Case No. 23-10072

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHERYL BUTLER,

Plaintiff-Appellant,

v.

JENNIFER M. COLLINS; STEVEN C. CURRALL; ROY P. ANDERSON; JULIE P. FORRESTER; HAROLD STANLEY; PAUL WARD; SOUTHERN METHODIST UNIVERSITY,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

RECORD EXCERPTS TO BRIEF OF PLAINTIFF-APPELLANT CHERYL BUTLER

EZRA ISHMAEL YOUNG
LAW OFFICE OF EZRA YOUNG
210 North Sunset Drive
Ithaca, New York 14850
Telephone: (949) 291-3185

Counsel for Professor Cheryl Butler

TABLE OF CONTENTS

No.	Description of Record Excerpt
13	Hearing Trans. March 8, 2023 (ROA.3452, ROA.3478–79, ROA.3490–93)
14	Hearing Trans. January 19, 2023 (ROA.3537, ROA.3541–42, ROA.3575–76, ROA.3593–94, ROA.3629–52, ROA.3656–58)

1

ADR,APPEAL,CLOSED,EXH-ADM,JURY,RAMIREZ,STAYED

U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:18-cv-00037-E

Butler v. Collins et al
Assigned to: Judge Ada Brown
Demand: $9,999,000
Case in other court: USCA5, 23-10072
193rd Judicial District Dallas County TX, DC-17-10420
Cause: 42:1981 Civil Rights

Date Filed: 01/05/2018
Date Terminated: 01/19/2023
Jury Demand: Plaintiff
Nature of Suit: 445 Civil Rights: Americans with Disabilities - Employment
Jurisdiction: Federal Question

Plaintiff

Cheryl Butler

represented by **Andrew A Dunlap**
Andrew Dunlap Attorneys PLLC
6565 North McArthur Blvd Ste 140
Irving, TX 75039-2478
972-807-6257
Fax: 214-614-5160
Email: aadunlapesq@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Bar Status: Admitted/In Good Standing**

Alfonso Kennard
Kennard Law PC
5120 Woodway Drive, Suite 10010
Ste 10010
77056
Houston, TX 77056
713-742-0900
Email: filings@kennardlaw.com
TERMINATED: 08/13/2018
Bar Status: Admitted/In Good Standing

Ezra Ishmael Young
Law Office of Ezra Young
210 North Sunset Drive
Ithaca, NY 14850
949-291-3185
Email: ezra@ezrayoung.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Gabrielle Ogechukwu Ilochi
The Ilochi Law Firm
11601 Shadow Creek Pkwy, #111-325
Pearland, TX 77584

713-487-9072
Email: gabrielle@ilochilaw.com
TERMINATED: 11/19/2019
Bar Status: Admitted/In Good Standing

John L Green
Law Office of John L Green JD PhD CPA
4888 Loop Central Drive
Suite 445
Houston, TX 77081
713-660-7400
Fax: 713-660-9921
Email: jlgreen488@aol.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Kenneth Royce Barrett
KRB Law
3740 Greenbriar #541873
Houston, TX 77254
281-433-0837
Fax: 346-980-4615
Email:
KennethRoyceBarrettLaw@Yahoo.com
TERMINATED: 10/10/2018
Bar Status: Admitted/In Good Standing

Laura Araceli Hernandez
Seyfarth Shaw LLP
700 Milam St
Houston, TX 77002-2812
713-238-1803
Fax: 713-821-0705
Email: lahernandez@seyfarth.com
TERMINATED: 11/19/2019
Bar Status: Admitted/In Good Standing

Sean M Miller
TB Robinson Law Group PLLC
7500 Felipe, Suite 800
Houston, TX 77063
713-568-1723
Fax: 713-965-4288
TERMINATED: 11/19/2019
Bar Status: Not Admitted

Terrence Bouvier Robinson
TB Robinson Law Group PLLC
7500 San Felipe Street
Suite 800
Houston, TX 77063
713-568-1723
Fax: 713-965-4288

Email: trobinson@tbrobinsonlaw.com
TERMINATED: 11/19/2019
Bar Status: Admitted/In Good Standing

V.

Defendant

Jennifer M Collins represented by **Kim J Askew**
DLA Piper, LLP (US)
1900 N. Pearl Street, Suite 2200
Dallas, TX 75201
214-743-4506
Fax: 214-665-5990
Email: kim.askew@dlapiper.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
Nexsen Pruet
4141 Parklake Avenue
Suite 200
Raleigh, NC 27612
919-678-7563
Fax: 919-850-4547
Email: bblinn-spears@nexsenpruet.com
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
K&L Gates LLP
1717 Main Street
Suite 2800
Dallas, TX 75201
214.939.5688
Fax: 214.939.5849
Email: chris.brown@klgates.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres
DLA Piper LLP (US)
1900 North Pearl Street
Suite 2200
Dallas, TX 75201
214-743-4500
Fax: 214-743-4545
Email: cristina.torres@dlapiper.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

John M Farrell

Arcadi Jackson LLP
2911 Turtle Creek Blvd
Suite 800
Dallas, TX 75219
214-865-6458
Fax: 214-865-6522
Email: john.farrell@arcadijackson.com
TERMINATED: 05/01/2018
Bar Status: Admitted/In Good Standing

Mallory Toby Biblo
DLA Piper LLP (US)
1900 N. Pearl Street
Suite 220
Dallas, TX 75201
214-743-4500
Fax: 214-743-4545
Email: mallory.biblo@us.dlapiper.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maria Garrett
DLA Piper LLP US
1900 N. Pearl Street
Suite 2200
Dallas, TX 75201
214-743-4537
Fax: 214-665-5956
Email: maria.garrett@dlapiper.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Steven C. Currall represented by **Kim J Askew**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
(See above for address)
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

John M Farrell
(See above for address)
TERMINATED: 05/01/2018
Bar Status: Admitted/In Good Standing

Mallory Toby Biblo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maria Garrett
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Roy P. Anderson represented by **Kim J Askew**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
(See above for address)
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

John M Farrell
(See above for address)
TERMINATED: 05/01/2018
Bar Status: Admitted/In Good Standing

Mallory Toby Biblo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maria Garrett
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Anthony Colangelo
TERMINATED: 11/21/2018

Defendant

Mary Spector
TERMINATED: 11/21/2018

Defendant

Julie P. Forrester represented by **Kim J Askew**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
(See above for address)
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Mallory Toby Biblo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maria Garrett
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Linda Eads
TERMINATED: 11/21/2018

Defendant

C. Paul Rogers
TERMINATED: 11/21/2018

Defendant

Elizabeth G. Thornburg
TERMINATED: 11/21/2018

Defendant

Jessica Dixon Weaver
TERMINATED: 11/21/2018

Defendant

George A. Martinez
TERMINATED: 11/21/2018

Defendant

Ndiva Kofele-Kale
TERMINATED: 11/21/2018

Defendant

John Lowe
TERMINATED: 11/21/2018

Defendant

Samantha Thomas
TERMINATED: 11/21/2018

Defendant

Rhonda Ice Adams
TERMINATED: 11/21/2018

Defendant

Carolyn Hernandez
TERMINATED: 11/21/2018

Defendant

Harold Stanley represented by **Kim J Askew**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
(See above for address)
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres

(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

John M Farrell
(See above for address)
TERMINATED: 05/01/2018
Bar Status: Admitted/In Good Standing

Mallory Toby Biblo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maria Garrett
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Paul Ward represented by **Kim J Askew**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
(See above for address)
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

John M Farrell
(See above for address)
TERMINATED: 05/01/2018
Bar Status: Admitted/In Good Standing

Defendant

R. Gerald Turner
TERMINATED: 11/21/2018

Defendant

Southern Methodist University represented by

Kim J Askew
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Bridget A Blinn-Spears
(See above for address)
TERMINATED: 01/08/2019
Bar Status: Admitted/In Good Standing

Christopher A Brown
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Cristina Iliana Torres
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

John M Farrell
(See above for address)
TERMINATED: 05/01/2018
Bar Status: Admitted/In Good Standing

Mallory Toby Biblo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maria Garrett
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Gerald L Turner
TERMINATED: 11/21/2018

Date Filed	#	Docket Text
01/05/2018	1 (p.30)	NOTICE OF REMOVAL WITH JURY DEMAND from 193rd Judicial District Court Dallas County, case number DC-17-10420 filed by Roy P. Anderson, Steven C. Currall, Paul Ward, Jennifer M Collins, Southern Methodist University. (Filing fee $400; receipt number 0539-8902095) In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the Judges Copy Requirements is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms and Instructions found at www.txnd.uscourts.gov, or by clicking here: Attorney

		Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) A-1, # 3 (p.445) Exhibit(s) A-2, # 4 Exhibit(s) A-3, # 5 (p.447) Exhibit(s) A-4, # 6 (p.451) Exhibit(s) A-5, # 7 (p.545) Exhibit(s) A-6, # 8 (p.548) Exhibit(s) A-7, # 9 (p.552) Exhibit(s) A-8, # 10 (p.566) Exhibit(s) A-9, # 11 (p.572) Exhibit(s) A-10, # 12 (p.594) Exhibit(s) A-11, # 13 (p.801) Exhibit(s) A-12, # 14 (p.804) Exhibit(s) A-13, # 15 (p.808) Exhibit(s) A-14, # 16 (p.891) Exhibit(s) A-15, # 17 (p.918) Exhibit(s) A-16, # 18 (p.944) Exhibit(s) A-17, # 19 (p.947) Exhibit(s) A-18, # 20 (p.948) Exhibit(s) A-19, # 21 (p.950) Exhibit(s) A-20, # 22 (p.984) Exhibit(s) A-21, # 23 (p.989) Exhibit(s) A-22, # 24 (p.990) Exhibit(s) A-23, # 25 (p.1064) Exhibit(s) A-24, # 26 Exhibit(s) A-25, # 27 Exhibit(s) A-26, # 28 Exhibit(s) A-27, # 29 Exhibit(s) A-28, # 30 (p.1065) Exhibit(s) A-29, # 31 (p.1067) Exhibit(s) A-30, # 32 Exhibit(s) A-31, # 33 (p.1071) Exhibit(s) A-32, # 34 Exhibit(s) A-33, # 35 (p.1074) Exhibit(s) A-34, # 36 (p.1076) Exhibit(s) A-35, # 37 (p.1080) Exhibit(s) A-36, # 38 (p.1090) Exhibit(s) A-37, # 39 (p.1106) Exhibit(s) A-38, # 40 (p.1119) Exhibit(s) A-39, # 41 (p.1121) Exhibit(s) A-40, # 42 (p.1132) Exhibit(s) A-41, # 43 (p.1134) Exhibit(s) A-42, # 44 (p.1136) Exhibit(s) A-43, # 45 (p.1138) Exhibit(s) A-44, # 46 (p.1148) Exhibit(s) A-45, # 47 (p.1151) Exhibit(s) A-46, # 48 (p.1159) Exhibit(s) A-47, # 49 (p.1161) Exhibit(s) A-48, # 50 (p.1172) Exhibit(s) A-49, # 51 (p.1174) Exhibit(s) A-50, # 52 (p.1210) Exhibit(s) A-51, # 53 (p.1228) Exhibit(s) A-52, # 54 (p.1230) Exhibit(s) A-53, # 55 (p.1239) Exhibit(s) A-54, # 56 (p.1256) Exhibit(s) A-55, # 57 (p.1260) Exhibit(s) A-56, # 58 (p.1282) Exhibit(s) A-57, # 59 Exhibit(s) A-58, # 60 (p.1425) Exhibit(s) A-59, # 61 (p.1431) Exhibit(s) A-60, # 62 Exhibit(s) A-61, # 63 (p.1444) Exhibit(s) A-62, # 64 (p.1459) Exhibit(s) A-63, # 65 (p.1468) Exhibit(s) B, # 66 (p.1469) Exhibit(s) C, # 67 (p.1474) Exhibit(s) D, # 68 (p.1475) Exhibit(s) E, # 69 (p.1480) Cover Sheet, # 70 (p.1485) Cover Sheet Supplement) (Askew, Kim) (Entered: 01/05/2018)
01/05/2018	2 (p.441)	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Paul Ward. (Askew, Kim) (Entered: 01/05/2018)
01/05/2018	3 (p.445)	New Case Notes: A filing fee has been paid. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge (Judge Stickney). Clerk to provide copy to plaintiff if not received electronically. (ndt) (Entered: 01/05/2018)
01/08/2018	4	This case was identified for conflict checking, and Chief Judge Barbara M.G. Lynn confirms recusal is requested. Pursuant to instruction in Special Order 3-249, the Clerk has randomly reassigned the case to Judge Sam A Lindsay for all further proceedings. Future filings should indicate the case number as: 3:18cv37-L. (lrl) (Entered: 01/08/2018)
02/07/2018	5 (p.447)	Motion to Dismiss for Failure to State a Claim filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward Attorney Kim J Askew added to party Harold Stanley(pty:dft) (Askew, Kim) (Entered: 02/07/2018)
02/07/2018	6 (p.451)	Brief/Memorandum in Support filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward re 5 (p.447) Motion to Dismiss for Failure to State a Claim (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) A-1, # 3 (p.445) Exhibit(s) A-2, # 4 Exhibit(s) A-3, # 5 (p.447) Exhibit(s) A-4, # 6 (p.451) Exhibit(s) A-5, # 7 (p.545) Exhibit(s) A-6, # 8 (p.548) Exhibit(s) A-7, # 9 (p.552) Exhibit(s) A-8, # 10 (p.566) Exhibit(s)

		A-9, # 11 (p.572) Exhibit(s) B) (Askew, Kim) (Entered: 02/07/2018)
02/08/2018	7 (p.545)	NOTICE of *Consent to Removal* re: 1 (p.30) Notice of Removal filed by Harold Stanley (Askew, Kim) (Entered: 02/08/2018)
02/28/2018	8 (p.548)	RESPONSE filed by Cheryl Butler re: 5 (p.447) Motion to Dismiss for Failure to State a Claim (Kennard, Alfonso) (Entered: 02/28/2018)
02/28/2018	9 (p.552)	Brief/Memorandum in Support filed by Cheryl Butler re 8 (p.548) Response/Objection *Defendants' Motion to Dismiss* (Kennard, Alfonso) (Entered: 02/28/2018)
03/09/2018	10 (p.566)	ORDER REASSIGNING CASE. Case reassigned to Judge Karen Gren Scholer for all further proceedings per Special Order 3-318. (Ordered by Chief Judge Barbara M.G. Lynn on 3/8/2018) (chmb) (Entered: 03/12/2018)
03/14/2018	11 (p.572)	REPLY filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward re: 5 (p.447) Motion to Dismiss for Failure to State a Claim (Attachments: # 1 (p.30) Exhibit(s) A) (Askew, Kim) (Entered: 03/14/2018)
03/19/2018	12 (p.594)	AMENDED COMPLAINT against All Defendants filed by Cheryl Butler. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B, # 3 (p.445) Exhibit(s) C, # 4 Exhibit(s) D, # 5 (p.447) Exhibit(s) E) (Kennard, Alfonso) (Entered: 03/19/2018)
03/28/2018	13 (p.801)	NOTICE of *ATTORNEY'S CHARGING LIEN* filed by Alfonso Kennard (Kennard, Alfonso) (Entered: 03/28/2018)
04/02/2018	14 (p.804)	First MOTION to Substitute Attorney, added attorney Kenneth Royce Barrett,Kenneth Royce Barrett for Cheryl Butler. Motion filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order)Attorney Kenneth Royce Barrett added to party Cheryl Butler(pty:pla) (Barrett, Kenneth) (Entered: 04/02/2018)
04/02/2018	15 (p.808)	Motion to Dismiss for Failure to State a Claim filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward (Attachments: # 1 (p.30) Exhibit(s))Attorney Bridget A Blinn-Spears added to party Julie P. Forrester(pty:dft) (Blinn-Spears, Bridget) (Entered: 04/02/2018)
04/02/2018	16 (p.891)	Brief/Memorandum in Support filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward re 15 (p.808) Motion to Dismiss for Failure to State a Claim (Blinn-Spears, Bridget) (Entered: 04/02/2018)
04/02/2018	17 (p.918)	ANSWER to 12 (p.594) Amended Complaint,, filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Blinn-Spears, Bridget) (Entered: 04/02/2018)

04/22/2018	18 (p.944)	Unopposed MOTION to Extend Time to Respond to the Motion to Dismiss filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order Proposed Order) (Barrett, Kenneth) (Entered: 04/22/2018)
04/23/2018	19 (p.947)	ORDER granting 18 (p.944) Motion to Extend Time. Plaintiff's deadline for replying to the Motion to Dismiss is extended from 4/23/2018 to 5/1/2018. (Ordered by Judge Karen Gren Scholer on 4/23/2018) (aaa) (Entered: 04/23/2018)
05/01/2018	20 (p.948)	NOTICE of *Withdrawal of John Farrell* filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward (Blinn-Spears, Bridget) (Entered: 05/01/2018)
05/02/2018	21 (p.950)	RESPONSE filed by Cheryl Butler re: 15 (p.808) Motion to Dismiss for Failure to State a Claim (Barrett, Kenneth) (Entered: 05/02/2018)
05/03/2018	22 (p.984)	First MOTION to Extend Time to Accept Late-Filed Response to Motion to Dismiss filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order) (Barrett, Kenneth) (Entered: 05/03/2018)
05/10/2018	23 (p.989)	ORDER granting 22 (p.984) First MOTION to Extend Time to Accept Late-Filed Response to Motion to Dismiss. (Ordered by Judge Karen Gren Scholer on 5/10/2018) (svc) (Entered: 05/11/2018)
05/16/2018	24 (p.990)	REPLY filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward re: 15 (p.808) Motion to Dismiss for Failure to State a Claim (Attachments: # 1 (p.30) Table of Attachments) (Blinn-Spears, Bridget) (Entered: 05/16/2018)
07/25/2018	25 (p.1064)	ORDER: Scheduling Conference set for 8/10/2018 01:00 PM in US Courthouse, Courtroom 1632, 1100 Commerce St., Dallas, TX 75242-1310 before Judge Karen Gren Scholer. (Ordered by Judge Karen Gren Scholer on 7/25/2018) (epm) (Entered: 07/25/2018)
08/10/2018	26	ELECTRONIC ORDER CANCELLING STATUS CONFERENCE: The status conference scheduled for 08/10/2018 is cancelled. (Ordered by Judge Karen Gren Scholer on 8/10/2018) (chmb) (Entered: 08/10/2018)
08/10/2018	27	Court Request for Recusal: Judge Karen Gren Scholer recused. As this case was originally transferred under Special Order 3-318 from Judge Lindsay, the case is returned to the docket of Judge Sam A. Lindsay. Future filings should indicate the case number as: 3:18cv37-L. (lrl). (Modified on 8/10/2018 to correct that case is returned to Judge Lindsay's docket.) (lrl) (Entered: 08/10/2018)
08/13/2018	28	ELECTRONIC ORDER denying as moot 5 (p.447) Motion to Dismiss for Failure to State a Claim in light of Second Amended Complaint and Defendants' Motion to Dismiss Second Amended Complaint (Ordered by Judge Sam A Lindsay on 8/13/2018) (chmb) (Entered: 08/13/2018)
08/13/2018	29	ELECTRONIC ORDER granting 14 (p.804) Motion to Substitute Attorney. Accordingly, Mr. Alfonzo Kennard Jr is withdrawn as counsel for Plaintiff. (Ordered by Judge Sam A Lindsay on 8/13/2018) (chmb) (Entered: 08/13/2018)
08/16/2018	30 (p.1065)	NOTICE of Attorney Appearance by Terrence Bouvier Robinson on behalf of Cheryl Butler. (Filer confirms contact info in ECF is current.) (Robinson, Terrence) (Entered: 08/16/2018)
10/08/2018		

