

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Sabina Burton,

Plaintiff,

v.

Case No. 14-CV-274

University of Wisconsin Regents, et al,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS'
PROPOSED FINDINGS OF FACT**

1. *UW-Platteville is organized into 24 academic departments, almost all of which are chaired by tenured faculty members. (Throop Decl., ¶ 3.)*

No dispute.

2. *The Criminal Justice (CJ) department is within the College of Liberal Arts and Education (LA&E). It offers a Bachelors of Science in Criminal Justice (BSCJ), a Bachelors of Science in Forensic Investigation (BSFI), an online undergraduate degree in criminal justice (BSCJ), and an online Masters of Science in Criminal Justice (MSCJ). (Throop Decl., ¶ 4-5).*

No dispute.

3. *As of 2014, the Criminal Justice department had around 16 faculty, 800 on-campus students, and 200 online students enrolled. (Throop Decl., ¶ 6; Caywood Decl., ¶ 3.)*

No dispute.

4. *The CJ department has been a stand-alone department at UW-Platteville since 1971. (Caywood Decl., ¶ 3.)*

No dispute.

5. *The criminal justice department is a hierarchical organization where faculty report to the Department Chair, the Chair reports to the Dean, who reports to the Provost, who reports to the Chancellor. (Caywood Decl., ¶ 17.)*

Dispute. The curriculum of all programs in criminal justice, whether on-campus or on-line, is the responsibility of the faculty in the criminal justice program. All coordinators/directors report to the department chair, who in turn reports to the dean of the college. The Chair is responsible to the Dean, and the unclassified (faculty and academic staff) and classified personnel assigned to the Department are responsible to the Chair. The Chair acts as a liaison between departmental personnel and the Dean. (Dalecki Decl. Ex. B at 002, 003, Dkt. No. 34-1)

REPLY: Fact not disputed; any dispute is not material.

6. *The CJ department has a Department Chair, whose duties include scheduling professors to teach courses, hiring adjunct professors, maintaining course syllabi, making staff appointments, approving department expenditures and proposing a department budget, and recruiting students, among other duties. In addition, the department chair was to act as a liaison between the faculty and the Dean. (Caywood Decl., ¶ 2.)*

No dispute.

7. *The CJ department also has the following managerial positions: Director of the Online Graduate Program, Online Undergraduate Coordinator, and Director of the Forensic Investigation (FI) program (formerly called the FI Coordinator). The duties of these positions are outlined in the CJ departmental policies and procedures. (Dalecki Decl., ¶ 6, Ex. B.)*

No dispute.

8. *Per the CJ departmental policies and procedures in effect as of Fall, 2011, all three of these positions received .5 (50%) release time from teaching responsibilities if a full-time faculty member held the position. This means that 50% of contracted-for teaching responsibilities are removed for the person serving in that position. For example, professors are typically contracted to teach four, three-credit classes per semester. Someone with 50% release time will only need to teach two, three-credit classes per semester to satisfy his or her contract requirements. (Dalecki Decl., ¶ 6, Ex. B.)*

No dispute regarding substance. The source of sentence 3 is not cited.

9. *Elizabeth Throop (Throop) is currently the Dean of the College of*

Liberal Arts and Education (LA&E) at the University of Wisconsin-Platteville. (Throop Decl., ¶ 2.)

No dispute.

10. *Throop has held this position since June of 2012. In this position, Throop oversees over two hundred employees, including both faculty and staff. (Throop Decl., ¶ 2.)*

No dispute.

11. *Throop is responsible for curriculum and personnel matters within LA&E. (Throop Decl., ¶ 2.)*

No dispute.

12. *Throop reports to the Provost and Vice Chancellor for Academic Affairs, Dr. Mittie N. Den Herder, who in turn reports to the Chancellor, Dennis Shields. Chancellor Shields then reports to the Board of Regents and University of Wisconsin System President, Dr. Ray Cross. (Throop Decl., ¶ 4.)*

No dispute.

13. *Caywood was a professor in the Criminal Justice (CJ) department at UW- Platteville between 1991 and 2015. (Caywood Decl., ¶ 2.)*

No dispute.

14. *Thomas Caywood (Caywood) retired from UW-Platteville in the summer of 2015. (Caywood Decl., ¶ 2.)*

No dispute.

15. *Caywood served in the U.S. Air Force from 1970-1974, and served one year in Vietnam. He was a member of the Missouri National Guard, Texas National Guard, and U.S. Army Reserves. In 1999, he spent nine months in Bosnia working military intelligence. He was a police officer in Missouri for almost four years before completing his PhD. (Caywood Tr. at 5:3-6-12.)*

No dispute.

16. *In 2006, Caywood was elected chair of the CJ department and served as chair until July of 2013. (Caywood Decl., ¶ 2.)*

No dispute.

17. *Caywood was head of search and screen committee that hired Burton.*

(Burton Tr. at 69:1-2).

No dispute.

18. *Caywood's primary responsibilities as department chair included scheduling professors to teach courses, hiring adjunct professors, maintaining course syllabi, making staff appointments, approving department expenditures and proposing a department budget, and recruiting students, among other duties. In addition, the department chair was to act as a liaison between the faculty and the Dean. (Caywood Decl., ¶ 2.)*

No dispute.

19. *As CJ Chair, Caywood had no authority to set professor's base salaries. That function was performed by the Dean and Provost. (Caywood Decl., ¶ 2; Throop Decl., ¶ 44.)*

No dispute.

20. *In the winter of 2014-15, Caywood was a member of the CJ Department's DRB board automatically because he was a tenured professor in the department. (Dalecki Tr. at 48:10-13.)*

Dispute. The CJ DRB is comprised of at least three tenured CJ faculty members and only the chair is automatically a member of the DRB. (Dalecki Decl. Ex. B at 008, Dkt. No. 34-1 at 008)

REPLY: Fact not disputed that Caywood is a member of the DRB. Any dispute is not material.

21. *Dr. Sabina Burton was hired as a tenure-track assistant professor, contracted to start teaching in the August of 2009. (Burton Dep. Tr. at 73:19-20).*

No dispute.

22. *In January 2012, Burton applied for promotion to associate professor. (Burton Tr. at 75:4-6.)*

No dispute.

23. *The Department Review Board (DRB) committee initially rejected Burton's bid for promotion because Burton's DRB file did not contain teaching evaluations from her previous position at UC Irvine. (Burton Dep. Tr. at 75:4-77:12).*

No dispute.

24. *When the teaching evaluations were submitted, the DRB recommended*

Burton for a promotion (Caywood Tr. at 81:10-82:20.)

No dispute.

25. *Burton received a salary increase with her promotion to Associate Professor. The promotion and salary increase were both effective starting the 2012-2013 school year. The short delay in approval of Burton's promotion had no effect on her salary, and no effect on the date her promotion became effective. (Burton Tr. at 77:11- 22; 475:25-476:2.)*

No dispute.

26. *At UW-Platteville, Burton has not applied for any promotions that she did not receive as a result of the events complained about in the Second Amended Complaint. (Burton Tr. at 496:21-497:6.)*

No dispute.

27. *The members of the DRB in the Spring of 2012 that voted on Burton's request for promotion to associate professor were: Caywood, Joe Lomax, Aric Dutelle, Bob Roberts, John Rink, and Mike Dalecki. (Burton Tr. at 75:18-23.)*

Dispute. The members of the DRB in the Spring of 2012 were Caywood, Joe Lomax, Aric Dutelle, Bob Roberts, John Rink, and Mike Dalecki. (Burton Dep., Dkt. No. 38, 75:18-23). The Department chair, Dr. Caywood, served on the DRB as a non-voting member. (Dalecki Decl. Ex. B, Dkt. No. 34-1 at 008)

REPLY: Fact not disputed.

28. *In January of 2013, Burton requested tenure. Burton's tenure request was granted and she received tenure effective for the 2013-14 school year. This was the earliest she could have been eligible for tenure. (Burton Tr. at 279:3-13.)*

No dispute.

29. *In the fall of 2013, Burton served as the chairperson of the department search and screen committee. The committee produced two candidates for positions in the criminal justice department. (Burton Dep. Tr. at 92:3-13; Dalecki Decl., ¶ 31.)*

No dispute.

30. *Dr. Michael Dalecki has served in various capacities with UW-Platteville for 24 years. He has served on numerous committees and boards including, but not limited to, serving as a member and Chair of the Academic Standards Committee, serving on the Department Review Board, and serving on the Faculty Senate. (Dalecki Decl., ¶¶ 2, 4-5.)*

Dispute sentence 1. Dr. Dalecki has been employed by UW-Platteville since 1999, or for 16 years. (Dalecki Decl. ¶4, Dkt. No. 34 at 2)

REPLY: Fact not disputed. Plaintiff's assertion is not supported by cited admissible evidence. Dr. Dalecki has been employed at UW-Platteville since August 1991, or for 24 years. (Dalecki Decl., ¶¶ 2, 4-5.)

31. *Between August 2013 and August 2015, Dalecki served as the Interim Chair of the Department of Criminal Justice (Dalecki Decl., ¶¶ 2, 4-5.)*

No dispute.

32. *Throop appointed Dalecki as interim chair of the CJ Department in July of 2013, after Caywood stepped down. (Throop Decl., ¶¶ 22-23.)*

No dispute.

33. *Dalecki's duties as interim chair included producing class schedules, overseeing hiring processes, ensuring curriculum is managed properly, addressing student concerns and problems, initiating new programs, overseeing online programs, supervising academic staff and faculty, and budgeting. (Dalecki Decl., ¶ 6, Ex. B.)*

No dispute.

34. *In the winter of 2014-15, Dalecki was not a voting member of the CJ department's DRB board. (Dalecki Tr. at 47:9-11.)*

Dispute. In the winter of 2014-15, Dalecki was an ex-officio member of the CJ Department's DRB board. (Dalecki Dep., Dkt. No. 41, 47:9-11)

REPLY: Fact not disputed. The term *ex-officio* is commonly used to convey limited participation. See also Plaintiff's response to PFOF ¶ 27.

35. *During the spring of 2012, Burton was on sabbatical, meaning that she had 100% release time from teaching. (Burton Tr. at 17:17-18:3.)*

Dispute. In the spring 2012, Dr. Burton was released from all teaching responsibilities to perform research, pursuant to the terms of a UW System faculty diversity research award, regarding working profiles of domestic terrorists. (Burton Dep., Dkt. No. 39, 411:1-22; Hawks Decl. ¶2(c), Ex. 20, Dkt. No. 53-20)

REPLY: Fact not disputed.

36. *Under this arrangement, Burton received her full salary without*

teaching any regular courses. Burton taught and was paid an additional amount for a course she taught as an overload during the spring 2012 semester. (Burton Tr. at 17:17-18:15)

No dispute regarding substance. Source for sentence 2 not cited.

37. *During the Spring 2012 semester, Burton served on the LA&E college search and screen committee. The committee's charge was to hire a Dean for the LA&E School. (Burton Tr. at 85:14-86:11; 92:16-19; 93:11-13.)*

No dispute.

38. *All of the committee members, including Burton, were asked to stay on the Committee during the Spring 2012 semester. (Burton Tr. at 85:14-86:11, 92:16-19; 93:11-13.)*

No dispute.

39. *During the spring of 2012, Caywood asked Burton to help with student advising because the department was short staffed. (Burton Tr. at 88:1-7.)*

No dispute.

40. *In the fall of 2012, Dr. Lorne Gibson taught two sections of a criminal justice research methods course designed to educate students in part on various methods of collection data or how different types of experiments are conducted. (Caywood Decl., ¶ 26)*

No dispute.

41. *Caywood learned after the fact that during two different class discussions on breach experiments that occurred Wednesday October 10, 2012, Dr. Gibson passed a note to a female student during class. The note said "call me tonight 642-4160." (Caywood Decl., ¶ 26.)*

Dispute sentence 2. The note read "call me tonight 642-0020," which was Dr. Gibson's personal cell phone number, with the word "call" highlighted in red. (Caywood Decl. Ex WW at 002, Dkt. No. 36-5; Zupec Decl. Ex. A, Dkt. No. 51-1).

REPLY: Fact not disputed; Defendants accept Plaintiff's clarification.

42. *In one section when Dr. Gibson handed the note to a female student she read the note, laughed out loud, passed the note to other students who also laughed, and the lectured continued. Nothing else was said. (Caywood Decl., ¶ 26.)*

Dispute. Dr. Caywood lacks the personal knowledge to make this assertion for the truth of the matter asserted. Uncorroborated testimony cannot support a claim if it is based on rumor. *Darchak v. City of Chicago Bd. of Educ.*, 580 F.3d 622, 631 (7th Cir. 2009); *see also Payne v. Pauley*, 337 F.3d 767, 773 (7th Cir. 2003). The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

REPLY: Defendants accept that the Court may not consider this fact for its truth. This proposed finding is offered for its effect on Caywood and his state of mind and analysis of the issue – in particular, Caywood's acceptance of Gibson's explanation that the note was intended as an experiment as opposed to intentional harassment of a student.

43. *In the other section he did the same thing handing a note to a female student. This student looked at the note and said or did nothing. (Caywood Decl., ¶ 26.)*

Dispute. Dr. Gibson walked up to Alexandra Zupec and slipped the note under Ms. Zupec's books in plain view of the five other students in her small group, sitting in a circle. At their urging, Ms. Zupec read the note to the five students in her small group and was shocked and embarrassed by it. Nervous about what to do, a student in the group suggested that Ms. Zupec talk to another teacher about the note. (Zupec Decl. ¶¶7-12, Dkt. No. 51)

REPLY: Fact not disputed. Defendants OBJECT and move to strike plaintiff's assertion as non-responsive.

44. *On October 10, 2012, a student approached Burton and told her that Dr. Gibson, had handed her a note during class time that said "call me! 642-4160". (Burton Tr. at 135:20-25; Caywood Decl., ¶ 26; Ex. WW.)*

Dispute. The note read "call me tonight 642-0020," which was Dr. Gibson's personal cell phone number, with the word "call" highlighted in red. (Caywood Decl. Ex WW at 002, Dkt. No. 36-5; Zupec Decl. Ex. A, Dkt. No. 51-1). On October 10, 2012, Ms. Zupec approached Dr. Burton after her class, showed her Dr. Gibson's note, and asked for Dr. Burton's help. Dr. Burton confirmed that the note was inappropriate and told Ms. Zupec she would notify to the Department chair and find

the University official Ms. Zupec should talk to about it. (Zupec Decl. ¶¶15-18, Dkt. No. 51)

REPLY: Fact not disputed. Defendants OBJECT and move to strike plaintiff's assertion as non-responsive. Any dispute is immaterial.

45. *That evening, Burton informed Throop, via email, that there was an incident on campus that involved a student and a professor that appeared to be inappropriate. (Burton Tr. at 254:23-255:5.)*

Dispute. That evening, Dr. Burton notified Dean Throop about the note by email, stating "I assume I'll talk to Tom about it? Or is it better to involve student affairs," and Dean Throop responded by suggested that Dr. Burton direct the student the Dean of Students, Artanya West. (Burton Dep., Dkt. No. 38, 254:23-255:8; Hawks Decl. ¶6(f), Dkt. No. 53-23)

REPLY: Fact not disputed.

46. *The following morning, Burton told Caywood about the student complaint and showed him the note. (Caywood Decl., ¶ 27, Ex. WW; Burton Tr. at 256:3-12.)*

Dispute. Early the following morning, Dr. Burton told Dr. Caywood about Dr. Gibson's note, that Dr. Burton would inform Student Affairs, and later she emailed the photo of the note to him, at Dr. Caywood's request. (Burton Dep., Dkt. No. 38, 255:8- 256:6, 257:2-6)

REPLY: Fact not disputed.

47. *Caywood was surprised when he saw the note, and wanted to find out from Dr. Gibson what had happened. (Caywood Decl., ¶ 27; Burton Dep. Tr. at 256:3- 12.)*

No dispute.

48. *Dr. Gibson was teaching that morning. Caywood sat in on both of his classes. The second class was over around noon. (Caywood Decl., ¶ 28.)*

No dispute.

49. *Caywood immediately met with Dr. Gibson, discussed the note incident with him, and reviewed his course syllabus for the previous day. (Caywood Decl., ¶ 28.)*

No dispute.

