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WILLIAM RUSSELL,)	CASE NO.: 2013-00138
)	
Plaintiff,)	
)	JUDGE PATRICK M. McGRATH
vs.)	MAGISTRATE HOLLY T. SHAVER
)	
CLEVELAND STATE UNIVERSITY,)	
)	
Defendant.)	
STEVEN LISS,)	CASE NO.: 2013-00139
)	
Plaintiff,)	JUDGE PATRICK M. McGRATH
)	
vs.)	MAGISTRATE HOLLY T. SHAVER
)	
CLEVELAND STATE UNIVERSITY,)	
)	
Defendant.)	

**PLAINTIFFS WILLIAM RUSSELL AND STEVEN LISS'S
JOINT PRE-TRIAL STATEMENT**

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ON COMPUTER

Pursuant to Loc. R. 7(B), plaintiffs Steve Liss and William Russell (together, “Plaintiffs”) respectfully submit this joint pretrial statement. This is an employment discrimination case set for trial beginning December 3, 2014. In short, CSU used a sham reorganization to fire only older workers in CSU’s Department of Student Life—including Plaintiffs—and then to promote only younger workers. In the process, CSU breached its contracts with both Plaintiffs. Plaintiffs respectfully reserve the right to amend this Statement, including adding witnesses and exhibits.

FACTUAL BACKGROUND

Defendant Cleveland State University (“CSU”) fired Liss, age 50, and Russell, age 66, because CSU wanted its Department of Student Life (“DSL”) to get younger. CSU hired Willie Banks to lead DSL in February 2012. Upon his hiring, Banks took an office in a hallway with younger DSL employees, separate from the three oldest DSL employees (Liss, Russell and Mary Myers), whose offices were located in a different hallway.¹ By April 2012, Banks had set to the task of justifying the termination of DSL’s three oldest workers while promoting its younger workers, and denying Liss and Russell placement in open positions for which they were qualified. *CSU admitted in deposition that based on this “100% correlation” between age and terminations, a reasonable person could conclude that age discrimination had occurred.*²

I. Plaintiffs Were Long-Term, Outstanding CSU Employees.

Plaintiffs have served CSU for a combined 55-plus years. Liss was employed by CSU for 19 years;³ Russell was employed by CSU for over 40 years.⁴ CSU recognized both

¹ Drnek Dep. 72:2-19; Plaintiff’s Consol. Dep. Ex. 500.

² Vartorella Dep. 161:12-19; Plaintiff’s Consol. Dep. Ex. 327.

³ Liss Dep. 32:20-23.

⁴ *Affidavit of William Russell* (“Russell MSJ Aff.”), attached to *Plaintiff William Russell’s Motion for Partial Summary Judgment*, filed on September 29, 2014.

Plaintiffs for their extraordinary contributions to CSU. Liss consistently earned excellent performance reviews, such that “Liss met every goal for his prior year” and “every single evaluation criteria . . . was ‘Met Expectations’ or higher.”⁵ Similarly, Russell’s outstanding work was recognized through various awards, including three nominations for CSU’s “Distinguished Service Award and national awards from the various fraternities and sororities he served in his role of Greek Life Coordinator.”⁶

II. Liss Complained About His Supervisor—Willie Banks—Disparaging Older Workers On the Basis of Age.

Upon being hired in February 2012, Banks made his dislike for older workers apparent, including regularly making age-related remarks. For instance, Banks commented that Russell and Myers were “old dogs” who could not “learn new tricks.”⁷ Liss complained about Banks’s age discrimination to at least three CSU representatives: HR representative Steve Vartorella,⁸ Banks’s supervisor—James Drnek,⁹ and CSU’s general counsel—Sonali Wilson.¹⁰

Similarly, Banks mandated reprimands of Russell and Myers but issued no such orders with respect to DSL’s younger employees.¹¹ Specifically, Banks required Liss to issue a first warning to Russell and to issue a letter of concern to Myers.¹² Liss repeatedly told Banks that he did not agree with Banks’s assessment of Russell’s and Myers’s performance and that he did

⁵ Drnek Dep.28:14-20. See also Plaintiff’s Consol. Dep. Exs. 131 & 132.

⁶ Russell MSJ Aff.

⁷ Liss Dep. 230:16-18.

⁸ Liss Dep. 100:21-101:7. Liss met with Vartorella on or around June 4 to discuss two issues,⁸ one of which was “to tell him about the kind of treatment we were receiving[,]” including that Banks was “using language that [Liss] felt uncomfortable with[,]” Liss Dep. 40:21-41:4. The other issue addressed in this conversation was whether Liss was required to follow Banks’s order to falsely reprimand Russell and Myers. Liss Dep. 40:21-25. Vartorella told Liss that he had no recourse and was required to do as Banks ordered. Liss Dep. 49:2-18. Within this conversation, Liss told Vartorella about the age-based comments Banks would make frequently. Liss Dep. 58:5-59:9. Vartorella’s only response was to encourage Liss to discuss the issues with Banks’s supervisor, Drnek.

⁹ Liss Dep. 59:19-60:1. See also Liss Dep. 97:13-17 & 177:21-178:5 (complaints to Drnek about Banks’s discriminatory order to falsely reprimand Russell and Myers).

¹⁰ Liss Dep. 46:18-47:20 & 220:10-16. Liss scheduled a meeting with the Affirmative Action representative but was terminated prior to the meeting occurring. Liss Dep. 46:18-47:20.

¹¹ Liss Dep. 40:4-8.

¹² Liss Dep. 40:6-11.

not agree that reprimand was appropriate in either case.¹³ While recognizing that he had no personal knowledge of the day-to-day performance of Russell,¹⁴ Banks nonetheless insisted on the reprimands. In the end, the reprimands were demonstrably false,¹⁵ so HR and Drnek—Banks’s supervisor—ordered that the reprimands be retracted.¹⁶

III. Banks Decided To Restructure DSL To Make It Younger.

In April 2012, Banks drafted a new organizational structure for DSL that was consistent with his desire to make the Department younger.¹⁷ The new structure put Banks—as the Associate Dean of Students—at the top with three direct reports: one for Student Organizations, one for Student Activities and one for Student Civic Engagement.¹⁸ Each of the three vectors had a Manager, who reported to Banks and a Coordinator, who reported to the respective Manager.¹⁹

Banks discussed this new structure with CSU HR representatives in May 2012 and provided job descriptions for the new positions even though drafting the descriptions was HR’s responsibility.²⁰ Banks also provided these job descriptions to Drnek.²¹ Despite this meeting and the April 2012 document Banks created setting forth his desired organizational structure,

¹³ Banks Dep. 216:9-15 & 217:2-11; Plaintiff’s Consol. Dep. Ex. 31; Liss Dep. 169:3-6.

¹⁴ Banks Dep. 147:8-11.

¹⁵ The letter of concern to Myers was premised on her alleged failure to login to OrgSync for a certain period; Liss testified that he was training Myers on OrgSync throughout the period in question and moreover, Myers was not slotted to take over OrgSync responsibilities until July 1, well after the letter of concern was issued. Liss Dep. 137:1-14 & 166:13-23. Likewise, the first warning to Russell was based on his alleged failure to provide Greek rosters in the appropriate format; however, both Russell and Liss had communicated to Banks that due to the timing of the request (school was not in session at the time), they would need some additional time to provide the rosters as requested. Liss Dep. 137:1-14.

¹⁶ Banks Dep. 151:10-152:2; Liss Dep. 50:9-17.

¹⁷ Banks Dep. 116:23-25; Plaintiff’s Consol. Dep. Ex. 317.

¹⁸ Plaintiff’s Consol. Dep. Ex. 317.