	31 (p.1067)	Unopposed MOTION to Substitute Attorney, *Kenneth R. Barrett* added attorney Terrence Bouvier Robinson. Motion filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order) (Robinson, Terrence) (Entered: 10/08/2018)
10/10/2018	32	ELECTRONIC ORDER granting 31 (p.1067) Motion to Substitute Attorney. Accordingly, Mr. Kenneth R. Barrett is withdrawn as Attorney-in-Charge for Plaintiff; and Terrence B. Robinson, Laura A. Hernandez, Sean Miller, and TB Robinson Law Group, PLLC are substituted in place of Kenneth R. Barrett. (Ordered by Judge Sam A Lindsay on 10/10/2018) (chmb) (Entered: 10/10/2018)
10/15/2018	33 (p.1071)	MOTION for Leave to File Proceed without local counsel filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order) (Robinson, Terrence) (Entered: 10/15/2018)
10/17/2018	34	ELECTRONIC ORDER granting 33 (p.1071) Motion for Leave to Proceed without Local Counsel. Accordingly, Plaintiff may proceed without local counsel. (Ordered by Judge Sam A Lindsay on 10/17/2018) (chmb) (Entered: 10/17/2018)
10/17/2018	35 (p.1074)	ORDER: Plaintiff is hereby directed to effect service by 11/16/2018, or show good cause in writing for the failure or inability to effect service. (Ordered by Judge Sam A Lindsay on 10/17/2018) (svc) (Entered: 10/17/2018)
10/17/2018	36 (p.1076)	ORDER REQUIRING ATTORNEY CONFERENCE AND STATUS REPORT: The conference shall take place no later than November 1, 2018. Status Report due by 11/16/2018. (Ordered by Judge Sam A Lindsay on 10/17/2018) (svc) (Entered: 10/17/2018)
11/16/2018	37 (p.1080)	Joint STATUS REPORT filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward. (Askew, Kim) (Entered: 11/16/2018)
11/16/2018	38 (p.1090)	Joint MOTION for Protective Order filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Southern Methodist University, Harold Stanley, Paul Ward (Attachments: # 1 (p.30) Proposed Order Agreed Protective Order) (Askew, Kim) (Entered: 11/16/2018)
11/19/2018	39 (p.1106)	ORDER granting 38 (p.1090) Motion for Protective Order. (Ordered by Judge Sam A Lindsay on 11/19/2018) (epm) (Entered: 11/19/2018)
11/21/2018	40 (p.1119)	ORDER: Pursuant to Rule 4(m), this action against Defendants Anthony Colangelo; Elizabeth G. Thornburg; Samantha Thomas; and Rhonda Ice Adams is dismissed without prejudice. Further, Butler did not include or name Mary Spector; Linda Eads; C. Paul Rogers; Jessica Dixon Weaver; George A. Martinez; Ndiva Kofele-Kale; John Lowe; Carolyn Hernandez; R. Gerald Turner, and Gerald Turner as parties in Plaintiff's Second Amended Complaint. By the court's count there are seven Defendants to this action, and all future filings will list seven parties as Defendants--Jennifer M. Collins; Steven C. Currall; Roy R. Anderson; Julie P. Forrester; Harold Stanley; Paul J. Ward; and Southern Methodist University. Accordingly, the court directs the clerk of court to amend the docket sheet to reflect that there are seven Defendants to this action. (Ordered by Judge Sam A Lindsay on 11/21/2018) (epm) (Entered: 11/21/2018)
11/21/2018	41 (p.1121)	SCHEDULING ORDER: This case is set for trial on this court's four-week docket beginning 5/4/2020 before Judge Sam A Lindsay. Joinder of Parties due by 5/3/2019. Amended Pleadings due by 5/3/2019. Motions due by 12/16/2019. Discovery due by 12/2/2019. Pretrial Order due by 4/6/2020. Pretrial Materials due

		by 4/6/2020. Settlement Status Report due by 2/19/2019. Pretrial Conference set for 5/1/2020 10:00 AM before Judge Sam A Lindsay. (Ordered by Judge Sam A Lindsay on 11/21/2018) (zkc) (Entered: 11/21/2018)
11/21/2018	42 (p.1132)	MEDIATION ORDER. The parties are to select or designate a mediator. Alternative Dispute Resolution Summary form provided electronically or by US Mail as appropriate. Deadline for mediation is on or before 12/2/2019. (Ordered by Judge Sam A Lindsay on 11/21/2018) (zkc) (Entered: 11/21/2018)
11/27/2018	43 (p.1134)	NOTICE of *Conflicts of Trial Date* re: 41 (p.1121) Scheduling Order filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward (Askew, Kim) (Entered: 11/27/2018)
01/08/2019	44 (p.1136)	NOTICE of *Withdrawal of Counsel* filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward (Askew, Kim) (Entered: 01/08/2019)
01/08/2019	45 (p.1138)	Pretrial Disclosures filed by Cheryl Butler. (Robinson, Terrence) (Entered: 01/08/2019)
02/19/2019	46 (p.1148)	Joint STATUS REPORT *of Settlement* filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward. (Askew, Kim) (Entered: 02/19/2019)
03/31/2019	47 (p.1151)	MEMORANDUM OPINION AND ORDER granting in part and denying in part 15 (p.808) Motion to Dismiss for Failure to State a Claim (Ordered by Judge Sam A Lindsay on 3/31/2019) (chmb) (Entered: 03/31/2019)
07/15/2019	48 (p.1159)	NOTICE of Attorney Appearance by Terrence Bouvier Robinson on behalf of Cheryl Butler. (Filer confirms contact info in ECF is current.) (Robinson, Terrence) (Entered: 07/15/2019)
07/24/2019	49 (p.1161)	MOTION for Reconsideration re 47 (p.1151) Order on Motion to Dismiss for Failure to State a Claim filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order) (Robinson, Terrence) (Entered: 07/24/2019)
08/05/2019	50 (p.1172)	NOTICE of Attorney Appearance by Christopher A Brown on behalf of Southern Methodist University. (Filer confirms contact info in ECF is current.) (Brown, Christopher) (Entered: 08/05/2019)
08/05/2019	51 (p.1174)	RESPONSE filed by Southern Methodist University re: 49 (p.1161) MOTION for Reconsideration re 47 (p.1151) Order on Motion to Dismiss for Failure to State a Claim (Attachments: # 1 (p.30) Exhibit(s), # 2 (p.441) Exhibit(s), # 3 (p.445) Exhibit(s), # 4 Exhibit(s), # 5 (p.447) Exhibit(s), # 6 (p.451) Exhibit(s)) (Askew, Kim) (Entered: 08/05/2019)
08/19/2019	52 (p.1210)	Amended MOTION for Reconsideration re 51 (p.1174) Response/Objection, filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order) (Robinson, Terrence) (Entered: 08/19/2019)
08/27/2019	53 (p.1228)	ORDER denying 49 (p.1161) Motion for Reconsideration ; denying 52 (p.1210) Motion for Reconsideration. (Ordered by Judge Sam A. Lindsay on 8/27/2019) (epm) (Entered: 08/27/2019)
09/05/2019	54 (p.1230)	Designation of Experts by Cheryl Butler. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B) (Robinson, Terrence) (Entered: 09/05/2019)

09/05/2019	55 (p.1239)	MOTION to Amend/Correct 52 (p.1210) Amended MOTION for Reconsideration re 51 (p.1174) Response/Objection, 49 (p.1161) MOTION for Reconsideration re 47 (p.1151) Order on Motion to Dismiss for Failure to State a Claim filed by Cheryl Butler. (Attachments: # 1 (p.30) Proposed Order) (Robinson, Terrence) (Entered: 09/05/2019)
09/06/2019	56 (p.1256)	MOTION to Compel *Discovery Responses and Production of Documents* filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley (Askew, Kim) (Entered: 09/06/2019)
09/06/2019	57 (p.1260)	Brief/Memorandum in Support filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re 56 (p.1256) MOTION to Compel *Discovery Responses and Production of Documents* (Askew, Kim) (Entered: 09/06/2019)
09/06/2019	58 (p.1282)	Appendix in Support filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re 57 (p.1260) Brief/Memorandum in Support of Motion (Attachments: # 1 (p.30) Exhibit(s) Appendix A, # 2 (p.441) Exhibit(s) A, # 3 (p.445) Exhibit(s) B, # 4 Exhibit(s) C, # 5 (p.447) Exhibit(s) D, # 6 (p.451) Exhibit(s) E, # 7 (p.545) Exhibit(s) F, # 8 (p.548) Exhibit(s) G, # 9 (p.552) Exhibit(s) H, # 10 (p.566) Exhibit(s) I, # 11 (p.572) Exhibit(s) J, # 12 (p.594) Exhibit(s) K) (Askew, Kim) (Entered: 09/06/2019)
09/10/2019	59	***VACATED PER 79 (p.1519) ORDER*** ORDER OF REFERENCE: Pursuant to 28 U.S.C. § 636(b), Defendants' Motion to Compel Discovery Responses and Production of Documents (Doc. 56 (p.1256)), filed September 6, 2019, is hereby referred to United States Magistrate Judge Rebecca Rutherford for hearing, if necessary, and determination. This order of reference also prospectively refers all procedural motions that are related to the referred motion to the United States Magistrate Judge for resolution. (Ordered by Judge Sam A. Lindsay on 9/10/2019) (aaa) Modified on 11/14/2019 (rekc). (Entered: 09/10/2019)
09/18/2019	60 (p.1425)	Special Order 3-335: Effective September 18, 2019, the cases listed on Exhibit A to this order are transferred to Judge Ada E. Brown's docket and shall henceforth be designated by the suffix letter "E." (The clerk has mailed a copy to all non-ECF users.) (Ordered by Chief Judge Barbara M. G. Lynn on 9/18/2019) (cea) (Entered: 09/19/2019)
09/24/2019	61 (p.1431)	RESPONSE filed by Cheryl Butler re: 56 (p.1256) MOTION to Compel *Discovery Responses and Production of Documents* (Attachments: # 1 (p.30) Proposed Order) (Robinson, Terrence) (Entered: 09/24/2019)
09/26/2019	62	***DISREGARD - ATTY TO REFILE*** RESPONSE filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward re: 55 (p.1239) MOTION to Amend/Correct 52 (p.1210) Amended MOTION for Reconsideration re 51 (p.1174) Response/Objection, , 49 (p.1161) MOTION for Reconsideration re 47 (p.1151) Order on Motion to Dismiss for Failure to State a Claim (Askew, Kim) Modified on 9/27/2019 (rekc). (Entered: 09/26/2019)
09/27/2019	63 (p.1444)	RESPONSE filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward re: 55 (p.1239) MOTION to Amend/Correct 52 (p.1210) Amended MOTION for Reconsideration re 51 (p.1174) Response/Objection, , 49 (p.1161) MOTION for Reconsideration re 47 (p.1151) Order on Motion to Dismiss for Failure to State a

		Claim (Askew, Kim) (Entered: 09/27/2019)
10/03/2019	64 (p.1459)	Designation of Experts by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B) (Askew, Kim) (Entered: 10/03/2019)
10/08/2019	65 (p.1468)	ORDER: Per Special Order 3-335 issued on September 18, 2019, your case has been transferred to Judge Ada Brown. All parties are instructed that any existing scheduling orders and deadlines imposed by the previous judge remain in place unless the parties are otherwise notified by this Court. (Ordered by Judge Ada Brown on 10/8/2019) (cea) (Entered: 10/08/2019)
10/08/2019	66 (p.1469)	REPLY filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward re: 56 (p.1256) MOTION to Compel *Discovery Responses and Production of Documents* (Brown, Christopher) (Entered: 10/08/2019)
10/24/2019	67 (p.1474)	ORDER: Before the Court is Plaintiff's Second Amended Motion for Reconsideration (Doc. 55 (p.1239)), filed 9/05/2019, and Defendants' Response in Opposition to Plaintiff's Second Amended Motion for Reconsideration (Doc. 63 (p.1444)), filed 9/27/2019. After careful consideration of the motion, response, and applicable law, the Court DENIES the motion. (Ordered by Judge Ada Brown on 10/24/2019) (twd) (Entered: 10/24/2019)
10/28/2019	68 (p.1475)	Unopposed MOTION to Withdraw filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Proposed Order Proposed Order on Motion to Withdraw as Counsel) (Robinson, Terrence) (Entered: 10/28/2019)
10/29/2019	69 (p.1480)	MOTION to Withdraw as Attorney filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Proposed Order Proposed Order on Motion to Withdraw as Counsel) (Robinson, Terrence) (Entered: 10/29/2019)
10/30/2019	70 (p.1485)	ORDER denying 68 (p.1475) Unopposed Motion to Withdraw as Counsel; denying 69 (p.1480) Unopposed Motion to Withdraw as Counsel. (Ordered by Judge Ada Brown on 10/30/2019) (ykp) (Entered: 10/31/2019)
10/31/2019	71 (p.1486)	Amended MOTION to Withdraw as Attorney filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order on Amended Motion to Withdraw as Counsel) (Robinson, Terrence) (Entered: 10/31/2019)
11/05/2019	72 (p.1491)	MOTION to Expedite *Ruling* filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order on Motion for Expedited Ruling) (Robinson, Terrence) (Entered: 11/05/2019)
11/07/2019	73 (p.1496)	ORDER SETTING STATUS CONFERENCE: To facilitate case management, the Court sets this case for status conference on 11/14/2019 at 02:00 PM in US Courthouse, Courtroom 1306, 1100 Commerce St., Dallas, TX 75242-1310 before Judge Ada Brown. Lead counsel for each party shall be present. The Court also will consider the pending Opposed Amended Motion to Withdraw as Counsel (Doc. No. 71 (p.1486)) and Unopposed Motion for Expedited Ruling (Doc. No. 72 (p.1491)) filed by TB Robinson Law Group, PLLC. The Court further orders that plaintiff Cheryl Butler appear at the hearing. (Ordered by Judge Ada Brown on 11/7/2019) (twd) (Entered: 11/07/2019)
11/11/2019		

	74 (p.1497)	MOTION Order on Motion to Appear by Telephone re 73 (p.1496) Order Setting Deadline/Hearing,, filed by Cheryl Butler (Attachments: # 1 (p.30) Proposed Order Proposed Order on Motion to Appear by Telephone) (Robinson, Terrence) (Entered: 11/11/2019)
11/12/2019	75	ELECTRONIC ORDER denying 74 (p.1497) Unopposed Motion to Appear by Telephone. (Ordered by Judge Ada Brown on 11/12/2019) (chmb) (Entered: 11/12/2019)
11/12/2019	76 (p.1501)	RESPONSE filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 71 (p.1486) Amended MOTION to Withdraw as Attorney (Askew, Kim) (Entered: 11/12/2019)
11/13/2019	77 (p.1510)	Court Request for Recusal: Judge Rutherford recused. Judge Ramirez assigned for matters that may be referred. (ewd) (Entered: 11/13/2019)
11/13/2019	78 (p.1511)	Supplemental Document by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley as to 76 (p.1501) Response/Objection *to Motion to Withdraw*. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B) (Askew, Kim) (Entered: 11/13/2019)
11/13/2019	79 (p.1519)	ORDER: The Court's 59 Order of Reference, referring Defendants' 56 (p.1256) Motion to Compel Discovery Responses and Production of Documents to United States Magistrate Judge Rebecca Rutherford, is hereby VACATED. (Ordered by Judge Ada Brown on 11/13/2019) (rekc) (Entered: 11/14/2019)
11/13/2019		56 (p.1256) MOTION to Compel *Discovery Responses and Production of Documents* No Longer Referred. Reason for termination: 79 (p.1519) Order. (rekc) (Entered: 11/14/2019)
11/14/2019	80 (p.1520)	First MOTION to Continue filed by Cheryl Butler (Attachments: # 1 (p.30) Declaration(s) Movant Declaration, # 2 (p.441) Proposed Order Proposed Order on Motion for Continuance) (Robinson, Terrence) (Entered: 11/14/2019)
11/14/2019	81 (p.1525)	RESPONSE AND OBJECTION filed by Cheryl Butler re: 71 (p.1486) Amended MOTION to Withdraw as Attorney , 69 (p.1480) MOTION to Withdraw as Attorney , 68 (p.1475) Unopposed MOTION to Withdraw (Attachments: # 1 (p.30) Affidavit(s) AFFIDAVIT OF CHERYL BUTLER, # 2 (p.441) Brief In Support of Opposition) (Green, John) (Entered: 11/14/2019)
11/14/2019	82	ELECTRONIC Minute Entry for proceedings held before Judge Ada Brown: Status Conference held on 11/14/2019. Attorney Appearances: Plaintiff - Terrence Robinson; Defense - Kim Askew, Chris Brown, (Kelly Thurman from SMU). (Court Reporter: Todd Anderson) (No exhibits) Time in Court - :34. (Entered: 11/15/2019)
11/15/2019	83 (p.1552)	ORDER denying as moot 80 (p.1520) Motion to Continue. (Ordered by Judge Ada Brown on 11/15/2019) (Attachments: # 1 (p.30) NEF) (chmb) (Entered: 11/15/2019)
11/15/2019	84 (p.1555)	ORDER granting 56 (p.1256) Motion to Compel Discovery Responses and Production of Documents. (Ordered by Judge Ada Brown on 11/15/2019) (axm) Modified filed date on 11/18/2019 (axm). (Entered: 11/18/2019)
11/18/2019	85 (p.1558)	ORDER granting 71 (p.1486) Motion to Withdraw as Attorney; denying as moot 72 (p.1491) Motion to Expedite. Attorney Terrence Bouvier Robinson terminated. The Court requests the clerk of the court to direct this Order to Plaintiff by both mail and email. (Ordered by Judge Ada Brown on 11/18/2019) (epm) (Entered: 11/19/2019)

