the AT&T grant application before it was submitted, was concerned about the representations being made. The representations were false because UW-Platteville did not (and still does not) have a cybersecurity curriculum and that Burton had not sought any necessary approvals, yet the application made definitive statements about what the curriculum would contain. Further dispute that Caywood's comments constituted an "abrupt withdrawal of support"; Caywood was expressing concerns about the errors in the release. (Dkt. No. 45 ¶¶ 89-111.)

165. Dr. Throop's accusations of Dr. Burton's purported mistakes and misrepresentations damaged Dr. Burton's reputation with AT&T, thereby foreclosing additional donations from AT&T as it had planned. Answers and Resps.

of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 10, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 9)

RESPONSE: OBJECTION. Burton has not submitted any evidence beyond her own speculation, such as a statement from Jermain or someone else at AT&T, demonstrating any damage to reputation, and this finding is therefore unsupported by any admissible evidence and should be stricken. Subject to and without waiving this objection, **disputed but immaterial.** Burton chose not to pursue any grants after January of 2013, and it was for this reason that AT&T did not make further donations. (Dkt. No. 45 ¶125.) See also response to #164.

166. Dr. Throop's accusations of Dr. Burton's purported mistakes and misrepresentations damaged Dr. Burton's reputation with Wisconsin Rep. Tranel and precluded opportunities for Dr. Burton working with him in the future. (Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 10, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 8)

RESPONSE: OBJECTION. Burton has not submitted any evidence beyond her own speculation, such as a statement from Tranel, demonstrating any damage to reputation, and this finding is therefore unsupported by any admissible evidence and should be stricken.

167. Dr. Throop's accusations of Dr. Burton's purported mistakes and misrepresentations and her withdrawal of support for development of the CJ cybersecurity program caused Dean Throop to deny Dr. Burton the opportunity to

be elected chair of the Department, and subjected Dr. Burton to retaliation by Dean Throop's appointed interim chair, Dr. Dalecki. (Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 10, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 9

RESPONSE: Defendant OBJECTS to the statement that Burtonw as subject to retaliation by Dalecki as a legal conclusion and moves to strike. Subject to and without waiving this objection, **disputed.** Burton did not nominate herself or express any desire to Throop to be considered for the permanent chair position of the CJ department in 2013 or 2014, and this was the reason she was not considered for chair. (Dkt. No. 45 ¶ 367.) Throop's concerns about the mistakes and misrepresentations in the press release were made in good faith and well founded. See also response to #164. Throop did not withdraw her support for the cybersecurity program, instead reiterating her support for Burton even as she expressed concerns about the press release. (Dkt. No. 45 ¶ 107.)

168. After the student complaint in 2012, Dr. Burton recorded certain meetings or conversations, when she remembered to have an audio recorder with her, because her worklife was aggravated by her discovery of contradictions in how others conducted the Department business. (Burton Dep., Dkt. No. 38, 194:6-19)

RESPONSE: Defendant OBJECTS that this finding is incomplete and taken out of context and therefore **disputes.** Burton surreptitiously recorded selected discussions with her colleagues "when [she] thought it would be a

good idea” or “because of the sensitivity to items” to be discussed. (Dkt. 38 194:6-19)

**Dr. Caywood’s Sexism and His Discriminatory Treatment
of and Retaliation Against Dr. Burton**

169. In about September 2009, after Dr. Burton had begun work in the Department, Dr. Caywood told Dr. Burton that he had not renegotiated her salary in part because a woman’s salary is secondary to that of a man’s. (Burton Dep., Dkt. No. 38, 271:5-272:2)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any remaining claims in this lawsuit. Burton has dismissed all sex discrimination claims, and is pursuing only retaliation claims that can be based, at the earliest, on events occurring after October 10, 2012. Subject to and without waiving this objection, **disputed but immaterial.** Caywood never stated that a woman’s salary is secondary to a man’s. (Dkt. 36 ¶46.)

170. Dr. Caywood told Dr. Burton that the reason a woman’s salary is secondary is that men are the primary breadwinners. (Burton Dep., Dkt. No. 38, 272:4-9, 273:9-17; Answers and Resps. of Pl. to Defs.’ First Set of Disc., Answer to Interrog. No. 6, Hawks Decl. ¶2(a), Ex. 1, Dkt. No. 53-1 at 7)

RESPONSE: Disputed. See response to #169, including objection.

171. In April and May 2010, on concluding her investigation of departmental conflict, based in part on Dr. Cheryl Banachowski-Fuller’s claims of harassment and discrimination by Dr. Caywood, then-Dean Mittie Nimocks instructed Dr. Caywood to arrange a mandatory workshop on conflict resolution,

civility and team building, but Dr. Caywood never complied. (Hawks Decl. ¶3(d), Ex. 7, Dkt. No. 53-7; Caywood Dep., Dkt. No. 40, 95:1-97:3)

RESPONSE: Defendant OBJECTS on the grounds set forth in response to #169 and to the characterization of a workshop as “mandatory.” Subject to and without waiving these objections, **disputed.** Banachowski-Fuller never alleged that Caywood harassed or discriminated against her and in fact testified that she had not complained of sex discrimination, but rather of “preferential treatment toward individuals who were in favor of the forensic investigation department and moving the department in another direction.” (Dkt. 46 74:20-25.) **No dispute** that Caywood did not arrange a workshop on conflict resolution, civility, and team building.

172. In spring 2010, fall 2010, spring 2011, fall 2011, spring 2012, and fall 2012, Dr. Caywood refused to approve Dr. Burton’s requests to teach online graduate courses. (Burton Dep., Dkt. No. 39, 431:10-432:11; Hawks Decl. ¶6(a), Ex. 18, Dkt. No. 53-18)

RESPONSE: Defendant OBJECTS on the grounds set forth in response to #169. Defendant further OBJECTS and **disputes** because Burton’s testimony is speculation and the cited document does not support the finding. The email is from Burton, not Caywood, and reads in full “Cheryl, I signed the form but I won’t take it to Tom. He has made it very clear to me last time that he is not going to sign anything that involves the online program.” (Dkt. No. 53-18) Burton’s belief is in contradiction with Caywood’s sworn testimony

in which he confirms he does not recall ever refusing to sign a contract to teach online that had been submitted for his signature. (Dkt. 36 ¶6.)

173. Dr. Burton complained to then-dean Mittie Nimocks Den Herder, who investigated Dr. Fuller's complaint and a complaint by Dr. Amy Nemmetz of the sexist environment in the CJ Department, because Dr. Burton was negatively affected by Dr. Caywood's attitude towards Dr. Fuller following Dr. Fuller's complaint. (Burton Dep., Dkt. No. 39, 433:6-21)

RESPONSE: See response to #171, including objections.

174. In addition to Dr. Fuller, Dr. Amy Nemmetz, Deborah Rice, and Danelle Bemis complained about sex discrimination by Dr. Caywood. (Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 7, Hawks Decl. ¶2, Ex. 1, Dkt. No. 53-1 at 7)

RESPONSE: See response to #171, including objections.