50. *Dr. Gibson explained the note was part of a lecture on breach experiments and the note was intended as an example of how to elicit a response. They talked about how the student may have misunderstood the purpose of the note. (Caywood Decl., ¶ 28.)*

Dispute the second sentence. Dr. Caywood's speculative testimony about the student's reaction cannot support a claim, if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded as the proposed fact described the contents of a conversation that occurred and does not involve speculation.

51. *Caywood instructed Gibson to email both sections of research methods to explain what happened. Gibson emailed his class an explanation at 12:47 p.m. on October 11, 2012. (Caywood Decl., ¶ 28.)*

No dispute.

52. *In the mean time Caywood emailed Burton with the explanation of why the note was passed. (Caywood Decl., ¶ 29.)*

No dispute.

53. *From Thursday afternoon onward, Caywood had a number of emails from Throop and Burton. By this time, the Provost and Director of UW-Platteville Human Resources were also involved in a number of emails about the incident. (Caywood Decl., ¶ 29.)*

No dispute.

54. *The Dean directed Caywood late Thursday evening October 11th to set up a meeting with the Director of HR, the Dean, Dr. Gibson and Caywood for Tuesday October 16th at 8:30 AM, which Caywood did. (Caywood Decl., ¶ 29.)*

No dispute.

55. *Caywood is a trained investigator and he investigated the in-class note incident that lead to the student complaint. (Caywood Decl., ¶ 30)*

No dispute.

56. *Caywood tried to ascertain who the student was so he could speak to her to find out what happened. (Caywood Decl., ¶ 30.)*

Dispute. On October 11 and 12, 2012, Dr. Caywood asked and received from Dr. Burton the name of the student, so he could interview her and Dr. Burton responded that Dr. Caywood should keep the student's name confidential and should discuss the matter with Dean Throop. (Hawks Decl. ¶6(j), Dkt. No. 53-27)

REPLY: Fact not disputed.

57. *Caywood was instructed at the October 16th meeting to stop trying to speak to the student. Caywood was instructed by human resources on October the 17th to quit asking Burton for information. Caywood stopped his investigation. (Caywood Decl., ¶ 30.)*

No dispute.

58. *Caywood was assured at the October 16th meeting that the dean or the Director of HR would contact the student. (Caywood Decl., ¶ 30.)*

No dispute.

59. *Caywood had no further involvement in the incident. (Caywood Decl., ¶ 30.)*

Dispute. By December, 2012, Dr. Caywood's involvement was ongoing, as he retaliated against Dr. Burton for having reported the incident, by refusing to place Dr. Burton in the chair role in a search committee, after he asked Dr. Burton to surrender her chair of a prior search committee to Dr. Gibson, and Dr. Burton notified Dean Throop. (Hawks Decl. ¶10(i), Ex. 57, Dkt. No. 53-57)

REPLY: Fact not disputed. Defendants offer clarification that the

“incident” refers to the response to the student's concern about the note.

Defendants' OBJECT and move to strike plaintiff's assertion as conclusory and non-responsive.

60. *At some point, however, Caywood learned who the student was, and some time later he had an advisee meeting with the student in question. Caywood asked her if she had been contacted by either the Dean or Director of HR. She said she had not. (Caywood Decl., ¶ 30.)*

Dispute. Dr. Caywood sought and received from Dr. Burton the name of the student, and Dr. Caywood later called the student into his office and told her that the note from Dr. Gibson was all a misunderstanding, in that it was an experiment that Dr. Caywood had approved, and the student told Dr. Caywood that she was uncomfortable and embarrassed by the incident. (Hawks Decl. ¶6(j), Ex. 27, Dkt. No. 53-27; Zupec Decl. ¶¶27-29; Dkt. No. 51)

REPLY: Fact not disputed. Defendants OBJECT and move to strike plaintiff's assertion as non-responsive. Objection notwithstanding, any dispute is immaterial.

61. *Caywood believes the issue with the student was mishandled from the start, by nearly everyone involved, including himself. (Caywood Decl., ¶ 31.)*

Dispute. The assertion is speculative. Self-serving and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak v. City of Chicago Bd. of Educ.*, 580 F.3d 622, 631 (7th Cir. 2009); *see also Payne v. Pauley*, 337 F.3d 767, 773 (7th Cir. 2003). The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

REPLY: Plaintiff's objection is unfounded; **Fact not disputed.** Self-serving testimony and testimony related to a witnesses' state of mind, if offered from someone with first-hand knowledge, and would otherwise be admissible at trial, as appropriate to consider on summary judgment. *See Hill v. Tangherlini*, 724 F.3d 965, 967 (7th Cir. 2013), *Buie v. Quad/Graphics, Inc.*, 366 F.3d 496, 504 (7th Cir. 2004). **Please also see Defendant's arguments in its brief related to why this objection is unfounded.

62. *Caywood realized that part of the problem was lack of policy that instructed what everyone was supposed to do in such a situation where a student makes a complaint about one professor to another professor. (Caywood Decl., ¶ 31.)*

Dispute. This assertion is uncorroborated, self-serving, speculative testimony cannot support a claim if it is based on intuition. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: No dispute that there was no reporting policy. Plaintiff's objection is unfounded; **fact not disputed**. Please see Defendant's reply to PFOF ¶ 61 as to why the objection is unfounded.

63. *Caywood created a policy and distributed it at a departmental meeting that occurred sometime around October 16, 2012. (Caywood Decl., ¶ 31.)*

No dispute.

64. *Caywood is a big believer in the chain of command. (Caywood Decl., ¶ 32.)*

Dispute. This testimony is speculative and self-serving. Uncorroborated, self-serving, speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak v. City of Chicago Bd. of Educ.*, 580 F.3d 622, 631 (7th Cir. 2009); *see also Payne v. Pauley*, 337 F.3d 767, 773 (7th Cir. 2003). The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

REPLY: Fact not disputed. Plaintiff's objection is unfounded. *See* Defendants' Reply to #61. Further, Caywood makes this statement based on his personal knowledge pursuant to Fed. Rule of Evidence 602. In an employment discrimination case, a defendant is entitled to explain why he or she acted in a particular manner, and to create a dispute of fact, the Plaintiff must put forth evidence calling the defendant's motives into question. *Valentino v. Vill. of S. Chicago Heights*, 575 F.3d 664, 669 (7th Cir. 2009). There is nothing inherently implausible, fishy, or unworthy of credence about a professor of criminal justice with a law enforcement and military background feeling that the chain of command in a reporting structure is important to efficiently solve problems.

65. *Caywood believes that if he had been informed about the student note first, he could have quickly contacted Gibson and directed him to apologize to his students, and solve the problem before it got out of hand. (Caywood Decl., ¶ 32.)*

Dispute. This assertion is speculative and Dr. Caywood's speculation is misplaced at summary judgment, as the court cannot determine its credibility. Uncorroborated, self-serving, and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See Defendants' Reply to #64. Further, Caywood makes this statement based on his personal knowledge pursuant to Fed. Rule of Evidence 602.

66. *As it stood, Dr. Gibson was not aware there was a misunderstanding until the next day. (Caywood Decl., ¶ 32.)*

No dispute.

67. *UW-Platteville has a procedure that must be followed before offering new courses or curricula. New courses must obtain departmental approval, either through a department curriculum committee or by the department chair person's signature on a proposal. (Burton Tr. at 206:5-24.)*

No dispute.

68. *If approved through the department, the course must obtain approval from the College Curriculum Committee. (Burton Tr. at 206:5-24.)*

No dispute.

69. *After approval through the College Curriculum Committee, approval then must be obtained through a body called the University Undergraduate Curriculum Committee (UUCC). (Burton Tr. at 207:4-10.)*

No dispute.

70. *If a new major area of study is to be established, the UW Board of Regents must approve. (Burton Tr. at 208:6-18; Caywood Tr. at 113:2-8.)*

No dispute.

71. *The exception to these approvals is for Current Topics courses. A new course, taught as a “current topics” course, may be offered three times without obtaining college or university approval. If the course is to be offered more than three times, it must go through the curriculum committee for approval. (Burton Tr. at 22:10-23:18.)*

No dispute.

72. *Burton suggested having lower level classes taught by senior level faculty. (Burton Tr. at 445:6-15)*

Dispute. Dr. Burton suggested that, because lower level courses are predominately assigned to adjuncts or staff members, classes might be combined for lectures by most senior faculty with student assistants to facilitate discussion meetings. (Burton Dep., Dkt. No. 39, 444:19-445:24).

REPLY: Fact not disputed. Dr. Burton stated in her deposition “At UW-Platteville, however, lower level courses are predominantly assigned to adjuncts or staff members” “...I suggested at one point that we may want to combine lower level courses because they are taught in a lecture format, not really a discussion, that we should combine and have 200 or 300 students in a large lecture hall and have them taught by our most senior faculty and use student assistantship to kind of facilitate discussions outside of the class.” (Burton Dep., Dkt. No. 39, 444:19-445:24).

73. *During the 2014-2015 school year, Thomas Caywood was the most senior member of the CJ department. During this time period, he was assigned to teach the Intro to Criminal Justice course, a lower level course. (Burton Tr. at 446:15-447:1; Kieckhafer Decl. Ex. A.)*

No dispute regarding substance. The source for sentence 2 is not cited.

REPLY: Kieckhafer Decl. Ex. A supports sentence 2.

74. *UW-Platteville has never offered a cybercrime course as part of its regular, undergraduate criminal justice curriculum (Throop Decl., ¶ 7.)*

No dispute.

75. *Prior to January of 2013, Burton had never taught a course or written an article, or given a paper on the subject of cybercrime. (Bensky Decl., ¶ 4, Ex. FFFF; Burton Tr. at 4:8-10, Ex. 3; Burton Tr. at 21:13-22:4; Burton Dep. Tr. at 62:12-63:1.)*

Dispute. Dr. Burton taught undergraduate courses on cybercrime as the Criminal Justice Current Topics Course CJ4630, in the spring 2010, spring 2012, fall 2012, spring 2013, and fall 2014. (Burton Dep., Dkt. No. 39, 401:24-404:1; David S. Kieckhaver Decl. Ex. A, Dkt. No. 33-1 at 003, 013, 016, 019, 028) In September 2012, Dr. Burton presented on the topic of “Cyber-Crime 2012: The Hacker-Community,” on a panel entitled “Future of Homeland Security Education-Increases in Cyber-Crime,” at the Midwestern Criminal Justice Association 2012 Annual Meeting in Chicago. (Hawks Decl. ¶6(d), Dkt. No. 53-21)

REPLY: Fact not disputed. Burton's deposition testimony indicates that she taught current topics in Cybercrime for the first time in the fall of 2013 or possibly the fall of 2012. Burton Tr. at 21:13-22:9; 22:24-23:2. Defendant agrees Dr. Burton presented on cyber crime as part of a panel in the fall of 2012, but that does not dispute the proposed finding, which relates to courses, articles, and presentations of papers.

76. *As of January 2013, Burton had not published anything on the topic of cybersecurity that had been reviewed by her national peers. Peer reviewed publication is the acknowledged standard for the establishment of expertise in higher education. (Throop Decl., ¶ 21.)*

No dispute.

77. *In February of 2012, Bob Roberts, who worked with UW-Platteville's grant-writing department the Office of Sponsored Programs, suggested that Burton apply for a National Science Foundation (NSF) grant to support the development of a cybersecurity program within the criminal justice department. (Burton Tr. at 209:23-25; Caywood Decl., ¶ 44.)*

No dispute regarding substance. Source not cited.

REPLY: Fact not disputed.

78. *Sometime around the Spring of 2012, Burton, together with faculty from other colleges and departments at UW-Platteville, submitted a proposal to the National Science Foundation. (Caywood Decl., ¶ 33.)*

No dispute.

79. *Caywood's understanding was that its goal was to create a cybersecurity research center at UW-Platteville. (Caywood Decl., ¶ 33.)*

No dispute.

80. *The grant request was for several hundred thousand dollars. With a grant of that magnitude, Caywood was more comfortable putting the cart before the horse. In other words, had Burton and the others won the grant, everyone would have scrambled to find a way to make it happen. (Caywood Decl., ¶ 33.)*

Dispute. Speculation as to the circumstances had Burton received the grant are irrelevant in determining the motion for summary judgment. Uncorroborated, self-serving, speculative testimony cannot support a claim if it is based on intuition. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Plaintiff does not dispute the grant request was for several hundred thousand dollars. Further, Caywood makes this statement based on his personal knowledge pursuant to Fed. Rule of Evidence 602. Please see Reply to PFOF ¶¶ 61, 64.

81. *As Burton's department chair, Caywood's signature was required on the grant application (Caywood Decl., ¶ 33.)*

No dispute.

82. *During the following few months, Burton worked with Roberts and Caywood to gather information necessary for the NSF grant application. These efforts included meeting with people at the Wisconsin Department of Justice, meeting with state legislators, looking into other programs related to cybersecurity, and having meetings to discuss logistics of how the program could be offered. (Burton Tr. at 207:19-212:9.)*

No dispute.

83. *On April 17, 2012, Burton submitted NSF grant for development of a cyber crime curriculum at UW-Platteville. Around August of 2012, Burton learned*

she did not receive the NSF grant. The NSF grant request was for about \$320,000. (Burton Tr. at 14:19-15-15; Burton Tr. at 17:10-12; Caywood Decl., ¶ 33.)

Dispute sentence 3. The NSF grant request was for \$485,932. (Hawks Decl. ¶10(g), Dkt. No. 53-49)

REPLY: Fact not disputed. The record contains conflicting information as to the exact amount of the NSF grant request; however, any dispute as to the exact grant request is immaterial.

84. *Sometime in the fall of 2012, Caywood learned Burton and the others had not received the grant. (Caywood Decl., ¶ 34.)*

No dispute.

85. *Caywood was aware that Burton remained interested in getting some sort of cybersecurity program (degree, certificate, or emphasis) started at UW-Platteville. (Caywood Decl., ¶ 34.)*

No dispute.

86. *Caywood supported Burton's efforts to create and develop a new program, but had emphasized to her the need to follow the required steps for starting new courses. (Caywood Decl., ¶ 34.)*

Dispute. Dr. Burton knew the steps to create a new course, took them, pursuant to a pertinent memorandum of agreement for online course development, and Dr. Caywood first indicated to Dr. Burton that a permanent course offering have Departmental approval in his letter to her, dated January 24, 2013, noting his and the University's disavowal of her plans for the cybercrime program. (Hawks Decl. ¶¶2(b), 3(a), Ex. 2, 4, Dkt. Nos. 53-2 and 53-4)

REPLY: Fact not disputed. Defendants' OBJECT and move to strike plaintiff's response as non-responsive. Any agreement related to the creation of a graduate on-line course is not related to her efforts to develop an undergraduate curriculum.

87. *Burton created two websites called the Journal of Cyber Security and Journal of Criminal Justice. The website was not an official website of UW-Platteville. (Throop Decl., ¶ 11, Exs. HHH, III.)*

No dispute regarding substance. The sources are Ex. HHH and III, Dkt. Nos. 37-2 and 37-3.

88. *In October of 2012, Burton applied for a \$7,000 donation from AT&T to assist in the development of a cybercrime curriculum at UW-Platteville. To apply for this donation, Burton sent AT&T a summary of the NSF proposal. (Burton Dep. Tr. at 233:9- 19; Throop Decl., ¶ 8; Throop Decl., ¶ 9, Ex. GGG.)*

No dispute.

89. *Burton’s application for the donation stated, “The Department of Criminal Justice at the University of Wisconsin at Platteville is in the process of developing a curriculum for cyber-security. In consultation with faculty from the School of Engineering and experts from the field, Burton is working to identify and develop specialized cybersecurity training to improve workforce competency levels in the public and private sector.” (Throop Decl., ¶ 9, Ex. GGG.)*

No dispute.

90. *The application also stated, “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.” (Throop Decl., ¶ 9, Ex. GGG.)*

No dispute.

91. *Throop did not see the grant application at the time it was submitted. (Throop Decl., ¶ 9.)*

No dispute.

92. *Throop felt these statements were untrue. (Throop Decl., ¶ 10.)*

Dispute. The court cannot consider the weight of testimony in deciding a motion for summary judgment; those determinations should be left to the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff’s objection is unfounded.