11/19/2019		***Clerk's Notice of delivery: (see NEF for details) Docket No:85. Also emailed to email address listed in order. Tue Nov 19 14:16:28 CST 2019 (crt) (Entered: 11/19/2019)
11/19/2019	86 (p.1560)	SUPPLEMENTAL ORDER REGARDING DISCOVERY RESPONSES AND PRODUCTION OF DOCUMENTS. The Court requests the clerk of the court to direct this Order to Butler by both mail and email. (Ordered by Judge Ada Brown on 11/19/2019) (axm) (Entered: 11/20/2019)
11/19/2019	87 (p.1561)	ORDER TO SHOW CAUSE: Show Cause Hearing set for 11/25/2019 02:00 PM in US Courthouse, Courtroom 1310, 1100 Commerce St., Dallas, TX 75242-1310 before Judge Ada Brown. The Court requests the clerk of the court to direct this Order to Butler by both mail and email. (Ordered by Judge Ada Brown on 11/19/2019) (axm) (Entered: 11/20/2019)
11/20/2019		***Clerk's Notice of delivery: (see NEF for details) Docket No:86. emailed to the email address listed on document 85 (p.1558) Wed Nov 20 12:51:56 CST 2019 (crt) (Entered: 11/20/2019)
11/20/2019		***Clerk's Notice of delivery: (see NEF for details) Docket No:87. and emailed to the email address listed on document 85 (p.1558) Wed Nov 20 12:54:10 CST 2019 (crt) (Entered: 11/20/2019)
11/21/2019	88	***DISREGARD, SEE 89 (p.1564) *** NOTICE of Attorney Appearance by Andrew A Dunlap on behalf of Cheryl Butler. (Filer confirms contact info in ECF is current.) (Dunlap, Andrew) Modified on 11/21/2019 (mla). (Entered: 11/21/2019)
11/21/2019	89 (p.1564)	NOTICE of Attorney Appearance by Andrew A Dunlap on behalf of Cheryl Butler. (Filer confirms contact info in ECF is current.) (Dunlap, Andrew) (Entered: 11/21/2019)
11/22/2019	90 (p.1565)	First MOTION to Continue *Hearing to Show Cause* filed by Cheryl Butler (Attachments: # 1 (p.30) Declaration(s), # 2 (p.441) Exhibit(s), # 3 (p.445) Exhibit(s), # 4 Affidavit(s)) (Dunlap, Andrew) (Entered: 11/22/2019)
11/24/2019	91	ELECTRONIC ORDER denying 90 (p.1565) Motion to Continue. (Ordered by Judge Ada Brown on 11/24/2019) (chmb) (Entered: 11/24/2019)
11/25/2019	92	ELECTRONIC Minute Entry for proceedings held before Judge Ada Brown: Show Cause Hearing held on 11/25/2019. Attorney Appearances: Plaintiff - Andrew Dunlap (Cheryl Butler); Defense - Kim Askew, Chris Brown, (Kelly Thurman from SMU). (Court Reporter: Todd Anderson) (Exhibits admitted-housed in CRD's office) Time in Court - 04:22. (chmb) (Entered: 11/26/2019)
11/25/2019		ELECTRONIC Notice of Hearing: Telephone Conference set for 11/27/2019 02:00 PM before Judge Ada Brown. (chmb) (Entered: 11/26/2019)
11/26/2019	93	(Document Restricted) Sealed Exhibit list (Sealed pursuant to SO 19-1, statute, or rule) filed by Cheryl Butler (Attachments: # 1 (p.30) Exhibit(s)) (Dunlap, Andrew) (Entered: 11/26/2019)
11/27/2019	95	ELECTRONIC Minute Entry for proceedings held before Judge Ada Brown: Telephone Conference held on 11/27/2019. Attorney Appearances: Plaintiff - Andrew Dunlap, (previous counsel Terrance Robinson, Gabrielle Ilochi, Monica Nunez-Garza and Alfonso Kennard); Defense - Kim Askew, Chris Brown. (Court Reporter: Todd Anderson) (No exhibits) Time in Court - 01:31. (chmb) (Entered:

		11/27/2019)
11/27/2019	96 (p.1594)	AFFIDAVIT re 56 (p.1256) MOTION to Compel *Discovery Responses and Production of Documents* by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Askew, Kim) (Entered: 11/27/2019)
12/02/2019	97 (p.1614)	ORDER: Any objections to the 96 (p.1594) Affidavit of Kim J Askew in Support of Award of Attorneys' Fees Related to Motion to Compel Discovery by either Plaintiff or her prior counsel, TB Robinson Law Group PLLC, must be filed no later than 12/16/2019. (Ordered by Judge Ada Brown on 12/2/2019) (mla) (Entered: 12/03/2019)
12/16/2019	98	(Document Restricted) Sealed Response re: 97 (p.1614) Order Setting Deadline/Hearing, (Sealed pursuant to SO 19-1, statute, or rule) filed by Cheryl Butler (Dunlap, Andrew) (Entered: 12/16/2019)
12/17/2019	99 (p.1615)	Supplemental Document by Cheryl Butler as to 98 Sealed and/or Ex Parte Response/Objection . (Attachments: # 1 (p.30) Exhibit(s)) (Dunlap, Andrew) (Entered: 12/17/2019)
12/19/2019	100 (p.1736)	REPLY filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 99 (p.1615) Supplemental Document (Askew, Kim) (Entered: 12/19/2019)
01/28/2020	101 (p.1744)	Agreed MOTION to Amend/Correct *Modify Scheduling Order* filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley (Attachments: # 1 (p.30) Proposed Order) (Askew, Kim) (Entered: 01/28/2020)
01/28/2020	102 (p.1748)	NOTICE of Attorney Appearance by Kim J Askew for Cristina I. Torres on behalf of Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Askew, Kim) (Entered: 01/28/2020)
01/29/2020	103	ELECTRONIC ORDER granting 101 (p.1744) Agreed Motion to Modify Scheduling Order. The deadline for the oral deposition of Plaintiff Cheryl Butler is 2/4/2020, and the dispositive motion deadline is extended to 3/27/2020. This order does not abate or extend any other pretrial deadlines or the trial date. (Ordered by Judge Ada Brown on 1/29/2020) (chmb) (Entered: 01/29/2020)
02/04/2020	104 (p.1750)	SUGGESTION OF BANKRUPTCY Upon the Record as to Cheryl Butler by Cheryl Butler. (Attachments: # 1 (p.30) Exhibit(s) EXHIBIT A - NOTICE OF BANKRUPTCY FILING) (Green, John) (Entered: 02/04/2020)
02/05/2020	105 (p.1753)	Order Administratively Closing Case. Pursuant to LR 79.2 and LCrR 55.2, exhibits may be claimed during the 60-day period following final disposition (to do so, follow the procedures found at Exhibit Guide). The clerk will discard exhibits that remain unclaimed after the 60-day period without additional notice. (Clerk to notice any party not electronically noticed.) (Ordered by Judge Ada Brown on 2/5/2020) (ndt) (Entered: 02/05/2020)
03/18/2020	106 (p.1755)	Special Orders 13-5 and 13-6 re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic (Ordered by Chief Judge Barbara M. G. Lynn on 3/16/2020 and 3/18/2020) (lrl) (Entered: 03/19/2020)
03/19/2020	107	Electronic Order: The undersigned orders that all civil and criminal bench and jury

		trials, in-person court hearings, and sentencing proceedings scheduled to take place through May 1, 2020, are continued due to concerns about COVID-19 and consistent with the Northern District of Texas's Special Order Nos. 13-5 and 13-6, entered by Chief Judge Barbara Lynn on March 13, and March 18, 2020, respectively. In addition, if the attorneys have been ordered to conduct a face-to-face meeting for purposes of preparing a Rule 26(f) Joint Report, an in-person meeting is no longer required. These continuances do not modify any pending deadlines other than the trial or hearing dates mentioned above. Attorneys should file a motion with the Court to modify any other deadlines unless, as is the case in some cases transferred to this Court from other judges, the scheduling order allows the parties to reset deadlines by agreement without Court approval. Due to the Court's reduced ability to obtain an adequate spectrum of jurors, and due to the reduced availability of attorneys and court staff to be present in courtrooms because of the public health considerations associated with COVID-19, the period of the continuances associated with this Order and Special Order Nos. 13-5 and 13-6 are excluded by the Speedy Trial Act, 18 U.S.C. § 3161(h) and 18 U.S.C. §3161 (h)(7)(A). The Court finds that the ends of justice served by ordering these continuances outweigh the best interests of the public and each defendants right to a speedy trial. In fact, the best interests of the public are served by these continuances. The Court encourages the parties to communicate with opposing counsel and litigants by video or telephone whenever possible. (Ordered by Judge Ada Brown on 3/19/2020) (lrl) (Entered: 03/19/2020)
02/22/2021	108 (p.1759)	Unopposed MOTION to Reopen Case filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Proposed Order) (Askew, Kim) (Entered: 02/22/2021)
02/22/2021	109 (p.1764)	Appendix in Support filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re 108 (p.1759) Unopposed MOTION to Reopen Case (Askew, Kim) (Entered: 02/22/2021)
02/23/2021	110 (p.1771)	ORDER GRANTING 108 (p.1759) UNOPPOSED MOTION TO REOPEN ADMINISTRATIVELY CLOSED CASE. (Ordered by Judge Ada Brown on 2/23/2021) (twd) (Entered: 02/23/2021)
03/02/2021	111 (p.1772)	STATUS REPORT ORDER: Joint Status Report due on or before 3/23/2021. (Ordered by Judge Ada Brown on 3/2/2021) (twd) (Entered: 03/02/2021)
03/23/2021	112 (p.1773)	Joint STATUS REPORT filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Askew, Kim) (Entered: 03/23/2021)
03/24/2021	113 (p.1777)	AMENDED SCHEDULING ORDER: Bench Trial set for three-week docketbeginning 4/5/2022 before Judge Ada Brown. Motions due by 10/25/2021. Discovery due by 9/27/2021. Pretrial Order due by 3/8/2022. Pretrial Materials due by 3/8/2022. Pretrial Conference set for 4/4/2022 10:00 AM before Judge Ada Brown. Deadline for mediation is on or before 9/27/2021. (Ordered by Judge Ada Brown on 3/24/2021) (hml) (Entered: 03/24/2021)

04/20/2021	114 (p.1786)	Court's Exhibit List from Show Cause Hearing held 11/25/2019. (chmb) (Entered: 04/20/2021)
08/02/2021	115 (p.1787)	Designation of Experts by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley, Paul Ward. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B) (Askew, Kim) (Entered: 08/02/2021)
09/02/2021	116 (p.1794)	Agreed MOTION to Extend Time of Deadlines In Amended Scheduling Order to Complete Limited Discovery filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B, # 3 (p.445) Proposed Order) (Askew, Kim) (Entered: 09/02/2021)
09/03/2021	117 (p.1803)	ORDER GRANTING 116 (p.1794) AGREED MOTION TO EXTEND DEADLINES IN AMENDED SCHEDULING ORDER: Discovery due by 10/29/2021. Deadline for mediation is on or before 10/29/2021. Motions due by 11/30/2021. (Ordered by Judge Ada Brown on 9/3/2021) (mjr) (Entered: 09/03/2021)
09/16/2021	118 (p.1804)	NOTICE of Attorney Appearance by John L Green on behalf of Cheryl Butler. (Filer confirms contact info in ECF is current.) (Green, John) (Entered: 09/16/2021)
10/12/2021	119 (p.1805)	MOTION to Compel *Mediation* filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Proposed Order Granting Motion to Compel Mediation, # 2 (p.441) Proposed Order Requiring Expedited Response) (Askew, Kim) (Entered: 10/12/2021)
10/14/2021	120	ELECTRONIC ORDER: The Court expedites the response and reply deadlines to Defendant's Expedited Motion to Compel Court-Ordered Mediation After Agreed Selection of Mediator, Motion for Sanctions, and Supporting Brief (Doc. 119). Plaintiff's response is due by 10/18/2021. Defendant's reply is due by 10/20/2021. (Ordered by Judge Ada Brown on 10/14/2021) (chmb) (Entered: 10/14/2021)
10/18/2021	121 (p.1829)	OBJECTION filed by Cheryl Butler re: 119 (p.1805) MOTION to Compel *Mediation* (Dunlap, Andrew) (Entered: 10/18/2021)
10/20/2021	122 (p.1840)	NOTICE of Attorney Appearance by Mallory Toby Biblo on behalf of Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Filer confirms contact info in ECF is current.) (Biblo, Mallory) (Entered: 10/20/2021)
10/20/2021	123 (p.1842)	REPLY filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 119 (p.1805) MOTION to Compel *Mediation* (Askew, Kim) (Entered: 10/20/2021)
10/20/2021	124	ELECTRONIC ORDER denying 119 (p.1805) Expedited Motion to Compel Court-Ordered Mediation After Agreed Selection of Mediator, Motion for Sanctions, and Supporting Brief. The parties have until 10/27/2021 to choose a new mediator or the Court will appoint one in the event the parties cannot agree. (Ordered by Judge Ada Brown on 10/20/2021) (chmb) (Entered: 10/20/2021)
10/27/2021	125 (p.1864)	NOTICE of *Agreed Mediator* filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley (Attachments: # 1 (p.30) Proposed Order) (Askew, Kim) (Entered: 10/27/2021)

11/29/2021	126 (p.1868)	MOTION for Summary Judgment filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley (Attachments: # 1 (p.30) Proposed Order) (Askew, Kim) (Entered: 11/29/2021)
11/29/2021	127 (p.1876)	Brief/Memorandum in Support filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re 126 (p.1868) MOTION for Summary Judgment (Askew, Kim) (Entered: 11/29/2021)
11/29/2021	128 (p.1937)	Appendix in Support filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re 126 (p.1868) MOTION for Summary Judgment , 127 (p.1876) Brief/Memorandum in Support of Motion (Askew, Kim) (Entered: 11/29/2021)
12/16/2021	129 (p.2272)	First MOTION to Extend Time to respond to motion for summary judgment filed by Cheryl Butler (Dunlap, Andrew) (Entered: 12/16/2021)
12/20/2021	130	ELECTRONIC ORDER granting 129 (p.2272) Plaintiff's Unopposed Motion to Extend the Time to File an Objection to Defendant's Motion for Summary Judgment. Plaintiff is ordered to respond by 1/03/2022. (Ordered by Judge Ada Brown on 12/20/2021) (chmb) (Entered: 12/20/2021)
01/03/2022	131 (p.2274)	Second MOTION to Extend Time to file an objection filed by Cheryl Butler (Dunlap, Andrew) (Entered: 01/03/2022)
01/04/2022	132 (p.2276)	RESPONSE filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 131 (p.2274) Second MOTION to Extend Time to file an objection (Attachments: # 1 (p.30) Proposed Order) (Askew, Kim) (Entered: 01/04/2022)
01/06/2022	133 (p.2281)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $100; Receipt number 0539-12502763) filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Brief in support and seeking relief from Local Rule 83.10)Attorney Ezra Ishmael Young added to party Cheryl Butler(pty:pla) (Young, Ezra) (Entered: 01/06/2022)
01/06/2022	134	ELECTRONIC ORDER granting 131 (p.2274) Plaintiff's Second Motion to Extend the Time to File an Objection to Defendant's Motion for Summary Judgment. Plaintiff's response due 1/7/2022. (Ordered by Judge Ada Brown on 1/6/2022) (chmb) (Entered: 01/06/2022)
01/06/2022	135 (p.2291)	Third MOTION to Extend Time to File Opposition to SJ filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Exhibit(s) Defs' Opp to Extension) (Young, Ezra) (Entered: 01/06/2022)
01/07/2022	136	ELECTRONIC ORDER granting 133 (p.2281) Application for Admission Pro Hac Vice of Ezra I. Young. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Ada Brown on 1/7/2022) (chmb) (Entered: 01/07/2022)
01/07/2022	137 (p.2301)	First MOTION to Strike 135 (p.2291) Third MOTION to Extend Time to File Opposition to SJ filed by Cheryl Butler (Dunlap, Andrew) (Entered: 01/07/2022)
01/07/2022	138 (p.2303)	First MOTION to Strike 137 (p.2301) First MOTION to Strike 135 (p.2291) Third MOTION to Extend Time to File Opposition to SJ filed by Cheryl Butler (Young,

		Ezra) (Entered: 01/07/2022)
01/07/2022	139 (p.2306)	First MOTION to Withdraw *as Counsel of Record* filed by Cheryl Butler (Dunlap, Andrew) (Entered: 01/07/2022)
01/07/2022	140 (p.2307)	First MOTION to Substitute Attorney, *Andrew Dunlap* added attorney Ezra Ishmael Young. Motion filed by Cheryl Butler (Young, Ezra) (Entered: 01/07/2022)
01/07/2022	141	ELECTRONIC ORDER denying 135 (p.2291) Plaintiff Cheryl Butler's Third Motion for Extension of Time. (Ordered by Judge Ada Brown on 1/7/2022) (chmb) (Entered: 01/07/2022)
01/10/2022	142	ELECTRONIC ORDER finding as moot 137 (p.2301) Plaintiff's Motion to Strike Pleadings pursuant to the Court's Electronic Order 141 denying Plaintiff Cheryl Butler's Third Motion for Extension of Time 135 (p.2291) . (Ordered by Judge Ada Brown on 1/10/2022) (chmb) (Entered: 01/10/2022)
01/10/2022	143	ELECTRONIC ORDER finding as moot 138 (p.2303) Plaintiff Cheryl Butler's Motion to Strike ECF NO. 137 pursuant to the Court's 142 Electronic Order finding 137 (p.2301) Plaintiff's Motion to Strike Pleadings as moot. (Ordered by Judge Ada Brown on 1/10/2022) (chmb) (Entered: 01/10/2022)
01/11/2022	144	ELECTRONIC ORDER denying 139 (p.2306) Motion to Withdraw as Counsel. (Ordered by Judge Ada Brown on 1/11/2022) (chmb) (Entered: 01/11/2022)
01/11/2022	145	ELECTRONIC ORDER denying 140 (p.2307) Motion to Substitute Attorney. (Ordered by Judge Ada Brown on 1/11/2022) (chmb) (Entered: 01/11/2022)
01/13/2022	146 (p.2309)	NOTICE of Attorney Appearance by Ezra Ishmael Young on behalf of Cheryl Butler. (Filer will update contact info in ECF.) (Young, Ezra) (Entered: 01/13/2022)
01/13/2022	147 (p.2311)	First MOTION for Reconsideration re 144 Order on Motion to Withdraw, 145 Order on Motion to Substitute Attorney filed by Cheryl Butler with Brief/Memorandum in Support. (Young, Ezra) (Entered: 01/13/2022)
01/14/2022	150 (p.2316)	OBJECTION filed by Cheryl Butler re: 147 (p.2311) First MOTION for Reconsideration re 144 Order on Motion to Withdraw, 145 Order on Motion to Substitute Attorney (Dunlap, Andrew) (Entered: 01/14/2022)
01/20/2022	151 (p.2318)	First MOTION to Strike 150 (p.2316) Response/Objection filed by Cheryl Butler (Young, Ezra) (Entered: 01/20/2022)
01/20/2022	152 (p.2321)	MOTION for Extension of Time to File Response/Reply to 134 Order on Motion for Extension of Time filed by Cheryl Butler with Brief/Memorandum in Support. (Young, Ezra) (Entered: 01/20/2022)
02/01/2022	153 (p.2330)	RESPONSE filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 147 (p.2311) First MOTION for Reconsideration re 144 Order on Motion to Withdraw, 145 Order on Motion to Substitute Attorney (Askew, Kim) (Entered: 02/01/2022)
02/01/2022	154 (p.2337)	RESPONSE filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 152 (p.2321) MOTION for Extension of Time to File Response/Reply to 134 Order on Motion for Extension of Time (Attachments: # 1 (p.30) Exhibit(s) A, # 2 (p.441) Exhibit(s) B, # 3 (p.445) Exhibit(s) C) (Askew, Kim) (Entered: 02/01/2022)