¹⁹ Plaintiff’s Consol. Dep. Ex. 317.

²⁰ Plaintiff’s Consol. Dep. Exs. 218 & 238; McCafferty Dep. 42:25-45:2.

²¹ Plaintiff’s Consol. Dep. Ex. 43.

Banks falsely claimed under oath that he “never had any discussions about restructuring until after the [Cauthen] report.”²²

IV. Banks Recommended CSU Hire His Close, Personal Friend as a Consultant To Review the Department and Then Told His Friend To Recommend Restructuring.

After deciding to reorganize the Department, Banks recommended that CSU pay his close friend, T. W. Cauthen, a mere \$3,000 to issue a consulting report concerning DSL. CSU hired Cauthen without issuing a “request for proposal,”²³ or considering anyone else.²⁴ Cauthen did not have prior experience consulting on universities similar to CSU.²⁵ Banks did not reveal this or his close relationship with Cauthen to CSU.²⁶

Banks told Cauthen in writing that Cauthen should recommend a reorganization of DSL.²⁷ Banks provided Cauthen with job descriptions for the Department’s three oldest employees, Liss, Russell and Myers, but did not provide job descriptions for the other, younger employees.²⁸ Banks also provided Cauthen with confidential HR documents concerning Russell.²⁹ Cauthen only reviewed the documents given to him by Banks and only interviewed the employees suggested by Banks. Cauthen sought no independent information.³⁰ Banks edited Cauthen’s drafts prior to submission of the final report.³¹ Most telling of all, **the structure Cauthen recommended was functionally identical to Banks’s “Org Chart AD” document, which he had created in April 2012.**³²

Q: So the final report from the leadership consultant is the same as Exhibit

²² Banks Dep. 91:13-16.

²³ Banks Dep. 88:12-15.

²⁴ Banks Dep. 90:25-91:2

²⁵ Banks Dep. 88:12-15 & 89:22-90:6; Liss Dep. 82:20-23.

²⁶ Banks Dep. 110:1-19.

²⁷ Plaintiff’s Consol. Dep. Exs. 16 & 35.

²⁸ Banks Dep. 160:8-161:15 & 162:23-163:9.

²⁹ Cauthen Dep. 156:16-158:2.

³⁰ Banks Dep. 162:17-163:12 & 205:17-22.

³¹ Banks Dep. 160:2-7.

³² Banks Dep. 222:22-223:1 (Banks “understood the Cauthen report to be consistent with the leadership and reporting structure that [he] created in Exhibit 317[.]”).

317 with respect to the Associate Dean, the reporting authority, the reporting relationships of the three vectors and the existence of a coordinator for each of those three vectors, correct?

A: Correct.³³

V. **Drnek Recommended the Structure Banks Created, Which Banks Had Instructed the Consultant to Endorse.**

On June 25, Drnek and Banks recommended restructuring DSL consistent with the structure created by Banks in April 2012 and copied by Cauthen in his consultant's report.³⁴ The recommendation was that CSU create five new jobs, place younger employees in two of those jobs without any posting or interview process, and terminate Liss, Russell and Myers—the older workers. In connection with this recommendation, CSU created a chart highlighting the ages of each individual terminated and of each individual retained.³⁵ CSU does not deny that the chart constitutes an evaluation of the employees being terminated, including Liss and Russell, based on their ages.³⁶ CSU likewise admits that the chart confirms that every staff member terminated was 50 or older and that every person assuming most or all of those employees' duties was 35 or younger.³⁷

VI. **Drnek Lied About Liss's Qualifications in Order To Obtain Approval for Liss's Termination.**

On August 9, Drnek met with his supervisor—George Walker, then CSU's Interim Provost and VP for Academic Affairs,³⁸ to seek approval for Plaintiffs' terminations. During that meeting, Drnek presented job descriptions for the new positions that were different than those Banks drafted in May/June 2012; Drnek had added new "minimum qualifications"³⁹ in an

³³ Banks Dep. 221:1-8. *See also* Liss Dep. 88:7-11.

³⁴ *See generally* Plaintiff's Consol. Dep. Ex. 15; Banks Dep. 218:7-221:8.

³⁵ Plaintiff's Consol. Dep. Ex. 327.

³⁶ Vartorella Dep. 144:9-12.

³⁷ Vartorella Dep. 158:20-159:2.

³⁸ *See, e.g.*, Drnek Dep. 66:21-25.

³⁹ *See, e.g.*, Drnek Dep. 131:19-132:1 & 132:18-133:2; Plaintiff's Consol. Dep. Ex. 218.

attempt to disqualify Plaintiffs from consideration. Despite this attempt, Liss remained qualified for the new positions. Drnek, however, falsely told Walker that Liss did not meet the newly-added minimum requirements.⁴⁰ CSU now admits that every reason for not placing Liss in the open positions was false.⁴¹

VII. CSU Refused To Place Plaintiffs in Open Positions for Which They Were Qualified.

In stark contrast to its treatment of Liss and Russell, CSU promoted substantially younger employees within the Department to two of the new Assistant Dean positions even though the employees did not respond to any posting, interview for the positions or even ask to be placed in the positions.⁴² CSU simply refused to make any effort to place Liss or Russell in positions for which they were qualified. This violates CSU policies.

- With respect to professional staff like Liss, the applicable policy provides that if there is a termination because of a reorganization, CSU “shall make a reasonable effort to secure alternative appointments within the University in open positions for which the affected individual is qualified.”⁴³
- Russell’s contract with CSU provided that in the event of a reorganization impacting Russell, CSU was required to transfer him into vacant posted bargaining unit positions for which he was qualified.⁴⁴

Liss ultimately applied for the three open positions in DSL.⁴⁵ Despite his superior qualifications, he was only granted an interview for one position.⁴⁶ Then CSU refused to consider him for the position in retaliation for Liss seeking CSU’s assurances that he would not

⁴⁰ Plaintiff’s Consol. Dep. Ex. 15; Drnek Dep. 151:12-15.

⁴¹ Drnek Dep. 137:23-139:11 & 140:19-141:15

⁴² Banks Dep. 59:22-60:11. *See also* Banks Dep. 59:10-21 (Banks did not consider any of the older employees within the Department for the positions to which Bergman and Johnston were promoted) & 178:18-179:20 (admitting differential treatment of Bergman in comparison to Liss because Bergman received a promotion without even asking and Banks did not even ask Liss if he was interested in the position to which Bergman was promoted).

⁴³ Amended Complaint at Exhibit A.

⁴⁴ *See* Complaint at ¶¶51-52.

⁴⁵ Liss Dep. 243:16-22.

⁴⁶ Liss Dep. 242:4-14.

be discriminated or retaliated against.⁴⁷ CSU ultimately hired, into the positions Liss had applied for, three substantially younger and less-qualified individuals, including two individuals, Jill Courson (the new Assistant Dean for Student Engagement) and Melissa Wheeler (the new Coordinator for Commuter Affairs & Student Center Programs), who had no previous experience at commuting or urban universities.⁴⁸

CSU's lack of effort to place Russell into vacant posted bargaining unit positions for which he was qualified is equally apparent. CSU transferred all of Russell's duties to a substantially younger new hire (and long-time friend of Banks),⁴⁹ Jill Courson, and had no specific discussions with Russell concerning any other job openings for which he was qualified.⁵⁰

VIII. Russell Requested FMLA Leave Prior to His Termination, Which He Was Unable To Take Due To His Termination.

CSU's termination of Russell resulted in him not being able to take FMLA leave to which he was entitled. CSU expressed its animosity towards Russell's leave requests in other ways as well, including instructing Liss not to accommodate Russell's health condition and refusing to rehire Russell.⁵¹

IX. CSU Recognizes That the Reorganization of DSL Was a Sham.

In the time since CSU fired only older workers and hired only younger workers, under the false claim of a reorganization, every administrator involved in the purported "reorganization" has left or is leaving CSU, or has been reassigned. Drnek has left CSU and

⁴⁷ Liss Dep. 243:6-15; Drnek Dep. 176:11-19.