175. Dr. Dalecki was concerned that Mr. Caywood and "his allies" would hinder the tenure progress of women in the Department. (Lohmann Dep., Dkt. No. 48, 16:22-17:13; Hawks Decl. ¶6(s), Ex. 36, Dkt. No. 53-36)

RESPONSE: Defendant OBJECTS to and **disputes** this finding as incomplete, taken out of context, and immaterial. Defendant OBJECTS to the finding to the extent it unfairly characterizes the concern as based on sexism or sex discrimination. The testimony at issue states:

Q. The next note is: "Concerned with going forward. Tenure progress and hindering of tenure progress by Tom and allies." Can you elaborate on that?
A. I know Mike had some concerns about a faculty member getting tenure or maybe a promotion. I don't recall exactly. I don't remember the-I don't

remember which faculty member we were even talking about, but I do remember Mike having some concerns that Tom and, quote, his allies would negatively affect any progress.

Q. Of a female faculty member, I presume? Is that a fair presumption?

A. I have no idea. I-yeah. I really don't have any idea. Well, yes. This says the finalists are all women. So, yes, that would be. (Dkt. No. 48 16:21-17:7)

See also objections in response to #169 and Dkt. No. 46 74:20-25 (concern was that "preferential treatment toward individuals who were in favor of the forensic investigation department and moving the department in another direction" rather than on the basis of sex).

176. Dr. Caywood guaranteed that during the grant period Dr. Burton would not be called upon to serve in a faculty governance or service activity which conflicts with project work. (Hawks Decl. ¶10(a), Ex. 43, Dkt. No. 53-43)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any remaining claims in this lawsuit. Burton has dismissed all sex discrimination claims, including all allegations predating the student complaint incident in fall of 2012, and is pursuing only retaliation claims. Subject to and without waiving this objection, **no dispute.**

177. Despite the award-based release from all teaching responsibilities and Dr. Caywood's guarantee of Dr. Burton's release from service activities and faculty governance activities, Dr. Caywood asked Dr. Burton to advise 60 students during the semester, which required her working a total of about 30-40 hours with the students. (Burton Dep., Dkt. No. 39, 411:23-412:22, 413:5-15; Hawks Decl. ¶10(a), Ex. 43, Dkt. No. 53-43)

RESPONSE: See OBJECTION in response to #176. Subject to this objection, **no dispute.**

178. Despite the award-based release from all teaching responsibilities and his guarantee of Dr. Burton's release from service activities and faculty governance activities, Dr. Caywood also assigned Dr. Burton to use her German contacts to build a study abroad program in Germany, which resulted in a two-week trip for thirteen CJ majors in the summer of 2013. (Burton Dep., Dkt. No. 38, 44:20-23, 45:18; Burton Dep. Dkt. No. 39, 414:13-415:20; Burton Decl. ¶7, Ex. 4, Dkt. No. 54-4; Deposition of Deborah Rice, Dkt. No. 49, Ex. 148 and 149, Hawks Decl. ¶¶9(a) & (b), Ex. 41 and 42, Dkt. Nos. 53-41 and 53-42; Hawks Decl. ¶10(a), Ex. 43. Dkt. No. 53-43)

RESPONSE: See OBJECTION in response to #176. Subject to this objection, **no dispute but immaterial.**

179. In 2011 and on other occasions, when Dr. Burton requested two overload courses for the extra income, Dr. Caywood denied them on the ground that it would be "too much" for her to do. (Burton Dep., Dkt. No. 38, 160:24-162:8)

RESPONSE: Disputed. Caywood does not recall ever refusing to sign an overload request form that had been submitted for his signature. (Dkt. No. 36 ¶ 9.)

180. Dr. Caywood allowed Dr. Gibson, a man and a more junior faculty member to teach two overload courses, or 150%, for several semesters. (Burton Dep., Dkt. No. 38, 160:5-9, 162:9-163:15)

RESPONSE: Defendants OBJECT based on lack of first-hand knowledge.

Disputed but immaterial. Caywood did not assign Gibson more overload courses than Burton. (Dkt. 40 75:12-14.)

181. In early fall, 2012, on granting Dr. Gibson and Dr. Roberts two overload courses and again refusing Dr. Burton, Dr. Caywood reiterated to Dr. Burton that men are primary breadwinners for their families. (Burton Dep., Dkt. No. 38, 159:11-160:5, 273:23-274:12; Answers and Resps. of Pl. to Defs.' First Set of Disc., Answer to Interrog. No. 6, Hawks Decl. ¶2, Dkt. No. 53 at 7)

RESPONSE: Defendants OBJECT that the cited material does not support the proposed finding. Subject to and without waiving, **disputed by immaterial.**

182. In September 2012, Dr. Caywood removed Dr. Burton as chair of a CJ faculty search and screen committee, her second search committee, and combined her committee with one chaired by Dr. Gibson. (Burton Dep., Dkt. No. 38, 275:25-276:8)

RESPONSE: See objections to #169. Subject to and without waiving this objection, **no dispute.**

183. Dr. Burton told Dr. Caywood that she needed that committee chair position to build her Department Review Board (DRB) file to support her eligibility for tenure. (Burton Dep., Dkt. No. 38, 276:15-17)

RESPONSE: See objection in response to #169. Subject to and without waiving this objection, **no dispute.**

184. Dr. Caywood told Dr. Burton that would get the next search and screen chair, and she would remain the “our token woman” on the combined committee led by Dr. Gibson. (Burton Dep., Dkt. No. 38, 275:14-18, 276:13-277:1)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any remaining claims in this lawsuit. Burton has dismissed all sex discrimination claims, including all allegations predating the student complaint incident in October of 2012, and is pursuing only retaliation claims. Subject to and without waiving this objection, **no dispute.**

185. Dr. Caywood also made distinctions between male and female academic staff members and generally assigned more student interns to men, along with the accompanying significant opportunity for additional income. (Burton Dep., Dkt. No. 38, 182:23-183:8, 183:19-184; Burton Dep., Dkt. No. 39, 407:7-408:11)

RESPONSE: Defendant OBJECTS to this finding as vague as to time, and lack of first hand knowledge, and immaterial. See objections and response to #169. Subject to and without waiving these objections, **disputed.** Caywood took the total number of interns and divided them by the total number of faculty available to take on interns. Faculty members were paid at a flat rate per student, with the rate based on the professor’s rank, not their sex. (Dkt. No. 36 ¶11.)

186. Dr. Caywood openly made statements to other faculty members about the abilities of women in general and their role as secondary breadwinners, and to faculty members and to students in the classroom that women do not belong in the

criminal justice field. (Burton Dep., Dkt. No. 38, 163:7-20, 164:1-4; Dalecki Dep., Dkt. No. 41, 116:10-117:16; Lohmann Dep., Dkt. No. 48, 14:16-16:20; Hawks Decl. ¶6(s), Ex. 36 Dkt. No. 53-36)

RESPONSE: Defendant OBJECTS to this finding as vague as to time and immaterial. See objections and response to #169. Subject to and without waiving this objection, **disputed but immaterial to Burton's remaining claims.** Burton voluntarily dismissed her sex discrimination claim for lack of evidence. Caywood never said that a woman's salary was secondary to a man's. Dkt. No. 36 ¶6.

187. Every summer since Dr. Gibson was hired, despite Dr. Burton's repeated requests, her experience and her reliable performance, Dr. Caywood also awarded him, and not Dr. Burton, the opportunity to teach summer undergraduate online courses for additional income. (Burton Dep., Dkt. No. 38, 160:10-20, 169:13-170:13, 171:21-172:1, 173:23-174:25)

RESPONSE: Defendant OBJECTS based on lack of first hand knowledge. Subject to and without waiving, **Disputed but immaterial.** Caywood was not responsible for finding faculty to teach online and has never been the undergraduate online coordinator in charge of scheduling faculty to teach the online undergraduate courses. Caywood does not recall ever refusing to sign a contract to teach online. (Dkt. No. 36 ¶¶ 6, 8.)