02/08/2022	155 (p.2378)	*Defendant's* Pretrial Disclosures *Under Federal Rule of Civil Procedure 26(a)(3)(A)* filed by Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Askew, Kim) (Entered: 02/08/2022)
02/09/2022	156 (p.2388)	First MOTION to Extend Time to file Pretrial Disclosures filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Exhibit(s) Correspondence btw Counsel, # 2 (p.441) Exhibit(s) Young Declaration) (Young, Ezra) (Entered: 02/09/2022)
02/14/2022	157 (p.2406)	REPLY filed by Cheryl Butler re: 147 (p.2311) First MOTION for Reconsideration re 144 Order on Motion to Withdraw, 145 Order on Motion to Substitute Attorney (Attachments: # 1 (p.30) Exhibit(s) Correspondence btw Counsel) (Young, Ezra) (Entered: 02/14/2022)
02/14/2022	158 (p.2415)	REPLY filed by Cheryl Butler re: 152 (p.2321) MOTION for Extension of Time to File Response/Reply to 134 Order on Motion for Extension of Time (Attachments: # 1 (p.30) Exhibit(s) Young email, # 2 (p.441) Exhibit(s) Correspondence btw Counsel, # 3 (p.445) Exhibit(s) Correspondence btw Counsel) (Young, Ezra) (Entered: 02/14/2022)
02/19/2022	159	***STRICKEN, Per 166 (p.2444) Order*** RESPONSE filed by Cheryl Butler re: 126 (p.1868) MOTION for Summary Judgment (Young, Ezra) Modified on 2/28/2022 (ygl). (Entered: 02/19/2022)
02/19/2022	160	***STRICKEN, Per 166 (p.2444) Order*** Brief/Memorandum in Support filed by Cheryl Butler re 159 Response/Objection (Young, Ezra) Modified on 2/28/2022 (ygl). (Entered: 02/19/2022)
02/19/2022	161	***STRICKEN, Per 166 (p.2444) Order*** Appendix in Support filed by Cheryl Butler re 159 Response/Objection (Young, Ezra) Modified on 2/28/2022 (ygl). (Entered: 02/19/2022)
02/22/2022	162 (p.2433)	RESPONSE filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley re: 156 (p.2388) First MOTION to Extend Time to file Pretrial Disclosures (Askew, Kim) (Entered: 02/22/2022)
02/23/2022	163	***DISREGARD, ATTORNEY TO REFILE*** MOTION for Hearing filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley (Askew, Kim) Modified on 2/23/2022 (mla). (Entered: 02/23/2022)
02/23/2022	164 (p.2442)	MOTION for Hearing filed by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley (Askew, Kim) (Entered: 02/23/2022)
02/25/2022	165 (p.2443)	ORDER granting 164 (p.2442) Agreed MOTION for Hearing: Status Conference set for 3/8/2022 10:00 AM before Judge Ada Brown. (Ordered by Judge Ada Brown on 2/25/2022) (jmg) (Entered: 02/25/2022)
02/28/2022	166 (p.2444)	ORDER AND MEMORANDUM OPINION: Plaintiff Cheryl Butler's Opposed Motion to File Opposition to Summary Judgment Out of Time with Incorporated Brief (Doc. 152 (p.2321)) is DENIED. The following filings are ORDERED STRICKEN from the record: Plaintiff Cheryl Butler's Responsive Motion Opposing Summary Judgment (Doc. 159); Brief in Support of Plaintiff's Opposition to Summary Judgment (Doc. 160); Appendix in Support of Plaintiff's Opposition to

		Summary Judgment (Doc. 161). (Ordered by Judge Ada Brown on 2/28/2022) (ygl) (Entered: 02/28/2022)
03/03/2022	167 (p.3180)	Notice of Filing of Official Electronic Transcript of Status Conference Proceedings held on 11-14-19 before Judge Brown. Court Reporter/Transcriber Todd Anderson, Telephone number 214-753-2170. Parties are notified of their duty to review the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If the transcript contains personal identifiers that must be redacted under MO 61, Fed.R.Civ.P. 5.2 or Fed.R.Crim.P. 49.1, or if the transcript contains the name of a minor child victim or a minor child witness that must be redacted under 18 U.S.C. § 3509, file a Redaction Request - Transcript within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (25 pages) Redaction Request due 3/24/2022. Redacted Transcript Deadline set for 4/4/2022. Release of Transcript Restriction set for 6/1/2022. (jta) (Entered: 03/03/2022)
03/03/2022	168 (p.3206)	Notice of Filing of Official Electronic Transcript of Show Cause and Status Conference Hearing Proceedings held on 11-25-19 before Judge Brown. Court Reporter/Transcriber Todd Anderson, Telephone number 214-753-2170. Parties are notified of their duty to review the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If the transcript contains personal identifiers that must be redacted under MO 61, Fed.R.Civ.P. 5.2 or Fed.R.Crim.P. 49.1, or if the transcript contains the name of a minor child victim or a minor child witness that must be redacted under 18 U.S.C. § 3509, file a Redaction Request - Transcript within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (171 pages) Redaction Request due 3/24/2022. Redacted Transcript Deadline set for 4/4/2022. Release of Transcript Restriction set for 6/1/2022. (jta) (Entered: 03/03/2022)
03/03/2022	169 (p.3378)	Notice of Filing of Official Electronic Transcript of Telephone Conference Proceedings held on 11-27-19 before Judge Brown. Court Reporter/Transcriber Todd Anderson, Telephone number 214-753-2170. Parties are notified of their duty to review the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If the transcript contains personal identifiers that must be redacted under MO 61, Fed.R.Civ.P. 5.2 or Fed.R.Crim.P. 49.1, or if the transcript contains the name of a minor child victim or a minor child witness that must be redacted under 18 U.S.C. § 3509, file a Redaction Request - Transcript within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (73 pages) Redaction Request due 3/24/2022. Redacted Transcript Deadline set for 4/4/2022. Release of Transcript Restriction set for 6/1/2022. (jta) (Entered: 03/03/2022)
03/04/2022	170 (p.2454)	Pretrial Disclosures filed by Cheryl Butler. (Young, Ezra) (Entered: 03/04/2022)
03/07/2022	171 (p.2488)	MOTION for Reconsideration re 166 (p.2444) Memorandum Opinion and Order,, filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Exhibit(s) Mediation Inquiry, # 2 (p.441) Exhibit(s) Expert Disclosures MIA, # 3 (p.445) Exhibit(s) Dunlap Emails, # 4 Exhibit(s) Scheduling Conflicts, # 5 (p.447) Exhibit(s) Dunlap Admissions, # 6 (p.451) Exhibit(s) Jan 7 Deadline, # 7 (p.545) Exhibit(s) Hearing Trans 2, # 8 (p.548) Exhibit(s) Pre Trial Order, # 9 (p.552)

		Exhibit(s) Hearing Trans 3, # 10 (p.566) Exhibit(s) Mitigation Produc, # 11 (p.572) Exhibit(s) Hearing Trans 2) (Young, Ezra) (Entered: 03/07/2022)
03/07/2022	172 (p.2592)	MOTION for Reconsideration re 166 (p.2444) Memorandum Opinion and Order,, filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Exhibit(s) Mediation Inquiry, # 2 (p.441) Exhibit(s) Expert Disclosures MIA, # 3 (p.445) Exhibit(s) Dunlap Emails, # 4 Exhibit(s) Scheduling Conflicts, # 5 (p.447) Exhibit(s) Dunlap Admissions, # 6 (p.451) Exhibit(s) Jan 7 Deadline, # 7 (p.545) Exhibit(s) Hearing Trans 2, # 8 (p.548) Exhibit(s) Pretrial Order, # 9 (p.552) Exhibit(s) Hearing Trans 3, # 10 (p.566) Exhibit(s) Mitigation Produc, # 11 (p.572) Exhibit(s) Hearing Trans 1) (Young, Ezra) (Entered: 03/07/2022)
03/07/2022	173	ELECTRONIC ORDER: Status Conference via zoom reset for 3/8/2022 03:00 PM before Judge Ada Brown. (Ordered by Judge Ada Brown on 3/7/2022) (chmb) (Entered: 03/07/2022)
03/08/2022	174	ELECTRONIC Minute Entry for proceedings held before Judge Ada Brown: Status Conference held on 3/8/2022. Attorney Appearances: Plaintiff - Andrew Dunlap, Ezra Young, John Green; Defense - Kim Askew, Mallory Biblo. (Court Reporter: Nikki Barr) (No exhibits) Time in Court - 01:40. **The 147 (p.2311) Motion for Reconsideration is hereby DENIED and the 151 (p.2318) Motion to Strike is found to be MOOT**. In today's hearing, the Court listed several reasons for denying Plaintiff Cheryl Butler's 147 (p.2311) Motion for Reconsideration of Motions to Withdraw and Substitute Counsel. The Court further notes its denial is based on a full review of the record and a totality of the circumstances. (chmb) Modified to add text on 3/8/2022 (epm). (Entered: 03/08/2022)
03/08/2022	175 (p.2701)	TRIAL BRIEF by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Askew, Kim) (Entered: 03/08/2022)
03/08/2022	176 (p.2724)	Proposed Pretrial Order by Cheryl Butler. (Young, Ezra) (Entered: 03/08/2022)
03/08/2022	177 (p.2769)	Proposed Pretrial Order *(Corrected)* by Cheryl Butler. (Young, Ezra) (Entered: 03/08/2022)
03/08/2022	178 (p.2814)	Proposed Findings of Fact by Cheryl Butler. (Young, Ezra) (Entered: 03/08/2022)
03/09/2022	179 (p.2873)	Supplemental Document by Cheryl Butler as to 174 Order on Motion for Reconsideration, Order on Motion to Strike, Status Conference . (Young, Ezra) (Entered: 03/09/2022)
03/09/2022	180 (p.2878)	Transcript Order Form: transcript requested by Roy P. Anderson, Steven C. Currall, Rhonda Ice Adams, Julie P. Forrester, Harold Stanley, Jennifer M Collins, Southern Methodist University for Status Conference held 03/08/2022 (Court Reporter: Nikki Barr.) Payment method: Private funds - Requester has obtained the estimate from the reporter and has paid or will pay the cost as directed. Reminder: If the transcript is ordered for an appeal, Appellant must also file a copy of the order form with the appeals court.. (Askew, Kim) (Entered: 03/09/2022)
03/09/2022	181 (p.2879)	MEMORANDUM OPINION AND ORDER denying 171 (p.2488) Motion for Reconsideration. (Ordered by Judge Ada Brown on 3/9/2022) (jmg) (Entered: 03/10/2022)

03/10/2022	182	ELECTRONIC ORDER finding as moot 172 (p.2592) Plaintiff Cheryl Butler's Motion for Reconsideration with Incorporated Brief. This motion is a duplicate of 171 (p.2488) . The Court dismissed that motion in its 181 (p.2879) Memorandum Opinion and Order. Therefore, this 172 (p.2592) motion is moot. (Ordered by Judge Ada Brown on 3/10/2022) (chmb) (Entered: 03/10/2022)
03/10/2022	183 (p.2883)	MOTION for Reconsideration re 181 (p.2879) Memorandum Opinion and Order filed by Cheryl Butler with Brief/Memorandum in Support. (Young, Ezra) (Entered: 03/10/2022)
03/14/2022	184 (p.2895)	NOTICE of Attorney Appearance by Maria Garrett on behalf of Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Filer confirms contact info in ECF is current.) (Garrett, Maria) (Entered: 03/14/2022)
03/14/2022	185 (p.2897)	Proposed Findings of Fact by Roy P. Anderson, Jennifer M Collins, Steven C. Currall, Julie P. Forrester, Southern Methodist University, Harold Stanley. (Askew, Kim) (Entered: 03/14/2022)
03/15/2022	186 (p.3452)	Notice of Filing of Official Electronic Transcript of Status Conference Proceedings held on 3-8-2022 before Judge Brown. Court Reporter/Transcriber Nikki Barr, Telephone number 214.753.2661 nikki_barr@txnd.uscourts.gov. Parties are notified of their duty to review the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If the transcript contains personal identifiers that must be redacted under MO 61, Fed.R.Civ.P. 5.2 or Fed.R.Crim.P. 49.1, or if the transcript contains the name of a minor child victim or a minor child witness that must be redacted under 18 U.S.C. § 3509, file a Redaction Request - Transcript within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (84 pages) Redaction Request due 4/5/2022. Redacted Transcript Deadline set for 4/15/2022. Release of Transcript Restriction set for 6/13/2022. (nbb) (Entered: 03/15/2022)
03/17/2022	187 (p.2948)	MEMORANDUM OPINION AND ORDER denying 183 (p.2883) MOTION for Reconsideration 181 (p.2879) Memorandum Opinion and Order. The Court ORDERS this case STAYED pending the Court's ruling on Defendants' motion for summary judgment. (Doc. 126). (Ordered by Judge Ada Brown on 3/17/2022) (jmg) (Main Document 187 replaced to correct typographical error on 3/18/2022) (epm). (Entered: 03/17/2022)
03/25/2022	188 (p.2968)	First MOTION for Discovery *pursuant to Rule 56(d)* filed by Cheryl Butler with Brief/Memorandum in Support. (Attachments: # 1 (p.30) Exhibit(s) Hearing Trans, # 2 (p.441) Exhibit(s) Tenure Box Contents, # 3 (p.445) Exhibit(s) Tenure Box Contents (Collins), # 4 Exhibit(s) Emails btw counsel, # 5 (p.447) Exhibit(s) Butler Dec. (Feb 2022), # 6 (p.451) Exhibit(s) Request for Tenure Box, # 7 (p.545) Exhibit(s) Emails btw counsel, # 8 (p.548) Exhibit(s) Collins Dec., # 9 (p.552) Exhibit(s) Third Comm. Tenure Rpt, # 10 (p.566) Exhibit(s) Tenure Box Feb 2016, # 11 (p.572) Exhibit(s) Curral Dep. Trans., # 12 (p.594) Exhibit(s) Curral May 5, 2016 denial ltr, # 13 (p.801) Exhibit(s) Apprehension of lawsuit in 2015, # 14 (p.804) Butler Dec. (Mar 2022)) (Young, Ezra) (Entered: 03/25/2022)
04/11/2022	189 (p.3068)	ORDER denying 188 (p.2968) Motion for Discovery pursuant to Rule 56(d). (Ordered by Judge Ada Brown on 4/11/2022) (oyh) (Entered: 04/11/2022)
04/11/2022		

	190 (p.3069)	ORDER granting 126 (p.1868) Motion for Summary Judgment. An opinion containing the grounds for the Court's decision is forthcoming. (Ordered by Judge Ada Brown on 4/11/2022) (ygl) (Entered: 04/12/2022)
12/02/2022	191 (p.3070)	MEMORANDUM OPINION, ORDER, AND ORDER TO SHOW CAUSE. For the reasons stated above, the Court DENIES Plaintiff's Motion to Reopen Discovery Pursuant to Rule 56(d). (Doc. 188). Furthermore, the Court ORDERS Plaintiff and her counsel, Ezra Young, to appear in-person for a hearing on January 19, 2023, at 10:00 a.m. in the United States District Court, 1100 Commerce Street, Courtroom 1310, Dallas, Texas 75242, to show cause as to (i) whether Young violated Federal Rule of Civil Procedure 11; (ii) whether Young violated the standards for attorney conduct adopted in Dondi; and (iii) whether Young should sanctioned. The Court requests the clerk of the court to direct this Order to Plaintiff Cheryl Butler and her counsel Ezra Young by both mail and email. (Ordered by Judge Ada Brown on 12/2/2022) (ndt) (Entered: 12/02/2022)
01/19/2023	192 (p.3087)	RESPONSE filed by Cheryl Butler re: 191 (p.3070) Order to Show Cause/Order to Answer,,, (Young, Ezra) (Entered: 01/19/2023)
01/19/2023	193 (p.3121)	MEMORANDUM OPINION AND ORDER: Defendants' 126 (p.1868) Motion for Summary Judgment is GRANTED. All of Plaintiff's remaining counts (Counts 9 to 30) are hereby dismissed with prejudice. (Ordered by Judge Ada Brown on 1/19/2023) (twd) (Entered: 01/19/2023)
01/19/2023	194	ELECTRONIC Minute Entry for proceedings held before Judge Ada Brown: Show Cause Hearing held on 1/19/2023. Attorney Appearances: Plaintiff - Ezra Young; Defense - Kim Askew, Mallory Biblo. (Court Reporter: Nikki Barr) (No exhibits) Time in Court - 03:12. (chmb) (Entered: 01/19/2023)
01/19/2023	195 (p.3172)	ORDER: Although the Court finds and concludes Youngs conduct was sanctionable, the Court declines to sanction Young. Demonstrably, all of Plaintiffs remaining claims have been dismissed with prejudice. (See Doc. 193). The Court declines to impose any sanction on Young. However, the Court cautions Young and any counsel practicing within the Northern District moving forward to reflect the attorney standards promulgated in Dondi. (Ordered by Judge Ada Brown on 1/19/2023) (chmb) (Entered: 01/19/2023)
01/19/2023	196 (p.3176)	FINAL JUDGMENT: Plaintiffs case is dismissed with prejudice. The Court instructs the Clerk of the Court to close this proceeding, notwithstanding. (Ordered by Judge Ada Brown on 1/19/2023) (chmb) (Entered: 01/19/2023)
01/19/2023	197 (p.3177)	NOTICE OF APPEAL as to 187 (p.2948) Memorandum Opinion and Order,, Super U, 193 (p.3121) Memorandum Opinion and Order, 195 (p.3172) Order, 190 (p.3069) Order on Motion for Summary Judgment, 189 (p.3068) Order on Motion for Discovery, 143 Order on Motion to Strike, 166 (p.2444) Memorandum Opinion and Order,, 47 (p.1151) Order on Motion to Dismiss for Failure to State a Claim, 141 Order on Motion for Extension of Time, 144 Order on Motion to Withdraw, 191 (p.3070) Order to Show Cause/Order to Answer,,, 67 (p.1474) Order,, Terminate Motions, 181 (p.2879) Memorandum Opinion and Order to the Fifth Circuit by Cheryl Butler. Filing fee $505, receipt number ATXNDC-13455617. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF

		attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Young, Ezra) (Entered: 01/19/2023)
01/22/2023	198 (p.3537)	Notice of Filing of Official Electronic Transcript of Show-Cause Proceedings held on 1-19-2023 before Judge Brown. Court Reporter/Transcriber Nikki Barr, Telephone number 214.753.2661 nikki_barr@txnd.uscourts.gov. Parties are notified of their duty to review the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If the transcript contains personal identifiers that must be redacted under MO 61, Fed.R.Civ.P. 5.2 or Fed.R.Crim.P. 49.1, or if the transcript contains the name of a minor child victim or a minor child witness that must be redacted under 18 U.S.C. § 3509, file a Redaction Request - Transcript within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (131 pages) Redaction Request due 2/13/2023. Redacted Transcript Deadline set for 2/22/2023. Release of Transcript Restriction set for 4/24/2023. (nbb) (Main Document 198 replaced per chambers to correct typographical error on 1/25/2023) (ali). (Entered: 01/22/2023)
01/27/2023		USCA Case Number 23-10072 in USCA5 for 197 (p.3177) Notice of Appeal filed by Cheryl Butler. (svc) (Entered: 01/27/2023)
02/27/2023	199 (p.3669)	Electronic Copy of Admitted Hearing or Trial Exhibit(s) re 197 (p.3177) Notice of Appeal filed by Cheryl Butler. Exhibits are available for public inspection at the clerk's office. (axm) (Entered: 02/27/2023)

2

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
v.	§	
	§	Civil Action No. **3:18-CV-37-L**
JENNIFER P. COLLINS, *et al.*,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the court is Defendants' Motion to Dismiss Second Amended Complaint Pursuant to Rule 12(b)(6) (Doc. 15), filed April 2, 2018. After considering the motion, response, and reply, the court **grants in part and denies in part** Defendants' Motion to Dismiss Second Amended Complaint Pursuant to Rule 12(b)(6) (Doc. 15).