⁴⁸ Banks Dep. 202:14-22.

⁴⁹ Banks Dep. 173:10-19.

⁵⁰ Russell Dep. 204:21-24 (was never offered a position at CSU after his termination). *See also* Russell Dep. 202:23-203:5 (Russell was told during the termination meeting that there were no part-time positions open and therefore CSU could not place him in any open position); Banks Dep. 175:21-23 (Banks never made any efforts to help Russell find a job).

⁵¹ Russell Dep. 199:9-200:3, 202:23-203:5 & 204:21-24; Liss Dep. 78:22-79:15; Russell Dep. 199:9-200:3.

now works in Bakersfield, California.⁵² Banks was denied promotion into Drnek's position and is actively interviewing with other schools.⁵³ Banks no longer reports directly to Drnek's replacement. Vartorella was reassigned and no longer supports DSL. Most tellingly, less than a year after paying Cauthen \$3,000 for his "report," CSU hired a new consultant for \$49,000 to conduct a new study of DSL.⁵⁴

LEGAL ISSUES AND ARGUMENT

I. Summary of Legal Issues.

Plaintiffs incorporate by reference their brief in opposition to CSU's motion for summary judgment, and further summarize the following legal issues:

1. Whether CSU discriminated on the basis of age against Liss and Russell when it terminated only Liss, Russell and other workers aged 50 or older.
2. Whether CSU discriminated on the basis of age against Liss and Russell when it refused to place them into open positions for which they were qualified, and instead filled those positions with substantially younger, less qualified persons.
3. Whether CSU retaliated against Liss because he complained of age discrimination.
4. Whether CSU interfered with Russell's exercise of his FMLA rights and/or retaliated against him for exercising those rights.
5. Whether CSU breached its contractual obligations to Liss and Russell.
6. The damages suffered by Liss and Russell.
7. Any right to any affirmative defense asserted by CSU.

These issues are set forth in more detail in the sections below.

II. Plaintiffs May Prove Discrimination with Either Direct or Indirect Evidence.

⁵² Drnek Dep. 161:20-24.

⁵³ Banks Dep. 27:12-20.

⁵⁴ See, e.g., Banks Dep. 30:17-31:1.

R.C. 4112.02(A) prohibits employers from discriminating based on age when making employment decisions.⁵⁵ Under Ohio law, there are two primary methods for proving discriminatory intent: the “direct” evidence method and the “indirect” evidence method.⁵⁶ A plaintiff may pursue his evidentiary burden under either method, or under both.⁵⁷ Under the direct evidence method, a plaintiff may offer “evidence of any type”—direct, circumstantial, or statistical—to “directly” prove the ultimate issue of unlawful intent.⁵⁸ Importantly, “direct evidence” refers to a **method** of proof, **not a type** of evidence.⁵⁹ This method differs from the indirect evidence method, which uses a multi-factor burden-shifting scheme to “indirectly” prove unlawful intent by eliminating common legitimate motives.⁶⁰

III. Plaintiffs Will Present Direct Evidence of Discrimination at Trial.

There is no dispute that there is a direct and absolute correlation between age and termination. In other words, zero older workers were promoted, and zero younger workers were terminated. This constitutes direct evidence of discrimination.⁶¹ CSU’s conduct and comments reflecting age-based stereotypes constitute additional direct evidence of age

⁵⁵ R.C. 4112.02(A).

⁵⁶ *Mauzy v. Kelly Services, Inc.*, 664 N.E.2d 1272, 1276-79, 75 Ohio St. 3d 578 (1996). See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (articulating the indirect method for demonstrating discriminatory intent under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.).

⁵⁷ See *Mauzy*, 664 N.E.2d at 1276-79,

⁵⁸ *Mauzy*, 664 N.E.2d at paragraph one of the syllabus.

⁵⁹ *Id.* (explaining *Kohmescher v. Kroeger Co.* (1991), 61 Ohio St.3d 501) (emphasis added). The *Mauzy* court, in clarifying the meaning of “direct evidence” as it is used in reference to the “direct evidence method,” emphasized that the term “is, in a sense, a misnomer.” *Id.* at 1279. It does not refer to “direct evidence” as the term is traditionally used relative to circumstantial evidence, *i.e.*, it does not refer to that **type** of evidence from which the fact-finder need not draw any inference to establish the fact for which the evidence is offered. *Id.* (clarifying that “direct evidence of discrimination” refers to a method of proof, not a type of evidence).

⁶⁰ *Id.* at 1276-78.

⁶¹ *EEOC v. Atlas Paper Box Co.*, 868 F.2d 1487, 1501 (6th Cir. 1989). The Supreme Court has noted that “fine tuning of the statistics” is not necessary in the face of “the inexorable zero.” *Teamsters*, 431 U.S. at 342 n.23. See also *United States v. Gregory*, 871 F.2d 1239, 1245 n.20 (4th Cir. 1989) (same). In cases, such as this one, the “inexorable zero speaks volumes” and establishes evidence of discrimination. *Barner v. City of Harvey*, 1998 U.S. Dist. LEXIS 14937, *160 (N.D. Ill. Sept. 16, 1998).

discrimination.⁶² A few examples are: Banks stating, in reference to older employees, “you can’t teach old dogs new tricks,”⁶³ his description of the older employees as “old fashioned,” and his criticisms of their programs as “out-dated.”⁶⁴

IV. Plaintiffs Will Present Overwhelming Indirect Evidence of Discrimination at Trial.

Employees may also use indirect evidence to show that they have been the victim of discrimination through the *McDonnell-Douglas* burden-shifting method of proof.⁶⁵ This method requires an employee to establish a *prima facie* case of discrimination.⁶⁶ If the employee establishes a *prima facie* case, a mandatory presumption of discrimination arises.⁶⁷ A defendant must then articulate a legitimate, non-discriminatory reason for the action it took against the plaintiff.⁶⁸ If the employer satisfies this burden, a court must afford the plaintiff an opportunity to demonstrate that the employer’s rationale is actually pretext for unlawful discrimination.⁶⁹

A. Plaintiffs Will Easily Establish Their *Prima Facie* Cases.

Courts universally agree that the *prima facie* burden is not intended to be onerous.⁷⁰ Plaintiffs will easily meet their *prima facie* burden at trial: (1) there is no dispute that both were over 40 at the time of their terminations; (2) CSU admits that Plaintiffs were qualified for the positions they held and gave both Liss and Russell outstanding annual evaluations;⁷¹ (3)

⁶² See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251, 109 S. Ct. 1775, 1791 (1989) (holding performance criticisms voiced while the plaintiff was being considered for a promotion that were based in common stereotypes permitted the inference that discrimination was the motivating factor behind the denial of the promotion, even if the criticisms were true).

⁶³ Liss Dep., p. 230.

⁶⁴ See, e.g., Russell Dep. 169:19-25 & 170:6-10.

⁶⁵ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

⁶⁶ See, e.g., *Wexler v. White's Fine Furniture*, 317 F.3d 564, 574 (6th Cir. Ohio 2003).

⁶⁷ See *Coburn v. Rockwell Automation, Inc.*, 238 Fed. App'x 112, 119 (6th Cir. Ohio 2007); see also *Lulaj v. Wackenhut Corp.*, 512 F.3d 760, 765 (6th Cir. 2008).

⁶⁸ *Mauzy*, 664 N.E.2d at 1277.