188. Dr. Caywood also assigned more student interns to male faculty members over female members of the Department. (Burton Dep., Dkt. No. 38, 182:12-183:6)

RESPONSE: See objections and response to #185.

189. After the incident with the student complaint, Dr. Burton and Dr. Caywood had a strained relationship so she tried to avoid pushing topics with him that would further aggravate the situation, such as her need also for the additional income opportunities he provided to Dr. Dalecki and Dr. Gibson. (Burton Dep., Dkt. No. 38, 167:9-16)

RESPONSE: Defendant OBJECTS to Burton's personal feelings about her relationship with Caywood as immaterial and moves to strike. Subject to and without waiving this objection, **disputed**. The record is replete with examples of Burton seeking, and receiving, additional income opportunities as a result of Caywood signing various forms for conference travel and related expenses as well as the development of graduate coursework after October 10, 2012. (*See, e.g.*, Dkt. 45 ¶¶ 236-241, 243, 257, 270.)

190. Dr. Caywood ignored or denigrated the excellent work of his female colleagues, specifically Dr. Fuller and Dr. Burton. (Throop Dep., Dkt. No. 42, 110:19-111:6)

RESPONSE: Defendant OBJECTS to this finding as vague and conclusory, Defendant further OBJECTS to this finding as immaterial because Burton has dismissed all sex discrimination allegations and this proposed finding

could only be conceivably relevant to a sex discrimination rather than a retaliation claim. Subject to and without waiving these objections, **no dispute.**

Dr. Dalecki and Dean Throop's Retaliation

191. Prior to Dean Throop's appointment of Dr. Dalecki as interim chair in July, 2013, Dr. Dalecki taught in the social sciences department. (Throop Decl. ¶22-23, Dkt. No. 37; Throop Dep., Dkt. No. 42, 82:22-83:4)

RESPONSE: No dispute.

192. Prior to August 2013, Dr. Dalecki had never taught a course offered by the CJ Department. (Defs.' Answer and Defenses to Pl.'s Second Am. Compl. (Answer), Dkt. No. 31, ¶100)

RESPONSE: No dispute.

193. As of August 2013, Dr. Dalecki was not and is not now qualified to teach most courses offered by the CJ Department. (Answer, Dkt. No. 31, ¶101)

RESPONSE: Defendant OBJECTS to the finding as vague and ambiguous as it refers to both "as of August 2013" and "was not and is not now." Subject to and without waiving this objection, **no dispute.**

194. Dr. Dalecki's dissertation was about organic food and he specializes in rural sociology, which does not overlap with the CJ Department. (Burton Dep., Dkt. No. 39, 260:1-4; Dalecki Dep., No. 41, 114:11-12)

RESPONSE: No dispute.

195. Because the CJ faculty was so small, outside faculty sat on the CJ DRB and Dr. Dalecki had been removed from the CJ DRB. (Burton Dep., Dkt. No. 39, 455:22-25)

RESPONSE: Defendant OBJECTS to this finding as vague as to time.

Subject to and without waiving this objection, **undisputed but immaterial.**

196. Prior to Dean Throop's appointment of Dr. Dalecki as interim chair, Dr. Dalecki had refused to allow CJ students to enroll in his sociology courses and he made such negative and derogatory statements about CJ students that the CJ students complained about him to the CJ faculty. (Burton Dep., Dkt. No. 39, 455:19-21, 459:5-23)

RESPONSE: Defendant OBJECTS to this proposed finding as immaterial to any issue in this litigation. Subject to and without waiving this objection, **no dispute.**

197. Soon after Dean Throop appointed Dr. Dalecki as interim chair of the Department, Dr. Dalecki asked Dr. Burton repeatedly about the status of her EEOC charge and the lawsuit and tried to convince her that it would be in her best interest to withdraw them. (Burton Dep., Dkt. No. 39, 11:23, 451:16-25, 454:10-455:10)

RESPONSE: Disputed in part to the characterization of the number of conversations. Subject to and without waiving, no dispute. During Dalecki's first year as interim chair, he had several conversations with Burton about her success in the CJ department, including achieving her goal

of becoming chair of the department. Dalecki encouraged her to think about her actions and how those actions presented her in a certain light to people, including the lawsuit. (Dkt. 34 ¶7.)

198. After Dr. Dalecki became interim chair, Dr. Dalecki told Dr. Burton that her complaints were old news and that nobody cares about them or want to hear about them anymore and she should let it go. (Dalecki Dep., Dkt. No. 41, 21:12-21, 22:4-11)

RESPONSE: See response to #197.

199. After Dr. Dalecki became interim chair, Dr. Dalecki also told Dr. Burton that he knows about her issues with Dr. Caywood and Dean Throop and that Dr. Burton is wrong about Dean Throop. (Burton Dep., Dkt. No. 39, 452:7-10)

RESPONSE: See response to #197.

200. After Dr. Dalecki became interim chair, Dr. Dalecki asked Dr. Burton what she was going to do next with her grievance. (Burton Dep., Dkt. No. 39, 452:10-13)

RESPONSE: See response to #197.

201. After Dr. Dalecki became interim chair, Dr. Dalecki tried to convince Dr. Burton not to pursue her lawsuit because Dr. Caywood is gone, things are better now with him in charge and Dr. Burton will not get the remedy she wants. (Burton Dep., Dkt. No. 39, 453:4-13)

RESPONSE: See response to #197.

202. Dean Throop appointed Dr. Dalecki as interim CJ chair despite the fact that the Department had rejected his application to join the CJ faculty and he did not have a good relationship with the CJ faculty. (Burton Dep., Dkt. No. 39; 455:11-19, 459:24-460:1; Dalecki Dep., Dkt. No. 41, 6:13, 19-23)

RESPONSE: Defendant OBJECTS to Burton's speculation that Dalecki did not have a good relationship with the CJ faculty. **No dispute** that Throop appointed Dalecki as interim CJ chair; **dispute** that the CJ department "rejected" his application and that he did not have a good relationship with the CJ faculty. (Dkt. 41 6:19-25) Dispute is immaterial.

203. Dean Throop appointed Dr. Dalecki as interim chair of the CJ Department to pressure Dr. Burton to withdraw her EEOC claim. (Burton Dep., Dkt. No. 39, 451:11-14, 452:23-453:1, 454:3-9)

RESPONSE: Defendant OBJECTS to this finding as speculation and not based on personal knowledge; Burton is therefore incompetent to testify to it. Subject to this objection, **disputed**. Throop selected Dalecki as interim chair based upon recommendations from others, and because she believed that someone from outside the CJ department would be a good choice while a nationwide search was conducted in light of the personality conflicts between certain individuals in the department, including but not limited to Burton. (Dkt. No. 45 ¶366.)

204. At one of the first CJ faculty meetings after Dean Throop appointed Dr. Dalecki as interim CJ chair, Dr. Dalecki indicated that he would probably be a

candidate for the permanent Department chair position. (Dalecki Dep., Dkt. No. 41, 93:11-23)

RESPONSE: No dispute.