Throop’s contemporaneous state of mind is documented. Throop noted in her email to Burton that “You and I have had numerous discussions, in person and in email, about moving forward with cyber-security – that you are not empowered to do that without your department’s backing. The press release –

which Jessica from AT&T told me was based on your proposal – directly contradicts our discussions and violates both the spirit and the letter of the policies covering faculty governance.” (Throop Ex. KKK) Moreover, Throop is competent to testify regarding her state of mind and Burton has offered no evidence to dispute that Throop did not actually believe the statements in the press release were misleading.

93. *Because Throop is responsible for curriculum matters within LA&E, she knew that no such curriculum had been developed, nor had it been approved or even reviewed by the college. (Throop Decl., ¶ 10.)*

No dispute.

94. *When Burton applied to the AT&T donation, Caywood was in the hospital. Burton told Caywood she was applying for additional money to support cyber-security, and Caywood reacted in a positive manner to that information. (Burton Tr. at 234:8- 235:12)*

Dispute. After AT&T reviewed a copy of the NSF proposal, AT&T representatives notified Dr. Burton that they would accept a formal application, which the UW Platteville Foundation submitted, and Dr. Caywood was in the hospital when Dr. Burton notified him that AT&T indicated it had money available for them. (Burton Dep., Dkt. No. 38, 233:9-235:12; Dkt. No. 37-1)

REPLY: Fact not disputed. Defendants’ OBJECT and move to strike plaintiff’s assertion as non-responsive.

95. *In or around November of 2012, Throop discovered that Burton had created two online websites regarding a proposed cybersecurity program at UW-Platteville. (Throop Decl., ¶ 11.)*

Dispute. Dr. Burton notified Dean Throop on October 6, 2012, by email, that she had created two open source journals regarding a proposed cybersecurity program (Hawks Decl. ¶10(d), Dkt. No. 53-46) and Dean Throop reviewed them both on October 15, 2012, in her office, where Dr. Burton gave Dean Throop the URLs for the two open source journal pages, Dr. Throop typed the URLs onto her computer and viewed the two web pages with Dr. Burton. (Burton Decl. ¶16, Dkt. No. 54-9)

REPLY: Fact not disputed. Any difference in recollection as to the exact date Dean Throop was made aware of the websites is not material, particularly because both dates occurred *after* the student complaint incident for which Burton claims retaliation. (Dkt. No. 54-9 and Burton Decl. ¶ 16 relate to the student complaint and not URLs for Burton's websites.)

96. *Burton did not obtain permission from Throop to make any representations about the status of her proposed cyber-security program at UW-Platteville on the websites she created. (Throop Decl., ¶ 12.)*

No dispute.

97. *When Throop saw the websites, she had serious concerns about the representations being made because Throop was worried that students would make arrangements to come to UW-Platteville anticipating matriculating in a program that did not, and still does not, exist. Throop felt that students would be rightfully very upset if this happened. (Throop Decl., ¶ 13.)*

Dispute. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. Throop's testimony as to her thoughts at the time are made with first-hand knowledge, are otherwise admissible, and because Burton offered no evidence to dispute this proposed fact, the court's acceptance of it does not require a credibility determination or an improper weighing of evidence.

98. *In addition, Burton asserted expertise on these websites without any evidence that the CJ department, in fact, had such expertise. (Throop Decl., ¶ 13.)*

Dispute. The website for the Journal of Cyber Security states the following proposal for the future of cybersecurity at UW-Platteville:

A Proposal for a Cyber-Security/Homeland Security Program at UW-Platteville

1. Create cyber-security and criminal justice journals (open access) for UW-Platteville Faculty, Staff & Students as well as outside scholars to publish their peer-reviewed work and be recognized outside of UWP.
- ...
2. Create an undergraduate and graduate course for cyber-security.
3. Create an undergraduate and graduate course for homeland security (I have 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.)
4. Form Workshops as a Community Outreach Program to educate law enforcement and private business in cyber-security.
 5. Create more homeland security and cyber-security courses in the next years. .
 - ..
 6. Develop an emphasis in homeland & cyber-security within Criminal Justice.
 7. Turn emphasis into a major in homeland & cyber security in the next years.
 8. Build a UWP Cyber-Security Center.

(Dkt. No. 37-3) The website for the Journal of Criminal Justice also states a “Proposal for a Cyber Security/Homeland Security Program at UW-Platteville” and reiterates, in an abbreviated fashion, the same eight parts of the proposal for a future cybersecurity program stated on the website for the Journal of Cyber Security. (Dkt. No. 37-2)

REPLY: Defendants OBJECT and move to strike plaintiff’s assertion pursuant to Fed. Rule of Evidence 106. Objection notwithstanding, **Fact not disputed.** Burton noted on her websites that “Soon this open access journal and the open access journal of cyber security will be able to publish works of our own students as well as other scholars around the world.” She further stated “If you are interested in publishing to the Journal of Criminal Justice or the journal of Cyber Security please send an email with an abstract of your work to burtons@uwplatt.edu. (Throop Ex. HHH)

99. *These websites were not officially sanctioned by the University, and they were not part of UW-Platteville’s website. However, Burton had placed the UW-Platteville logo on the websites. (Throop Decl., ¶ 14.)*

Dispute. The first sentence is a legal conclusion for the fact-finder. The UW-Platteville logo was not on the websites. (Dkt. No. 37-2, 37-3)

REPLY: **Fact not disputed; no material dispute.** Plaintiff’s objection is unfounded. Burton provided no evidence her URLs were

developed or supported by UWP's official website and provided no evidence of permission from UWP. Any dispute as to whether UW-Platteville's logo appeared on the Websites is not material to the outcome of this case.

100. This concerned Throop because someone viewing the website could conclude that the website and its content were officially sanctioned and supported by the University. (Throop Decl., ¶ 14.)

Dispute. This sentence improperly asserts speculative, uncorroborated testimony, based on intuition. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded. Throop's concerns and the basis of those concerns are **not disputed**. Plaintiff offered no evidence that Throop's concerns were insincere, and Throop is competent to testify regarding her feelings.

101. AT&T approved the \$7,000 donation and someone from AT&T drafted a press release announcing the award. (Throop Decl., ¶ 15.)

No dispute.

102. Someone from AT&T forwarded a draft of the press release to Burton on Wednesday evening; the final press release was due the next day. (Burton Tr. at 247:4- 247:10.)

No dispute.

103. The press release stated, among other things: UW-Platteville's Department of Criminal Justice is currently developing the cyber security curriculum in consultation with faculty from the School of Engineering and experts from the field. The new course is expected to be available to undergraduate students beginning spring of 2012. The university is also developing an online graduate course in cyber security to be taught starting in the spring of 2014. (Caywood Decl., ¶ 36, Ex. YY)

No dispute.

104. *Like the grant application, the release contained a number of misstatements about the existence and status of a cybersecurity program. (Throop Decl., ¶ 15.)*

Dispute. The grant application stated “[t]he Department of Criminal Justice . . . is in the process of developing a curriculum for cyber-security. In consultation with faculty from the School of Engineering and experts from the field, Dr. Burton is working to identify and develop specialized cyber-security training . . .” The application also identified future project “milestones,” including undergraduate and graduate course development and student recruitment. (Dkt. No. 37-1 at 2)

REPLY: Fact not disputed. UWP was not in the process of developing a curriculum, insofar as Burton admits that she had not submitted a proposal to her department or taken any of the steps necessary to approve courses through the faculty governance channels. The NSF grant proposed a multi-disciplinary proposal that was not funded, and there is no evidence that the other colleges and departments involved remained on-board to develop a cyber security program. (See non disputed responses to PFOF ¶¶ 67-70; 83, 84 93, 96, 115).

105. *Throop was concerned that Burton was making representations about a program that had not received the required approvals from the CJ department, the college of LA&E, or the University’s faculty. (Throop Decl., ¶ 15.)*

Dispute. Speculative testimony cannot support a motion for summary judgment. Uncorroborated and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. See Defendants’ Reply to #100.

106. *Throop drafted an email to the Provost, Mittie N. Den Herder, on January 24 when she learned of Burton’s misrepresentations. (Throop Decl., ¶ 16.)*

Dispute. This assertion is based on the speculative testimony in ¶105 and is therefore unsupported.

REPLY: Fact not disputed. Plaintiff offered no evidence that

Throop did not draft the email. Throop stated in her email:

My draft:

Sabina, congratulations. This is all very nice, but I want to remind you that your course is a special topics course. Please do not make any representations about an expanded curriculum until you have gone through all of the proper channels of governance. You and I have discussed this several times. You must get the support of your department before you publicly discuss new courses or programs. You do not have approval yet from your department or this college to move forward on a cyber security program, and I am not empowered to simply open one. Again, it has to go through faculty governance processes and that has not yet happened. Furthermore, a \$7000 grant is nice but we have colleagues getting grants in the hundreds of thousands of dollars who do not create such a stir.

(Throop Ex. JJJ, page 002)

107. Although Throop was concerned about Burton's misleading statements and insisted that they be corrected in the release, she made sure to express her support for Burton's initiative and efforts in obtaining the \$7,000 grant and for her work and her passion in the CJ department. (Throop Decl., ¶ 17.)

Dispute. Uncorroborated and self-serving testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. Further, this assertion is based on the speculative testimony in ¶105 and is unsupported. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Throop stated in her email:

And I think it's wonderful that you are actively searching out funding sources! ...

I too want our students to flourish and, more importantly, I want you to flourish. But I'm uncomfortable with misstatements about programs in the Department of Criminal Justice and the University and don't want them going to the press. I understand--as I have said to you many times--that you are enthusiastic and excited about cyber-security. I am too! But we are not anywhere near able to say that we are developing a program in it and it seems that you have said that in your proposal. ...

I want to support your exploration of cyber-security or whatever other research interest you choose to follow. ...

I encourage you to accept the award on Monday and put it to good use as you work on refining your current topics course in cyber-security. I also encourage you to work with your departmental colleagues over the next few years to explore whether cyber-security is an area that the department believes is worth developing. Your colleagues may not agree that this is a direction the department should take.

As always, Sabina, I am grateful for your work and your passion; in this case, though, accuracy is very important as the University deals with the public.

(Throop Ex. KKK)

108. As a result, Throop wrote Burton an email on January 24, 2013, reiterating support for her efforts and explaining Throop's concerns. (Throop Decl., ¶ 17.)

Dispute. This assertion is based on the speculative testimony in ¶105 and is therefore unsupported.

REPLY: Fact not disputed. See Defendants Reply to ¶ 107.

109. Around January 24, 2013, Caywood received the press release regarding a \$7,000 grant from AT&T. Burton gave it to Caywood to obtain his approval. (Caywood Decl., ¶ 36; Burton Tr. at 247:4-249:4)

No dispute.

110. Upon review, Caywood objected to what was stated in the press release and had very serious concerns because he believed there were errors in it. (Caywood Tr. at 11:13-22; Caywood Decl., ¶ 36.)

Dispute. Dr. Caywood's assertion is speculative and cannot be considered in determining a motion for summary judgment. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See Defendants' Reply to #100. Caywood makes this statement based on his personal knowledge pursuant to Fed. Rule. 602.

111. Specifically, Caywood's concern was that neither the Criminal Justice Department nor the university faculty governance had approved a cybersecurity curriculum, but the press release, to him, implied otherwise. (Caywood Tr. at 15:22-17:18.)

Dispute. Dr. Caywood's assertion is speculative and cannot be considered in determining a motion for summary judgment. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See Defendants' Reply to #100. Caywood makes this statement based on his personal knowledge pursuant to Fed. Rules of Evidence 602. Plaintiff provided no evidence to dispute that "neither the Criminal Justice Department nor the university faculty governance had approved a cybersecurity curriculum." Burton has failed to call Caywood's personal opinion regarding the press release into question. It is not speculative or inherently implausible.

112. Around that same time, Caywood also reviewed the websites Burton had created and posted to the Internet. The content of the websites concerned him, in part, because they were unclear as to whether they were personal websites, or websites purporting to be projects of UW-Platteville's Criminal Justice Department. (Caywood Tr. at 16:13-22.)

Dispute. Whether the independence of the websites was clear to Dr. Caywood is speculative and cannot be considered in determining a motion for summary judgment. Uncorroborated, self-serving, speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible.

Darchak, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See Defendants' Reply to ¶¶ 100 and 111.

113. *Prior to January of 2013, Caywood was aware that Burton intended to teach a graduate online cyber-security course, but Caywood had not seen the proposal, and it had not been approved by the Graduate Council (Caywood Decl., ¶ 35.)*

No dispute.

114. *As of January 2013, Burton had not submitted any cyber-security course proposals through the College Curriculum Committee or the University Curriculum Committee. (Caywood Decl., ¶ 35.)*

No dispute.

115. *As of January, 2013, Caywood was aware that not all CJ faculty supported a cyber-security program, and was unsure as to whether the CJ department, as a whole, would support development of a cyber-security curriculum. (Caywood Decl., ¶ 35.)*

Dispute. This uncorroborated, speculative assertion is an inappropriate basis on which to decide summary judgment.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See Defendants' Reply to #100. Caywood makes this statement based on his personal knowledge pursuant to Fed. Rules of Evidence 602. Plaintiff fails to offer any evidence to dispute this claim.

116. *As of the spring of 2013, Burton had not submitted a proposed cyber-security curriculum to Caywood or to anyone else at the university, to obtain departmental or university approval. (Burton Tr. at 242:12-243:4; 245:14-22; Throop Decl., ¶ 10.)*

Dispute. Dr. Burton entered into an agreement to develop the online CJ7430 Cyber-Crime course in 2013. (Burton Dep., Dkt. No. 39, 404:6-13; Hawks Decl. ¶2(b), Ex. 2, Dkt. No. 53-2)

REPLY: Fact not disputed. Defendants' clarify that as of the beginning of the 2013 spring semester, Burton had not submitted a proposed curriculum for undergraduate cybersecurity courses or curricula. The online graduate course was not submitted until late March, 2013. (See PFOF 128 & plaintiff's response.)

117. The purpose of the AT&T grant was to explore the development of a cybersecurity program that had not yet been formally proposed at UW-Platteville. (Burton Dep. Tr. at 242:23-244:18.)

No dispute.

118. On Monday January 30, 2013, AT&T presented a large \$7,000 check to Burton in a public ceremony attended by Vice Chancellor and Provost Mittie N. den Herder, Caywood, and a number of others. (Throop Decl., ¶ 18; Caywood Tr. at 11:19- 22; Throop Decl., ¶ 18.)

No dispute.

119. Throop asked to meet with Burton and Caywood, then the CJ chair, to discuss the AT&T incident and to attempt to resolve any differences moving forward. Burton refused to meet. (Throop Decl., ¶ 19; Ex. KKK.)

No dispute.

120. Instead, Burton sent an email to Caywood and Throop with a link to a webpage from the Wisconsin Department of Workforce Development's Equal Rights Division that related to employment discrimination, with no further explanation. (Throop Decl., ¶ 20; Ex. KKK.)

Dispute. Dr. Burton's email stated: I am not available to meet with you and Tom tomorrow. I don't expect much good to come out of it. I need some time to myself & family from this petty office stuff. I am tired of being bullied and manipulated at work. Frankly I found your comments to the AT&T press release unnecessarily harsh and discouraging. I thought you would be pleased with the accomplishment. (Dkt. No. 36-5 at 002)

REPLY: Defendants incorrectly cited – the proper citation should be Ex. 000, Dkt. 37-8.

121. Throop believed that Burton was attempting to provoke Caywood and

Throop, while at the same time refusing to discuss the concerns they both had expressed regarding her misleading statements about the proposed cybersecurity program. As a result, Throop advised Caywood not to respond. (Throop Decl., ¶ 20.)

Dispute. This assertion is speculative and cannot be considered by the court in determining a motion for summary judgment. Uncorroborated and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. *See*

Dkt. 37-8. Throop may testify as to what her feelings were at the time.

Burton offered no evidence to call these feelings into question.

122. As of January 2013, Throop did not believe that Burton was an expert in cyber-security. (Throop Decl., ¶ 21.)

Dispute. Dean Throop's speculation on Dr. Burton's expertise is speculative and cannot be considered by the court in determining a motion for summary judgment. Uncorroborated and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. Burton has not offered any evidence to rebut this fact or call Throop's feelings into question. Burton admitted that she had not published in the field of cybersecurity. (PFOF ¶ 76.)