⁶⁹ *Id.*

⁷⁰ *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248, 251 (1981).

⁷¹ Drnek Dep. 28:14-20; Banks Dep. 37:2-6 & 68:20-23; Plaintiff’s Consol. Dep. Exs. 131 & 132.

Plaintiffs were terminated and denied rehire; and (4) Plaintiffs were treated differently than substantially younger DSL employees Bob Bergman and Jamie Johnston. As to the final prong, Plaintiffs will offer substantial evidence of differential treatment, including that Plaintiffs were subjected to scrutiny and review Bergman and Johnston were not subject to (e.g. Banks ordered that Russell be reprimanded, and Banks only sent the job descriptions for Plaintiffs and another older employee—Mary Myers—to Cauthen); and Plaintiffs were terminated and not rehired even though there were open positions for which they were qualified while Bergman and Johnston were promoted into positions for which they neither applied nor interviewed.

B. CSU’s Stated Reason for Terminating Plaintiffs Is Demonstrably False and Pretext for Unlawful Discrimination.

Pretext may be established “either directly by persuading the [trier of fact] that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.”⁷² “[T]he factfinder’s disbelief of the reasons put forward by the defendant” will allow it to infer intentional discrimination.⁷³ If “disbelief is accompanied by a suspicion of mendacity,” the likelihood of intentional discrimination is increased, permitting the factfinder to infer discrimination more readily.⁷⁴

CSU claims that the “sole reason” for Plaintiffs’ termination was the reorganization of the Department based on the Cauthen Report.⁷⁵ CSU’s stated reason for the terminations is patently false and pretext for unlawful discrimination. The evidence at trial will show that as of April 24, 2012, over a month before Cauthen’s report, Banks had already designed the

⁷² *Burdine, supra*, 450 U.S. at 256.

⁷³ *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284, 1294 (D.C. Cir. 1998) (internal quotations omitted).

⁷⁴ *Id.*

⁷⁵ Banks Dep. 39:22-25 & 143:24-144:6.

reorganization.⁷⁶ By May 14, two weeks before Cauthen's report, Banks had revised the job descriptions for the older workers and then held a meeting with Drnek, among others, to discuss the "Reorganization Plan."⁷⁷ Only after the structure had been designed and the job descriptions revised did Banks hire his close friend Cauthen to pretend that Cauthen had devised the plan himself. Cauthen did not ask for any documents, reviewed only the documents given to him by Banks, and only spoke with the people determined by Banks; then he recommended a reorganization that mirrored the plan designed by Banks in April.⁷⁸ The overwhelming evidence shows that the terminations of Liss and Russell were not based on the Cauthen Report, but were decided by Banks many weeks before Cauthen's Report. The report is sham and pretext to hide CSU's plan to fire the older workers.

Additional evidence of pretext is that Drnek changed the job descriptions drafted in May/June 2012 in an effort to disqualify Plaintiffs for the new positions.⁷⁹ Moreover, Drnek still had to lie about Liss's lack of qualifications: Drnek now admits that the five reasons he gave his supervisor, George Walker, for why Liss should not be placed in any of the new positions were untrue.⁸⁰ The impact of CSU's multiple misrepresentations is that they "permit the trier of fact to conclude that the employer unlawfully discriminated."⁸¹

⁷⁶ Vartorella Dep. 161:12-19; Plaintiff's Consol. Dep. Ex. 327.

⁷⁷ Plaintiff's Consol. Dep. Ex. 238; McCafferty Dep. 42:25-45:2.

⁷⁸ Banks Dep. 222:22-223:1 (Banks "understood the Cauthen report to be consistent with the leadership and reporting structure that [he] created in Exhibit 317[.]").

⁷⁹ Drnek Dep. 131:19-134:1.

⁸⁰ See *Plaintiff's Consolidated Memorandum in Opposition to Defendant's Motion for Summary Judgment* at pp. 20-21.

⁸¹ *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. at 148 (internal citations omitted).

Finally, CSU's failure to investigate Plaintiffs' complaints of discrimination permits the jury to infer a discriminatory motive.⁸² Liss complained to at least three CSU representatives. Nonetheless, CSU admits it never investigated the complaints about Banks's discrimination.⁸³

V. At Trial, Plaintiffs Will Offer Evidence Showing That CSU Engaged in Unlawful Retaliation.

Plaintiffs will establish a *prima facie* case of retaliation: (1) Plaintiffs complained about Banks's discrimination, (2) the complaints were made to at least three CSU representatives, and (3) CSU fired and refused to rehire Plaintiffs. The final element of the *prima facie* case is a causal connection between the protected activity—here, the complaints of discrimination—and the adverse action—here, the terminations and refusals to rehire.⁸⁴ “[T]emporal proximity between the events is significant enough to constitute evidence of a causal connection for the purposes of satisfying a *prima facie* case of retaliation.”⁸⁵ Other evidence, from which the jury may independently infer a causal connection, is that CSU refused to investigate Plaintiffs' complaints.⁸⁶ Finally, as to Liss, the retaliation is particularly clear: while seeking the new open positions, Liss complained about discrimination and “**as a result of that, unfortunately,**

⁸² *Malik v. Carrier Corp.*, 202 F.3d 97, 105 (2d Cir. 2000) (“an employer's investigation of a sexual harassment complaint is not a gratuitous or optional undertaking; under federal law, an employer's failure to investigate may allow a jury to impose liability on the employer.”) (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275 (1998)); *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1033 (9th Cir. 2006) (“The summary judgment record does not indicate affirmatively whether Electra's Board of Directors investigated or evaluated Cornwell's concern that Sharp's actions were racially motivated. A reasonable jury could view Electra's failure to investigate as an attempt to conceal Sharp's illegitimate motives.”); *Collins v. Cohen Pontani Lieberman & Pavane*, 2008 U.S. Dist. LEXIS 58047, *35-36 (S.D.N.Y. July 30, 2008) (“A reasonable jury could find that Pavane's failure to investigate this complaint pursuant to CPLP's discrimination policy was evidence that he was covering up discriminatory treatment.”).

⁸³ Vartorella Dep. 171:8-10.

⁸⁴ *Nguyen v. City of Cleveland*, 229 F.3d 559, 564 (6th Cir. 2000) (citing *EEOC v. Avery Dennison Corp.*, 104 F.3d 858, 861 (6th Cir. 1997)).

⁸⁵ *Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 525 (6th Cir. 2007) (citing *Clark Cty. School Dist. v. Bredeen*, 532 U.S. 268, 273 (2001)). Adverse actions that fall within a three-month period between the protected activity and the adverse action is sufficient to create a causal connection for the purposes of establishing a *prima facie* case. *Goeller v. Ohio Dep't. of Rehab. & Corr.*, 285 F. App'x 250, 257 (6th Cir. 2008) (two months); *Singfield v. Akron Metro. Hous. Auth.*, 389 F.3d 555, 563 (6th Cir.2004) (three months).

⁸⁶ See n. 149, *supra*.

you know, Steve -- his -- that -- that kind of ended his part in that -- in that particular search.⁸⁷

Plaintiff will then, through the evidence set forth *supra* Section IV(B), establish that CSU's offered reason for the adverse actions against Plaintiffs are a pretext for retaliation.