205. When Dean Throop attended Department meetings after she appointed Dr. Dalecki as interim chair, she made it well known that she did not like Dr. Gibson challenging Dr. Dalecki's appointment and seeking to become chair. (Burton Dep., Dkt. No. 39, 361:20-25)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any dispute; if true, the action would have affected not only Burton but all members of the department equally, whether they engaged in protected activity or not. Subject to and without waiving this objection, **disputed but immaterial.** Throop's reasoning for not accepting Gibson as chair was that he had not received a majority of votes from the tenured CJ faculty and because Gibson was not tenured. (Dkt. No. 37 ¶ 25.)

206. In about March 2014, after Dr. Gibson's retention appeal was successful and the committee determined that he should be retained, Dr. Dalecki sought dirt on Dr. Gibson to support Dr. Gibson's ouster because Dr. Gibson had not supported Dr. Dalecki's appointment as Department chair and would not follow Dr. Dalecki's orders. (Burton Dep., Dkt. No. 39, 362:23-364:17)

RESPONSE: Defendant OBJECTS on the same ground as in its response to #205. Subject to and without waiving this objection, **disputed but**

immaterial. Gibson was not retained because he had conducted no scholarship of any kind and was difficult to work with. (Dkt. 42 152:7-16.)

207. On learning that Dr. Burton had first complained to the Chancellor and then filed a grievance against Dean Throop regarding Dr. Dalecki's appointment as interim CJ Chair, Dr. Dalecki called Dr. Burton into his office and chastised her for contacting the Chancellor about his appointment, and told her that he is a better choice for chair because he knows where the skeletons are buried. (Burton Dep., Dkt. No. 39, 473:14-474:1; Burton Decl. ¶22-23, Dkt. No. 56; Dalecki Dep., Dkt. No. 41, 20:3-18)

RESPONSE: Defendant OBJECTS to this statement as incomplete and taken out of context and therefore **disputed**. As Dalecki has explained, "I know where the skeletons are buried" meant that Dalecki knew who the people were that were issues on campus, knew what pushed people's buttons, and knew how people responded to particular types of situations. Dalecki used this statement in the context of a mentoring discussion to make clear that the chair must have experience in knowing how to deal with different personality types, understand what drives their behavior, and what problems they may have had in the past in order to get anything done. (Dkt. 34 ¶ 16.)

208. In that meeting, Dr. Dalecki told Dr. Burton that she is not chair material, because she has not served on the CRST, does not have support in the Department and does too much complaining. (Burton Decl. ¶23, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context and therefore **disputes**. (See Dkt. No. 45 ¶¶ 163-167 and Dkt. 34 ¶¶ 7, 16, Ex. C and response to #207).

209. Dr. Dalecki also told Dr. Burton in that meeting that she cannot expect to file a lawsuit without suffering consequences. (Burton Decl. ¶23, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context and therefore **disputes**. (See Dkt. No. 45 ¶¶ 163-167 and Dkt. 34 ¶¶ 7, 16, Ex. C and response to #207).

210. In March 2014, soon after the University granted Dr. Burton a salary inequity/inversion adjustment, Dr. Dalecki asked Dr. Burton whether her lawsuit was still on and Dr. Burton responded that she had no plans to drop her lawsuit because she had done nothing wrong in handling the student complaint and her damages were not addressed. (Burton Decl. ¶22-23, Dkt. No. 56)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context and therefore **disputes**. (See Dkt. No. 45 ¶¶ 163-167 and Dkt. 34 ¶¶ 7, 16, Ex. C and response to #207).

211. That information annoyed Dr. Dalecki, and he told Dr. Burton she should “get over it,” since she was getting a pay raise and nothing good would come from a lawsuit. (Burton decl. ¶32, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as incomplete and taken out of context and therefore **disputes**. (See Dkt. No. 45 ¶¶ 163-167 and Dkt. 34 ¶¶ 7, 16, Ex. C and response to #207).

212. Several days later, Dr. Fuller asked Dr. Burton about her intentions regarding her lawsuit and told Dr. Burton that she should not mess with administration and come across as “crazy” and “sue happy,” and that Dr. Burton would be dean material but not with a lawsuit. (Burton Decl. ¶33, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as immaterial to any issues in this litigation. Subject to and without waiving this objection, **no dispute.**

213. Dr. Fuller reminded Dr. Burton that she had handled her own sexual harassment complaint against Dr. Caywood without filing a grievance and it worked out well for her. (Burton Decl. ¶34, Dkt. No. 54)

RESPONSE: Disputed. Fuller never complained of sexual harassment against Caywood. Banachowski-Fuller never alleged that Caywood harassed or discriminated against her and in fact testified that she had not complained of sex discrimination, but rather of “preferential treatment toward individuals who were in favor of the forensic investigation department and moving the department in another direction.” (Dkt. 46 74:20-25.) **No dispute** that Fuller did not file a grievance.

214. Reserve.

RESPONSE: Defendant OBJECTS that this is not a finding of fact and moves to strike.

215. By June, 2014, Dr. Burton was emotionally unable to continue her laborious plans for a visit by German students because Dr. Burton’s mother’s health

was failing, Dr. Burton was told that she was near death, and Dr. Burton had to attend to her mother by coordinating with family and medical staff, requiring hours of attention daily before and during the visit of the German delegation. (Dkt. No. 37-15 at 032-033)

RESPONSE: Disputed. Burton was not emotionally unable to continue with plans for the German delegation, but instead laughed about dumping the German delegation on Dalecki and Caywood:

Q. Well, what do you understand that [Burton] reported?

A. I don't know what she reported to Dr. Dalecki, because I do not have access to that, but I know what she said to me when she called me that night.

Q. And what did she say to you?

A. And she said to me, "Ha, ha. Look what happened. I gave it all back on to Mike and to Tom. After all, they were the two who invited them over anyway.

...

Q. When did you become aware that Dr. Burton's mother was in critical condition?

A. I never knew her mother was in critical condition. (Dkt. 49 28:9-29:1)

216. In 2014, Dr. Dalecki ordered Dr. Burton's CJ colleagues not to talk to her in much the same way Dr. Dalecki had treated Dr. Gibson with a "gag order." (Burton Dep., Dkt. No. 39, 476: 3-478:15; Pl's Answers to Defs' Second Set of Interrog., Interrog. No. 1, Hawks Decl. ¶7, Ex. 39, Dkt. No. 53-39)

RESPONSE: Defendant OBJECTS to this finding as speculation, hearsay, and not based on personal knowledge. Because the finding is not supported by any admissible evidence, Defendant moves to strike the finding.

217. In the fall 2014, after Ronald Jacobus started his CJ graduate studies, Dr. Dalecki told him that he should not align himself with Dr. Burton. (Burton Dep., Dkt. No. 39, 477: 17-20; Ronald Jacobus Decl. ¶¶28-29, Dkt. No. 52)

RESPONSE: Defendant OBJECTS to this finding under the best evidence rule; Burton produced a surreptitiously recorded copy of the discussion, along with a transcript, in this litigation that contradicts this finding. Defendant also objects to this finding as immaterial to any dispute in the litigation. Subject to and without waiving these objections, **disputed.** Dalecki never tells Jacobus not to align himself with Burton but mentored Jacobus not to get in the middle of a dispute between two faculty members. (Dkt. 34 ¶ 8.)