I. Factual and Procedural Background

Plaintiff Cheryl Butler ("Plaintiff") brought this action against Southern Methodist University ("SMU") and a number of individuals. As a result of Plaintiff's Second Amended Complaint ("Complaint") and an order by the court dismissing claims against certain unserved defendants under Federal Rule of Civil Procedure 4(m), only SMU and Defendants Jennifer P. Collins, Steven C. Currall, Roy R. Anderson, Julie Forrester Rogers, Harold Stanley, Paul J. Ward remain ("Individual Defendants").[1] The court refers collectively to SMU and the Individual Defendants as "Defendants."

[1] On November 21, 2018, the court ordered as follows:

> In its Order of October 17, 2018, the court directed Plaintiff Cheryl Butler ("Plaintiff" or "Butler") to effect service on **Defendants Anthony Colangelo; Elizabeth G. Thornburg; Samantha Thomas; and Rhonda Ice Adams** by November 16, 2018, and warned her that if service was not effected on these Defendants by this date, this action against these Defendants would be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. As of this date, the

In her Complaint, Plaintiff alleges causes of action under state and federal law. Plaintiff's claims pertain to and arise from her employment as a "tenure track" Assistant Professor of Law at the SMU Dedman School of Law. In their Motion to Dismiss, Defendants move for dismissal of Plaintiff's negligent supervision claim against SMU. Defendants also move to dismiss Plaintiff's claims against the remaining Individual Defendants for fraud, defamation, conspiracy to defame, alleged violations of the Family Medical Leave Act ("FMLA"), and claims brought pursuant to 42 U.S.C. § 1981. For the reasons herein explained, the court **grants** Defendants' Motion to Dismiss Plaintiff's negligent supervision claim against SMU and Plaintiff's claims against the Individual Defendants for fraud, defamation, and conspiracy to defame, and **denies** Motion to Dismiss Plaintiff's FMLA claim and claims brought pursuant to § 1981 against the Individual Defendants.

II. Standard for Rule 12(b)(6) - Failure to State a Claim

To defeat a motion to dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 742 (5th Cir. 2008); *Guidry v. American Pub. Life Ins. Co.*, 512 F.3d 177, 180 (5th Cir. 2007). A claim meets the plausibility test "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer

---

docket does not reflect that Defendants Anthony Colangelo; Elizabeth G. Thornburg; Samantha Thomas; and Rhonda Ice Adams have been served. Moreover, Butler has not requested an extension of the court's deadline, or shown good cause for her failure to effect service as ordered by the court. Accordingly, pursuant to Rule 4(m), this action against Defendants **Anthony Colangelo; Elizabeth G. Thornburg; Samantha Thomas; and Rhonda Ice Adams is dismissed without prejudice**.

Order (Doc. 40).

possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). While a complaint need not contain detailed factual allegations, it must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555 (citation omitted). The "[f]actual allegations of [a complaint] must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (quotation marks, citations, and footnote omitted). When the allegations of the pleading do not allow the court to infer more than the mere possibility of wrongdoing, they fall short of showing that the pleader is entitled to relief. *Iqbal*, 556 U.S. at 679.

In reviewing a Rule 12(b)(6) motion, the court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mutual Auto. Ins. Co.,* 509 F.3d 673, 675 (5th Cir. 2007); *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In ruling on such a motion, the court cannot look beyond the pleadings. *Id.*; *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). The pleadings include the complaint and any documents attached to it. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000). Likewise, "'[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claims.'" *Id.* (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp*., 987 F.2d 429, 431 (7th Cir. 1993)). In this regard, a document that is part of the record but not referred to in a plaintiff's complaint *and* not attached to a motion to dismiss may not be considered by the court in ruling on a 12(b)(6) motion. *Gines v. D.R. Horton, Inc.*, 699 F.3d 812, 820 & n.9 (5th Cir. 2012) (citation omitted). Further, it

is well-established and "'clearly proper in deciding a 12(b)(6) motion [that a court may] take judicial notice of matters of public record.'" *Funk v. Stryker Corporation*, 631 F.3d 777, 783 (5th Cir. 2011) (quoting *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) (citing *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994)).

The ultimate question in a Rule 12(b)(6) motion is whether the complaint states a valid claim when it is viewed in the light most favorable to the plaintiff. *Great Plains Trust Co. v. Morgan Stanley Dean Witter*, 313 F.3d 305, 312 (5th Cir. 2002). While well-pleaded facts of a complaint are to be accepted as true, legal conclusions are not "entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679 (citation omitted). Further, a court is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions, or legal conclusions. *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (citations omitted). The court does not evaluate the plaintiff's likelihood of success; instead, it only determines whether the plaintiff has pleaded a legally cognizable claim. *United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir. 2004). Stated another way, when a court deals with a Rule 12(b)(6) motion, its task is to test the sufficiency of the allegations contained in the pleadings to determine whether they are adequate enough to state a claim upon which relief can be granted. *Mann v. Adams Realty Co.*, 556 F.2d 288, 293 (5th Cir. 1977); *Doe v. Hillsboro Indep. Sch. Dist.*, 81 F.3d 1395, 1401 (5th Cir. 1996), *rev'd on other grounds*, 113 F.3d 1412 (5th Cir. 1997) (en banc). Accordingly, denial of a 12(b)(6) motion has no bearing on whether a plaintiff ultimately establishes the necessary proof to prevail on a claim that withstands a 12(b)(6) challenge. *Adams*, 556 F.2d at 293.

III. Analysis

A. Negligent Supervision, Defamation, Fraud, Conspiracy to Defame

Defendants contend that Plaintiff's negligent supervision claim against SMU and her defamation and fraud claims against the Individual Defendants are preempted by the Texas Commission on Human Rights Act ("TCHRA"). Defendants further assert that Plaintiff's conspiracy to defame claim against the Individual Defendants fails, as a matter of law, as it is derivative of her preempted defamation claim.

Plaintiff disagrees that the TCHRA preempts all of her tort claims against SMU, and also responds that the TCHRA does not preempt her defamation and other tort claims against the Individual Defendants.[2]

Defendants reply that the cases relied on by Plaintiff in response to their preemption argument regarding the defamation and fraud claims against the Individual Defendants are distinguishable. *See* Defs.' Reply (noting that they were unable to locate some of the cases relied on by Plaintiff because the citations included in her response were incorrect). Regarding the tort claims against the Individual Defendants, Defendants contend:

> In this case, Butler alleges a discriminatory and retaliatory scheme that took place over her entire tenure at SMU and involved many members of the faculty, not a single unexpected incident of attempted rape. Every allegation Butler raises of defamatory or fraudulent conduct by the individual defendants takes place within the scope of their employment in terms of discrimination and retaliation in the tenure and

[2] Plaintiff filed a twenty-four page response to Defendants' Motion to Dismiss. The response includes a table of contents and table of authorities as required by this district's Local Civil Rule 7.2, but the table of contents simply outlines the sections included in Plaintiff's response without providing any corresponding page references as required by Local Civil Rule 7.2(d)(1), making it totally useless and unhelpful in locating the various arguments made by Plaintiff in her response. Plaintiff's response is missing citations to legal authority and her pleadings and, thus, does not comply with Local Civil Rules 7.1(d) or 7.2(d)(2). *Failure in the future of Plaintiff to comply with this district's Local Civil Rules will result in the noncompliant filing being stricken without further notice or other sanctions.*

> promotion process. *See, e.g.*, 2d Am. Compl. ¶¶ 631, 638, 645 (alleging defendants defamed Butler because they sought to retaliate against her). Butler's fraud claim is based on the same conduct as her discrimination and retaliation claims. The Second Amended Complaint directly and repeatedly links Butler's fraud allegations to discrimination and retaliation, explicitly alleging that withholding the tenure report was retaliatory for discrimination complaints. *See, e.g.*, 2d Am. Compl. ¶¶ 664-666, 670, 672-675, 678. 2d Am. Compl. ¶ 678. The gravamen of all Butler's claims in the Second Amended Complaint is discrimination and retaliation in connection with the tenure and promotion process. Accordingly, like the tort claims in *Waffle House*, *Hassell*, and *Woods*, Butler's tort claims are all preempted by the TCHRA.

Defs.' Reply 5 (footnote omitted) (citing *Hassell v. Axium Healthcare Pharmacy, Inc.*, No. 4:13-CV-746-O, 2014 WL 1757207 at *7 (N.D. Tex. May 2, 2014); *Woods v. Communities in School Se. Tex.,* No. 09-14-00021-CV, 2015 WL 2414260 at *10 (Tex. App. Beaumont May 21, 2015, no pet.); *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 802, 808 (Tex. 2010)). Defendants maintain that Plaintiff abandoned her negligent supervision claim against SMU by not addressing it. Defendants also note:

> Butler did not include claims for defamation and fraud against SMU in her Second Amended Complaint, but inexplicably continues to argue in her Response (p. 13-15) that the TCHRA does not preempt all tort claims against SMU. Her live complaint does not contain claims for defamation and fraud against SMU and the argument is irrelevant.

Defs.' Reply 2.

The court has reviewed the cases cited by the parties, to the extent it was able to locate them using the citations provided, and agrees with Defendants that Plaintiff's defamation and fraud claims are preempted by the TCHRA, as the gravamen of these claims is, as Defendants argue, for unlawful employment discrimination and retaliation, wrongs that the TCHRA is specifically designed to address. *See Waffle House, Inc.*, 313 S.W.3d at 808-09 (concluding that the plaintiff's common law tort claims were preempted by her claim under the TCHRA because the gravamen of these claims

was the type of wrong that the TCHRA was meant to remedy). Because Plaintiff's conspiracy to defame is derivative of her preempted defamation claim, it also fails as a matter of law. *Vendever LLC v. Intermatic Mfg. Ltd.*, No. 3:11-CV-201-B, 2011 WL 4346324, at *7 (N.D. Tex. Sept. 16, 2011) (citing *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)).

Further, as Plaintiff did not respond to Defendants' Motion to Dismiss and argument that her negligent supervision claim against SMU is also preempted by the TCHRA, the court concludes that Plaintiff abandoned this claim, which will be dismissed with prejudice. *See Black v. Panola Sch. Dist.*, 461 F.3d 584, 588 n.1 (5th Cir. 2006) (concluding that the plaintiff abandoned her retaliatory abandonment claim when she failed to defend the claim in response to a motion to dismiss); *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1164 (5th Cir. 1983) (explaining that a plaintiff, "in his opposition to a motion for summary judgment cannot abandon an issue and then . . . by drawing on the pleadings resurrect the abandoned issue").

Finally, as Defendants correctly note, Plaintiff's live pleading does not include claims for defamation or fraud against SMU. As a result, the claims are not before the court. As these claims are not part of this action, the court need not address Plaintiff's contentions regarding them or the parties' other contentions that are mooted by the court's rulings.

Because Plaintiff's claims for defamation, conspiracy to commit defamation, and fraud against the Individual Defendants fail as a matter of law, and Plaintiff has abandoned her negligent supervision claim against SMU, the court will not allow her to further amend her pleadings as to these claims in an attempt to resurrect them, as doing so would be futile and unnecessarily delay the resolution of this litigation.

B. Claims Under FMLA and Section 1981

Defendants seek dismissal of Plaintiff's claims under the FMLA and section 1981 on the grounds that they are not Plaintiff's "employer" for purposes of the FMLA, and they are not proper defendants under section 1981 because they did not have substantial control over Plaintiff with respect to employment decisions. The court will deny Defendants' Motion to Dismiss these claims, as it determines that resolution of these issues, which involve factual inquiries, is more appropriate in the context of a summary judgment motion or at trial. As previously stated, at the motion-to-dismiss stage, the court only tests the adequacy of the pleadings and does not address issues of proof or credibility. In this regard, the court also notes the heavy reliance of Defendants on summary judgment motion cases.

IV. Conclusion

For the reasons stated, Defendants' Motion to Dismiss Second Amended Complaint Pursuant to Rule 12(b)(6) (Doc. 15) is **granted** with respect to Plaintiff's negligent supervision claim against SMU and Plaintiff's claims against the Individual Defendants for fraud, defamation, conspiracy to defame, and these claims are **dismissed with prejudice**. Defendants' Motion to Dismiss Second Amended Complaint Pursuant to Rule 12(b)(6) (Doc. 15) is **denied** with respect to Plaintiff's FMLA claim and claims brought pursuant to section 1981 against the Individual Defendants.

It is so ordered this 31st day of March, 2019.

Sam A. Lindsay
United States District Judge

3

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER, Plaintiff, v. JENNIFER M. COLLINS; STEVEN C. CURRALL: ROY P. ANDERSON: JULIE P. FORRESTER; HAROLD STANLEY; PAUL WARD; and SOUTHERN METHODIST UNIVERSITY, Defendants.	§ § § § § § § § § § § § §	CIVIL ACTION NO. 3:18-CV-00037-E

ORDER

Before the Court is Plaintiff's Second Amended Motion for Reconsideration (Doc. 55), filed September 5, 2019, and Defendants' Response in Opposition to Plaintiff's Second Amended Motion for Reconsideration (Doc. 63), filed September 27, 2019. After careful consideration of the motion, response, and applicable law, the Court **DENIES** the motion.

SO ORDERED.

Signed October 24, 2019.

ADA BROWN
UNITED STATES DISTRICT JUDGE

4

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	CIVIL ACTION NO. 3:18-cv-00037-E
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRALL,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, AND	§	
SOUTHERN METHODIST UNIVERSITY,	§	
	§	
Defendants.	§	

ORDER AND MEMORANDUM OPINION

Before the Court is Plaintiff Cheryl Butler's Opposed Motion to File Opposition to Summary Judgment Out of Time with Incorporated Brief. (Doc. 152). After considering the motion, response, the record, and applicable law, the Court finds that the motion should be, and therefore is, DENIED.

I. Background Facts

This case stems from the Defendants' decision to deny Plaintiff's tenure as a law professor and alleged defamatory statements made in 2016. The case was removed to federal court in January of 2018 and was originally before Judge Lindsay. Since then, the case has survived the dismissal without prejudice of multiple defendants, a case reassignment to Judge Brown, Plaintiff's termination of six of her attorneys, Plaintiff's show cause hearing, and Plaintiff's suggestion of bankruptcy leading to the administrative closure of the case.

Defendants filed an unopposed motion to reopen the case in early February 2021. (Doc. 108). One year has passed since the Court granted the motion and reopened the case. (Doc. 109). From that moment to today, Defendants have timely filed their designation of experts, (Doc. 115);

their motion for summary judgment (Doc. 126); and their pretrial disclosure (Doc. 155). The case was finally on track to conclude with an April 5, 2022, trial date. Meanwhile, Plaintiff has not been nearly as productive.

In addition to filing nothing described in the Court's Amended Scheduling Order (Doc. 113), Plaintiff's response to Defendants' summary judgment motion was originally due December 20, 2021. Citing upcoming work demands for both Plaintiff and her attorney Andrew Dunlap, Plaintiff requested a deadline extension to January 3, 2022. (Doc. 129). The Court granted this first extension. (Doc. 130). Then, citing the same work demands and how close she was to finishing her brief, Plaintiff asked for a second deadline extension for an additional four days. The Court granted this second extension. (Doc. 134). From there, the case took an unusual turn.

The day before Plaintiff's summary judgment response was due, Attorney Ezra Young motioned the Court to appear *pro hac vice* on behalf of Plaintiff. (Doc. 133). That same day, he filed Plaintiff's Third Motion for Extension of Time requesting a new deadline of January 20, 2022. (Doc. 135). The next day, Plaintiff's other attorney Andrew Dunlap motioned to strike that third request from the record (Doc. 138) and then motioned to withdraw as counsel. (Doc. 139). The Court granted the application for admission *pro hac vice* (Doc. 136), denied the third deadline extension (Doc. 141), and denied the motion to withdraw as counsel (Doc. 144). Attorney Ezra Young filed Plaintiff's Opposed Motion to File Opposition to Summary Judgment Out of Time requesting a new deadline of either February 18 or 19, 2022; it is unclear from the motion which date she desired. (Doc. 152). That motion (Doc. 152) is now before the Court and is DENIED for the reasons described below.

II. Legal Standard

Federal Rule of Civil Procedure 6(b)(1)(B) provides "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect." "A district court has

discretion to refuse to accept a party's dilatory response to a motion for summary judgment [] and has discretion to deny extending the deadline when no excusable neglect is shown." *Kitchen v. BASF*, 952 F.3d 247, 254 (5th Cir. 2020) (citing *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 161 (5th Cir. 2006)).

The standard for evaluating excusable neglect or good cause is an equitable one that considers "all relevant circumstances surrounding the party's omission," including "the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) (citation and footnote omitted). "Even if good cause and excusable neglect are shown, it nonetheless remains a question of the court's discretion whether to grant any motion to extend time under Rule 6(b)." *McCarty v. Thaler*, 376 F. App'x 442, 443 (5th Cir. 2010) (per curiam) (unpublished) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 894-98 (1990)).

III. Analysis

This Court has been flexible regarding Plaintiff's needs to modify this case's schedule and deferential to her reasons for doing so. But her motions to delay these proceedings have begun to pile up. After granting the Plaintiff multiple extensions, despite her multiple excuses, the Court's flexibility and deference is finally exhausted. At the end of day, "[d]istrict courts must have the power to control their dockets by holding litigants to a schedule." *Shepherd v. City of Shreveport*, 920 F.3d 278, 288 (5th Cir. 2019). The Plaintiff here is not special—the Court must exercise its power to hold her to the deadlines she proposed.

a. Granting this relief unduly prejudices the Defendants.