VI. Plaintiffs Will Prove FMLA Interference and Retaliation at Trial.

There is no dispute that Russell was entitled to FMLA leave. At trial, Plaintiffs will offer evidence establishing that both Russell and Liss informed CSU of Russell's need to take FMLA leave.⁸⁸ CSU engaged in retaliation and interference prohibited under the FMLA by instructing Liss not to accommodate Russell's medical needs,⁸⁹ and by firing Russell before he could take leave and then refusing to rehire him.⁹⁰

VII. Plaintiffs Will Establish CSU's Multiple Breaches of Contract at Trial.

With respect to Liss, CSU was obligated to make affirmative "reasonable efforts to secure alternative appointments within the University in open positions."⁹¹ At the time of the reorganization, there were three open Assistant Dean positions for which Liss was qualified. Instead of placing Liss into any of these positions, CSU promoted two younger less qualified workers (Bergman and Johnston) and then left the third position open while it started a three-month search. CSU breached its contract by failing to make any effort to place Liss into open positions for which he was qualified.⁹²

As to Russell, he will prove at trial that CSU, among other things, failed to provide him all service credit to which he was entitled and failed to pay him for all time worked.

⁸⁷ Drnek Dep. 168:19-21 (emphasis added).

⁸⁸ Russell Dep. 161:17-25 & 191:5-192:9; *Affidavit of William Russell* ("Russell BIO Aff."), attached to *Plaintiff's Consolidated Memorandum in Opposition to Defendant's Motion for Summary Judgment*, filed on October 15, 2014.

⁸⁹ Liss Dep. 78:22-79:15; Russell Dep. 199:9-200:3.

⁹⁰ Russell Dep. 199:9-200:3, 202:23-203:5 & 204:21-24.

⁹¹ Plaintiff's Consol. Dep. Ex. 328, at §8.5.4.4.3(b), p. XV.

⁹² *See, e.g.*, Drnek Dep. 150:8-151:11; Banks Dep. 175:21-23; Vartorella 96:22-97:4 & 98:14-22.

EVIDENTIARY ISSUES

Plaintiffs will file motions *in limine* with respect to certain evidentiary issues.

Plaintiffs' counsel intends to propose various trial stipulations to CSU's counsel.

WITNESSES

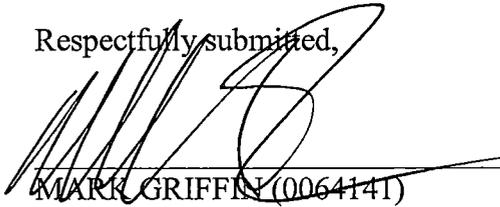
Plaintiff anticipates calling the following witnesses:

1. Plaintiff William Russell;
2. Plaintiff Steven Liss;
3. Steve Vartorella;
4. Willie Banks;
5. Donna Whyte;
6. Jamie Johnston;
7. Jill Courson;
8. George Walker;
9. Sandra Emerick;
10. Jean McCafferty;
11. Bob Bergman;
12. Daniel Lenhart;
13. John Burke, Ph.D.;
14. Defendant's custodian of financial and business records; and
15. Rebuttal witnesses and Defendant's witnesses.

EXHIBITS

Plaintiffs' Exhibit List is attached hereto as Exhibit 1. Plaintiffs reserve the right to use any exhibit identified by CSU. Plaintiffs may enlarge all and/or a portion of some exhibits for demonstrative purposes. Plaintiffs reserve the right to amend this exhibit list.

Respectfully submitted,



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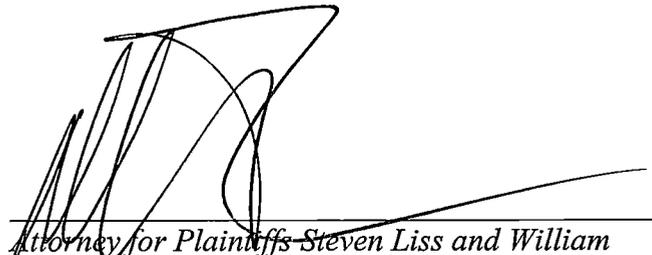
*Attorneys for Plaintiffs Steven Liss and William
Russell*

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing was served via regular US mail, on this 30th
day of October 2014 to:

Randall W. Knutti, Esq.
Amy S. Brown, Esq.
Emily M. Simmons, Esq.
Ohio Attorney General's Office
Court of Claims Defense Section
150 East Gay Street, Floor 18
Columbus, OH 43215

Attorneys for Defendant



*Attorney for Plaintiffs Steven Liss and William
Russell*

IN THE OHIO COURT OF CLAIMS

WILLIAM RUSSELL,)	CASE NO.: 2013-00138
)	
Plaintiff,)	
)	JUDGE PATRICK M. McGRATH
vs.)	MAGISTRATE HOLLY T. SHAVER
)	
CLEVELAND STATE UNIVERSITY,)	
)	
Defendant.)	
)	
STEVEN LISS,)	CASE NO.: 2013-00139
)	
Plaintiff,)	JUDGE PATRICK M. McGRATH
)	
vs.)	MAGISTRATE HOLLY T. SHAVER
)	
CLEVELAND STATE UNIVERSITY,)	
)	
Defendant.)	

PLAINTIFFS' EXHIBIT LIST

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Cleveland, Ohio 44113
Tel. (216) 621-3500
Fax (216) 621-3422

Attorneys for Plaintiffs Steven Liss and William Russell



Plaintiff anticipates that she will submit the following exhibits at the trial of this matter:

Tr. Ex. #	Description
1.	Complaint – Liss
2.	Subpoena for Deposition of Dr. Drnek for Liss
3.	Complaint – Russell
4.	Subpoena for Deposition of Dr. Drnek for Russell
5.	CSU Answer – Liss
6.	CSU Answer – Russell
7.	First Amended Complaint-Liss
8.	First Amended Complaint-Russell
9.	CSU Answer to First Amended Complaint-Liss
10.	CSU Answer to First Amended Complaint-Russell
11.	Defendant’s Responses to Plaintiff’s First Set of Interrogatories – Liss
12.	Defendant’s Response to Plaintiff’s First Request for Production of Documents Liss
13.	Defendant’s Response to Plaintiff’s Second Set of Interrogatories and Request for Production of Documents – Liss
14.	Defendant’s Responses to Plaintiff’s First Set of Interrogatories – Russell
15.	Defendant’s Response to Plaintiff’s First Request for Production of Documents – Russell
16.	Defendant’s Response to Plaintiff’s Second Set of Interrogatories and Request for Production of Documents – Russell
17.	Termination Letters for Liss, Myers, Russell
18.	Rationale for Proposed Reduction in Work Force
19.	Reorganization Notes from George Walker-Jim Drnek Meeting
20.	Professional Staff Job Descriptions and Organizational Charts

21. Student Life Reorganization Salary Proposals
22. Consultant Agreement for Dr. T.W. Cauthen
23. Performance Reviews – Russell
24. Handwritten Notes on Organizational Structure
25. Position Descriptions – Russell, Myers, Lenhart
26. Professional Staff Job Descriptions
27. Department of Student Life Leadership Consultant Report-June 8th
28. Department of Student Life Leadership Consultant Report-June 15th
29. Russell Hiring Paperwork
30. Banks Greek Life Questionnaire
31. Liss Review of Myers at Banks' Request
32. Email from Liss to Banks re Confidential Draft Memos
33. Emails between Mearns and Drnek re Student Leadership & Involvement Consultant
34. Email from Banks to Vartorella, Drnek re Consultant Visit
35. Email from Banks to Drnek re Consultant Scope of Work
36. Email from Banks to various re Consultant Visit
37. Email from Banks to Drnek re Student Organizations
38. Email from Banks to various re Consultant Visit
39. Email from Banks to Drnek forwarding Email from Liss to Banks re CSI Update
40. Russell Responses to Greek Life Questionnaire
41. Email from Banks to Drnek re Updated Position Descriptions
42. Email from Banks to Drnek forwarding Email from Liss to Banks, Russell re Greek Life Information
43. Email from Russell to all Greek Organizations re Request from Associate Dean Willie Banks