218. On March 27, 2015, Dr. Dalecki became irate and yelled at the Department secretary in the presence of Mr. Jacobus and other students after Dr. Dalecki learned that she had consulted Dr. Burton regarding the teaching schedule. (Burton Dep., Dkt. No. 39, 477:20-478:14; Jacobus Decl. ¶30, Dkt. No. 52)

RESPONSE: Defendant OBJECTS to this finding as immaterial and to the speculation that Dalecki's demeanor or state of mind resulted because the assistant "had consulted Dr. Burton." Subject to these objections, **disputed.** Dalecki "was unhappy with her because those are the kinds of decision that are made by the chair, not by an administrative secretary." (Dkt. 41 138:16-20)

219. Dr. Burton had chaired the search committee that hired Dr. Stackman and Dr. Burton was very helpful and supportive of Dr. Stackman. (Stackman Dep., Dkt. No. 47, 8:11-22)

RESPONSE: No dispute.

220. Prior to Dr. Stackman's arrival in Platteville, she sought Dr. Burton's advice about which University committees Dr. Stackman should ask to serve on to best apply her expertise. (Stackman Dep., Dkt. No. 47, 10:1-13)

RESPONSE: No dispute.

221. In early summer 2014, Dr. Stackman was newly moved to Platteville and her belongings had not arrived yet, Dr. Burton asked Dr. Stackman to house sit while Dr. Burton was away and Dr. Stackman said she would. (Stackman Dep., Dkt. No. 47, 13:11-14:12)

RESPONSE: No dispute.

222. Dr. Stackman and her former colleagues often helped one another, including babysitting and house sitting, so Dr. Stackman did not think much about house sitting for Dr. Burton and she was not discomfited by the discussion with Dr. Burton. (Stackman Dep., Dkt. No. 47, 15:3-19, 17:20-25, 18:2-4, 36:16-37:3)

RESPONSE: Defendant OBJECTS to the portion of the finding that she was "not discomfited" as ambiguous and vague as to time, as Stackman testified that she was not uncomfortable "at the time" of her initial discussion with Burton, but later "realized [she] probably should have been uncomfortable

given the potential for things to have gone awry.” **No dispute** as to the remainder. (Dkt. 47 17:20-18:9.)

223. Dr. Stackman did not house sit for Dr. Burton because Dr. Dalecki cautioned Dr. Stackman about her potential liability if Dr. Burton’s house caught fire or her horses got sick while Dr. Stackman was there. (Stackman Dep., Dkt. No. 47, 14:13-15:4, 18:4-8)

RESPONSE: Defendant OBJECTS to this finding as immaterial, incomplete, and taken out of context, as Stackman also provided other reasons. Dr.

Stackman’s full answer is as follows:

Q. Why not?

A. I must have mentioned her request in passing to Mike Dalecki, and he suggested that that might not be a good thing for me to do given the power dynamic that was involved because she is a tenured faculty member and has a vote as to whether or not I get tenure in the department. And he just-I don’t know if it was at that conversation or another one shortly thereafter, but it was something to the extent of, if something had gone wrong at the house, house had caught on fire or horse had gotten sick, that I could be liable for that. (Dkt. 47 14:15-15:2.)

224. Dr. Dalecki also cautioned Dr. Stackman not to house sit because of the power dynamic, because Dr. Burton was tenured and would vote on Dr. Stackman’s tenure progress. (Stackman Dep., Dkt. No. 47, 14:17-22)

RESPONSE: No dispute.

225. Dr. Burton’s attempts to resolve her grievances and requests for investigations were mishandled. (Burton Decl. ¶39, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as vague, calling for a legal conclusion, and immaterial to the issues in this litigation. Subject to

and without waiving these objections, **disputed**. Burton's many grievances were processed and heard by various members of the administration in accordance with applicable procedures and bylaws and resolutions reached, though Burton may not agree with every finding. *See, e.g.*, Dkt. 39 493:21-495:13.

226. On August 4, 2014, Dr. Dalecki denied Dr. Burton's request to teach an online course as part of her normal course load. (Dalecki Dep., Dkt. No. 41, 31:12-17, 54:16-18)

RESPONSE: No dispute.

227. At Dr. Dalecki's request, Dr. Burton gave up a prestigious position on the CRST, after he promised her she would have other opportunities. (Hawks Decl. ¶6(t), Ex. 37, Dkt. No. 53-37 at 1)

RESPONSE: No dispute that Burton gave up her position on the CRST; **dispute** that the position was "prestigious" to anyone but Burton. (Dkt. 41 166:11-21.)

228. In August, 2014, Dr. Dalecki also arbitrarily replaced himself as Dr. Stackman's mentor, although Dr. Burton needed that assignment to build her DRB file for promotion. (Hawks Decl. ¶6(t), Ex. 37, Dkt. No. 53-37)

RESPONSE: Disputed but immaterial. Having a mentoring assignment removed from Burton was not materially adverse to her and harmed her in no way. Mentoring does not support an application for promotion. Dalecki "can never remember [mentoring] being an issue to the positive in any

instance” when it comes to academic promotion. (Dkt. 41 30:9-12.) Dalecki did not remove Burton “arbitrarily” but did so after having at least two conversations with Burton about power differentials and conflicts of interest. After Burton inappropriately asked Stackman, a junior untenured faculty member, to housesit for her, Dalecki changed the assignment. (Dkt. 41 101:10-102:4.)

229. On Aug. 29, 2014, Dr. Dalecki admits that he assigned Dr. Solar, a one-year faculty member, as chair of a search and screen committee to hire three new faculty members and denied Dr. Burton’s request to be a member of that search committee. (Dalecki Dep., Dkt. No. 41, 33:14-35:7, 139:14-22)

RESPONSE: No dispute.

230. On drafting and advertising a job description for the committee, Dr. Solar did not comply with faculty bylaws regarding recruitment. (Dalecki Dep., Dkt. No. 41, 142:22-143:18; Hawks Decl. ¶4(d), Ex. 14, Dkt. No. 53-14.

RESPONSE: Defendant OBJECTS to this finding as immaterial to any dispute in this litigation and as contradicted by the cited testimony and therefore **disputes**. However this dispute is immaterial. Dalecki’s testimony is as follows:

Q. Do you concur with Dr. Burton’s conclusion that Dr. Solar violated the university policy by failing to take a vote of the department faculty?

A. He possibly did.

Q. This is just a yes or no.

A. I don’t know. I don’t have the policy in front of me. It’s difficult for me to say exactly to what degree her claim holds water. (Dkt. 41 143:15-22)

231. Dr. Dalecki subsequently refused Dr. Burton's request to chair a search committee for even one of the three new faculty members. (Dalecki Dep., Dkt. No. 41, 35:16-36:5)

RESPONSE: No dispute.

232. In early October, 2015, Dr. Dalecki refused to meet with Dr. Burton regarding his unfair treatment of her and, specifically, his denial of her request to serve on the Department curriculum committee. (Burton Dep., Dkt. No. 39, 488:7-16; Burton Decl. ¶38, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as not supported by the cited source material and as immaterial and therefore moves to strike. By October of 2015, Dalecki had not been the chair of the CJ department for a number of months and any failure to meet with her was immaterial.

233. Dr. Burton had excellent student evaluations regarding her teaching of the comparative criminal justice systems course in Spring 2014. (Dalecki Dep., Dkt. No. 41, 159:1-24; Dalecki Dep. Ex. 52, Hawks Decl. ¶4(e), Ex. 15, Dkt. No. 53-15; Kieckhafer Decl. Ex. A at 025, Dkt. No. 33-1)

RESPONSE: No dispute.