123. Throop examined Burton's publication record, and Burton had not published anything on the topic of cyber-security that had been reviewed by her national peers, nor had she presented at any national peer conferences on the topic that Throop was aware of. (Throop Decl., ¶ 21.)

Dispute. This assertion is uncorroborated and cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a

motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded. Burton admitted that she had not published in the field of cybersecurity. (PFOF ¶ 76.) Burton offered no evidence that prior to January 2013 she had presented at a national peer conference on cybersecurity *that Throop was aware of*.

124. *Burton included the fact that she had received the AT&T donation in her DRB file, and she could cite the fact that she had facilitated the donation when requesting consideration for things like merit pay. (Burton Tr. at 251:23-252:4.)*

No dispute.

125. *Burton chose not to pursue grants after January of 2013. (Burton Tr. at 56-58; 200:19-201:17.)*

No dispute.

126. *In October 2012, Burton was in the process of proposing a new online graduate course in cybersecurity. (Caywood Decl., ¶ 19.)*

Dispute. Dr. Burton entered into an agreement to develop the online CJ7430 Cyber-Crime course in 2013. (Burton Dep., Dkt. No. 39, 404:6-13; Hawks Decl. ¶2(b), Ex. 2, Dkt. No. 53-2)

REPLY: Fact not disputed. The facts cited in the response support the proposed finding.

127. *New graduate courses must be approved through a governing body called the Graduate Council. Around October 22, 2012, Caywood was copied on an email from Dr. Fuller, director of the CJ graduate program, instructing Burton that the Graduate Council must approve the course before Burton is issued a development contract, and advising that the development contract must be submitted in January (of 2013). In November, 2012, Dr. Fuller informed Burton of a December 13, 2012 deadline to submit course materials to the Grad Council. She did not submit such materials prior to the deadline. (Caywood Decl., ¶ 20; Ex. TT.)*

No dispute.

128. *Around March 18, 2013, Burton's proposal was placed in Caywood's mailbox. The Graduate Council was scheduled to meet on Thursday March 21st. Caywood reviewed the proposal and had several concerns. (Caywood Decl., ¶ 21; Ex. TT.)*

No dispute.

129. *Rather than refuse to sign, Caywood took it upon himself to seek out the advice of Dr. David Van Buren, then dean of the graduate school, and one of the smartest people Caywood knew at UW-Platteville. Caywood wanted to get Dr. Van Buren's advice on Burton's proposal (Caywood Decl., ¶ 21.)*

Dispute. Self-serving and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed that Caywood sought advice from Dr.

Van Buren; no evidence to dispute Caywood's reason for doing so.

130. *Caywood's understanding of his conversation with Dr. Van Buren was that Van Buren had objections to some of the wording and the focus of the course. (Caywood Decl., ¶ 21.)*

Dispute. Self-serving and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

131. *Caywood passed these concerns on, and indicated that Throop and Caywood would approve if Dr. Van Buren's suggestions were implemented. (Caywood Decl., ¶ 21.)*

Dispute. Dr. Caywood posed objections to Dr. Burton's proposal for a graduate cybercrime course, based on his incorrect assertion the proposal would not be approved; however, Dr. David Van Buren, Dean of Graduate Studies and associate vice chancellor wrote to Dr. Burton that the "proposal looks fine" and did not have "references to 'training' or the technical cyber security issues that . . . might raise a red flag among the Computer Science people." (Caywood Decl. Ex. TT, Dkt. No. 36-2 at 004, 009, 011, 0123)

REPLY: Defendants OBJECT and move to strike plaintiff's assertion on completeness grounds pursuant to Fed. Rule of Evidence 106. Van Buren stated in his email to Burton:

Thank you, Sabina. I'm copying Tom Caywood and Cheryl Banachowski-Fuller on this in order to avoid any misunderstanding. I'm sorry if there has been any miscommunication regarding my discussion with Tom. I didn't tell him that I thought the course wouldn't be approved. In fact, I said that I thought the topics in the course description looked fine. I expressed concern however, about the reference to "training" and the areas of the document that seemed to allude to the technical side of computer security issues. I was merely suggesting a strategy that might make the proposal more likely to be approved. I think the faculty in computer science might question the expertise of people outside of software engineering/computer science to address technical aspects of computer security. My suggestion was merely to modify the document slightly in order to avoid any problems on that. Conversely, you might want to talk with Rob Hasker in advance, and then decide whether you wanted to remove those references. Rob is the coordinator for the Computer Science master's program and their representative on Graduate Council so I thought he would be the person most likely to ask questions about the more technical computer security issues.

I hope this clarifies my discussion with Tom. In terms of topics that you want to address and the course description, I think it looked fine. By the way, maybe I misunderstood your statement about the Criminal Justice graduate program being part of Business Administration. While there are some courses from Business Administration included in the Criminal Justice master's curriculum (I think 3 courses), I don't consider the graduate program in Criminal Justice to be part of Business Administration. There are also course offerings from Psychology, Political Science, and Counseling Psychology. Actually, the greatest number of support classes come from Psychology.

At any rate, I hope this clarifies my discussion with Tom. I would be happy to discuss this in person if you like.

Caywood noted that: "...I emailed her back and basically said she can remove the one learning objective I noted and I will sign it or she could leave it in and I won't..."

(Caywood Ex. TT)

Subject to objection, **Fact not disputed** because: no dispute that Van Buren had suggestions; no dispute that Caywood passed those on to Burton; no dispute that Caywood and Throop would sign proposal if Burton made Van Buren's suggested changes.

132. *The intent was to ensure passage at the Graduate Council without objections from other members of the Council. (Caywood Decl., ¶ 21.)*

Dispute. Self-serving and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

133. *Burton made the requested changes. Caywood signed off on the form and personally took it to the Dean's office for her signature. (Caywood Decl., ¶ 22.)*

No dispute.

134. *The emails Caywood was copied on indicate that Burton was aware as early as October of 2012, but no later than November 2012, that she needed to submit course approval to the Graduate Council in December 2012 to keep on schedule of having her development contract issued. (Caywood Decl., ¶ 23.)*

No dispute.

135. *Burton did not submit her proposal to Caywood until the middle of March, 2013, when several people had to scramble to make sure the Graduate Council approved the course. (Caywood Decl., ¶ 23.)*

Dispute. This assertion presents uncorroborated testimony that cannot support a claim on summary judgment because the court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in

deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

136. *UW-Platteville compensated Burton \$3,750 for developing the online graduate course in cybercrime. (Burton Tr. at 404:6-15.)*

No dispute.

137. *By the fall of 2012, the numerous email complaints sent by Burton took a toll on Caywood's work environment. (Caywood Decl., ¶ 45.)*

Dispute. This assertion is uncorroborated and self-serving and cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

138. *Burton had a habit of involving upper management, by cc-ing them in email, in her various complaints. (Caywood Decl., ¶ 45; Throop Decl., ¶ 33.)*

Dispute. Uncorroborated speculation about Dr. Burton's email habits cannot be considered by the court in determining a motion for summary judgment, if it is based on intuition. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Defendants' OBJECT and move to strike plaintiff's response as unfounded. Please see, e.g., Bensky Exs. LLL, ZZZ, KKKK and Throop Ex. PPP. Burton's habit of including upper management in her departmental complaints is documented and undisputed.

139. *Caywood felt caught between her, other faculty in CJ, Throop, human resources, and the Provost. (Caywood Decl., ¶ 45.)*

Dispute. This assertion is uncorroborated and self-serving and cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

140. *Much of Caywood's time during the 2012-2013 school year had been spent dealing with Burton's actions, reactions, and disgruntled behavior. (Caywood Decl., ¶ 45.)*

Dispute. This assertion is uncorroborated and speculative. Uncorroborated, self-serving, and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed; objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

141. *As had been Caywood's experience with Burton, when she did not get what she wanted, she engaged in accusatory email-writing and complained to the dean, provost, and chancellor (Caywood Decl., ¶ 25.)*

Dispute. This uncorroborated and speculative assertion cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Burton did not offer any evidence that she attempted to solve her problems on her own. Objection unfounded for the

reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

142. *In 2012 and 2013 Caywood was dealing with his own serious health issues, as well as a death in his immediate family, and his seriously ill mother. (Caywood Decl., ¶ 45.)*

No dispute.

143. *Burton's frequent virulent, and often lengthy emails caused consternation for the entire CJ department (Throop Decl., ¶ 35.)*

Dispute. This uncorroborated and speculative assertion cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Burton provided no evidence to the contrary. Objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

144. *Burton repeatedly attempted to undermine Dalecki's leadership during his time as interim chair between August 2013 and August 2015. (Throop Decl., ¶ 36.)*

Dispute. On November 6, 2013, Dr. Burton filed a grievance against Dean Throop, challenging Dean Throop's appointment of Dr. Dalecki as interim chair of the Department without an affirmative vote by the CJ faculty, and on December 13, 2013, the University Complaints and Grievances Commission agreed that Dean Throop's appointment of Dr. Dalecki as interim Department chair violated the process required by the LA&E constitution and the faculty bylaws. (Hawks Decl. ¶¶6(p), (q), Ex. 33, 34 Dkt. Nos. 53-33, 53-34)

REPLY: Fact not disputed. Defendants OBJECT and move to strike plaintiff's response as non-responsive.

145. *For example, Burton drafted an email to the chancellor, vice chancellor,*

Throop, and Shane Drefcinski on July 11, 2013, even before Dalecki was officially appointed, stating “To be on record: I formally oppose the nomination of Mike Dalecki as interim’s chair of the Department of Criminal Justice.” She then said, “Dr. Caywood’s recommendation was accepted. I was not asked. Even though not happy about the choice I originally accepted the appointment. Since Lana Caywood called my home today and implied that Dalecki would treat me unfairly I must now oppose the appointment. The abuse must stop.” (Throop Decl., ¶ 34, Ex. SSS.)

No dispute.

146. *Burton would complaint if other faculty members received an award or praise about an accomplishment because she felt this was somehow retaliation against her. (Dalecki Decl., ¶ 38.)*

Dispute. This uncorroborated assertion cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Objection unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton admitted to this conduct.

See directly below, PFOF ¶¶ 147, 148, 149, 150..

147. *Dalecki received an email from Burton on September 18, 2013 demanding to know why a second-year faculty member was receiving the college Professional Development Award, and requesting that the nomination be withdrawn. (Dalecki Decl., ¶ 39, Ex. H.)*

No dispute.

148. *Burton wrote, “I am deeply disturbed by the decision to give the professional achievement award to Rex Reed this October. This is just another retaliation against me. The award is void as it is in violation of the nomination procedure . . . What has Rex done in the last year that outshines me (besides being a male which seems to count a lot in our department and obviously in LAE)? This action just validates my desire to have this matter resolved on a higher level.” (Dalecki Decl., ¶ 39, Ex. H.)*

No dispute.

149. *Burton also demanded to have “this nomination of Rex Reed repealed” and further insisted, “I want an investigation to determine whether documents were falsified or if someone without authorization spoke in the name of the CJ DRB and nominated Rex Reed” for his award. (Dalecki Decl., ¶ 39, Ex. H.)*

No dispute.

150. *In another instance, Burton railed against Dalecki for praising other colleagues, complaining, “When we gave our poster presentation for the Germany trip last October you didn’t even show up. You never praised my work in a department email but at the same time called Diana [Johnson] and Dana [Cecil]’s enlistment of CJA brilliant. You didn’t praise my efforts publicly verbally either. You call me your ‘star’ but keep that under cover so nobody can see me shine. I am your closet star . . . You don’t want to offend Caywood, Dutelle, Johnson and Cecil by praising my work.” (Dalecki Decl., ¶ 40, Ex. D.)*

No dispute.

151. *On May 9, 2014, Dalecki sent an email to the CJ Department advising them that graded materials should not be left outside of faculty offices as it is a FERPA violation. Dalecki’s intention was not to call out a specific staff member, but to address the entire department as a whole. Burton responded in an email to the entire CJ Department calling out Caywood for the violation. (Dalecki Decl., ¶ 35; Bensky Decl., Ex. J.)*

No dispute.

152. *In the fall of 2012, Burton sent Dalecki an email requesting he allow one of her students to take an exam late. The student had approached Dalecki late and he had to write a separate exam for him. (Dalecki Decl., ¶ 37.)*

No dispute.

153. *Dalecki told Burton that the student should have been more responsible by notifying Dalecki in advance of his inability to take the exam at the scheduled time, and that by her enabling his behavior the “monkey is on your back, not on his, where it belongs.” (Dalecki Decl., ¶ 37.)*

No dispute.

154. *Burton falsely told the student that Dalecki had called him a monkey, causing the student to become very upset. (Dalecki Decl., ¶ 37.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak v. City of Chicago Bd. of Educ.*, 580 F.3d 622, 631 (7th Cir. 2009); see also *Payne v. Pauley*,

337 F.3d 767, 773 (7th Cir. 2003). Caywood cannot speak to the truth of the matter asserted. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Plaintiff appears to make a hearsay objection, but the statement of what

Burton told the student is an admission by a party opponent and not hearsay.

Burton offered no evidence to dispute this fact, even though she could have done so through her own declaration. Therefore, it must be accepted as true.

155. *In June of 2014, after several members of the faculty left positions at UW- Platteville, Burton wrote an email to Dalecki and copied the entire department, titled "Can we call a spade a spade?" (Dalecki Decl., ¶ 35; Throop Decl., ¶ 35, Ex. UUU.)*

No dispute.

156. *Burton's June 6, 2014 email accused colleagues who had recently resigned of unethical behavior and threatening to involve the Wisconsin Attorney General's office in investigating what she characterized as a conspiracy. Burton's email accused her colleagues of being inconsiderate and unprofessional, and refers to the department of the two faculty members as a "train wreck." (Dalecki Decl., ¶ 35; Throop Decl., ¶ 35, Bensky Decl., ¶ 3, Ex. YYY.)*

Dispute, source incorrectly cited is Ex. UUU, Dkt. No. 37-14. In that document, at 001 and 002, Dr. Burton wrote:

Both [FI colleagues] waited until the last minute to inform the department of their decision to depart, leaving their students (and us) hanging. I have never worked with such inconsiderate and unprofessional colleagues before. I think the students deserve to know who is responsible for the "train wreck" and put blame where blame is due. Our FI students were aggressively recruited into a program with, as confirmed by the recent reports, at least partially false information or intentional lack of information. Their prospect for being hired into an FI job after graduation is poor. Most states require CSI's to have LE field experience. Academies and police/Sheriff's departments train in fingerprinting, photography etc. in a much shorter time-span. Police

officers can specialize in forensics in in-departmental training at low or no cost.

This “train wreck” shouldn’t be our mess to clean up. FI students deserve to know what they are up against so they can make meaningful, informed career choices before it is too late for them to do so, before we take their money for a program we know is flawed and understaffed. . . .

. . . As a public institution there really should be an investigation into potentially corrupt behavior that if substantiated would allow for legal remedies (e.g., tuition reimbursement for students who cannot continue their FI education as planned). . .

. I think the Attorney’s General office would be a good institution to look into this mess.

REPLY: Defendants accept Plaintiff’s clarification as to the correct cite. However, Defendants note **Fact not disputed.**

157. Burton provided no basis for her claims, but indicated that she intended to involve UW-Platteville students in the issue (Throop Decl., ¶ 35.)

Dispute. Dr. Burton wrote, in Ex. UUU, Dkt. No. 37-14 at 001 and 002: I plan to tell students the truth about what’s been happening in the department.

. . .

We wouldn’t have a job without our students. Our actions or inaction affects their futures. Many of our students (and their parents) have made great sacrifices to be here. They don’t deserve to pay the cost of some faculty selfishness or pettiness.

. . .

We have a chance now to make some difficult decisions and effect some changes for the better. Let’s do it right this time. Let’s start being transparent in our dealings. Let’s keep open minds as we look to the future of our department. Let’s work together for the good of the school and students. Let’s follow policy. Let’s follow policy and law. Let’s use some good old common sense going forward. I have many ideas for moving past this point in our department’s history. Most of my suggestions in the past have been ignored or have been thrown back in my face. I hope those days are behind me. I hope those of us remaining in the department can act like professionals.