If the Court allowed Plaintiff's dilatory response to remain, Defendants would have fourteen days to reply creating a March 5, 2022, deadline. The Parties' Pretrial Materials are due

just three days later, March 8, 2022. So rather than having time to focus solely on preparing pretrial materials, as originally contemplated by the parties most recent Joint Status Report (Doc. 112), Defendant would also have to prepare a reply brief. All this cramming would take place within one month of the April 5, 2022, trial date, further inhibiting Defendants' time to prepare. Defendants already opposed Plaintiff's second request for an extension citing their need for "time to prepare for whatever claims survive their motion for summary judgement." (Doc. 132). In addition to that concern becoming more pronounced with the elapsing of one and a half months, granting Plaintiff's request would now require Defendants to work on materials with overlapping deadlines.

b. The length of delay negatively impacts the proceedings.

At minimum this extension would require the parties to juggle multiple deadlines at once. Plaintiff has already proved unable to do so as she failed to comply with the February 8, 2022, Pretrial Disclosure deadline. (*See* Doc. 156-2, Declaration of Ezra Ishmael Young) ("In the course of juggling lead drafting of Professor Butler's summary judgment opposition, two replies to Defendants' opposition to other motions pending before this Court [], I inadvertently missed the deadline for the pretrial disclosures.). In all likelihood, this extension would further require the Court to, once again, extend the deadlines in this four-year-old case.

c. The reasons for delay are simply unpersuasive.

Plaintiff's flouting of the deadlines she proposed must no longer be rewarded. Her reasons for extensions are unpersuasive; and the Court will no longer exercise its discretion to grant them.

i. Although the first motion to extend the summary judgment response deadline was unpersuasive, the Court granted the extension anyway.

Plaintiff's First Unopposed Motion to Extend the Time to File an Objection to Defendants' Motion for Summary Judgement (sic) states the following: "Defendants (sic) can show good cause in this matter because Plaintiff is concluding the fall semester as a professor at Washburn University Law School and cannot assist her counsel in providing a response" and that Plaintiff's Counsel Andrew Dunlap "is also unable to respond in the time allotted due to other matters

requiring his attention." (Doc. 129).

Plaintiff was a law professor at the time she agreed to establish the November 30, 2021, deadline to file dispositive motions and should have been aware that her semester would be concluding at that time. Plaintiff's Counsel Andrew Dunlap's reasoning for the extension was then, and is now, simply too vague to determine if it was or was not for good cause. Nevertheless, the Court granted the deadline extension.

ii. Although the second motion to extend the summary judgment response deadline was unpersuasive, the Court granted the extension anyway.

Plaintiff's Second Motion to Extend the Time to File an Objection to Defendants' Motion for Summary Judgement (sic) simply copied and pasted the language of the first motion into the second, including the same arguments and same typos. (Doc. 131). However, this time Plaintiff stated that she "has completed her brief but needs to complete her declaration and finish compiling exhibits" and needed a four-day extension because she was in the middle of grading papers. *Id.*

Again, Plaintiff was a law professor at the time she asked for the first extension and should have known that she would be grading papers at the time of the first deadline she requested. The second motion again failed to explain what "other matters" required Plaintiff's Counsel Andrew Dunlap's attention. Defendants' counsel opposed Plaintiff's second request for a deadline extension. Despite the second motion's deficiencies, and despite Defendants' objections, the Court granted the second deadline extension.

iii. The third motion was unpersuasive—the Court declined to extend the deadline any further.

The third motion for a deadline extension came on the day the response was due. As noted above, the Court allowed a new attorney to appear on behalf of Plaintiff one day prior to the deadline. Plaintiff's newest attorney, Ezra Young, filed the third motion asking for a January 20, 2022, deadline. The motion begins by explaining his last-minute entry into the case, proceeds to make a claim that undermines Plaintiff's previous contention, and concludes with several

Through this motion, Plaintiff alleges the following:

> Professor Butler notified me [Attorney Ezra Young] via text and later called me directly to share that Mr. Dunlap had not finalized her opposition brief, had not yet identified any documents in support of her brief or otherwise confirmed to Professor Butler that he had pulled any documents necessary to support her brief, even though she repeatedly requested such confirmation. Mr. Dunlap also shared that he had not completed a declaration in support of the same.

(Doc. 135). This new claim that "Mr. Dunlap had not finalized her opposition brief" contradicts Plaintiff's previous claim in her second extension request that she "has completed her opposition brief[.]" This discrepancy does not prove excusable neglect; it shows the opposite. The next series of arguments are no better.

Mr. Young argues that it is in Plaintiff's interest to receive a third extension. While that part is true, it in no way demonstrates excusable neglect. He then argues it is in the Court's interest to grant the third extension because it will "preserve the integrity of these proceedings[.]" (Doc. 135 at 3). He cites nothing to support this claim. In fact, the opposite is true; allowing one party to repeatedly propose deadlines and then ignore them undermines the integrity of the proceedings. Lastly, he argues that Defendant's opposition to the motion is "unavailing given that Professor Butler has already advised that she welcomes and will support jointly any additional scheduling relief sought by Defendants to accommodate this third extension." *Id.* at 5. Defendants' unwillingness to delay these proceedings any further is not "unavailing" simply because Plaintiff remains willing to do so. None of these arguments move the needle towards finding excusable neglect.

Finally, Plaintiff claims she will be able to submit a response if the Court grants a third extension, this time to January 20, 2022. Plaintiff's Counsel Ezra Young assured the Court that these two weeks will be enough time to "work with Mr. Dunlap to obtain copies of all discovery produced in this matter and review it with Professor Butler and file clean, well-researched and evidence supported opposition filings in this matter." *Id.* at 3. The motion provides no explanation

why Mr. Dunlap would be able to finally turn his attention to this matter. It provides no explanation how Mr. Young could get himself up to speed enough to draft a substantive and fully compliant response to Defendants' summary judgment motion within fourteen days.

With no showing of excusable neglect, no indication how Plaintiff could accomplish such a feat in such little time, and in light of all the previous modification to this case's schedule, the Court declined the third request. Not to be deterred, Plaintiff filed a motion for a fourth deadline extension request.

iv. The fourth motion is unpersuasive and is therefore denied.

As an initial matter, it is unclear which date Plaintiff intended to finally file its summary judgment response. In the beginning of Plaintiff's motion, "Plaintiff Butler proposes a new deadline of February 18, 2022[.]" (Doc. 152 at 1). Just a few pages later, Plaintiff states "[i]n [Plaintiff's Counsel Mr. Young's] professional judgment, a new and final deadline of February 19, 2022, is both realistic and necessary under the circumstances." *Id.* at 5. Plaintiff concludes this motion by stating the Court should "permit Professor Butler to file her opposition to summary judgment on February 18, 2022." *Id.* at 8.

Ordinarily, the Court would assume the February 19, 2022, date was simply a typo considering the February 18 date appearing in the introduction and conclusion. But ultimately, Plaintiff filed her dilatory summary judgment response on February 19, 2022, forty-three days after the deadline. (Doc. 159). Even if the Court had granted this fourth deadline extension, Plaintiff would still have blown it. The reasons set forth in the motion are as unpersuasive as the others. The Court need not address all of them in this opinion, but a few are noteworthy enough to warrant a response.

First, the motion references alleged ongoing disputes between Plaintiff and her counsel Andrew Dunlap. For example, her declaration states "[f]or much of 2021, Mr. Dunlap refused to timely work, made unilateral decisions in this litigation in direct contravention of my instruction and interests, made inappropriate financial demands of me, refused access to documents in this

matter, and repeatedly threatened to withdraw if I did not cease complaining about these problems." (Doc. 148-1). Plaintiff's Counsel Andrew Dunlap paints a largely different picture going as far as accusing her of outright lying to the Court. (Doc. 149) ("Plaintiff is lying to the court in paragraph 13 a (sic) of her declaration.").

For the purposes of denying this motion, the Court need not decide who is "lying" in each one of the various disputes between Plaintiff and Mr. Dunlap. It is enough that these disputes predate Defendants' summary judgment motion by months; but she only brings these grievances to the Court's attention one week after her second extended deadline had passed. The Court finds that both Plaintiff and Mr. Dunlap lack credibility. Furthermore, the Court will not allow this convenient bickering on the record, after the deadline for the response has passed, to serve as a basis for delaying these proceedings any further.

Second, Plaintiff argues that her offer to not oppose any future deadline extensions that Defendants request and that "there is no reason to believe this Court would not grant such relief" proves there is no prejudice to Defendants. (Doc. 152 at 7). The Court already noted the prejudice to Defendants above. The Court cites this portion of the motion to highlight Plaintiff's indifference to the Court's docket. This Court has nearly one thousand pending cases before it with hundreds of motions to address. Plaintiff's dismissive and conclusory claim that "that there is no reason to believe this Court" would not grant an additional extension in this four-year old case one month from the trial date only highlights her disregard for the Court's docket. *Id.*

Third, Plaintiff argues that not being granted this extension means "that she lose[s] her merits case by default." *Id.* This contention is false. Courts of this jurisdiction do not simply grant "default" summary judgments when the nonmovants fail to respond—instead, they conduct the summary judgment analysis as usual except for treating facts listed in the movant's motion as undisputed. *See, e.g.*, *Trieger v. Ocwen Loan Servicing, LLC*, No. 3:19-cv-100-L, 2019 U.S. Dist. LEXIS 183294, at *7-8 (N.D. Tex. Oct. 22, 2019) (citing *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988).

Furthermore, Plaintiff's argument here assumes that nonmovants are entitled to unlimited deadline extensions so long as they are responding to dispositive motions. The one case Plaintiff cites to support that assumption, an inapposite Eighth Circuit case, does not address the fact that courts of this jurisdiction can and do consider summary judgment motions without responses. *See, e.g., id.* This fact was simply not before the Eighth Circuit in the case she cites. At last, Plaintiff provides no sound reason why she is entitled to receive eighty-two days to respond to Defendants' summary judgment motion when our local rules allow for twenty-one. *See* Local Rule 7.1(e). The Court now turns to the final factor.

d. The Court finds the Plaintiff acted in bad faith.

The Court reaches this conclusion based on the entirety of the record. Plaintiff has developed a bad habit of ignoring deadlines, (*see* Doc. 54, Plaintiff's Expert Witness Designation filed two days after the deadline established in the Court's Scheduling Order (Doc. 41)); failing to comply with discovery requests, (*see* Doc. 97, indicating the Court's consideration of awarding Defendants' attorney's fees based on Plaintiff's failure to comply with discovery requests); substituting counsel when major deadlines approach, (*see* Doc. 71, Opposed Amended Motion to Withdraw as Counsel one month prior to the discovery deadline and while she owed multiple discovery documents to Defendants); then blaming the withdrawn attorney as the reason for the delay, (*see* Doc. 98 at 4 of 20; *see also* Doc. 152).

The Court previously noted its lack of trust for Plaintiff's delay tactics. For example, the Court ordered Plaintiff to attend a status conference. (Doc. 73). Despite the Court's order, she failed to appear. The Court found her excuse for her failure to be disingenuous.

> On November 7, 2019, this Court entered an Order setting a November 14, 2019 status conference to facilitate management of the case. (Doc. 73). The Order specifically required Plaintiff to appear at the hearing. *Id.* Plaintiff failed to appear in person for the November 14, 2019 status conference, violating the Court's November 7, 2019 Order.
>
> Plaintiff filed a motion for continuance, but only after the November 14, 2019 status conference had already begun. (Doc. 80). In her motion, Plaintiff acknowledged the importance of her appearance at the proceeding. Specifically, she stated, "[o]n November 7, 2019 and again on November 11, 2019, counsel of record sent a copy of

> the order via email expressly emphasizing the importance of Plaintiff's mandated appearance at the upcoming November 14, 2019 hearing." As excuses for failing to appear, Plaintiff claims "she is unable to appear on this date due to existing medical conditions," "due to her medication, and its accompanying side effects such as drowsiness, she is unable to drive to Dallas to attend the hearing," and "she has a doctor's appointment scheduled for Thursday, November 14, 2019." In a declaration attached to her motion, Plaintiff states the doctor's appointment was "[t]o secure a doctor's note verifying [her] unavailability" for the hearing. That Plaintiff can get to and from a doctor's appointment the same day she claims to be unable to attend the proceeding in the Court undermines her credibility with the Court.

(Doc. 87). The Court will not exercise its discretion to reward this kind of behavior.

IV. Conclusion

For the above reasons, Plaintiff Cheryl Butler's Opposed Motion to File Opposition to Summary Judgment Out of Time with Incorporated Brief (Doc. 152) is DENIED. The following filings are ORDERED STRICKEN from the record: Plaintiff Cheryl Butler's Responsive Motion Opposing Summary Judgment (Doc. 159); Brief in Support of Plaintiff's Opposition to Summary Judgment (Doc. 160); Appendix in Support of Plaintiff's Opposition to Summary Judgment (Doc. 161).

SO ORDERED: February 24, 2022.

Ada Brown
UNITED STATES DISTRICT JUDGE

5

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
TEXAS DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:18-cv-00037-E
	§	
JENNIFER COLLINS, STEVEN CURRALL, ROY ANDERSON, JULIE FORRESTER, HAROLD STANLEY, PAUL WARD, and SOUTHERN METHODIST UNIVERSITY,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff Cheryl Butler's Motion for Reconsideration with Incorporated Brief (Doc. 171). After considering the motion, the record, and applicable law, the Court finds that the motion should be, and therefore is, DENIED.

I. Introduction

This motion asks the Court to reconsider its order that 1) denied Plaintiff's fourth request for a summary judgment response deadline extension; and 2) struck Plaintiff's late response from the record. (Doc. 166). In the order, the Court explained its reasoning in detail. *Id.* Two weeks have passed; there are no new developments in this case and no changes in the applicable law.

The Court finds the motion unpersuasive and presents no legal basis for this Court to reverse itself. The Court reaffirms its finding that Plaintiff failed to show excusable neglect in failing to timely file a summary judgment response; and the Court will not exercise its discretion to allow her late filing. (Doc. 166). The Court writes further to clarify a legal issue Plaintiff raises regarding this Court's discretion to deny the relief she seeks.

II. Legal Standard

Plaintiff's motion is governed by Rule 54(b). Rule 54(b) applies where, as here, a party

seeks to revise an order that did not result in the case being dismissed. It provides:

> [A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

FED. R. CIV. P. 54(b). Under Rule 54(b), the Court has broad discretion to reconsider and modify its prior order "for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law." *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990). The Court's discretion to reconsider its interlocutory ruling is not limited by the heightened standards of other rules governing reconsideration of final orders, including Rule 59(e). *Id.*

III. Analysis

a. Plaintiff's legal argument regarding this Court's authority is unpersuasive.

Plaintiff claims "it is an abuse to ignore late summary judgment opposition." (Doc. 171 at 12) (cleaned up). She cites four cases in support of her claim, two from the Fifth Circuit and two from the Eighth Circuit. *See id.* at 12-13 (citing *Chorosevic v. MetLife Choices*, 600 F.3d 934, 947 (8th Cir. 2010); *Ballard v. Heineman*, 548 F.3d 1132, 1137 (8th Cir. 2008); *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988); *Hibernia Nat. Bank v. Admin. Cent. Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985). The Court read these cases, considered Plaintiff's arguments, but after doing so, the Court remains unpersuaded by her interpretation and rejects it accordingly.

b. The Fifth Circuit has affirmed this Court's authority to decline late summary judgment responses.

The Court disagrees with Plaintiff's understanding and explanation of those four cases.

The Fifth Circuit has held post *Eversley* and *Hibernia* that district courts in this circuit have the power to reject late summary judgment responses. *Kitchen v. BASF*, 952 F.3d 247, 254 (5th Cir. 2020) ("A district court has discretion to refuse to accept a party's dilatory response to a motion for summary judgment, [] and has discretion to deny extending the deadline when no excusable neglect is shown.") (citing *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 161 (5th Cir. 2006)). If the exact language in *Kitchen* does not make the Court's authority clear, the facts of *Adams* drive the point home.

> Adams argues that the District Court erred by not relying upon his untimely response in opposition to Travelers's filing for summary judgment, by not granting an extension under Rule 6(b)(2), and by not granting a continuance for further discovery under Rule 56(f). We review for abuse of discretion. After two extensions beyond the initial February 2004 deadline, Adams filed both his response to Travelers' motion for summary judgment and a request for a third extension on June 9, 2004, the day following the final due date. The District Court did not abuse its discretion by refusing to apply Adams's untimely response to Travelers' motion for summary judgment, despite having read it, or by denying an extension because Adams failed to demonstrate excusable neglect. Adams had ample time to comply with the extended deadline.

465 F.3d at 161–62.

Like the district court in *Adams*, this Court granted two summary judgment response deadline extensions—and did so over Defendant's objection to the second. And again, like the district court in *Adams*, this Court declined to grant a further extension. However, the similarities end there. Adams attempted to file his response only one day past the second extension's final deadline. *Id.* The Fifth Circuit still held the district court "*did not abuse its discretion* by refusing to apply [his] untimely response to Travelers' motion for summary judgment[.]" *Id.* (emphasis added).

Unlike Adams, Plaintiff filed a fourth extension request, and would have still needed a

fifth, before filing her response.[1] And again, unlike Adams, Plaintiff attempted to file her response forty-three days past the final deadline.

IV. Conclusion

For the reasons stated above, Plaintiff Cheryl Butler's Motion for Reconsideration with Incorporated Brief (Doc. 171) is DENIED.

SO ORDERED: March 9, 2022.

Ada Brown
UNITED STATES DISTRICT JUDGE

[1] Plaintiff, in her fourth motion for a summary judgment response deadline extension, requested a February 18, 2022, deadline. *See* (Doc. 152 at 1, 8). Despite the newest date she proposed, which the Court never approved, Plaintiff filed her dilatory response to summary judgment on February 19, 2022. *See* (ECF No. 159) (stricken per the Court's order in (Doc. 166)).

6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER, Plaintiff, v. JENNIFER M. COLLINS, STEVEN C. CURRALL, JULIE FORRESTER ROGERS, HAROLD STANLEY, and SOUTHERN METHODIST UNIVERSITY, Defendants.	§ § § § § § § § § §	Case No. 3:18-cv-00037-E

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff Cheryl Butler's Motion for Reconsideration of the March 10, 2022 Order with Incorporated Brief. (Doc. 183). After considering the motion, the record, and applicable law, the Court finds that the motion should be, and therefore is, DENIED.

I. Background Facts

This case stems from the Defendants' decision to deny Plaintiff's tenure as a law professor and alleged defamatory statements made in 2016. Defendants removed this case to federal court in January of 2018; it was originally before Judge Lindsay. Since then, the case has survived the dismissal without prejudice of multiple defendants, a case reassignment to Judge Brown, Plaintiff's termination of six of her attorneys, Plaintiff's show cause hearing, and Plaintiff's suggestion of bankruptcy leading to the administrative closure of the case. Defendants filed an unopposed motion to reopen the case in early February 2021. (Doc. 108).