234. Dr. Dalecki refused Dr. Burton's request to teach CJ3230, comparative criminal justice systems, in Spring 2015, and Dr. Dalecki assigned that course to Dana Cecil, who was academic staff. (Dalecki Dep., Dkt. No. 41, 158:8-16, 160:1-7; Caywood Dep., Dkt. No. 40, 132:10-11)

RESPONSE: No dispute.

235. In November 2014, Dr. Dalecki attended a social event organized by the Department and attended by a graduate student, Ronald Jacobus, and Department faculty and academic staff. (Dalecki Dep., Dkt. No. 41, 40:5-20, 41:12-42:1; Jacobus Decl. ¶¶12-13, 16, Dkt. No. 52)

RESPONSE: No dispute.

236. At the social event, Deborah Rice, academic staff in the CJ Department, told CJ colleagues, including Dr. Dalecki and Mr. Jacobus, that Dr. Burton has a mental illness. (Burton Dep., Dkt. No. 39, 143:24-144:4; Jacobus Decl. ¶¶12-14, 16, Dkt. No. 52; Lohmann Dep., Dkt. No. 48, 6:7-22; Hawks Decl. ¶8(a), Ex. 40, Dkt. No. 53-40)

RESPONSE: Defendant OBJECTS to cited testimony by Burton and Lohmann as lacking foundation or personal knowledge and as hearsay; subject to and without waiving these objections, **no dispute.**

237. At the same social event, the Provost, Dr. Mittie Nimocks Den Herder, told Mr. Jacobus, Dr. Dalecki and others that Dr. Burton was on a sinking ship by herself. (Burton Dep., Dkt. No. 39, 367:11-368:4; Jacobus Decl. ¶17, Dkt. No. 52; Lohmann Dep. Dkt. No. 48, 54:13-55:16)

RESPONSE: Defendant OBJECTS to cited testimony by Burton and Lohmann as lacking foundation or personal knowledge and as hearsay; subject to and without waiving these objections, **no dispute.**

238. Mr. Jacobus was surprised by Ms. Rice's and the Provost's statements about Dr. Burton and that Dr. Dalecki did not correct Ms. Rice or reprimand her for

making them and he reported Ms. Rice's and the Provost's statements to Dr. Burton, with whom he had worked as an undergraduate assistant and who was his unofficial mentor. (Jacobus Decl., ¶¶2-4, 7-9, 18-19, Dkt. No. 52)

RESPONSE: Defendant **Objects** to this finding as containing multiple and confusing facts. Subject to and without waiving, **no dispute** as to what Mr. Jacobus thought; **no dispute** that he reported statements to Burton. Fact immaterial.

239. On learning that Mr. Jacobus had told Dr. Burton about the statements made about her, Dr. Dalecki met privately with Mr. Jacobus to give him some advice and Mr. Jacobus recorded the meeting. (Dalecki Dep., Dkt. No. 41, 43:19-23, 71:16-24, 77:13-15; Jacobus Decl. ¶¶20-23, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11)

RESPONSE: No dispute. Fact immaterial.

240. Mr. Jacobus recorded the meeting with Dr. Dalecki, and the partial transcript of the recording accurately records their conversation. (Jacobus Decl. ¶22-23, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11)

RESPONSE: No dispute. Fact immaterial.

241. Dr. Dalecki warned Mr. Jacobus that he should be very careful about passing information on to others and counseled him that there would be ramifications for what he does or consequences of his behavior. (Dalecki Dep., Dkt. No. 41, 44:11-14, 73:24-2; Answer, Dkt. No. 31, ¶169; Jacobus Decl. ¶¶24, 27, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11)

RESPONSE: No dispute. Fact immaterial.

242. Dr. Dalecki told Mr. Jacobus that he recalled a time, when he was a master's student, when someone gave him a chance rather than cut him off at the knees and let him "crawl away bleeding." (Dalecki Dep., Dkt. No. 41, 44:21-45:7; Jacobus Decl. ¶¶26, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11)

RESPONSE: No dispute. Fact immaterial.

243. Dr. Dalecki told Mr. Jacobus that, if his loyalty is unabashedly to Dr. Burton, that's not likely to end well for Mr. Jacobus. (Dalecki Dep., Dkt. No. 41, 70:4-24; Jacobus Decl. ¶¶27-29, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11)

RESPONSE: No dispute. Fact immaterial.

244. Dr. Dalecki warned Mr. Jacobus that he should think broadly about the department, the University and his career, and what might be the outcome of his behavior. (Dalecki Dep., Dkt. No. 41, 70:7-13; Jacobus Decl. ¶¶24, 226-29, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11)

RESPONSE: No dispute. Fact immaterial.

245. On December 16, 2014, Dean Throop notified Dr. Burton in writing that she was in violation of the University's employee handbook and that Dean Throop "will be forced to pursue disciplinary measures" against Dr. Burton because Dr. Burton cancelled a class on December 12, 2014, without notice to Dr. Dalecki and without Dr. Dalecki's approval. (Bensky Decl. Ex. AAAA at 002, Dkt. No. 43-3)

RESPONSE: No dispute.

246. Before Dean Throop admonished had Dr. Burton in writing and announced that she would discipline her, Dean Throop did not seek to verify with Dr. Burton or with Dr. Dalecki whether Dr. Burton had cancelled her class. (Throop Dep., Dkt. No. 42, 15:22-16:2; Burton Dep., Dkt. No. 39, 365:15-21; Rice Dep., Dkt. No. 49, 17:8-18)

RESPONSE: No dispute.

247. Dr. Dalecki told Dean Throop that a CJ staff member informed him that Dr. Burton had cancelled the class. (Throop Dep., Dkt. No. 42, 15:11-13; Dalecki Dep., Dkt. No. 41, 105:8-106:7)

RESPONSE: No dispute.

248. Ms. Rice told Dalecki that two students told her that Dr. Burton was going to Germany on Friday. (Rice Dep., Dkt. No. 49, 15:16-21, 17:19-18:2, 20:13-22)

RESPONSE: No dispute.

249. Dr. Burton did attend the staff meeting the following week, and she has a perfect class attendance record, even meeting classes when she is sick, making arrangements for a class if attends a conference, and is in attendance during finals week. (Burton Dep., Dkt. No. 39, 366:2-4, 21-25; Rice Dep., Dkt. No. 49, 17:25-18:4)

RESPONSE: No dispute.

250. The University Director of Graduate Studies and Academic Projects investigated a complaint by Dr. Burton and reported to the Chancellor, on April 8, 2015, that Dean Throop incorrectly admonished Dr. Burton for having cancelled her

classes on December 12, 2014. (Dalecki Dep. Ex. 40, Hawks Decl. ¶4(b), Ex. 12, Dkt. No. 53-12)

RESPONSE: No dispute.

251. Dr. Burton believed that Dean Throop was going to fire her because, on about June 25, 2014, Dr. Fuller told Dr. Burton that Dean Throop and Dr. Dalecki were talking about ways to terminate Dr. Burton's employment. (Burton Dep., Dkt. No. 39, 357:15-258:1)

RESPONSE: No dispute as to what Dr. Burton believed, although Burton's thoughts are immaterial; **OBJECT** to Dr. Fuller's statements as inadmissible hearsay; **OBJECT** to statements allegedly made by Throop and Dalecki that Burton lacks first-hand knowledge and is therefore not competent to testify regarding what they said.