REPLY: Fact not disputed. The quoted materials support defendant's fact.

158. *Throop did not reprimand Burton for this email at that time. (Throop Decl., ¶ 35.)*

No dispute.

159. *In a subsequent email on the subject, Burton stated, "I think your response to me was uncalled for. When you perceive that others are out of line you choose to keep quiet (not to step on anyone's toes or give them the benefit of the doubt, probably as an attempt to garner support for your election as chair in this department). I just got my first ever pedicure-so get off my toes!!!!" (Bensky Decl., ¶ 3, Ex. YYY.)*

No dispute.

160. *In an email response, Dalecki asked Burton to speak with him in person and stated that he did "not intend to get in long email discussions about these things." (Bensky Decl., ¶ 3, Ex. YYY.)*

No dispute.

161. *In response, Burton emailed the CJ department saying, "Then why, WHY did you not call me or ask me to talk to you? You had my number. Your previous long email 'incited a strong emotional response.' Next time follow your own advice." (Bensky Decl., ¶ 3, Ex. YYY.)*

No dispute.

162. *Burton's initial email concerned Dalecki because he was worried about being sued for defamation, and he was worried that if Burton shared her conspiracy theory with the Criminal Justice students, she would destroy the confidence of the students in their major. (Dalecki Tr. at 167:12-168:3.)*

Dispute. Dalecki's speculations about the response of the students cannot be considered in determining a motion for summary judgment. Uncorroborated, self-serving, and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

163. *Burton made allegations against Dalecki that he coerced her to drop her lawsuit by stating to her "you can't file a lawsuit without consequences" and that nobody wanted to hear about her complaints anymore. (Dalecki Decl., ¶ 7.)*

No dispute.

164. *During Dalecki's first year as Interim Chair, he had several conversations with Burton about her success in the Criminal Justice Department. (Dalecki Decl., ¶ 7.)*

No dispute.

165. *Dalecki wanted Burton to think about her actions and how those actions presented her in a certain light to other people, including the present lawsuit. (Dalecki Decl., ¶ 7.)*

Dispute. This testimony is uncorroborated and self-serving. Uncorroborated, self-serving, and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

166. *The Department Chair serves at the pleasure of the Dean, and the Dean has to have confidence in that person's abilities that they will pursue the Dean's agenda and policies. (Dalecki Decl., ¶ 7.)*

Dispute. This testimony is uncorroborated and self-serving. Uncorroborated, self-serving, and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Dalecki, as Department Chair, had firsthand knowledge of reporting structure, and the Dean's expectations of the chair. Burton offered no evidence to the contrary.

167. *Dalecki wanted Burton to think about what things she had done to make people believe she has the background and experience to serve as Chair, such as serving on university-wide committees. (Dalecki Decl., ¶ 7.)*

Dispute. This testimony is not corroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

168. *Burton alleged that Dalecki threatened a graduate student who had reported a colleague's defamatory statement against her. (Dalecki Decl., ¶ 8)*

No dispute.

169. *Dalecki does not believe he "threatened" the graduate student. Dalecki attempted to mentor him as Dalecki did not think, as a graduate student, that he should get in the middle of a dispute between two faculty members. (Dalecki Decl., ¶ 8.)*

Dispute. This testimony is uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Any dispute is immaterial to whether Dalecki retaliated against Burton.

170. *Dalecki learned during his deposition in this lawsuit that the graduate student had audio recorded his conversation with Dalecki and given it to Burton. (Dalecki Decl., ¶ 8.)*

No dispute.

171. *Dalecki has a background in organization theory. To Dalecki, leadership is helping people improve themselves to assist them with their academic growth or to be successful in their careers. (Dalecki Decl., ¶ 9.)*

Dispute. This testimony is uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

172. *Dalecki often informally attempts to mentor students and faculty who are under his leadership. (Dalecki Decl., ¶ 9.)*

Dispute. This testimony is uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

173. *When Dalecki speaks to people, he often speaks in metaphors. It is natural for Dalecki to use language that is colorful and varies in its nature. (Dalecki Decl., ¶ 10.)*

Dispute. This testimony is uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary

judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

174. *Burton has alleged that Dalecki limited her assistance with the visiting delegation of German students. In the fall of 2013, Burton came to Dalecki office and asked him to support her bringing some German students to Platteville. (Dalecki Tr. at 27:16-17, 125; Dalecki Decl., ¶ 11.)*

No dispute.

175. *Dalecki told her he would support it as long as it did not cost the department any resources as he was still new as Interim Chair and did not yet have a complete handle on spending tempos and budget issues. (Dalecki Tr. at 27:16-17, 125, Dalecki Decl., ¶ 11.)*

Dispute. This testimony is uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

176. *Burton emailed Dalecki on June 9, 2014 and told him that she did not want to worry about the German delegation visit due to her mother's health and told that Dalecki "It is on you" and that Caywood gave her the order to create a short study abroad exchange program "So it's not my initiative. You inherited it as Chair." (Dalecki Tr. at 27:16-17, 125; Dalecki Decl., ¶ 11, Ex. D.)*

No dispute.

177. *Dalecki had to spend about 15 hours the week before the German students came to campus making arrangements, and another 40 hours during the week of June 16, 2014 driving them around and attending to them while they were on campus, in addition to Dalecki's normal duties as Interim Chair. (Dalecki Decl., ¶ 12.)*

No dispute.

178. *Three other CJ faculty members helped out with the German delegation visit by driving the students around and organizing trips. (Dalecki Decl., ¶ 13.)*

No dispute.

179. *Two of those faculty members were paid for their work, while the other faculty member and Dalecki were not paid. (Dalecki Decl., ¶ 13.)*

No dispute.

180. *There was to be a welcome ceremony for the German delegation the morning after their arrival (Dalecki Tr. 170:25-171:22.)*

No dispute.

181. *Dalecki had to pick the German students up at the Dane County Regional Airport in Madison on June 16, 2014. (Dalecki Dep. Tr. 171:15-172:17; Dalecki Decl., ¶ 14.)*

No dispute.

182. *On their way to Platteville from the airport, a tornado struck Platteville. (Dalecki Tr. 171:15-172:17; Dalecki Decl., ¶ 14.)*

No dispute.

183. *Dalecki received a call while in the shuttle from the resident director of the dorm that the residence hall in which the students were supposed to be staying had broken windows and was flooded and that the delegation would need to be taken elsewhere. Dalecki was further informed that part of the roof was torn off. (Dalecki Tr. 171:15-172:17; Dalecki Decl., ¶ 14.)*

No dispute.

184. *Dalecki arranged for the delegation to be housed in another residence hall. (Dalecki Tr. 171:15-174:5; Dalecki Decl., ¶ 14.)*

No dispute.

185. *There was no power anywhere in town and the university had shut down and Dalecki asked his wife to bring flashlights for the German students. (Dalecki Tr. 171:15-174:5; Dalecki Decl., ¶ 14.)*

No dispute.

186. *Dalecki settled the guests in at approximately 1:30 a.m. At that point, the German students had been awake for many hours due to their travel and Dalecki*

had been awake for approximately 20 hours and had been experiencing extreme back pain all day. (Dalecki Tr. 171:15-174:5; Dalecki Decl., ¶ 14.)

No dispute.

187. *The day was one of the most emotional and painful Dalecki experienced in his life. (Dalecki Tr. 171:15-174:5; Dalecki Decl., ¶ 14.)*

Dispute. This testimony is uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

188. *Dalecki had not had the opportunity to inform the assistant chancellor of the new arrangements until she telephoned him early the following morning to ask about the status of the delegation. (Dalecki Dep. Tr. 174:2-14.)*

No dispute.

189. *At the time that the delegation visited, Dalecki was suffering from sciatica, to the point where he was riding a cart around campus to get around. Dalecki had back surgery to relieve this condition three weeks later on July 8, 2014. (Dalecki Tr. 170:25- 171:22; Dalecki Decl., ¶ 15.)*

No dispute.

190. *In the aftermath of the tornado, the university had essentially shut down. Kids on campus went home and registrations were canceled. The university put cold food out for people because the power was out and they were unable to cook anything. (Dalecki Tr. 174:2-22.)*

No dispute.

191. *Dalecki took the German delegation to nearby Cuba City to eat because there was no plate in Platteville to eat. Dalecki did not tell Burton about the change in schedule for the welcome ceremony because he was dealing with these unforeseen events and changes to the itinerary associated with the tornado hitting Platteville. (Dalecki Tr. 174:2-175:11.)*

No dispute.

192. *Burton has alleged that Dalecki told her “I know where the skeletons are buried.” By this statement, Dalecki meant that he knows who the people are that are issues on campus, Dalecki knows what pushes people’s buttons, and Dalecki knows how people respond to particular types of situations. (Dalecki Decl., ¶ 16.)*

Dispute. The second sentence uncorroborated and is self-serving. Uncorroborated testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff’s objection is unfounded for the reasons explained in Defendant’s responses to previous, similar objections, and for the reasons explained in Defendant’s brief.

193. *Dalecki has never seen a letter of appointment issued to Burton that says she must teach 25% of her normal course load online (Dalecki Decl., ¶ 17.)*

Dispute. This assertion is uncorroborated and cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff’s objection is unfounded.

Burton provided no evidence that she is contracted to teach 25% of her courses online, and she provided no evidence that Dalecki was aware of this letter of appointment that she has not produced in this lawsuit.

194. *Online are huge money losers when fulltime professors teach them as part of their normal course load. During the time Dalecki was CJ Department Chair, UW- Platteville had a bit of a fiscal crisis and the CJ Department is short by 3 or 4 full-time faculty members (Dalecki Tr. at 202:8-16.)*

Dispute the first sentence. Dr. Fuller, who runs the CJ online programs, describes them as “cost-recovery” programs, which means that “[t]hey’re not part of an FTE formula like regular on-campus courses. The distance learning programs are managed and organized through the Distance Learning Center. . . .Recovery

cost means that we have to have enough students in the class before we can run the class . . . It's a self-revenued program." (Fuller Dep., Dkt. No. 46, 9:10-10:1) The second sentence is an uncorroborated assertion, which requires a credibility determination inappropriate at summary judgment.

REPLY: Fact not disputed. Defendants OBJECT and move to strike this response on the grounds of completeness pursuant to Fed. Rules of Evidence 106. Cost-recovery programs are part of an FTE formula like regular on-campus courses. The distance learning programs are managed and organized through the Distance Learning Center. The procedures for assigning instructors and other things are different than on campus. Recovery cost means that there must be enough students in the class before the class can be offered. (Fuller Dep., Dkt. No. 46, 9:10-10:1)

195. Burton sent Dalecki an email on April 2, 2015, which she copied the Dean, Provost, and Assistant Chancellor, stating her discontent with the fact that Dalecki assigned a probationary faculty member to a course she wanted to teach. She contends that as a tenured associate professor, she should have priority over a probationary assistant professor. (Dalecki Decl., ¶ 24; Bensky Decl., ¶ 3, Ex. ZZZ.)

Dispute. Dr. Dalecki rejected Dr. Burton's request to teach CJ/FI seminar assigning that seminar to a probationary faculty member, and assigning to Dr. Burton a lower level course that the same probationary faculty member had taught before, all despite the fact that Burton is the most senior CJ faculty member for on campus teaching. (Ex. CCCC, Dkt. No. 43-5)

REPLY: Fact not disputed. Defendants' OBJECT and move to strike plaintiff's response as non-responsive. The evidence provided in response supports DPFOF ¶ 195; Burton offered no evidence to the contrary.

196. As Interim Chair of the CJ Department, Dalecki had to concern himself with scheduling courses for all faculty and academic staff within the department. Rearranging a schedule for one faculty member has a domino effect for the rest of the department. (Dalecki Decl., ¶ 25.)

Dispute. The second sentence is an uncorroborated assertion, which requires a credibility determination inappropriate at summary judgment.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. Dalecki, as department chair, has personal knowledge of the effect of changing one professor's schedule on all the other department faculty. Burton offered no contrary evidence.

197. *If Dalecki moves one person's schedule around, then he has to rearrange everyone else's schedule. Because the CJ Department was short several full-time staff members during the spring of 2015, the remaining staff members had to pick up that load. (Dalecki Decl., ¶ 25.)*

Dispute. These sentences are uncorroborated assertions, which requires a credibility determination inappropriate at summary judgment. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See reply to PFOF ¶ 196.

198. *It was Dalecki's goal to facilitate everyone's schedules so as not to overload them or assign staff to courses they had not taught in previous semesters. (Dalecki Decl., ¶ 25.)*

Dispute. This sentence is an uncorroborated assertion, which requires a credibility determination inappropriate at summary judgment. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief.

199. *The DRB is composed of tenured faculty, of which Caywood was one. Dalecki did not assign him to the DRB. (Dalecki Decl., ¶ 26.)*

Dispute. See Defendants' proposed finding of fact ¶20.

REPLY: Fact not disputed. Plaintiff's response to ¶ 20 is: "Dispute. The CJ DRB is comprised of at least three tenured CJ faculty members and only the chair is automatically a member of the DRB. (Dalecki

Decl. Ex. B at 008, Dkt. No. 34-1 at 008)” It does not dispute any part of DPFOF ¶ 199.

200. *As Dalecki was Interim Chair of the CJ Department, he was not a voting member of the DRB at that time and had no knowledge as to why Burton received a lower peer evaluation (Dalecki Decl., ¶ 26.)*

No dispute.

201. *Around June 26, 2014, HR Director John Lohmann suggested mediation between Burton and Dalecki. Jen DeCoste, the Chief Diversity Officer and Assistant Chancellor for Diversity and Inclusion, also attended the mediation. (Dalecki Decl., ¶ 28.)*

No dispute.

202. *DeCoste told Burton the she believed Burton was engaging in bullying behavior. (Dalecki Decl., ¶ 28.)*

Dispute. This are uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff’s objection is unfounded. Burton offered no evidence to refute this statement (which is not offered for its truth, but rather offered for the fact that is was said).

203. *Burton surreptitiously audio recorded multiple meetings and conversations with ever telling participants of the conversations that she was recording them. (Burton Tr. at 193:14-24.)*

No dispute.

204. *On October 7, 2014, Burton emailed a colleague and demanded, “I need the following information for my complaint: a) Who authorized your directed study with Alex Marsh in Fall 2013? B) For how many credits did he signed up with you? C) Did Alex pass the study? What was his grade? D) What was the title of his paper/project? What was it for? E) Who was the project turned in to? F) Please provide me a copy of the paper of the directed study. (Throop Decl., ¶ 34, Ex. RRR.)*

No dispute.

205. *In October of 2014, Burton threatened a junior faculty member's tenure bid over email after what the faculty member engaged in what Burton believed was a violation of policy (Throop Decl., ¶ 37; Ex. VVV.)*

Dispute. Dr. Burton wrote to the second-year faculty member, Dr. Solar, to point out his violation of CJ Department policies and procedures in his conduct as a search committee chair and her responsibility to record that in the customary annual letter regarding a junior faculty member's tenure prospects. (Dkt. No. 37-15 at 035-036)

REPLY: Fact not disputed. Burton's response supports DPFOF ¶

205.

206. *The junior faculty member, Dr. Pat Solar, attempted to resolve the issue with Burton, who refused to budge on it. (Throop Decl., ¶ 37; Ex. VVV.)*

Dispute. Dr. Burton refused to overlook Dr. Solar's policy violation. (Dkt. No 37- 15 at 035-036)

REPLY: Fact not disputed. Burton's response supports DPFOF ¶

206.

207. *Dr. Solar then expressed a concern that he would not be treated fairly by Burton (Throop Decl., ¶ 37, Ex. VVV.)*

Dispute. This is a self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. Pat

Solar stated in his email:

This is the response I received after I asked her, in the spirit of cooperation and collegiality, to drop her complaint.

As you will read, she is really going to "do her best" to treat me fairly with respect to her review of my performance. Well...I'm really not interested in her "best," just overall fairness. If I screwed up, I'll take the repercussions and learn. Having her on the DRB is a bit disconcerting to me at this point given the tone of her message here.

Quite frankly, I see this as bullying behavior of a probationary faculty member by a "Senior, Tenured Faculty member."