44. Email/Memo from Banks to Drnek re Recommendations for Reorganization within Student Life
45. Emails between Liss, Russell, Drnek, Banks, Myers re Written Warning of June 18, 2012 Retraction Request
46. Email from Drnek to Vartorella, Banks re Student Life Update – Confidential
47. Email from Banks to Drnek re Draft Greek Life Reorganization Letter to Students
48. Email from Banks to Drnek re Work Assignments
49. Email from Banks to Liss, Drnek, Myers, Vartorella re FY13 Goal Statements
50. Memo to Colleagues from Drnek re Reorganization
51. Email from Banks to Liss, Drnek, Vartorella re CAS Assignment/Housing & Residential Life
52. Coordinator of Greek Life & Commuter Programs Job Description
53. Drnek Handwritten Notes re SGA
54. Memo from Drnek to Student Government Association re Follow-up on 2/26/13 Meeting
55. Memo from Student Government Association to Drnek, Zhu re Concerns
56. New Student Affairs/Student Life Staff Responsibilities
57. Email from Johnston to Drnek re Student Life Issue/Student Complaint
58. Cauthen Resume
59. 2010 Liss Performance Review
60. 2008 Liss Performance Review
61. 2009 Liss Performance Review
62. 2003 Liss Supervisor of the Year Award
63. Professional Staff Reclassification Request Forms
64. Proposal for Leadership Consultant/Scope of Work
65. Department of Student Life Reorganization Plan Draft

66. Email from Drnek to Vartorella, Mutti, McCafferty, Banks re Student Life Reorganization 2012
67. Email from Liss to Horsfall, Vartorella, Banks re Technology Update/Greek Life PIP
68. Email from Liss to Banks re Greek Life PIP
69. Director of Center for Student Involvement Job Description
70. Various Student Organizations Job Descriptions
71. Email from Drnek to Walker, Snell, Artbauer, Zhu, Banks re Student Life Reorganization Update
72. Email from Drnek to Various w/Formal Reorganization Announcement
73. Email from Vartorella to Begalla, Banks, Mutti, Drnek re Recent Student Life Events
74. Email from Liss to Banks, Myers re Greek Recruitment & Fall Activities
75. Email from Liss to Banks, Russell, Myers re Greek Relationship Agreement/Draft
76. Email from Drnek to Banks re Greek Life Changes
77. Rationale for Reduction in Work Force, Proposed Layoff 9/1/12
78. Draft – Reduction in Workforce – Student Life Reorganization
79. Liss Resume
80. Myers Resume
81. Memo from Banks to Drnek re Recommendations for Reorganization within Student Life
82. Salary Proposal
83. Various Student Life Job Descriptions
84. Draft Rationale for Reduction in Work Force – Liss – Proposed Layoff 7/15/12
85. Draft Rationale for Reduction in Work Force – Russell – Proposed Layoff 7/15/12
86. 2009 Russell Performance Review
87. 2008 Russell Performance Review

88. Liss Responses to Student Organizations Questionnaire
89. Draft – Greek Life PIP
90. Lists from Liss/Banks Meetings
91. Liss OrgSync Connect Conference Notes & Ideas
92. Notes from Liss/Banks Meeting
93. Email from Liss to Banks re Confidential/Revised Draft Memos
94. Email from Liss to Myers, Drnek re TKE Graffiti Party
95. Liss List of Items for Review with Dr. Banks
96. Termination Letter to Liss
97. Termination Letter to Myers
98. Termination Letter to Russell
99. Associate Dean of Student Life Proposed Organizational Structure Charts
100. Memo to Students re Reorganization
101. Handwritten Notes from Donna Whyte re Meeting with Banks re Discrimination
102. Realignment of Duties in Student Life Reorganization
103. Personal Data Worksheet – Catherine Lewis
104. Personal Data Worksheet – Jamie Stoegbauer
105. Personal Data Worksheet – Jill Courson
106. Personal Data Worksheet – Melissa Wheeler
107. Personal Data Worksheet – Robert Bergmann
108. 2009 Liss Performance Review
109. 2008 Liss Performance Review
110. Student Life Reorganization Chart
111. Student Life Reorganization Salary Plan
112. Personal Data Worksheet – Willie Banks

113. Benefit Costs for Russell & Liss
114. Position Description – Bergmann
115. Position Description – Courson
116. Position Description – Johnston
117. Position Description – Lewis
118. Position Description – Liss
119. Position Description – Russell
120. 2010 Liss Performance Review
121. 2011 Liss Performance Review
122. 2012 Liss Performance Review
123. Email from Drnek to Vartorella, Banks re Student Life Update – Confidential
124. Email from Banks to Drnek forwarding Email from Liss to Russell re First Written Warning Memo
125. Emails between Banks, Agent, Drnek re Greek Life Changes
126. Liss Responses to Student Organizations Questionnaire
127. Email from Banks to Drnek forwarding Email from Myers to Liss, Banks re Job Performance Concern
128. Email from Banks to various re Consultant Visit
129. Proposal for Leadership Consultant/Scope of Work
130. Email from Banks to Liss, Drnek, Werner re Student Involvement Workshop Series/Funding Query
131. Email from Banks to Drnek forwarding Email from Liss to Banks re CSI Update
132. Email from Liss to Banks, Myers re Greek Recruitment & Fall Activities
133. Department of Student Life Reorganization Plan Draft
134. Email from Banks to Liss, Drnek re Recap of Meeting
135. Email from Banks to Liss re Confidential Draft Memos

136. Email from Banks to Drnek re Requested Materials
137. Email from Banks to Drnek forwarding Email from Liss to Banks re Quick Update/Written Warning of June 18, 2012 Retraction Request
138. Email from Banks to Drnek re Reorganization
139. Email from Banks to Drnek fwd Email from Liss to Banks, Drnek, Myers, Russell, Lenhart re Urban 13/Student Organizations Research
140. Syllabus for HON 201 – taught by Liss
141. Email from Banks to Drnek re bullet list-reasons for reorg
142. Email from Banks to Bergmann re New Organizational Structure
143. Email from Banks to Liss re Update/First Written Warning Memo
144. Email from Banks to Liss re Draft Retraction/Written Warning of June 18, 2012 Retraction Request
145. Email from Vartorella to Banks, Drnek, Mutti re Job Descriptions
146. Email from Liss to Lenhart, Myers, Russell, Banks re Update/Scheduled Appointment Hours
147. Email from Liss to Horsfall, Vartorella, Banks re Technology Update/Greek Life PIP
148. Draft Greek Life PIP Memo from Liss to Russell, Banks, Myers
149. Email from Liss to Russell, Myers, Banks re Greek Relationship Agreement Draft
150. Email from Liss to Banks re Greek Life PIP
151. Draft Greek Life PIP Memo from Liss to Russell, Banks, Myers
152. Email from Bergmann to Banks re Items Needed
153. Email from Bergmann to Banks re Proposal to the President
154. Student Organization Officers Return Rates
155. Email from Myers to Liss, Banks, Drnek re FY12 Student Organizations Report Summary
156. Email from McCafferty to Drnek, Banks, Vartorella re Job Descriptions