252. Dr. Burton was stressed at Dr. Fuller's revelation to her that Dean Throop and Dr. Dalecki discussed her termination and she wrote to Dr. Fuller that she does not feel safe and is being treated for severe tension headaches, which will impede her driving to supervise interns off campus. (Hawks Decl. ¶6(s), Ex. 36, Dkt. No. 53-36)

RESPONSE: Defendant **OBJECTS** to this finding as unsupported by the cited material and based on speculation and as hearsay so far as it concerns discussion by Throop and Dalecki regarding Burton's termination.

Defendants therefore **move to strike** this finding due to the absence of any

supporting admissible evidence (Dkt. 53-36.) **No dispute** as to Burton's feelings, although immaterial.

253. On responding to Dr. Burton's email, Dr. Fuller did not disavow or correct the information conveyed by Dr. Burton that Dean Throop and Dr. Dalecki had discussed her termination. (Hawks Decl. ¶6(s), Ex. 36, Dkt. No. 53-36)

RESPONSE: Defendant OBJECTS to this finding as unsupported by the cited material and based on speculation and as hearsay so far as it concerns discussion by Throop and Dalecki regarding Burton's termination.

Defendants therefore **move to strike** this finding due to the absence of any supporting admissible evidence (Dkt. 53-36.)

254. Dean Throop's issuance of a letter of direction to Dr. Burton, based on false accusation and without giving Dr. Burton an opportunity to respond, showed to Dr. Burton the Dean's intention to fire her. (Burton Dep., Dkt. No. 39, 358:4-13)

RESPONSE: Defendants OBJECT to Burton's speculation that the Dean intended to fire her. This statement is made without first-hand knowledge and contradicts the records evidence. Subject to and without waiving, **Disputed.** The letter of direction, which set forth specific instances of Burton's documented misconduct and unprofessional behavior, was intended to encourage Burton to resolve any legitimate disagreements with her colleagues through the proper channels. Dkt. 37 ¶¶33- 39, Ex. WWW.

255. The letter of direction to a faculty member is a warning regarding expectations of employment, reciting circumstances alleged, but not proven, by the author. (Lohmann Dep., Dkt. No. 48, 44:21-22, 45:12-25)

RESPONSE: Defendants OBJECT to Burton's speculation that the Dean intended to fire her. This statement is made without first-hand knowledge and contradicts the records evidence. Subject to and without waiving, **Disputed.** The letter of direction was written to encourage resolution of any legitimate disagreements through the proper channels without involving unnecessary groups or individuals and to advise Burton of Throop's concerns. Dkt. 37 ¶39, See also response to #254.

256. The letter of direction is a significant event for the Dean to allege that a faculty member has displayed unprofessional conduct with her colleagues. (Lohmann Dep., Dkt. No. 48, 46:14-24)

RESPONSE: Defendant OBJECTS to this finding as unsupported by the cited material and OBJECTS that Lohmann's feelings about whether Throop's letter was significant are immaterial. Lohmann's testimony is as follows:

Q. Is it significant to you that the dean of the college writes to a faculty member that the faculty member has displayed unprofessional and concerning interactions with your campus colleagues?

A. Is this significant? Yes.

Q. And does that, in your opinion, reflect a conclusion by the dean as to what Dr. Burton did, in fact, do?

A. Certainly an opinion. (Dkt. 48 46:14-24.)

257. Dr. Stackman never complained to Dr. Dalecki that Dr. Burton had asked her to housesit, having possibly only mentioned it inadvertently. (Stackman Dep., Dkt. No. 47, ¶37:13-22)

RESPONSE: Defendant OBJECTS to this findings as taken out of context and in violation of the rule of completeness. Dr. Stackman's complete answer is as follows:

Q. Surprised that it found its way into a letter of direction?

A. Yes. And the whole mentor/mentee thing. I didn't think much of it at the time other than I knew there were some things going on with Sabina and things that she was saying that did not match up with what Mike was saying. And he's the department chair, and I didn't know what kind of role or responsibility he would have in my promotion and tenure process here. And at the time I felt better with Mike as my mentor because I didn't know what to expect or what to anticipate with Sabina. When Sabina would tell me her reason, for example, not working with the Germans, and then Mike would tell me that there were other things going on that I was not privy to, it just made more sense for me not to be her mentee. (Dkt. 47 37:20-38:12)

258. Tenure doesn't pose a problem to Dean Throop, who can get a tenured professor fired for insubordination. (Burton Dep., Dkt. No. 39, 359:6-19)

RESPONSE: Defendant OBJECTS to this finding as speculation and based on a lack of personal knowledge, and calling for a legal conclusion. Subject to and without waiving these objections, **disputed**. Dismissal of tenured faculty members is governed by various policies, procedures, bylaws, and state statutes and administrative codes. (*See, e.g.*, Dkt. 34 Ex. B, Wis. Admin. Code Chapter §UWS 4, 6, 7, 13.)

259. Despite a lengthy appeals process available for professors to challenge their discharge, a professor can be caused to be removed by creating a hostile environment, refusing requests for certain assignments, marking the professor

down in evaluations and by refusing additional salary opportunities. (Burton Dep., Dkt. No. 39, 359:20-360:9)

RESPONSE: Defendant OBJECTS to this finding as based on lack of personal knowledge and calling for a legal conclusion. Subject to and without waiving these objections, **disputed**. Dismissal of tenured faculty members is governed by various policies, procedures, bylaws, and state statutes and administrative codes. (*See, e.g.*, Dkt. 34 Ex. B, Wis. Admin. Code Chapter §UWS 4, 6, 7, 13.)

260. On January 15, 2015, Dean Throop filed with the Chancellor a complaint requesting a formal letter of reprimand against Dr. Burton, pursuant to Wis. Admin. Code § UWS Ch. 6 (Dkt. No. 37-15), which could result in the dismissal of the complaint, referral to a faculty committee, or the invocation of discipline, from a reprimand to dismissal. (Throop Dep., Dkt. No. 42, 68:13-69:15)

RESPONSE: Defendant OBJECTS that the proposed finding is unsupported by the record and therefore **disputes**. Throop's cited testimony establishes that she was uncertain of the range of appropriate disciplinary action the chancellor could invoke, or whether the chancellor had authority to convert the complaint to a different type of proceeding, or that dismissal could result. **No dispute** that Throop filed a complaint with the Chancellor against Burton for her increasingly unprofessional and difficult behavior on January 5, 2015. (Dkt. 42 68:13-69:22)

261. On September 25, 2015, Dr. Burton submitted to Chancellor Shields and Dr. Barraclough a response to Dean Throop's complaint of January 5, 2015. (Burton Decl. ¶28, Ex. 11, Dkt. No. 54-11)

RESPONSE: No dispute.

262. Dr. Caywood believes that Dr. Burton has not acted contrary to policy or bylaws of UW-Platteville during her tenure at UW-Platteville. (Caywood Dep., Dkt. No. 40, 51:3-9)

RESPONSE: Defendant OBJECTS to this finding as a legal conclusion, vague, taken out of context, and in violation of the rule of completeness.

Caywood's testimony is as follows:

Q. Do you believe that Dr. Burton during her tenure at UW Platteville has acted in a manner that's contrary to policy or bylaws of the organization-of the university?