(Throop Ex. WWW)

208. *Throop did not reprimand Burton for this email at that time. (Throop Decl., ¶ 37.)*

No dispute.

209. *In light of the escalating issues between Burton and her colleagues, Throop issued an October 28, 2014 letter of direction to Burton (Throop Decl., ¶ 38; Ex. WWW.)*

Dispute. This are uncorroborated, self-serving assertion for the basis of the letter of direction that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. The letter addresses, among other things, the following issues between Burton and her colleagues:

1. Accusations of abuse against Dr. Dalecki but failed to support allegations with factual basis;
2. Inflammatory emails on June 6, 2014, to entire CJ Department accusing recently resigned colleagues of unethical behavior and threatened to ask Wisconsin Attorney General to investigate;
3. After partially organizing a visit by German colleagues in June 2014, abruptly informing the Chair that she had no intention of being part of that visit only a few days before German colleagues arrived;
4. Asked Assistant Professor and mentee to house-sit for her during the summer;
5. Sent an email to Academic Staff member Deb Rice demanding information regarding an independent study for a CJ student;

6. Threatened a colleague with consequences to his potential tenure because she was displeased with his interpretation of his role as committee chair; and
7. Informed students to by-pass the interim department chair because he was biased.

(Throop Ex. WWW)

210. *Throop's intention in writing this letter was to encourage Burton to resolve any legitimate disagreements she had with her colleagues through the proper channels – namely by addressing such issues at the local level first without involving unnecessary groups or individuals, such as students or the chancellor, in these disputes. (Throop Decl., ¶ 39, Ex. WWW.)*

Dispute. This are uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. See

DPFOF ¶¶ 209 and 211.

211. *In the letter, Throop directed that Burton work to resolve her differences at the local level without involving the administration, to “cease all email activity making groundless and unwarranted accusations against Dalecki or any other members of the university community, “to treat [her] colleagues in the criminal justice department with respect,” to apologize for her inappropriate comment regarding the junior faculty member's tenure bid, and to “cease involving students in [her] personal disputes and grievances.” (Throop Decl., ¶ 39, Ex. WWW.)*

No dispute.

212. *In response, Burton disregarded the direction to resolve her issues at the local level and filed a grievance against Throop. (Throop Decl., ¶ 40, Ex. XXX.)*

Dispute. To characterize Dr. Burton's rebuttal and grievance as “disregarding the direction to resolve her issues at the local level” is an uncorroborated and self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for

summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence that she attempted to resolve her issues, other than to file a grievance against Dean Throop.

213. *Burton submitted a lengthy "rebuttal," in which she stated that Dalecki and Throop were bullies and that the letter of direction had violated Burton's due process rights guaranteed by the U.S. Constitution. (Throop Decl., ¶ 40; Ex. XXX.)*

No dispute.

214. *Among other allegations in her response, Burton stated, "I looked for the email I sent to the Chancellor on October 2, 2014 but it has disappeared from my account. Fortunately I have a copy of it. I have also noticed that other important emails . . . have disappeared from my account as well. So it seems that someone is going through my email account and systematically deleting incriminating files. Throop's denial of the existence of an email that she reprimanded me for is an indication of a cover up." (Throop Decl., Ex. XXX.)*

No dispute.

215. *Rather than apologize to Dr. Solar for threatening his tenure bid, Burton explained that she wrote her statements to him "because Solar violated policy and state law, lied to me, demonstrated his ineptitude and failed to follow Dalecki's directions at the department meeting on August 29, 2014." (Throop Decl., Ex. XXX.)*

Dispute. See paragraphs 205, 206, above.

REPLY: Fact not disputed.

216. *She went on to say, "I did not threaten Dr. Solar with consequences to his potential tenure bid. I said I would write about his policy violation in my annual letter concerning his prospects for tenure. It is no more a threat than a police officer issuing a traffic citation to a motorist who she caught speeding. I informed Dr. Solar that I would hold him accountable for his violation and suggested that he might mitigate the damage to his possibilities for tenure by moving forward in compliance with policy in the future. (Throop Decl., Ex. XXX.)*

No dispute.

217. *Burton concluded "I believe Dean Throop wrote this letter of direction with ill intent and malice. I believe the letter is intended to provoke me, cause me*

stress related health issues, make me want to quit my job and to lay the groundwork for her to fire me on fabricated changes sometime in the future. I believe the letter is written as retaliation against me for having filed a federal lawsuit against her.” (Throop Decl., Ex. XXX.)

No dispute.

218. *At no point in her response did Burton take any responsibility for any of the issues Throop had raised, nor did she indicate any intent to follow the directions in the letter. (Throop Decl., Ex. XXX.)*

No dispute.

219. *Around the winter-spring of 2014, after UW-Platteville had hired Dr. Valerie Stackman, a new professor, Dalecki assigned Burton to be Stackman’s mentor. Sometime thereafter, Burton asked Stackman to house-sit for Burton. Stackman declined to house-sit, and reported to Dalecki that Burton had asked her to house-sit. (Dalecki Dep. Tr. at 176:7-15.)*

Dispute. Dr. Stackman agreed to house sit for Dr. Burton, but, in inadvertent conversation with Dr. Dalecki, he cautioned her not to do so because Dr. Stackman could be liable for any damage to Dr. Burton’s house or horses and because Dr. Burton would be in a position later to vote on Dr. Stackman’s tenure. (Stackman Dep., Dkt. No. 47, 13:11-15:2, 37:13-22)

REPLY: Fact not disputed. Defendants’ OBJECT and move to strike plaintiff’s response as non-responsive. Any dispute related to initially accepting or declining to house sit is immaterial.

220. *Around the summer of 2014, Dalecki then removed Burton as Stackman’s mentor, because Dalecki felt such a request, from a senior tenured faculty member to a new junior faculty member who had just been hired, was not appropriate. (Dalecki Dep. Tr. at 101:10-102:4.)*

Dispute. Dr. Dalecki’s reasons for removing Dr. Burton as Dr. Stackman’s mentor are uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff’s objection is unfounded for the reasons explained in Defendant’s responses to previous, similar

objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Dalecki's feelings and motivations into question, and they are not inherently implausible.

221. *In light of Burton's repeated and public criticisms of Dalecki, Throop determined that Burton could not objectively evaluate his candidacy for permanent chair of the CJ department (Throop Decl., ¶ 41.)*

Dispute. Dean Throop's assertion is uncorroborated and self-serving and cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Throop's feelings and motivations into question, and they are not inherently implausible.

222. *Throop explained this reason to Burton and ultimately removed her from the search and screen committee when she refused to recuse herself from considering Dalecki's candidacy. (Throop Decl., ¶ 41.)*

No dispute.

223. *In December of 2014, Throop heard from another professor that Burton cancelled classes. Throop wrote an email to Burton indicating Burton would be disciplined. Throop's email did not say that Burton would be fired. (Dalecki Dep. Tr. 114:7, Ex. 42; Throop Tr. at 13:22-14:11, 14:21-25; Burton Tr. at 357:12-14; Bensky Decl., ¶ 3, Ex. AAAA.)*

Dispute. Dean Throop's email stated: "I will be forced to pursue disciplinary measures as a result." (Dkt. No. 43-3, at 002)

REPLY: Fact not disputed.

224. *The information Throop received was incorrect; Burton did not cancel her classes. (Bensky Decl., ¶ 3, Ex. AAAA.)*

No dispute.

225. *Upon receiving Throop's email, Burton emailed all of the students in her class-there were over 30 students-saying:*

Subject: I need your help!!!

Dear Student,

Dean Throop falsely accused me of canceling my class last Friday and wants to fire me over it. Please see the email below to see her extremely harsh and false accusations.

I ask that you please reply to this email with your confirmation that I did teach my class last Friday, Dec 12, 2014 to prove to Dean Throop that I did not cancel the class. This is extremely important for me. Dean Throop wants to fire me. If you came to class on Friday, Dec 12, 2014 you know that I was there. Dean Throop wants to discipline me for not being at the class. She is just looking for reasons to “discipline” me. Your confirmation that I was in class on that day will convince her that she has her facts wrong and could save me from severe discipline that I don’t deserve.

Why does Dean Throop want to hurt me you ask? Well, since I am asking you for an honest response I will give you an honest answer to this question.

On October 11, 2012 a female student came to me with a complaint of a sexual advance by a male faculty member. I helped the student report the complaint to Student Affairs. I have been mercilessly harassed since then for my actions in assisting that student. I have tried to keep students out of this conversation but the Dean has put me in a position where I need students to confirm my presence in my classes last Friday. I need your help. Please reply to this email as soon as you can with your confirmation that I was in class on Friday, Dec 12, 2014.

Thank you so much,

Below is Dean Throop’s email to me:

(Dalecki Tr. 114:7, Ex. 42; Bensky Decl., ¶ 3, Ex. AAAA.)

No dispute.

226. *Burton believed it was appropriate to send her students this email during their final exams. (Burton Dep. Tr. at 373:13-25.)*

No dispute.

227. *In an email Burton wrote to Governor Walker, Burton referred to Throop, Caywood, and Dalecki as “liberal bastards.” (Burton Dep. Tr. at 335:16-19; 345:16- 19.)*

No dispute.

228. *Base salary is the amount of money professors are compensated for teaching four courses during each the spring and fall semesters during a nine-month academic year. (Throop Decl., ¶ 42.)*

No dispute.

229. *The provost, in consultation with the dean, is responsible for setting base salaries for incoming professors. (Caywood Dep. Tr. at 108:21-109:1.)*

No dispute.

230. *The base salary also requires some academic advising and service to the university, where such service typically involves sitting on department, college, or university committees. (Burton Dep. Tr. at 82:20-83:10; Throop Decl., ¶ 42.)*

No dispute.

231. *A professor may also earn additional compensation by developing graduate courses, supervising summer interns, and obtaining grants that cover payments for salary over and above one's teaching responsibilities. (Throop Decl., ¶ 43.)*

No dispute.

232. *The Provost, in consultation with the Dean of the college, is in charge of setting base salaries. (Throop Decl., ¶ 44.)*

No dispute.

233. *UW-Platteville professors have several ways to earn extra income. The most common way is by teaching overload courses. Any course a professor teaches during the nine-month school year that exceeds four classes each semester counts as an overload. (Throop Decl., ¶ 43; Caywood Decl., ¶ 9.)*

No dispute.

234. *There are a handful of ways to be assigned overload courses: a professor may request to teach an additional class that is a topic of interest, the department chair may ask particular professors to teach an overload course to fill in for a professor who, because of sabbatical or other release time, is not teaching, or a department chair may ask for volunteers to teach overload courses. (Burton Tr. at 125:7-17; check cite.)*

No dispute.

235. *Faculty earn extra money when they teach overload courses and the extra compensation is a flat per-class rate based on rank. (Caywood Decl., ¶ 9.)*

No dispute.

236. *The department chair needed to approve overload assignments.*

(Caywood Decl., ¶ 9.)

No dispute.

237. *Often, faculty has the opportunity to teach on-campus overload courses. (Caywood Decl., ¶ 10.)*

No dispute.

238. *All professors must complete a form called “Request for Additional Payment” to obtain approval and compensation for teaching an overload course. Approval is typically required from the department chair, the dean of the college, and the provost of the university. (Caywood Decl., ¶ 9; Crowley Decl., Ex. R.)*

No dispute.

239. *Before each semester, when overloads were requested, Caywood would receive a stack of overload request forms, and would sign them. (Caywood Decl., ¶ 9.)*

No dispute.

240. *Caywood does not recall ever refusing to sign an overload request form that had been submitted for his signature. (Caywood Decl., ¶ 9.)*

Dispute. Dr. Caywood refused to sign overload requests for online, graduate teaching. (Burton Dep., Dkt. No. 39:395-23; Hawks Decl. ¶6(a), Ex. 18, Dkt. No. 53-18)

REPLY: Fact not disputed. Plaintiff fails to offer any evidence to show that Caywood refused to sign overload requests for online graduate teaching. Plaintiff admits that she taught 2 online courses in the fall of 2013 as overload and that the Chair’s signature was required for permission to teach these classes. (Burton Dep., Dkt. No. 39: page 394:14 – 397:-13)

241. *On November 2, 2012, (after the student complaint incident) Caywood signed an overload request form that Burton submitted to him. Caywood’s signature indicated his approval for Burton to teach and be paid for teaching CJ 4630, Cybercrime, which she taught in the Spring of 2013. (Burton Tr. at 417:8-23; 418:3-5.)*

No dispute.

242. *Throop approved of Burton’s overload request to teach CJ 4630 on November 26, 2012. This overload teaching provided Burton an additional \$3,375. This was soon after the student complaint incident. (Burton Tr. at 418:13-20.)*

No dispute.

243. *On November 21, 2012, soon after the student complaint incident, Caywood and Throop signed an additional payment request from Burton to advise, via distance learning, two graduate seminar papers. This additional work compensated Burton \$1,000. (Burton Tr. at 418:23-420:1.)*

No dispute.

244. *Professors can also make additional compensation by obtaining grants that cover payments for salary over and above their teaching responsibilities. (Caywood Decl., ¶ 44; Ex. ZZ.)*

No dispute.

245. *Dutelle, Gibson, and Caywood received a two-year UW system grant for prior learning assessments. (Caywood Decl., ¶ 44.)*

No dispute.

246. *Bob Roberts, who worked in the sponsored programs office, contacted Caywood, Dutelle, and Gibson about grant money available from the Lumina Foundation through the U.W. System to explore offering veterans university credit for their prior learning experience serving in the military. (Caywood Decl., ¶ 44; Ex. ZZ.)*

No dispute.

247. *In the proposal, Caywood, Dutelle and Gibson requested the following salaries for their work, which was to cover a two year period: Caywood: \$6,500 (for 130 hours at \$50/hour), Dutelle: \$13,050 (290 hours at \$45/hour), Gibson: \$13,050 (290 hours at \$45/hour). (Caywood Decl., ¶ 44; Ex. ZZ.)*

No dispute.

248. *The grant would temporarily bump up their base salaries for two years. (Caywood Decl., ¶ 44; Ex. ZZ.)*

No dispute.

249. *The grant application was submitted in late 2011. (Caywood Decl., ¶ 44; Ex. ZZ.)*

No dispute.

250. *Caywood, Dutelle and Gibson created a report which they provided to the Lumina Foundation. When their work was complete, Caywood, Dutelle and*

Gibson's base salaries returned to normal. (Caywood Decl., ¶ 44.)

No dispute.

251. *Between October 2012 and the present, Burton did not apply for any grants that she did not receive as a result of the events complained about in the Second Amended Complaint. (Burton Tr. at 496:13-20.)*

No dispute.

252. *Professors also earn money over and above their contracted-for teaching by taking on interns. (Caywood Decl., ¶ 11.)*

No dispute.

253. *As CJ Chair, Caywood was responsible for assigning interns to faculty. (Caywood Decl., ¶ 11.)*

No dispute.

254. *To do this, Caywood would take the total number of interns and divide them by the total number of faculty available to take on interns. (Caywood Decl., ¶ 11.)*

Dispute. This is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. Caywood, as chair, has personal knowledge related to the method he used to assign interns. Burton provided no evidence to the contrary.

255. *Faculty would be paid a flat rate per student, where the flat rate was based on the professor's rank. (Caywood Decl., ¶ 11.)*

No dispute.

256. *Sometimes, students would drop their internship, or fail to pay the registration fee. If that was the case, the professor to whom the intern was assigned would not be paid for the intern who dropped his or her internship. (Caywood Decl., ¶ 11.)*

No dispute.

257. *On December 5, 2012, Caywood signed a form that approved for Burton being paid an additional \$250.00 for taking on an intern. This approval was provided within two months after the student complaint. (Burton Tr. at 420:2-421:3.)*

No dispute.

258. *In the summer of 2015, Dalecki assigned Burton interns based on his understanding of her medical restriction that she was not to drive long distances. He assigned either interns that were in the Platteville area, or interns who were doing long distance internships where communications would be accomplished through Skype. (Dalecki Tr. at 146:7-147:4.)*

Dispute. This is an uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton provided no evidence that her interns were either local or via Skype, and offered no evidence that Dalecki didn't make these assignments based on Burton's medical restrictions.