After discovery concluded, Defendants filed their motion for summary judgment on November 29, 2021. (Doc. 126). Plaintiff's response to Defendants' summary judgment motion was originally due twenty-one days later, December 20, 2021. Citing upcoming work demands for both Plaintiff and her attorney Andrew Dunlap, Plaintiff requested a deadline extension to January 3, 2022.

(Doc. 129). The Court granted this first extension. (Doc. 130). Then, citing the same work demands and how close she was to finishing her brief, Plaintiff asked for a second deadline extension of an additional four days. The Court granted this second extension. (Doc. 134). From there, the case took an unusual turn.

The day before Plaintiff's summary judgment response was due, Ezra Young motioned the Court to appear *pro hac vice* on behalf of Plaintiff. (Doc. 133). That same day, Mr. Young filed Plaintiff's Third Motion for Extension of Time requesting a new deadline of January 20, 2022. (Doc. 135). The next day, Plaintiff's other attorney Andrew Dunlap motioned to strike that third request from the record (Doc. 138) and then motioned to withdraw as counsel. (Doc. 139). The Court granted the application for admission *pro hac vice* (Doc. 136), denied the third deadline extension (Doc. 141), and denied the motion to withdraw as counsel (Doc. 144). Mr. Young filed Plaintiff's fourth motion requesting a new summary judgment response deadline of either February 18 or 19, 2022; it is unclear from the motion which date Plaintiff desired. (Doc. 152). The Court denied that fourth deadline extension in its February 28 Order and Memorandum Opinion. (Doc. 166). In it the Court found that Plaintiff failed to show good cause or excusable neglect, and that Plaintiff acted in bad faith. *Id.*

Plaintiff filed a motion to reconsider that order (Doc. 171). She also filed a duplicate motion (Doc. 172). The Court issued a March 9 memorandum opinion and order denying the motion for reconsideration. (Doc. 181). On March 10, the Court issued an electronic order mooting the duplicate motion. (Doc. 182). Plaintiff then filed another motion for reconsideration titled Plaintiff Cheryl Butler's Motion for Reconsideration of the March 10, 2022 Order with Incorporated Brief. (Doc. 183). This newest motion is now before the Court. But before the Court can even get to the analysis addressing the motion, the Court must clarify the first of many errors Plaintiff commits within the motion.

Plaintiff, in her second motion for reconsideration, makes repeated reference to the Court's "March 10" opinion. (Doc. 183). It is likely that her arguments pertain to the Court's March 9 opinion. She properly cites the March 9 opinion, but improperly labels it the March 10 opinion. (Doc. 183 at 1). The Court will treat this motion as if it is meant to respond to the Court's March 9 memorandum opinion and order denying reconsideration of the summary judgment deadline extension, rather than the March 10 electronic order finding the duplicate motion moot.

II. Legal Standard

Plaintiff's motion is governed by Rule 54(b). Rule 54(b) applies where, as here, a party seeks to revise an order that did not result in the case being dismissed. It provides:

> [A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

FED. R. CIV. P. 54(b). Under Rule 54(b), the Court has broad discretion to reconsider and modify its prior order "for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law." *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990)). The Court's discretion to reconsider its interlocutory ruling is not limited by the heightened standards of other rules governing reconsideration of final orders, including Rule 59(e). *Id.*

III. Analysis

Plaintiff's motion is overloaded with improper interpretations of: 1) Fifth Circuit precedent, 2) this Court's opinions, and 3) the record at hand. The Court now turns its attention away from the hundreds of other motions before it and turns its attention towards Plaintiff's latest attempt to ignore what the Court made clear in its February 24, 2022, order. Plaintiff has failed to show good cause and

excusable neglect in failing to timely file her summary judgment response and the Court reaffirms its original finding of bad faith by Plaintiff. The Court writes now to clarify the myriad errors contained in her latest motion for reconsideration.

a. The Court has already acknowledged that *Eversley* is controlling; Plaintiff's improper interpretation of it is not.

As the Court noted in its February 28, 2022, order, this Court cannot and will not grant Defendants' motion for summary judgment based on Plaintiff's failure to timely respond. (Doc. 166 at 8) (citing *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988)). Just like the district court in *Eversley*, this Court will treat the facts in the summary judgment motion as undisputed and focus on whether Defendants' have made a *prima facie* showing of entitlement to summary judgment. Contrary to Plaintiff's argument, this Court never "reverse[d] course" nor "side-stepp[ed] *Eversley*." (Doc. 183 at 4). What the Court did do in its March 9 opinion is decline to follow Plaintiff's improper interpretation of *Eversley*.

The Fifth Circuit in *Eversley* stated the following:

> After the end of the discovery period, which had lasted eight months or more, MBank moved for summary judgment, supported by affidavits and deposition excerpts as well as a list of undisputed facts and a supporting brief. Notwithstanding that local rules called for a response within twenty days, Eversley filed absolutely no response [whatsoever] to MBank's motion, nor did he seek an extension of time within which to do so. Approximately seven weeks after MBank's motion was filed, the district court entered its memorandum opinion granting the motion. Eversley filed no motion for reconsideration, and did not otherwise make any attempt in the court below to either cause it to change its ruling or to in any way oppose the granting of the motion. Neither on appeal nor in the court below has Eversley ever offered any explanation for his failure to oppose the motion for summary judgment, or to seek reconsideration; nor has he ever asserted that he did not have an adequate opportunity for discovery or the like. Eversley did, however, file a timely notice of appeal. In ruling on MBank's motion, the district court did not grant it because Eversley had in any sense "defaulted."

> *See Hibernia National Bank v. Administracion Central Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985). Rather, the district court accepted as undisputed the facts so listed in support of MBank's motion for summary judgment. In our opinion, the district court acted properly in doing so and, since Eversley made no opposition to the motion, the court did not err in granting the motion as MBank's submittals made a *prima facie* showing of its entitlement to judgment. *See Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). Viewed in this light, we conclude that summary judgment for MBank was proper.

Id. The remainder of the opinion dealt with the district court's summary judgment analysis regarding Plaintiff's religious discrimination claim. The Court listed this section in its entirety to highlight the level of Plaintiff's error and to demonstrate why it refuses to accept Plaintiff's improper interpretation.

After acknowledging the nonmovant's failures, Plaintiff concluded the following regarding the Fifth Circuit's decision in *Eversley*: "because absolutely no opposition was made to summary judgment below, the Fifth Circuit deemed the nonmovant to have 'defaulted' and on that basis approved of the trial court's grant of summary judgment." (Doc. 172 at 12); *see also* (Doc. 181 at 4) (citing Doc. 172 at 12–13 analysis of precedent)). Plaintiff's quote here is the opposite of what the Fifth Circuit held. *Eversley*, 843 F.2d at 174 ("the district court *did not* grant [summary judgment] because Eversley had in any sense 'defaulted.' (citations omitted). Rather, the district court accepted as undisputed the facts so listed in support of Mbank's motion for summary judgment. In our opinion, the district court acted properly in doing so[.]") (emphasis added).

The crux of the Fifth Circuit's holding is that, despite Eversley's failure to respond, MBank still needed to make "a *prima facie* showing of its entitlement to judgment." *Id*. The remainder of the opinion went on to assess the movant's *prima face* case proving entitlement. *Eversley* in no way supports Plaintiff's argument that she can file her summary judgment response whenever she gets around to it, rather than when the Court ordered her to do so. Lastly, *Eversley* is distinguishable from

the case at hand because, unlike the district court in *Eversley*, this Court made a specific finding that Plaintiff failed to show good cause or excusable neglect and has acted in bad faith.

b. Both *Adams* and the instant case are factually distinguishable from *Hibernia.*

Contrary to Plaintiff's argument, this Court does not determine which Fifth Circuit cases are binding based on recency; it makes its decision according to which Fifth Circuit cases are factually similar to the case at hand and is bound accordingly. Plaintiff's decision to accuse this Court of "reason[ing] that later panels subvert earlier panels" is a straw man argument and a red herring. (Doc. 182 at 2–4). The Court wrote its March 9 opinion to refute Plaintiff's unsupported and legally contradicted claim that "it is an abuse to ignore late summary judgment opposition." (Doc. 171 at 12) (cleaned up). The opinion made clear the Court "read these cases, considered Plaintiff arguments, but after doing so, the Court remains unpersuaded by her interpretations and rejects it accordingly." The Court lacks the resources to explain why each case Plaintiff cites, in each one of Plaintiff's mounting motions for reconsideration, is inapplicable or unpersuasive. Plaintiff's improper interpretation of *Hibernia* does not is not a sound basis for this Court to apply the prior panel rule.

The Court will now list the *Hibernia* facts below and will show step by step how far they are from Plaintiff's actions:

> On December 20, 1984, Hibernia filed a motion for summary judgment against Granados. Field received the motion in the late afternoon of December 21, 1984. The date set for hearing the motion was January 9, 1985. Field apparently was unaware of Local Rule 3.7, which requires oppositions to motions to be filed 8 days before the hearing date and believed that the deadline for filing a response to the motion was the day prior to the hearing date, i.e., January 8, as provided by Fed. R. Civ. P. 56(c). Field prepared responsive pleadings from December 26 to December 28 and then sent them to his client for execution with instructions to forward them to Willeford for filing.
>
> On January 2, 1985, Field received a letter from the district judge informing him that responsive pleadings to Hibernia's motion for

> summary judgment were due on January 1 by 5:00 p.m. Field then called the chambers of the district judge and told a law clerk that circumstances had made it impossible to file a timely response, but that he would file an unexecuted copy of the pleadings as soon as possible and that he would seek leave of the court and opposing counsel to file a response out of time. Field spoke with opposing counsel, who agreed to late receipt of the papers, so long as they were received by January 4.
>
> On January 4, the district court granted Hibernia's motion for summary judgment. Later the same day Willeford filed a motion for leave to file a response out of time and an unexecuted copy of Granados's declaration and other documents. He also filed a motion to admit Field as counsel *pro hoc vice*.
>
> In his minute entry of January 7, the district judge granted the motion to admit Field. However, he denied the motion to file a response out of time. In doing so, the judge noted that he had spoken with counsel for Hibernia, who had objected to late filing of a response. He also noted that neither local counsel nor appellant had signed the responsive pleadings offered. Although the judge had been informed by Field that signed pleadings would be available shortly, he indicated that the pleadings did not meet the form required by 28 U.S.C. § 1746.

Hibernia, 776 F.2d at 1278–79. The *Hibernia* facts are different from this case for the following non-exhaustive list of reasons:

1) The Fifth Circuit noted its concern that the district court granted the motion by default. *See id.* at 1279 (after outlining several indicators that the district court granted summary judgment by default and citing case law explaining that doing so was prohibited, the Fifth Circuit stated: "[b]ased on the record below, we cannot say with assurance that the district judge's decision to grant summary judgment was based on the merits rather than on Granados's default."). This Court will note, again, that it *cannot* and *will not* grant Defendants' summary judgment motion by default. *See* (Doc. 166 at 8) (noting that courts of this jurisdiction do not grant summary judgment by default) (citing *Eversley*, 843 F.2d at 174).

2) The local rule in effect in *Hibernia* gave the nonmovant's attorney ("Mr. Field") eleven days to respond to the summary judgment motion. *See id.* at 1280. Our local rules gave Plaintiff twenty-one days to respond. Local Rule 7.1(e). And the Court's granting Plaintiff's request for extensions brought the total up to thirty-nine days. *See* (Doc. 134).

3) The Fifth Circuit noted Mr. Field received the summary judgment motion on December 21, "just before the Christmas holidays". *Hibernia*, 776 F.2d at 1280. Plaintiff received the summary judgment motion November 29 and was originally required to respond by December 21. (Doc. 126). Moreover, Plaintiff has never alleged that holidays of any kind are the basis for an extension nor to blame for her tardiness. *Cf.* (Doc. 131) (Plaintiff's second motion for an extension stated only that "Plaintiff and Her (sic) counsel worked throughout the Holiday break[.]") (the Court granted this motion (Doc. 134)).

4) Mr. Field was unaware of the actual deadline; he mistakenly believed it was due seven days after the actual due date. *See Hibernia*, 776 F.2d at 1278. Plaintiff has never argued she was unclear about her deadlines. In fact, her attorney Mr. Dunlap, in Plaintiff's motion to extend the deadline, acknowledged the original "deadline to file a response [was] December 20, 2021." (Doc. 129). The Court granted Plaintiff two deadline extensions ordering her to respond by the exact date she requested. Finally, not only was Plaintiff's newest attorney Mr. Young aware of the January 3, 2022, deadline, he agreed to join the case despite it. (Doc. 133) (noting that the Court had not yet ruled on the motion to extend the deadline to January 7, 2022).

5) Mr. Field prepared responsive pleadings within seven days of receiving the motion for summary judgment and within the deadline to file a timely response. *See Hibernia*, 776 F.2d

at 1278. Plaintiff took eighty-two days total and was not prepared to file until forty-three days after the deadline. (Doc. 159).

6) The district court in *Hibernia* noted procedural deficiencies—Field was not yet admitted *pro hac vice* and unsigned pleadings—as a basis for denying relief. *Hibernia*, 776 F.2d at 1280–81. This Court noted substantive deficiencies—undue prejudice to the defendants, negative impacts on the proceedings and the Court's docket, and a finding that Plaintiff acted in bad faith. (Doc. 166).

Hibernia does not support Plaintiff's argument that she may file her response whenever she feels like it, despite the Court's order (Doc. 134) to file by January 7, and despite the Court finding no good cause, no excusable neglect, and bad faith (Doc. 166). Furthermore, Plaintiff's attempt to distinguish *Kitchens* and *Adams* is likewise unpersuasive. She is, however, correct in noting "*Kitchen* and *Adams* do not directly speak to the legal issue raised and the posture of the request made by Professor Butler." (Doc. 183 at 5). Because unlike *Kitchens* and *Adams*, this Court held Plaintiff failed to show good cause, failed to show excusable neglect, and has acted in bad faith.

c. Plaintiff's improper interpretation of *Hibernia* is not binding on this Court.

Plaintiff makes the following claim when she compares *Hibernia* to this case:

> This Court did not rule on Professor Butler's January 20 extension request until February 28, 2022, nine days after she docketed her summary judgment opposition (ECF Nos. 159, 160, and 161). As held in *Hibernia*, excusable neglect exists when the trial court does not inform the party of the pertinent deadline until after the deadline has passed. 776 F.2d at 1280 (finding excusable neglect where "the district judge's notice of the filing deadline did not reach [the party] until the day after the deadline had passed"). Given that this Court never did not (sic) inform her whether an extension would be granted until long after the deadline she proposed had passed and after her filings had been docketed, *Hibernia's* logic establishes excusable neglect.

(Doc. 183 at 7) (alterations in original). The only correct contention in this quote regarding *Hibernia* is that the Fifth Circuit did state "the district judge's notice of the filing deadline did not reach Field until the day after the deadline had passed." *Hibernia*, 776 F.2d at 1280. However, that fact is not the sole reason the Fifth Circuit determined the district court should have found excusable neglect. Plaintiff here ignores the remaining portion of the quote to blind herself to the reason *Hibernia* is distinguishable.

> Specifically, we note that the fact that Field received Hibernia's motion for summary judgment just before the Christmas holidays and that the district judge's notice of the filing deadline did not reach Field until the day after the deadline had passed. Under other circumstances, Field may have received the notice in time to file the responsive pleadings, which he had already prepared, before the deadline. At any rate, once Field discovered that the deadline had passed he moved with all possible speed to file unexecuted set of pleadings and to secure leave of court for a late filing. The minimal tardiness involved in this case was not enough to justify depriving Granados of the right to present a substantive defense. Field's neglect here should have been excused.

Id. As the Court noted above, none of those factors are present here. Even still, it is the full facts before the Fifth Circuit that led to its conclusion. The Fifth Circuit did not reach its conclusion based solely on the notice reaching the attorney one day after the response was due. Typically, the Court would write off an attorney's attempt to quote case law out of context, and for convenience of his own argument, as sloppy lawyering. But Plaintiff has gone further. Plaintiff is now inadvertently, or worse, intentionally, accusing this Court of failing to notify Plaintiff of her deadline to respond to defendant's motion for summary judgment. This accusation is false.

The Court informed Plaintiff of her deadlines at every turn in this case. With respect to the summary judgment filings, the amended scheduling order explicitly states that the "deadline for dispositive motions was November 30, 2021". (Doc. 117) (cleaned up). Our local rules explicitly state "[a] response and brief to an opposed motion must be filed within 21 days from the date the

motion is filed." Unlike Mr. Field in *Hibernia*, Plaintiff has never argued she was unclear about when she was required to file a response. In fact, her attorney Mr. Dunlap, in his motion to extend the deadline, acknowledged the original "deadline to file a response [was] December 20, 2021." (Doc. 129). The Court, in its order granting the first extension, explicitly stated "Plaintiff is ordered to respond by 1/03/2022." (Doc. 130). Again, the Plaintiff proposed a new deadline—this time to January 7, 2022. (Doc. 131). Again, the Court granted this extension and explicitly stated "Plaintiff's response [was] due 1/07/2022." (Doc. 134). Finally, not only was Plaintiff's newest attorney Mr. Young aware of the January 3, 2022, deadline, he agreed to join the case despite it. (Doc. 133) (noting that the Court had not yet ruled on the motion to extend the deadline to January 7, 2022).

The Court denied Plaintiff's third motion to extend the deadline the same day she filed it. (Doc. 135). The Court's scheduling order makes clear in bold writing that deadline modification must be based on "good cause." (Doc. 113). Mr. Young was aware of the actual deadline to file a summary judgment response—he and his client chose to ignore it and instead file a third request for a further deadline extension that failed to show good cause or excusable neglect. The Court promptly denied that third request the same day. *Hibernia* is predicated on actual deadlines not proposed deadlines.

At the end of the day, *Hibernia's* "logic" does not apply to this case. Moreover, *Hibernias's* "logic" is not made applicable because the Court turned its attention to the myriad other cases on its docket, drafted a ten-page memorandum opinion that explained legally and factually why Plaintiff failed to show good cause or excusable neglect and has acted in bad faith, and filed it "nine days after she docketed her [forty-three days late] summary judgment response." (Doc. 183). The burden to show good cause and excusable neglect has been and remains with Plaintiff. *See* Fed. R. Civ. P. 6(b). Plaintiff has failed to carry that burden. *Hibernia* does not require this Court to find good cause where

it does not exist. The Court conducted the necessary inquiry for a third time and still finds no good cause or excusable neglect and still finds bad faith by the Plaintiff.

d. Plaintiff's interpretation of this Court's footnote in its March 9 opinion is erroneous.

Plaintiff improperly concludes that "[t]he March 10 opinion (sic) opines for the first time that because Professor Butler missed the deadline extension requested in her January 20, 2022 motion, that the Court is justified in striking her belated summary judgment opposition." (Doc. 183) (citing Doc. 182 at 4 n. 1). This conclusion is nowhere close to what the Court said in its March 9 or March 10 opinion and in no way flows from it.