A. Do you have a specific example?

Q. I'm asking you.

A. I don't believe so. (Dkt. 40 51:3-9.)

263. On July 2, 2014, Dr. Burton wrote to Dr. Fuller about Dr. Fuller's "revelation" to Dr. Burton that Dean Throop and Dr. Dalecki discussed Dr. Burton's termination, and on responding, Dr. Fuller did not deny the truth of that information and that she conveyed it to Dr. Burton, in fact she forwarded a copy of the message to Dr. Dalecki. (Hawks Decl. ¶6(r), Ex. 35, Dkt. No. 53-35)

RESPONSE: Defendant OBJECTS to this finding as based on speculation and as hearsay and moves to strike. Burton provides no foundation for the "revelation" statement in her email to Fuller. **No dispute** that Fuller's response does not mention any revelation or termination or that Fuller included Dalecki in her response. (Dkt. 53-35.)

264. By the fall and winter of 2014-15, Dr. Burton feared for her job because of the actions of Dr. Dalecki, including his gag order to colleagues. (Burton Dep., Dkt. No. 39, 477:3-478:14; Jacobus Decl. ¶¶30-31, Dkt. No. 52)

RESPONSE: Defendant OBJECTS that Burton's feelings about the situation are immaterial. Subject to and without waiving this objection, **no dispute as to Burton's feelings. Object** to the "gag order" by Dalecki against Burton finding as not supported by the evidence cited.

265. By the fall and winter of 2014-15, Dr. Burton feared for her job because of the actions of Dean Throop, including the letter of direction of October 28, 2014 (Dkt. No. 35-15 at 4-6), the charge dated December 16, 2014, that Dr. Burton had cancelled a class (Dkt. No. 43-3 at 2), and the §UWS Ch. 6 complaint of January 5, 2015 (Dkt. No. 35-15 at 1-3). (Burton Decl. ¶¶24-25, Dkt. No. 54)

RESPONSE: No dispute as to how Burton felt.

266. Dr. Burton suffered such severe physical symptoms because of her workplace stress that her physician determined that it was necessary for Dr. Burton to take a leave of absence from work for the spring semester, beginning in January 2015. (Burton Decl. ¶¶26-27, Dkt. No. 54; Bearnse Decl. ¶¶4-9, Dkt. No. 50)

RESPONSE: Defendant OBJECTS to this finding as a legal conclusion that any physical symptoms were caused by workplace stress. Subject to and without waiving this objection, **no dispute** that Burton took a leave of absence beginning in January of 2015 for the spring semester.

267. Dr. Burton relations with the current Department chair, Dr. Strobl, and Dr. Burton's colleagues is collegial and without disruption. (Throop Dep. 118, 122; Stackman Dep., Dkt. No. 47, 21:6-21)

RESPONSE: No dispute. Fact not material.

268. After Dean Throop appointed Dr. Dalecki as interim chair on July 10, 2013, she supported Dr. Dalecki for the position of permanent CJ chair. (Burton Decl. ¶¶29-30, Dkt. No. 54)

RESPONSE: Defendant OBJECTS to this finding as vague as to time.

Subject to and without waiving this objection, **disputed.** Throop attended meetings at which the process to select a permanent chair was discussed, but the process was decided upon by the members of the CJ department through votes, not by Throop. Dkt. No. 37 ¶¶25-30.

269. Dean Throop continued to support Dr. Dalecki for the permanent chair and unilaterally changed the criteria for the CJ chair announcement, which the Department had drafted, to benefit Dr. Dalecki, because the Department's position description contained minimum qualifications that Dr. Dalecki did not possess. (Burton Decl. ¶¶29-31, Dkt. No. 54)

RESPONSE: Disputed but immaterial. Throop altered the job description to encourage a wider applicant pool and to make the advertisement more professional. Dkt. No. 37 ¶ 31. Throop attended meetings at which the process to select a permanent chair was discussed, but the process was

decided upon by the members of the CJ department through votes, not by Throop. Dkt. No. 37 ¶¶25-30.

270. In her January 2015 Ch. UWS 6 complaint against Dr. Burton, Dean Throop threatened discipline on a baseless accusation that Dr. Burton had cancelled classes on December 12, 2014, without first notifying Dr. Dalecki and obtaining his permission. (Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11)

RESPONSE: Defendant OBJECTS to this finding under the best evidence rule; Burton submits her summary and opinion of Throop's complaint and not the complaint itself. Subject to and without waiving this objection, **disputed.** Throop filed the grievance for the reasons set forth in the grievance itself and the letter of direction Throop had issued Burton in October 2014. See Dkt. 37 Ex. WWW.

271. Dean Throop sharply admonished Dr. Burton and threatened to discipline Dr. Burton for a class *not* on the basis of a rumor that Dean Throop had not substantiated. (Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11)

RESPONSE: Defendant OBJECTS to the characterization of Throop's communication as "sharply admonish[ing]" Burton; subject to this objection, **no dispute.**

272. Dean Throop's threatened discipline of Dr. Burton for a class *not* missed was an example of the very tenet that formed the basis of much of Dean Throop's criticisms of Dr. Burton: that she had not "kept it local" by talking face-to-

face with a colleague to work out any differences. (Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11)

RESPONSE: No dispute. Fact not material.

273. On November 17, 2012, following Dr. Caywood's admonition at a Department faculty meeting the previous day that he should be notified first of a student complaint before a harmless matter is taken all the way to the provost, Dr. Burton notified Provost Den Herder that Dr. Caywood was retaliating against her because of my assistance to the student who was harassed by Dr. Gibson. (Burton Decl. ¶35, Ex. 14, Dkt. No. 54-14)

RESPONSE: Defendant OBJECTS to this finding as calling for several legal conclusions and as unsupported by the evidence cited. The cited document contains Burton's statement that Caywood "made a big deal out fo a student complaint and before notifying him took it all the way to the provost' (paraphrased by me)" and that she "feel[s]" retaliated against, though she left open the possibility that she "acted poorly" during the student complaint incident. (Dkt. No. 54-14.)

274. On October 3, 2012, Dr. Burton also met again with the group preparing the NSF proposal resubmission, as they had an October 8, 2012 deadline, and Dr. Burton asked Kathy Lomax, at the UW-Platteville Foundation, to review the AT&T proposal. (Burton Decl. ¶36, & Ex. 15, Dkt. Nos. 54 & 54-15)

RESPONSE: No dispute. Fact immaterial.

275. On October 10, 2012, the group continued efforts to meet the short deadline for NSF proposal resubmission, but because Dean Throop would be unavailable to review the proposal and draft budget, Dr. Caywood advised Dr. Burton and Mr. Roberts to wait until the December deadline, writing: “No need to rush this to get it to the dean by tomorrow if we are not going to do it correctly. I’m sure she wants some time to look everything over before she signs. If there is another cycle in December then that should give us time to get everything ready and to the dean early enough for her satisfaction.” (Burton Decl. ¶37, Ex. 16, Dkt. Nos. 54 & 54-16)

RESPONSE: No dispute.

276. On the January 2015 DRB evaluations, Dr. Burton received a lower peer evaluation than she had before, with Dr. Caywood as a member of the committee. (Dalecki Decl. ¶26, Dkt. No. 34)

RESPONSE: No dispute that Burton received a lower evaluation; **dispute** the implication that Caywood’s membership on the committee was the cause and OBJECT that the implication is not based on personal knowledge and Burton is therefore incompetent to testify to it.

Dated this 11th day of December, 2015

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