157. Memo from Student Government Association to Office of the President re Increasing Allocations for Student Activities
158. Email from Drnek to Vartorella, Mutti, McCafferty, Banks re Student Life Reorganization
159. Email from Drnek to Vartorella, Mutti, McCafferty, Banks re Materials Provided to Provost
160. Email from Drnek to [REDACTED] re Greek Life Changes
161. Email from Drnek to Vartorella, Banks re Info for Provost Walker
162. Email from Drnek to Banks re Reorg Info
163. Email from Drnek to Napier, Banks re Confidential – Student Life Reorganization
164. Email from Drnek to various re Student Life Reorganization
165. Email from Drnek to Walker, Snell, Artbauer, Zhu, Banks re Student Life Reorganization Update
166. Email from Drnek to Vartorella, Banks re Student Life Update – Confidential
167. Viking Expeditions Constitution
168. Greek Organizations List
169. Email from Russell to all Greek Orgs re Request from Associate Dean Willie Banks
170. Email from Drnek to Kalnasy, Long, Walker, Snell re Student Life Reorganization Info
171. Email from Drnek to Walker, Snell, Artbauer, Zhu re Student Life Reorganization Update
172. Department of Student Life Reorganization Plan
173. Rationale for Reduction in Work Force – Liss
174. Email from Brown to McHenry re Keeling & Associates – Proposal for Services
175. Keeling & Associates Proposal for Services
176. Email from Brown to McHenry re Keeling & Associates Report
177. Keeling & Associates Review of Student Programs and Services

178. Email from Cannon to Smith re Homecoming Feedback
179. Memo from Grospitch to Smith re Homecoming Scheduling Problems
180. Memo from Student Government Association to Smith re Homecoming Planning Process 2012
181. Intentionally Left Blank
182. Email from Liss to Horsfall, Vartorella re Greek Life PIP
183. Email from Liss to Myers, Russell, Banks, Drnek, Vartorella, Horsfall re Evaluation Update
184. Email from Vartorella to Mutti, Horsfall, Krasniansky re Meeting Date/Time/Location Confirmed
185. Banks 2012 Review
186. Rationale for Reduction in Work Force – Liss
187. Email from Banks to McCafferty re Hello
188. Attachments to Email from Banks to McCafferty re Hello
189. Handwritten Notes on Meeting w/Drnek, Banks, Vartorella
190. Purchase Requisition for Consulting Review w/Keeling & Associates
191. Schedule A to Consulting Agreement – Revised Proposal for Services
192. Email from Drnek to himself -2011-2012 Annual Report Student Life
193. Email from Drnek to Johns Hopkins re Application Materials for Vice Provost for Student Affairs w/Attachments
194. Email from Drnek to Napier, Day, Banks re Confidential – Student Life Reorganization
195. Email from Banks to Drnek, Lenhart, Keller, Liss, [REDACTED], Russell, Bergmann, Myers, Johnston, Lee, Sparks re Consultant Visit
196. Email from Banks to Drnek forwarding Email from Liss to Banks re CSI Update
197. Email from Banks to Drnek forwarding Email from Liss to Banks re Student Organizations & Greek Life Questionnaires/Inquiries
198. New Student Affairs/Student Life Staff Responsibilities

199. Email from Mutti to Drnek, Vartorella re Draft Letter for Steve Liss – Finalized
200. Email from Napier to Drnek re Confidential – Student Life Reorganization
201. Email from Drnek to Vartorella, Banks re Student Life Update – Confidential
202. Email from Drnek to Vartorella, McCafferty, Mutti, Banks re Materials Provided to Provost
203. Email from McCafferty to Drnek, Banks, Vartorella re job descriptions
204. Email from Banks to Drnek re Update First Written Memo Warning
205. Email from Banks to Liss BCC Drnek re Recap of Meeting
206. Email String between Drnek, Vartorella, Banks, Mutti re to review reorg plan
207. Email String between Banks, Drnek and Vartorella re consultant visit
208. Email from Drnek to Boise, Goodman at CSU Law re Student Org Coordinator Job Description
209. Email from Drnek to Staff, Liss, Lee re Out of Office
210. Posting Preview Assistant Dean, Student Engagement
211. EEO Summary re position Assistant Dean, Student Engagement
212. Posting Info for Assistant Dean, Student Engagement
213. Posting Info for Assistant Dean, Student Engagement
214. Posting Info for Assistant Dean, Student Engagement for top 5 candidates
215. Application of Courson for Assistant Dean, Student Engagement
216. Application of Liss for Assistant Dean, Student Engagement
217. Resume of Jill Courson
218. Resume of Steven Liss
219. EEO Summary, Coordinator, Commuter Affairs
220. Posting Info for Coordinator, Commuter Affairs
221. Posting Info for Coordinator, Commuter Affairs
222. Posting info for Coordinator, Commuter Affairs

223. Posting Preview Job Description Coordinator, Commuter Affairs
224. Liss Application for the position of Coordinator, Student Activities
225. Resume of Steven Liss
226. EEO Summary re Applicants for Coordinator, Student Activities
227. EEO Summary re Applicants/Finalists for Coordinator Student Activities
228. Application of Steven Liss for position of Coordinator Commuter Affairs & Student Center Programs
229. Steve Liss Resume
230. Posting Preview-Coordinator, Student Activities
231. Email from Bergmann to Vartorella re Coordinator of Commuter Affairs
232. Email from Bergmann to Liss re Coordinator, Student Activities Search
233. Email String between Banks, Bergmann, Johnston re Interview Coordinator of Commuter Affairs
234. Email String between Liss and Bergmann re Interview times for Coordinator, Student Activities Interview
235. Email from Catherine Lewis to Bergman RE Coordinator Student Activities Interview
236. Email String between Bergmann to Search Committee for Coordinator, Student Activities
237. Search Committees List of Applicants to Interview
238. Review Rating Form for Applicants for Coordinator, Student Activities Position
239. Email from Keller to Liezer re Search Updates
240. Posting Review, Assistant Dean, Student Engagement
241. Hiring Proposal for Jill Courson
242. Resume of Jill Courson
243. EEO Summary re Applicants for Assistant Dean, Student Engagement Position

244. Email String between Brown, Hinton-Hannah, Vartorella re Candidate Interviews for the position of Assistant Dean, Student Engagement
245. Email String between Drnek and Brown re Rating Forms for Student Life Job Candidates
246. Professional Vacancy Checklist-New Hire Catherine Lewis
247. Posting Review for Coordinator, Student Activities
248. Email from HR to Brown re New Hire Approval Memo for Catherine Lewis
249. Hiring Proposal for Catherine Lewis
250. CSU Application for Catherine Lewis for the position of Coordinator, Student Activities
251. Cover Letter and Resume for Catherine Lewis
252. EEO Summary RE Applicants for Coordinator, Student Activities
253. Professional Vacancy Check List for Coordinator, Commuter Affairs-New Hire Melissa Wheeler
254. Post Preview Coordinator, Commuter Affairs
255. EEO Review for Coordinator, Commuter Affairs Applicants
256. Student Life Search Committee Lists
257. Interview Notes for Catherine Lewis for the position of Coordinator, Student Activities
258. Interview Notes for Steven Liss for the position of Coordinator, Student Activities
259. Interview Notes for Steven Liss for the position of Coordinator, Student Activities
260. Rankings for the position of Coordinator, Student Activities
261. Interview notes for the position of Coordinator, Student Activities
262. Interview Notes for Steven Liss for Coordinator, Student Activities Position
263. Notes Ranking Candidates for Assistant Dean, Student Engagement
264. Review Ranking Form for the Assistant Dean, Student Engagement Position