259. *The CJ Department had between 12-14 full time faculty and academic staff, and often needed to hire adjunct instructors to teach. (Caywood Decl., ¶ 4.)*

No dispute.

260. *The department generally offered about 40 on-campus classes during both the spring and fall semesters. (Caywood Decl., ¶ 4.)*

No dispute.

261. *As Department Chair, Caywood needed to secure classrooms that could accommodate the class size, schedule professors, making sure they were not doubled up on teaching time, and work around professor sabbaticals and release time. (Caywood Decl., ¶ 4.)*

No dispute.

262. *Not every professor is qualified to teach every course. (Caywood Decl.,*

¶4.)

No dispute.

263. *One consideration that Dalecki and Caywood made when assigning courses was to reduce the number of preparations one professor would need. Where possible, Caywood kept one professor teaching two sections of the same course, so that the professor would not have to prepare for too many courses. (Dalecki Tr. at 157:5-22; Caywood Decl., ¶ 5.)*

No dispute.

264. *Dalecki believed that the worst schedule one could have would be to be teaching four sections of four different courses. Teaching two sections of the same course reduces the number of necessary preparations. (Dalecki Dep. Tr. at 157:5-22.)*

Dispute. Sentence one is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Dalecki has personal knowledge, as Department Chair, of a schedule that would involve more necessary preparation for any professor.

265. *When scheduling courses, Caywood first considered the needs of the department. Then, if Caywood could, he considered special requests made by professors (Caywood Decl., ¶ 5.)*

Dispute. These are uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offered no evidence to dispute Caywood's process in assigning classes.

266. *Often special requests to teach courses cannot be accommodated, because the department chair must be concerned with the schedules of many*

professors. Sometimes, changing one person's schedule can have a domino effect on everyone else's schedule, and can create unworkable scheduling problems. (Dalecki Tr. at 160:1-19.)

Dispute. These are uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence to dispute that changing one person's schedule disrupts other professor's schedules.

267. *CJ faculty is given the opportunity to volunteer to teach online. As the CJ Chair, Caywood was not responsible for finding faculty to teach online. (Caywood Decl., ¶ 6.)*

No dispute.

268. *Online courses are assigned by the coordinator of the online CJ program. They are then approved by the Department Chair. (Dalecki Decl., ¶ 18.)*

No dispute.

269. *The CJ Chair's signature is required on professor's contract to teach online. (Caywood Decl., ¶ 6.)*

No dispute.

270. *Caywood does not recall ever refusing to sign a contract to teach online that had been submitted for his signature. (Caywood Decl., ¶ 6.)*

Dispute. Dr. Caywood refused to sign contracts for online graduate teaching. (Burton Dep., Dkt. No. 39:395-23; Hawks Decl. ¶6(a), Ex. 18, Dkt. No. 53-18)

REPLY: Fact not disputed. Plaintiff fails to offer any evidence to show that Caywood refused to sign a contract to teach online that had been submitted for his signature. Plaintiff admits that she taught 2 online courses in the fall of 2013 as overload and that the Chair's signature was required for permission to teach these classes. (Burton Dep., Dkt. No. 39: page 394:14 – 397:-13)

271. *Dr. Cheryl Banachowski-Fuller is the director of the online Criminal Justice Graduate program and has been director of that program for several years. (Caywood Decl., ¶ 7.)*

No dispute.

272. *She is responsible for assigning professors to teach courses in the graduate online program. (Caywood Decl., ¶ 7.)*

No dispute.

273. *Since about 2014, Dr. Banachowski-Fuller has also acted as the online undergraduate coordinator. The undergraduate online coordinator is responsible for scheduling faculty to teach the online undergraduate courses. (Caywood Decl., ¶ 8.)*

No dispute.

274. *Amy Nemmetz was the undergraduate online coordinator from about 2007 to 2011. Dana Cecil served as the undergraduate online coordinator from about 2011 through 2014. (Caywood Decl., ¶ 8.)*

No dispute.

275. *The online courses are typically assigned to adjunct professors, who are part-time department members, or may be taught by full-time department members as an overload. (Caywood Decl., ¶ 9; Dalecki Decl., ¶ 18.)*

No dispute.

276. *Teaching online courses are not a typical part of full-time faculty members' regular load because on-campus undergraduate courses took priority over online courses. (Caywood Decl., ¶ 10.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence to the contrary.

277. *During Dalecki's time as Interim Chair, he does not recall an instance where a full-time CJ faculty member taught an online course as part of their normal*

course load. (Dalecki Decl., ¶ 19.)

Dispute. This is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no instance where a full time CJ faculty member taught an online course as part of normal course load.

278. *For online overload courses, professors are paid \$260.00 per student enrolled in a course. (Dalecki Decl., ¶ 20.)*

No dispute.

279. *Face to face upper level courses typically have an enrollment of 25-30 students per course and lower level courses typically have an enrollment of 40-50 students per course. Online elective courses generally have between 8-14 students per class, while online core courses average around 17-20 students per class. (Dalecki Decl., ¶ 21.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Dalecki's feelings and motivations into question, and they are not inherently implausible.

280. *Due to the lower enrollment rates of online courses, it is not fiscally responsible to have full time faculty teach online courses as part of their normal course load, as those courses do not generate as much revenue for the university as face to face courses. (Dalecki Decl., ¶ 22.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Dalecki's feelings and motivations into question, and they are not inherently implausible.

281. *During Dalecki's time as Interim Chair, the CJ Department was short-staffed. As such Dalecki needed full-time, experienced faculty members like Burton on campus teaching face to face courses. (Dalecki Decl., ¶ 23.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Dalecki's feelings and motivations into question, and they are not inherently implausible.

282. *Caywood made assignments based on various factors, including but not limited to: expertise, regular course schedule (one professor cannot teach two courses at the same time), multiple section offerings (e.g., if a professor was already teaching two sections of Intro to Criminal Justice, it would make sense for the professor to teach a third section as an overload, because no additional preparation would be required of the professor), and asking for volunteers. (Caywood Decl., ¶ 10.)*

No dispute.

283. *Burton's salary as of her April 2009 hire date was \$48,000. Prior to the 2009-2010 school year, on July 28, 2009, Burton received a \$2,000 pay raise for a market adjustment. Her salary as of July 28, 2009 was \$50,000. (Crowley Decl., Ex. J.)*

No dispute.

284. *Burton's base salary remained at \$50,000 through the 2011-2012 academic year. Burton's salary letter indicated an inability to fund pay plan increases. (Crowley Decl. Ex. K, L.)*

No dispute.

285. *Due to Burton's promotion to Associate Professor, on June 8, 2012, Burton's base salary was raised by \$1,750 to \$51,750. (Crowley Decl. Ex. M, N.)*

No dispute.

286. *On March 26, 2014, Burton received a base salary adjustment, from \$52,268 to \$56,000. Her new base salary, retroactively effective August 19, 2013, was \$56,000. (Crowley Decl. Ex. O, P.)*

No dispute.

287. *Lorne Gibson holds two PhDs, one in criminal justice and one in education. (Burton Tr. at 98:13-17.)*

No dispute.

288. *Gibson was hired in 2011. His starting salary was \$50,000. (Crowley Decl. Ex. LL, MM.)*

No dispute.

289. *In May, 2012, Gibson was awarded a temporary upward adjustment to his base salary because he received a Prior Learning Assessment (PLA) Grant. This grant gave him a temporary salary boost to \$56,525. (Crowley Decl. Ex. OO.)*

No dispute.

290. *Gibson's temporary salary adjustment carried through to the following year, so that his base salary was \$57,090. (Crowley Decl., Ex. PP.)*

No dispute.

291. *In October 2014, Gibson's PLA grant work was complete and his base salary returned to \$51,465. (Crowley Decl. Ex. QQ.)*

No dispute.

292. *Aric Dutelle's tenure track appointment began in 2010. His starting salary was \$48,000. (Crowley Decl. Ex. Y, Z.)*

No dispute.

293. *In June, 2012, Dutelle received a \$1,750 salary increase because he was promoted to associate professor. (Crowley Decl. Ex. BB.)*

No dispute.

294. *In May of 2012, Dutelle was awarded a temporary upward adjustment to his base salary because he received a Prior Learning Assessment (PLA) Grant. This grant gave him a temporary salary boost to \$54,525 (salary before the \$1,750 promotion). (Crowley Decl. Ex. CC.)*

No dispute.

295. *In September of 2013, Dutelle's temporary salary adjustment carried through to the following year, so that his base salary was \$58,100. The temporary adjustment to Dutelle's base salary was to terminate on December 31, 2013. (Crowley Decl. Ex. CC.)*

No dispute.

296. *In August of 2013, Dutelle accepted a position as the Interim Director of Sponsored Programs in the Office of Grants, Research & Sponsored Programs Department. In this position, his base salary was \$72,000. This base salary did not include the temporary base salary increase due to the PLA Grant. (Crowley Decl. Ex. GG; II.)*

No dispute.

297. *Dutelle resigned from his position as Interim Director, Office of Sponsored Programs, effective June 6, 2014. (Crowley Decl., Ex. JJ.)*

No dispute.

298. *Aric Dutelle published three books while he was teaching at UW-Platteville: *Introduction to Crime Scene Investigation*, (2010), *Criminal Investigation*, and *Ethics for the Public Service Professional*. While he was at UW-Platteville, Dutelle authored more textbooks than any other instructor or professor in the criminal justice department. (Burton Tr. 99:16-101:25; 107:12-17; Ex. 4.)*

No dispute.

299. *Dutelle was the program coordinator of the forensic investigation program, which is a degree program within the Criminal Justice Department. (Burton Tr. at 105:14-16; Caywood Decl., ¶ 37.)*

No dispute.

300. *Dutelle worked on bringing grant money to UW-Platteville. He was the*

principal investigator for two United States Department of Justice grant proposals, and as of 2011, he had obtained over \$100,000 in grants and external funding for UW- Platteville's forensic investigation program. (Caywood Decl., ¶ 41; Burton Tr. at 108:1- 10, Ex. 5.)

No dispute.

301. In March 2014, Throop recommended Burton for an equity adjustment effective August of 2013, without a question from her. Burton ultimately received that adjustment to her base salary (Throop Decl., ¶ 44.)

No dispute.

302. Specifically, Throop provided Burton with an equity adjustment to cure a salary inversion. (Throop Decl., ¶ 44.)

Dispute. Dean Throop requested an inequity/inversion adjustment to Dr. Burton's salary because "[s]he is a tenured associate professor but is making less than Dr. Pat Solar, a first-year tenure-track professor." (Hawks Decl. ¶6(u), Ex. 38, Dkt. No. 53-38)

REPLY: Fact not disputed. Evidence offered in response supports proposed finding.

303. An equity adjustment to a professor's salary reflects a change due to a factor other than promotion. (Throop Decl., ¶ 45.)

No dispute.

304. Such an adjustment may be recommended because the market for similar talent demands a higher salary, or to cure a salary inversion. (Throop Decl., ¶ 45.)

No dispute.

305. An equity adjustment is not an admission that there was any sort of discrimination occurring at UW-Platteville, regarding either Burton or any other individual. (Throop Decl., ¶45.)

Dispute. This assertion is a legal conclusion for a fact-finder.

REPLY: Fact not disputed. Plaintiff's objection is unfounded. Throop, as someone who recommends equity adjustments at UW Platteville, has requisite personal knowledge to testify as to what an equity adjustment is and isn't.

306. *A salary inversion occurs when a lower-ranking faculty member is paid more at the time of hire than a higher-ranking faculty member. This may occur for any variety of reasons. (Throop Decl., ¶¶ 45, 46.)*

No dispute.

307. *The incoming faculty member, Dr. Solar, was hired at a higher salary than others before him because he had highly desirable academic credentials and over thirty years of professional experience in policing, including experience as a police chief. (Throop Decl., ¶ 46.)*

No dispute.

308. *His salary was the product of negotiations between Dr. Solar and the University. (Throop Decl., ¶ 46.)*

No dispute.

309. *After Dr. Solar was hired, Throop requested the equity adjustment for Burton to cure the disparity (Throop Decl., ¶ 46.)*

Dispute. See paragraph 302 above.

REPLY: Fact not disputed.

310. *David S. Kieckhafer is employed by the University of Wisconsin-Platteville as the University Registrar. (Kieckhafer Decl., ¶ 1.)*

No dispute.

311. *He created a spreadsheet representing Criminal Justice and Forensic Investigation courses taught at the University of Wisconsin-Platteville between Fall 2009 and Fall 2014. (Kieckhafer Decl., ¶ 2, Ex. A.)*

No dispute.

312. *All course information resides in UW-Platteville's Pioneer Administrative Software System (PASS) – the student information system operated by Oracle's PeopleSoft Campus Solution. The course list was produced using a query in PASS. (Kieckhafer Decl., ¶ 3.)*

No dispute.

313. *Course information is obtained directly from academic departments as we prepare for registration each semester. The Registrar's office receives the information and enters it into PASS. The academic departments review the course information in PASS for accuracy prior to student registration. Instructor names*

must be accurately maintained in order for each instructor to access class rosters and enter grades. (Kieckhafer Decl., ¶ 4.)

No dispute.

314. *The course information in PASS are regularly kept business records of the University of Wisconsin-Platteville, to which the Registrar's office has access. (Kieckhafer Decl., ¶ 5.)*

No dispute.

315. *The course information listed in Exhibit A must be interpreted as follows: Column A: Term (Fall, Spring, or Summer); column B: Year (The calendar year of the term); column C: Subject (the department of the course including departments which offer related courses to Criminal Justice or Forensic Investigation. This includes subjects where the same course is offered through multiple departments); column D: Catalog Number (1000 – 4000 level are undergraduate courses; 5000 – 7000 are graduate level courses); column E: Section (Numbers under 50 are on-campus; those 50 and higher are distance education – online offerings; those with an 'L' are lab sections; those with 'AE' are in the Adult Education program); column F: Course title; column G: units (the credits or semester hours of the course); column H: First Name (of the Instructor); column I: Last Name (of the Instructor); column J: Enrolled (the number of students enrolled in the section of the course). (Kieckhafer Decl., ¶ 6.)*

No dispute.

316. *At some point, Dalecki denied Burton's request to teach one of her regular courses online because the department was short-staffed and Dalecki needed her to teach in the classroom. (Dalecki Tr. at 54:8-13.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Dalecki's feelings and motivations into question, and they are not inherently implausible.

317. *In 2003 Provost Carol Sue Butts asked department chair, Joe Lomax, whether we as a department could develop a forensic related program. (Caywood*

Decl., ¶ 12.)

No dispute.

318. The department had the backing of the administration through the entire development process providing funding and more importantly positions to start the forensic investigation program. (Caywood Decl., ¶ 12.)

No dispute.

319. A nation-wide search was held late 2003 and early 2004. (Caywood Decl., ¶ 12.)

No dispute.

320. Aric Dutelle was hired, as academic staff, to start the FI program beginning Fall 2004. He has a Master's degree in forensic sciences. (Caywood Decl., ¶ 12, 37.)

No dispute.

321. The CJ Department had several FI classes approved through all related curriculum committees by the time Aric Dutelle arrived on campus for the Fall semester. (Caywood Decl., ¶ 13.)

No dispute.

322. Dutelle was brought in as teaching academic staff. It took five years to get this position as a tenure track position. (Caywood Decl., ¶ 37.)

No dispute.

323. A national search was conducted and he was hired in 2009 or 2010. Dutelle was hired, and he was given two years toward tenure by the Dean and Provost. (Caywood Decl., ¶ 37.)

No dispute.

324. Dutelle received 50% release time because he was the FI coordinator. This 50% release time was written into the policies and procedures for the criminal justice department. (Caywood Decl., ¶ 38.)

No dispute.

325. The department policies also indicated that the undergraduate online coordinator, and the director of CJ online graduate program, would receive 50% release time if they were fulltime faculty. (Caywood Decl., ¶ 38.)

No dispute.

326. *As coordinator, Dutelle's duties included leading, planning, and managing the undergraduate FI program, managing the FI budget, providing faculty oversight, training faculty, developing and revising courses, supervising, recruiting and managing program personnel, advertising the program and recruiting students, and performing other duties assigned by the CJ Chair. (Caywood Decl., ¶ 39.)*

No dispute.