265. Review Ranking Form for the Assistant Dean, Student Engagement Position
266. Email from Hinton-Hannah to Brown CC Vartorella List candidates to interview
267. Email from Hinton-Hannah to Brown CC Vartorella List of candidates to interview
268. Email String between Liss, Hinton-Hannah, BCC Drnek and Vartorella re Interview
269. Email String between Liss, Hinton-Hannah, BCC Drnek and Vartorella re Liss Questions
270. Cauthen LinkedIn profile
271. Facebook pictures of Cauthen and Banks
272. News Articles regarding Cauthen positions at University of Georgia
273. Cauthen Twitter page
274. Resume for Cauthen
275. Notes by Banks re Bullet List
276. Chart for Student Life made by Banks
277. Charts for Student Life made by Banks
278. Student Media Specialist General Duties and Responsibilities by Banks
279. Coordinator, Student Activities General Duties and Responsibilities by Banks
280. Manager of Student Organization General Duties by Banks
281. Director of Center of Student Involvement General Duties and Responsibilities
282. Professional Non Bargaining List
283. Draft Reduction in Force-Student Life Reorganization
284. CSU Position description for Steve Liss, Director of Student Involvement
285. Staff Annual Evaluation Summary for Steven Liss

286. Staff Annual Evaluation Summary for Steven Liss
287. Student Life Reorganization Chart by Vartorella
288. CSU-Professional Staff Personnel Policies
289. Letter from Donna Whyte with CSU response to Liss complaint of age discrimination and retaliation
290. Memorandum from Walker to Liss re Response to Step 2 Grievance by Liss
291. Email from Liss to Mutti, Vartorella requesting a Step 3 to the Grievance Process
292. Letter from CSU to Liss-Step 3 Grievance Response
293. Letter from Donna Whyte with CSU response to Liss complaint of age discrimination and retaliation
294. Letter from Drnek to Liss-CSU response to Step 1 Grievance
295. Professional Staff Evaluation Summary for Steven Liss
296. Professional Staff Evaluation Summary for Steven Liss
297. Professional Staff Evaluation Summary for Steven Liss
298. Professional Staff Evaluation Summary for Steven Liss
299. Email String between Liss and Banks re Draft Memos for Russell and Myers
300. Email String between Drnek and Liss re Instructions for Your Transition
301. Email from Liss to Vartorella re Assistance with Sensitive Matter
302. Email from Russell to Liss CC Drnek, Banks, Vartorella re Written Warning of June 18, 2012 Retraction Request
303. Email from Liss to Russell CC Banks, Drnek re First Written Memo Warning
304. Email from Liss to Banks re Student Organizations & Greek Life Questionnaire
305. Email from Banks to Liss re Recap of Meeting
306. Email from Liss to Banks re Confidential/ Revised Draft Memos
307. Email from Liss to Banks CC Russell RE Greek Life Information

308. Email String between Liss, Banks, Russell re Draft Retraction/ Written Warning of June 18, 2012 Retraction Request
309. Email String between Liss, Banks and Russell re Confirming/ Greek
310. Email from Liss to Banks re Evaluation Process
311. Email String between Liss and Drnek re Reference Request
312. Email String between Liss and Whyte re meeting re complaint of discrimination
313. Email from Drnek to Liss re Grievance Letter Decision
314. Letter from Drnek to Liss-CSU response to Step 1 Grievance
315. Email from Banks to Liss re Recap of Meeting
316. Email String between Liss and Whyte re Grievance and Liss Questions
317. Email from Lenhart to Drnek re Department of Student Life
318. Email String between Liss, Emerick re Update
319. Email from Liss to Drnek re Confidential
320. Email from Liss to Banks re Confidential Draft Memos
321. The History of Greek Life at CSU as Experienced by Someone Who Has Been There from the Beginning by Russell
322. Special Enrollment in Part B Medicare Form for Russell
323. Email from Wilson to Russell CC Vartorella re Letter Agreement to Extend Employment
324. Letter from Stephanie McHenry Congratulating Russell for nomination to receive 2012 Distinguished Service Award
325. Email String between Russell and Drnek, Vartorella re Hours and Issues
326. Email from Russell to Wilson re Grievance re Discriminatory Issues
327. Email from Wilson to Russell re Extension of Time

328. Email from Wilson to Russell re end of employment agreement
329. Email from Russell to Vartorella CC Mutti and Wilson re Response to Termination Proposal
330. Email String between Drnek and Russell re Smooth Transition
331. Letter from Careworks to Russell re FLMA
332. Letter from Careworks to Russell re FMLA
333. Professional Staff Performance Evaluation for Russell
334. Professional Staff Performance Evaluation for Russell
335. Professional Staff Performance Evaluation for Russell
336. Professional Staff Performance Evaluation for Russell
337. Professional Staff Performance Evaluation for Russell
338. The achievement of CSU Greek Organizations in the past 5 years
339. Newspaper Article re Major Restructuring in Dept. of Student Life spurs confusion in student organization
340. Newspaper Article re Local Sororities concerned over their fate
341. Newspaper Article re Student Life implements major changes
342. Newspaper Article re CSU's Greek Life Rises from the Ashes
343. Newspaper Article re SGA speaks out at press conference Al Bitar: SGA was not consulted about Student Life
344. Newspaper Article Voice of the Students: Recent Layoffs in Student Life have caused students to speak out about the decision and what the future holds
445. Newspaper Article re Restructuring in Student Life continues to raise questions- students reaction to the sudden termination of three key staff members
346. Email String re Russell payroll issues
347. Email String between Vartorella and Begalla re wanting to see the student life consultant report and understand reorganization

348. Chart of Student Life before reorganization done by Banks
349. Chart of Student Life after reorganization done by Banks
350. Trial Subpoena for Banks for 9/2/14 trial
351. Trial Subpoena for Banks for 9/17/14 trial
352. Jill Courson Application for Assistant Dean, Student Engagement
353. Webpage-Job Title for Courson at University of Georgia-Student Affairs Specialist II
354. Letter from Whyte to Russell re his grievance and denying it
355. Letter from Ronald Berkman re Russell grievance and uphold Whyte decision
356. Email from Russell to Sonali Wilson re Complaining of Discrimination
357. Letter Step Three Grievance to Liss from Assistant Vice President Human Resources
358. Letter from Ronald Berkman re Liss grievance and uphold Whyte decision
359. Cauthen Report from Cauthen Production
360. Cauthen Interview Notes w/CSU Staff Day One
361. Cauthen Interview Notes w/CSU Staff Day One
362. Cauthen Questions for Consideration
363. Letter of Recommendation from Bank
364. Professional Staff Job Description – Coordinator, Student Organizations – Job Code 32268B
365. Professional Staff Job Description – Coordinator, Student Organizations – Job Code 33268B
366. Professional Staff Job Description Template
367. Cauthen Production
368. Seating Chart for Student Life Department done by Dr. Drnek

369. Organization Chart for Student Life done by Dr. Drnek
370. Economic Expert Report for William Russell by Dr. Burke
371. Documents given to Dr. Burke for Economic Expert Report for William Russell
372. Economic Expert Report for Steven Liss by Dr. Burke
373. Documents given to Dr. Burke for Economic Expert Report for Steven Liss

TPG

THORMAN PETROV GRIFFIN

October 30, 2014

Via UPS Overnight Mail

The Ohio Judicial Center
Court of Claims of Ohio
65 South Front Street
Third Floor
Columbus, OH 43215

Re: *Liss v. Cleveland State University-Case No.: 2013-00139*
Russell v. Cleveland State University-Case No.: 2013-00138

Dear Sir/Madam:

I have enclosed an original and three copies of *Plaintiffs' William Russell and Steven Liss's Joint Pre-Trial Statement* for the cases referenced above. The original is for filing with the Clerk and two other copies we would like to have time-stamped. Please return the time-stamped copies to me in the enclosed self-addressed postage-prepaid envelope. The third copy is a courtesy copy for the Magistrate.



Thank you for your attention to this matter. Please do not hesitate to call me should you have any questions.

Sincerely,



Lesa Liston
Paralegal
lleston@tpgfirm.com

Enclosures

Cc: Randall W. Knutti, Esq.
Amy S. Brown, Esq.
Emily M. Simmons, Esq.