327. *Unfortunately, not everyone in the CJ department was supportive of the FI program or of Mr. Dutelle's qualifications; nevertheless, it was backed by a majority of the department, and curriculum and courses were approved, when such approval was required by the CJ department, LA&E College, UW-Platteville, and/or the UW System Board of Regents. (Caywood Decl., ¶ 13.)*

No dispute.

328. *When the FI program was developed, the CJ department did not have its own curriculum committee. (Caywood Decl., ¶ 14.)*

No dispute.

329. *Prior to the department curriculum committee, the process for obtaining course approvals was by discussion and consensus among the faculty. (Caywood Decl., ¶ 14.)*

No dispute.

330. *In January 2009, the criminal justice department moved from Warner Hall to the suites in Ullsvik Hall. (Caywood Decl., ¶ 15.)*

No dispute.

331. *Office space was assigned by seniority – meaning, who had been at UW-Platteville the longest. Faculty with higher degrees did not get preference. (Caywood Decl., ¶ 15; Caywood Tr. at 90:15-91:8.)*

No dispute.

332. *Cheryl Banachowski-Fuller, as director of the graduate program, and Caywood, as CJ department chair, were assigned the two largest offices. (Caywood Decl., ¶ 15.)*

No dispute.

333. *Tenure track faculty and academic staff, by seniority, picked which office each wanted. Kathy Winz opted not to take a window office as she was retiring in May. (Caywood Decl., ¶ 15.)*

No dispute.

334. *Otherwise, the senior staff picked windowed offices and Junior staff picked remaining offices. (Caywood Decl., ¶ 15.)*

No dispute.

335. *Burton was not in the CJ department when the offices were initially assigned (Caywood Tr. at 90:10-11.)*

No dispute.

336. *Around May of 2012, Burton was upset about not having enough summer interns, and told Caywood she had received an unsolicited job offer and she may have to entertain future offers if her income diminished. (Caywood Decl., ¶ 18.)*

Dispute. Dr. Caywood's assertion is of Dr. Burton's state of mind and motivation is speculative and cannot be considered in determining a motion for summary judgment. Uncorroborated and speculative testimony cannot support a claim if it is based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence to dispute her admission. DPFOF ¶ 336 is a party admission that says:

This summer I've been working harder than the summers before (incl. teaching 8 hours every day during pre-session) but will make less money. Big part is that we have fewer interns this year. I have given 9 students a good amount of time in assisting them with their internship applications and letters of recommendation as well as inquired about PACCE funding for our unpaid students. I was surprised to learn that Dana Cecil, who I appreciate and value, has been assigned the same number of on campus interns as faculty even though her primary task is the online program. It looks like Dana has at least 1 intern in the undergraduate program as well as a fully enrolled online seminar to

teach during this summer. If she is allowed to do both online and on-campus I am requesting to do the same, especially since my options in the graduate programs have diminished greatly.

More and more undergraduate students do their seminar online as it is perceived to be easier. While you teach a high quality seminar course on campus we have an instructor in the online program who just recently graduated with an online MA degree. I believe that the online seminar course as the last hurdle before graduation should be taught by a Ph.D. I would be glad to do so this summer.

I have received an unsolicited job offer from D.C. that I will not pursue as I am happy here at UWP and the family enjoys living in Platteville. However, I may have to entertain future offers if my yearly income (incl. summer pay) continues to diminish so my financial and time sacrifices for a traditional Ph.D. were not in vain. Our family expenses are increasing also with Sophie starting college next year.

I have spent a great amount of time and effort, including numerous phone calls to Germany in putting together a high quality study abroad program for our 0 students that is the best value available. I have done so gladly to benefit our program but without any reimbursement.

Thank you for taking the time.

(Caywood Decl., ¶ 18; Ex. SS)

337. In response, Caywood discussed the challenges of dividing interns among faculty, and told Burton that she is a valuable member of the department Caywood also said if opportunities were available elsewhere Caywood wished her the best. (Caywood Decl., ¶ 18.)

No dispute.

338. In the CJ Department, new professors are hired via committee called a "Search and Screen Committee." (Throop Decl., ¶ 47.)

No dispute.

339. The CJ department chair appoints a faculty member to be the Search and Screen chairperson. (Throop Decl., ¶ 47; Dalecki Decl., ¶ 30.)

No dispute.

340. *Search and screen committees are made up of typically three or four faculty members, one student and one diversity representative. (Throop Decl., ¶ 47; Dalecki Decl., ¶ 30.)*

Dispute. All faculty members in the CJ Department are invited to serve on search and screen committees, which must follow all University policy and procedures governing the hiring of faculty, and there are no stated diversity requirements in CJ policies and procedures. (Dkt. No. 34-1 at 008-009)

REPLY: Fact not disputed. Defendants' OBJECT and move to strike plaintiff's response as non-responsive.

341. *The Search and Screen committees are used to search for and assess prospective CJ faculty candidates, and recruits, interviews, and recommends one or more professors to hire for the department. (Throop Decl., ¶ 47; Dalecki Decl., ¶ 30.)*

No dispute.

342. *Similarly, the LA&E College has a search and screen committee to search for a new Dean. In 2012, Burton sat on the College search and screen committee that hired Dr. Throop. (Burton Tr. at 92:16-24.)*

No dispute.

343. *Burton was the chair of the CJ department's search and screen committees that hired Dr. Lorne Gibson in 2011. (Caywood Decl., ¶ 16.)*

No dispute.

344. *In the fall of 2012, CJ was short faculty, and by the end of semester CJ had four or five different faculty searches ongoing. (Caywood Decl., ¶ 16.)*

No dispute.

345. *Instead of running five separate searches with five different committees, the dean and the director of human resources agreed to reduce the number of different search committees and allow each committee to search for multiple positions. (Caywood Decl., ¶ 16.)*

No dispute.

346. *That is how Lorne Gibson became chair of two searches and Aric Dutelle became head of two searches. (Caywood Decl., ¶ 16.)*

Dispute. This is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence that this was not how Gibson and Dutelle each became head of two searches.

347. *Dalecki appointed Burton to chair the 2013 CJ department's search and screen committee that produced two candidates that were hired. (Dalecki Tr. at 35:13- 14; Dalecki Decl., ¶ 31.)*

No dispute.

348. *In the fall of 2014, a search and screen committee was formed to hire three new faculty members. Burton wanted three separate committees, but there was only a need to form one committee, as it was a more efficient use of time. Dalecki assigned another faculty member to Chair that search as it is his duty to spread the work around amongst all of the faculty members in the CJ Department and generate committees which will produce the best results. (Dalecki Decl., ¶ 31; Bensky Decl., ¶ 3, Ex. DDDD.)*

Dispute. Sentence two and three are uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Dalecki's feelings and motivations into question, and they are not inherently implausible.

349. *Dalecki does not recall any other faculty member ever complaining to him while he was Interim Chair that they were not on a search and screen committee. (Dalecki Decl., ¶ 32.)*

Dispute. This is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*,

580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

There is nothing intuitive, rumor-laden or inherently implausible about this statement.

350. *Members of a search and screen committee do not receive release time from teaching, and they do not receive additional pay. (Burton Tr. at 483:10-13.)*

No dispute.

351. *On January 15, 2013, Burton requested to use CJ funds to take students to Washington D.C. for a conference. (Caywood Decl., ¶ 23.)*

No dispute.

352. *Although the CJ department had already covered costs for a different trip Burton took with students in the fall of 2012, Caywood approved funding for the second trip. (Caywood Decl., ¶ 23.)*

No dispute.

353. *Caywood's approval was given on January 22, 2013. (Caywood Decl., ¶ 23.)*

No dispute.

354. *Prior to Caywood's approval of funding Burton's second conference trip, he was not aware of any other time in the 21 years he had been at UW-Platteville when the CJ department provided funding to a faculty member for two different conferences during the course of one school year. (Caywood Decl., ¶ 23.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton provides no evidence that any other faculty member received funding for two different conferences in one school year.

355. *On February 12, 2013, Burton requested Caywood's approval for three PACCE projects. (Caywood Decl., ¶ 24.)*

No dispute.

356. *Caywood reviewed her projects which seemed to Caywood to be very labor intensive. (Caywood Decl., ¶ 24.)*

Dispute. This is an uncorroborated assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

357. *Caywood was aware of Burton's overload course, intern supervision, and graduate seminar paper supervision (all of which resulted in her receiving additional funds). Burton was also developing a short study abroad trip to Germany that spring. (Caywood Decl., ¶ 24.)*

No dispute.

358. *Caywood was concerned she was doing too much. (Caywood Decl., ¶ 24.)*

Dispute. This is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Caywood's feelings and motivations into question, and they are not inherently implausible. Furthermore, this sentiment is documented in a contemporaneous email that Caywood sent Burton that

explained the basis of his concern that Burton was doing too much. See Dkt. 36-4.

359. *Despite Caywood's concerns, he signed the paperwork and put in her mailbox. (Caywood Decl., ¶ 24.)*

No dispute.

360. *Burton requested early tenure in 2013. Caywood initially did not support this request because he could not recall that anyone at any time since he was at UW-Platteville had been granted early tenure. (Caywood Tr. 79:4-11.)*

No dispute.

361. *Caywood was hesitant about Burton's tenure request. She had only been at the university for four years. (Caywood Decl., ¶ 25.)*

No dispute.

362. *Usually, tenure is granted in the fifth or sixth year. (Caywood Decl., ¶ 25.)*

No dispute.

363. *Caywood changed his mind and despite Caywood's reservations, he agreed to support Burton's tenure. (Caywood Tr. at 79:4-80:8, Caywood Decl., ¶ 25.)*

No dispute.

364. *In July of 2013, Caywood stepped down as the chair of the CJ department. (Throop Decl., ¶ 22.)*

No dispute.

365. *With the new school year set to begin in less than sixty days, Throop chose to appoint an interim chair while a national search was conducted. (Throop Decl., ¶ 22.)*

No dispute.

366. *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. (Throop Decl., ¶ 23.)*

Dispute. These are uncorroborated, self-serving assertions that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded for the reasons explained in Defendant's responses to previous, similar objections, and for the reasons explained in Defendant's brief. Burton offered no evidence to call Throop's feelings and motivations into question, and they are not inherently implausible.

367. *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. (Throop Decl., ¶ 24, 32; Burton Tr. at 379:25-380:2.)*

No dispute.

368. *In September of 2013, an election was conducted for the chair of the CJ department. Of the eight eligible voting members, no individual received a majority of votes in the election. (Throop Decl., ¶ 25.)*

No dispute.

369. *Dr. Gibson received the most votes, with only three votes. Dr. Gibson was not tenured. (Throop Decl., ¶ 25.)*

No dispute.

370. *On August 29, 2014, Throop attended a CJ department meeting. (Throop Decl., ¶ 27.)*

No dispute.

371. *During that meeting, Throop remarked to the department members present that she had received requests to postpone the search for a permanent chair because the department also had three faculty searches and an academic staff search to conduct. (Throop Decl., ¶ 27.)*

No dispute.

372. *Throop asked those present whether they would prefer that the search for a permanent chair be postponed and provided a secret ballot. (Throop Decl., ¶ 27.)*

No dispute.

373. *Ultimately, the department chose to proceed with searching for a permanent chair. (Throop Decl., ¶ 27.)*

No dispute.

374. *During that same meeting, the department also discussed whether the chair of the search committee for the permanent chair should be appointed from within CJ or from a different department at UW-Platteville. (Throop Decl., ¶ 28.)*

No dispute.

375. *Throop offered a secret ballot, but the faculty ultimately agreed to decide the issue on a voice vote and concluded that an outside chair for the search committee was preferable. (Throop Decl., ¶ 28.)*

No dispute.

376. *Dalecki was not present for the August 29, 2014 meeting, other than to introduce Throop. (Throop Decl., ¶ 29.)*

No dispute.

377. *Burton surreptitiously recorded the August 29, 2014 meeting but did not tell anyone she was recording it. (Throop Decl., ¶ 30; Burton Tr. at 465:25-466:13.)*

No dispute.

378. *During the meeting, the CJ department, including Burton, agreed that a chair of the search for the permanent chair should come from outside the department. (Throop Decl., ¶ 30; Tr. at 469:8-11.)*

No dispute.

379. *Throop made some changes to the criteria for the CJ Chair job announcement so that the advertisement sounded more professional, and to encourage a wider applicant pool than the original advertisement permitted. (Throop Decl., ¶ 31.)*

Dispute. This is an uncorroborated, self-serving assertion that cannot support a claim if based on intuition, rumor, or is inherently implausible. *Darchak*, 580 F.3d at 631; *see also Payne*, 337 F.3d at 773. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence that Throop made changes to the job description for any other reasons.

380. *Caywood is personally aware that Aric Dutelle had been involved in a number of activities outside the classroom since he had been at UW-Platteville. (Caywood Decl., ¶ 40.)*

No dispute.

381. *He worked with agencies of the Federal Government in recovery attempts of human remains of US citizens killed in Africa, and he had been involved in forensic training for government agencies in Central and South America. (Caywood Decl., ¶ 40.)*

No dispute.

382. *Dutelle did not receive time off during the regular school year to do these activities. (Caywood Decl., ¶ 40.)*

No dispute.

383. *Mr. Dutelle has been successful in obtaining a Wisconsin Department of Justice grant to purchase photographic equipment. (Caywood Decl., ¶ 41.)*

No dispute.

384. *As of 2012, Dutelle had brought \$100,000 in grants to the CJ department (Caywood Decl., ¶ 41.)*

No dispute.

385. *He, along with John Rink (political science & mock trial supervisor) and Chuck Cornett (chemistry) provided forensic camps for local high school students during the summer. (Caywood Decl., ¶ 41.)*

No dispute.

386. *One semester Dutelle taught a class aboard an aircraft carrier. He was not on campus for several weeks at the start of the semester, so Dutelle utilized distance learning software extensively for this class until he returned to campus. (Caywood Decl., ¶ 42.)*

No dispute.

387. *Most CJ faculty members utilize distance learning software to some extent in their on campus classes. (Caywood Decl., ¶ 42.)*

No dispute.

388. *Dutelle also lead short term study abroad classes in Honduras for CJ students just like Burton did with her study abroad trip to Germany. (Caywood Decl., ¶ 42.)*

No dispute.

389. *Many faculty, including Mr. Dutelle and Burton, were paid by outside sources for off-campus work. (Caywood Decl., ¶ 43.)*

No dispute.

390. *For example, one faculty member taught online courses for a university out of state. (Caywood Decl., ¶ 43.)*

No dispute.

391. *Another faculty member was a practicing attorney with a private practice. (Caywood Decl., ¶ 43.)*

No dispute.

392. *Caywood is aware that Burton taught online at other institutions. (Caywood Decl., ¶ 43.)*

No dispute.

393. *Throop removed a letter of direction she had issued to Dr. Eugene Alcalay from his file as a result of negotiations and because Dr. Alcalay agreed to comply with the directions in the letter (Throop Decl., ¶ 48.)*

Dispute. This is an uncorroborated assertion inappropriate as a basis for summary judgment. The court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from facts in deciding a motion for summary judgments as these are determinations to be made by the factfinder. *Liberty Lobby*, 477 U.S. at 255.

REPLY: Fact not disputed. Plaintiff's objection is unfounded.

Burton offers no evidence to the contrary.

394. *Burton filed her first EEOC charge on August 13, 2013. (Dkt. 1 paragraph 4.)*

No dispute.

395. *Burton's second EEOC charge does not name Michael Dalecki and does not describe the conduct in the Second Amended Complaint. (Bensky Decl., ¶ 5, Ex. HHHH.)*

Dispute. Dr. Burton's second EEOC charge was filed on December 5, 2014 and supplemented on July 21, 2015, identifying conduct by Dr. Dalecki which was alleged in the Second Amended Complaint, and on which, at counsel's request, the EEOC issued a notice of a right to sue. (Burton Decl. ¶¶2, 3, Ex. 2 and 3, Dkt. Nos. 54-2 and 54-3; Hawks Decl. ¶¶11-12, Ex. 51 and 52, Dkt. Nos.53-51 and 53-52)

REPLY: Any dispute is immaterial; Burton has dismissed Dalecki from this lawsuit.

Dated this 11th day of December, 2015.

Respectfully submitted,

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