As an initial matter, the Court drew no such conclusion. The Court attached a footnote to the following sentence: "[u]nlike Adams, Plaintiff filed a fourth extension, and would have still needed a fifth, before filing her response." The footnote reads in its entirety: "Plaintiff, in her fourth motion for a summary judgment response deadline extension, requested a February 18, 2022, deadline. *See* (Doc. 152 at 1, 8). Despite the newest date she proposed, which the Court never approved, Plaintiff filed her dilatory response to summary judgment on February 19, 2022. *See* (ECF No. 159) (stricken per the Court's order in (Doc. 166)). The Court attached the footnote to explain why a fifth motion for a deadline extension would be necessary. The words "stricken per the Court's order in (Doc. 166)" is attached to explain what happened to that motion as a result of the Court finding no good cause or excusable neglect and bad faith by the Plaintiff. The whole point of that analysis is to demonstrate why *Adams* is close enough to the facts at hand such that the Court's exercise of its discretion is precedented.

As a legal matter, the Court draws its authority to strike dilatory responses from the record based on its power to enforce: 1) the deadlines in the amended scheduling order;[1] 2) the Local Civil rules;[2] 3) the Federal Rules of Civil Procedure;[3] and 4) Fifth Circuit precedent.[4]

As a factual matter, the Court exercised its authority to strike the dilatory response because: 1) Plaintiff failed to comply with the Court's order to file her summary judgment response by January 7, 2022—not whenever Plaintiff felt like filing it; 2) because the Court found that Plaintiff failed to show good cause or excusable neglect in filing her response forty-three days late; and 3) because the Court's review of the record reveals Plaintiff acted in bad faith. Plaintiff has yet to convince this Court otherwise.

e. Plaintiff's interpretation of the Court's reconsideration standard is erroneous.

Plaintiff accuses the Court of "reasoning that reconsideration is *only* appropriate where there are no new factual developments and intervening change in law." (Doc. 183 at 8–9) (citing Doc. 181 at 1) (emphasis added). This Court has never said that reconsideration is "only" appropriate where it finds changes in fact or intervening law. This accusation is false. The Court specifically stated in the legal standard section of the March 9 opinion, the following: "[u]nder Rule 54(b), the Court has broad discretion to reconsider and modify its prior order 'for *any reason it deems sufficient*, even in the

[1] (Doc. 117) (establishing a November 30, 2021, deadline for dispositive motions).

[2] *See* Local Rule 7.1(e) (giving parties twenty-one days to respond to opposed motions).

[3] *See* Fed R. Civ. P. 6(b) (giving the Court authority to extend deadlines based on a finding of good cause and excusable neglect)).

[4] *See Kitchen v. BASF*, 952 F.3d 247, 254 (5th Cir. 2020) ("[I]t was no abuse of the district court's discretion to strike his late-filed motion. We have held a district court has discretion to refuse to accept a party's dilatory response to a motion for summary judgment, even if the court acknowledges reading the response, and has discretion to deny extending the deadline when no excusable neglect is shown.") (citing *Adams v. Travelers Indem. Co. of Conn.*, 465 156, 161 (5th Cir. 2006)).

absence of new evidence or an intervening change in or clarification of the substantive law.'" (Doc. 181 at 2) (citing *Austin*, 864 F.3d at 336 (quoting *Lavespere*, 910 F.2d at 185)).

For whatever reason, Plaintiff has misinterpreted the Court's introduction to its March 9 opinion as a claim that changes in facts or intervening law are required for reconsideration. Plaintiff is confusing sufficient and necessary conditions. The Court listed several criteria it deems sufficient; it need not hedge its bets by repeating that the list is non exhaustive. And it need not explain the technicalities of necessary versus sufficient conditions in each opinion to lawyers who should understand the difference. Instead, the Court writes plainly for everyone's benefit. The Court stated plainly that the "Doc. 166 Order, [] explained its reasoning in detail. Two weeks have passed; there are no new developments in this case and no changes in the applicable law. The Court finds the motion unpersuasive and presents no legal basis for this Court to reverse itself." (Doc. 181 at 1). The Court will now state its reasoning technically: Plaintiff has failed to put forth "any reason . . . sufficient" for this Court to reverse itself.

f. Plaintiff's improper interpretation of *Xerox* is not binding on this Court.

Plaintiff's citation to *Xerox* is unhelpful. *See* (Doc. 183 at 8) (citing *Xerox Corp. v. Genmoora Corp.*, 888 F.2d 345, 349 (5th Cir. 1989) ("Refusal to grant reconsideration is tested under an abuse of discretion standard, but the Judge has to consider judicially the record as it exists at the time of the motion for reconsideration not just as it existed at the time of the initial ruling."). *Xerox* concerned evidence important enough to affect the outcome of the case that was not in the record at the time the lower court ruled on summary judgment; the Fifth Circuit determined that the district court should have granted a continuance to allow that evidence to be produced before ruling on summary judgment. *Xerox Corp.* 888 F.2d at 355–56. The Court reviewed the record and specifically noted in its March

9 opinion "[a]fter considering the motion, *the record*, and applicable law, the Court finds that the motion should be, and therefore is, DENIED." (Doc. 181). To the extent Plaintiff's argument here is referring to the Court's actual March 10 opinion (Doc. 182) finding her duplicate motion for reconsideration (Doc. 172) moot for being a duplicate, the Court declines to re-review the record for the sole purpose of mooting duplicate filings. Doing so would waste this Court's resources. The key to this *Xerox* analysis is that Plaintiff never alleged that such important evidence is missing from the summary judgment record in this case.

Instead, Plaintiff argues that this Court in its order denying motions for reconsideration "must also at the very least review and respond to a motion for reconsideration that points out the earlier opinion was premised on an erroneous assessment of the evidence." (Doc. 183 at 8) (citing *Xerox Corp.* 888 F.2d at 349). The Court reviewed the motion for reconsideration (Doc. 172) and responded accordingly. (Doc. 181) (reaffirming the findings in its original order, (Doc. 166)). Plaintiff goes further arguing, "[e]ach and every one of the several significant errors of fact Professor Butler raises in her March 7 motion pertaining to the February 28 opinion are totally ignored by the March 10 opinion (sic). Under *Xerox*, this an (sic) abuse of discretion that should be remedied by reconsideration." (Doc. 183 at 9).

The Court responded to all Plaintiff's arguments by saying they are all unpersuasive and do not warrant the Court reversing itself. Nothing in *Xerox* requires this Court to take the time to reexplain why "each and every one" of its own findings are correct; nor does *Xerox* require this Court to explain in any detail why this Court finds Plaintiff's interpretation of the law or record unpersuasive. Plaintiff's *belief* that there are "several significant errors" does not place an obligation on this Court to write lengthy opinions that succeed in changing Plaintiff's mind.

g. Plaintiff's accusations against her counsel Andrew Dunlap are unpersuasive.

In Plaintiff's motion for reconsideration (Doc. 171), she claims, through her attorney Mr. Young, that she "herself did not make contradictory requests—Mr. Dunlap made filings without her authorization and at times made representations that were false when made and which Butler immediately asked him to correct." (Doc. 171 at 4–5); *see also* (Doc. 183 at 8–9) (demanding this Court address arguments made in the (Doc. 171)). The irony is that Plaintiff, through Mr. Dunlap, made similar allegations against the counsel that came before Mr. Dunlap. *See* (Doc. 99 at 19) (Plaintiff made the following accusation against her prior counsel: "the issue is that you made false representations to the court.") (cleaned up). The timing of the past accusation, the timing of this current accusation, the similarity between them, Mr. Dunlap's declaration (Doc. 149), Mr. Dunlap's clarifications at the March 8 hearing, Plaintiff's previous attempt to manufacture an excuse to avoid this Court's past order,[5] a review of the documents she attached to support this latest accusation, and a review of the record as a whole lead this Court to conclude that Plaintiff's claim here lacks merit.

Furthermore, the Court must note that Plaintiff and her newest attorney Mr. Young are far too careless in launching ethics accusations against her prior counsel Mr. Dunlap. (Doc. 171 at 4–5); (Doc. 171–5); (Doc. 183 at 79). Mr. Dunlap is under no obligation to draft filings that meet Mr. Young's standards; he is not required to prepare a response in accordance with Mr. Young's preferred timelines; he is not required to divide labor between himself and his client the way Mr. Young would

[5] The Court ordered a status conference for November 14, 2019, and specifically required Plaintiff Cheryl Butler to attend. (Doc. 73). Despite the Court order requiring her to appear, she failed to do so. Instead, she filed a motion for continuance the day of the hearing with her sworn declaration containing the following claim: "[t]o secure a doctor's note verifying my unavailability, I have a doctor's appointment scheduled for Thursday, November 14, 2019." (Doc. 80-1 at 1). The Court highlighted the absurdity of her argument that she could not attend the status conference per the Court's order because she needed to get a doctor's note explaining why she could not attend status conference. (Doc. 87). The Court ordered a show cause hearing and specifically noted "[t]hat Plaintiff can get to and from a doctor's appointment the same day she claims to be unable to attend the proceeding in this Court underminer her credibility with the Court." *Id.* at 2.

divide it. Mr. Young's assessment of the matter is unpersuasive to this Court, particularly for the purpose of gaining relief Plaintiff is neither legally nor factually entitled to receive. The Court will now speak on the issue of whether Mr. Dunlap's second motion for a deadline extension (Doc. 131) misled the Court—simply put, it did not.[6]

The Court has reviewed Mr. Dunlap's declaration (Doc. 149) (discussing advising his client to abandon or focus more heavily on better claims then dividing the labor accordingly), his testimony at the March 8 hearing (Doc. 186 at 79–80), the conversations between Mr. Dunlap and Mr. Young (Doc. 171-5), Plaintiff's second motion for a deadline extension (Mr. Dunlap refers to Mrs. Butler as Plaintiff and to himself as Plaintiff's counsel), Plaintiff's third motion for a deadline extension (Doc. 135 at 3) (Mr. Young acknowledges Plaintiff Butler had prepared partial drafts), Mr. Dunlap's prior dealings with the Court in this case, and the record as a whole. The Court determines that Mr. Dunlap's statement that "Plaintiff has completed her brief but needs to complete her declaration and finish compiling her exhibits" is supported by the record. More importantly, this bickering is no basis for the Court to find good cause or excusable neglect.

h. Plaintiff's accusations against Defendants regarding missing deadlines are erroneous and unpersuasive.

Finally, rather than carrying her burden of showing good cause and excusable neglect, Plaintiff attempts to point the finger at Defendants. *See* (Doc. 171 at 1) ("The Opinion relies heavily on Defendants' representations that they have made all deadlines while Professor Butler has repeatedly broken them[.]"); *See id.* at 2 (arguing Defendants have not "truthfully admitted missing

[6] The Court found this motion unpersuasive *not* misleading. (Doc. 166). A litigant's stated reason for needing an extension is not the only factor the Court considers when considering a deadline extension. In terms of the second motion, the request was timely (came before the deadline), the extension was minimal (four days), and concerned an important matter (summary judgment). In that circumstance, the Court still found good cause existed to extend the deadline even though the reason the attorney stated was not persuasive.

deadline" (expert disclosures under Rule 26) (mediation order). More importantly, Plaintiff is again too careless in accusing the Defendants' attorneys of ethical misconduct. *See* Tex. Disc. R. Prof. Conduct 3.03, Candor Toward the Tribunal.

Plaintiff argues that Defendants have not complied with the Rule 26 requirements for disclosures. (Doc. 171 at 5–6); (Doc. 183 at 9) (alleging "[b]oth Defendants' first and second expert designations identify them as regular experts designated under Rule 26(a)(2) not rebuttal experts designated under 26(a)(2)(B)). Her argument here is unpersuasive.

To begin, the labeling of those rules is meaningless for the purposes of determining whether a litigant intends to call expert independent of Plaintiff's decision or if only to rebut a Plaintiff's expert. The text within the designations, rather than any references to the rule, makes clear to the Court that Defendant's first and second expert designations are intended to be rebuttal experts.

1. The first expert witness in the first designation is a rebuttal expert. *See* (Doc. 64 at 2).

   > Mr. Shank may offer expert testimony regarding the reasonableness and necessity of any attorneys' fees sought by Plaintiff Chery (sic) Butler in this litigation. At this juncture, Butler has not pleaded or otherwise set forth the amount of attorneys' fees she will seek in this case or the basis on which such attorneys' fees are reasonable or necessary. Defendants will produce an expert report if required, or provide detailed opinions when Plaintiff complies with Rule 26(a)(2) and provides such information or testimony.

2. The second expert witness in the first designation is a rebuttal expert. *See id.* at 2–3.

   > Mr. Earle may offer expert testimony regarding the alleged economic losses and other economic damages sought by Plaintiff. . . . Plaintiff has not produced [damages based on lost or past wages] documents. Defendants will produce an expert report, if required, or provide detailed opinions when Plaintiff complies with Rule 26(a)(2) and provides such testimony.

3. The first expert witness in the second designation is a rebuttal expert. *See* (Doc. 115 at 1–2).

> Mr. Newkirk may offer expert testimony regarding the reasonableness and necessity of any attorneys' fees sought by Plaintiff Chery (sic) Butler in this litigation. At this juncture, Butler has not pleaded or otherwise set forth the amount of attorneys' fees she will seek in this case or the basis on which such attorneys' fees are reasonable or necessary. Defendants will produce an expert report if required, or provide detailed opinions when Plaintiff complies with Rule 26(a)(2) and provides such information or testimony.

4. The second expert witness in the second designation is a rebuttal expert. *See id.* at 2–3.

> Mr. Earle may offer expert testimony regarding the alleged economic losses and other economic damages sought by Plaintiff. . . . Plaintiff has not produced [damages based on lost or past wages] documents. Defendants will produce an expert report, if required, or provide detailed opinions when Plaintiff complies with Rule 26(a)(2) and provides such testimony.

Defendant's use of the phrases "may offer", "if required", and "when Plaintiff complies with Rule 26(a)(2)" indicates their intent that these witnesses be rebuttal experts. Moreover, Defendants pretrial disclosures list their only expert, Ms. Newkirk, under the section of "witnesses who may be called if the need arises." (Doc. 155 at 2) (cleaned up). Finally, Defendants explained their reason for preemptively designating rebuttal experts in the March 8 hearing. (Doc. 186 at 58) ("There is no expert report. We are not putting in any affirmative evidence except to rebut what Mrs. Butler failed to do. Now, if she doesn't call any experts, it's a nonissue. Because we don't need experts.").

The Court's scheduling order provides the following regarding rebuttal experts:

> Rebuttal Expert(s): If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), the disclosures required under Rule 26(a)(2) shall be made shall be made within 30 days after the disclosure made by the other party.

(Doc. 113 at 3). The record indicates that Defendants' experts are in fact rebuttal experts. Accordingly, Defendants are not required to turn over Rule 26(a)(2) disclosures until Plaintiff turns over her expert disclosures. If Plaintiff does not intend to call experts, and thus have no obligation to make Rule 26(a)(2) disclosures, then Defendants have no rebuttal expert deadline. Plaintiff's argument regarding Defendants missing deadlines is therefore unpersuasive.

IV. Conclusion

For the above reasons, Plaintiff Cheryl Butler's Motion for Reconsideration of the March 10, 2022 Order with Incorporated Brief (Doc. 183) is DENIED in its entirety. The Court ORDERS this case STAYED pending the Court's ruling on Defendants' motion for summary judgment. (Doc. 126).

SO ORDERED; March 17, 2022.

Ada Brown
UNITED STATES DISTRICT JUDGE

7

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-CV-00037-E
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRAL,	§	
ROY ANDERSON,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, and	§	
SOUTHERN METHODIST UNIVERSITY	§	
	§	
Defendants.	§	

ORDER

Before the Court is Plaintiff Cheryl Butler's Motion to Reopen Discovery Pursuant to Rule 56(d). (Doc. 188). The Court reviewed the motion, record, and applicable law. The motion is **DENIED.** An opinion containing the grounds for the Court's decision is forthcoming.

SO ORDERED: April 11, 2022.

Ada Brown
UNITED STATES DISTRICT JUDGE

8

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-CV-00037-E
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRAL,	§	
ROY ANDERSON,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, and	§	
SOUTHERN METHODIST UNIVERSITY	§	
	§	
Defendants.	§	

ORDER

Before the Court is Defendants' Motion for Summary Judgment. (Doc. 126). The Court reviewed the motion, record, and applicable law. The motion is **GRANTED.** An opinion containing the grounds for the Court's decision is forthcoming.

SO ORDERED: April 11, 2022.

Ada Brown
UNITED STATES DISTRICT JUDGE

9

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-CV-00037-E
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRAL,	§	
ROY ANDERSON,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, and	§	
SOUTHERN METHODIST UNIVERSITY	§	
	§	
Defendants.	§	

MEMORANDUM OPINION, ORDER, AND ORDER TO SHOW CAUSE

On March 25, 2022, Plaintiff filed her Motion to Reopen Discovery Pursuant to Rule 56(d) With Incorporated Brief ("Plaintiff's Motion"). (Doc. 188). On April 11, 2022, the Court issued an Order denying Plaintiff's Motion. (Doc. 189). In that Order, the Court stated "[a]n opinion containing the grounds for the Court's decision is forthcoming." (Doc. 189). The Court explains its reasoning for denying Plaintiff's Motion below. Furthermore, the Court ORDERS both Plaintiff and her counsel, Ezra Young, to appear, in-person, at a show cause hearing on January 19, 2023, at 10:00 a.m. in the United States District Court, 1100 Commerce Street, Courtroom 1310, Dallas, Texas 75242, to determine whether Young should be sanctioned.

I. PROCEDURAL HISTORY

Because Plaintiff's Motion concerns a request for additional discovery in opposition to Defendant's motion for summary judgment, the Court provides a procedural history of the pertinent motion practice.

A. Defendants' Motion for Summary Judgment and Granted Extensions for Plaintiff's Response

Plaintiff asserted thirty counts against Defendants based on allegations of defamation; fraud; negligence; breach of contract; and unlawful employment practices. (Doc. 12). The Court previously dismissed eight of Plaintiff's claims with prejudice. (Doc. 47). The Parties conducted discovery on the remaining claims pursuant to an amended scheduling order. (Doc. 113). On September 2, 2021, the Parties filed an agreed motion to extend (i) the discovery deadline to October 29, 2021 and (ii) the dispositive motion deadline to November 30, 2021. (Doc. 116). The Court granted the Parties' extensions, as requested. (Doc. 117).

Defendants timely filed their motion for summary judgment on November 29, 2021. (Doc. 126). Defendants' motion for summary judgment sought dismissal of all of Plaintiff's remaining counts. Plaintiff's response to Defendants' motion for summary judgment ("Response") was due twenty-one days later, on December 20, 2021. *See* N.D. Tex. Civ. R. 7.1(e) ("A response and brief to an opposed motion must be filed within 21 days from the date the motion is filed."). Citing upcoming work demands for both Plaintiff and her attorney Andrew Dunlap, Plaintiff requested an extension for her Response—to January 3, 2022. (Doc. 129). The Court granted this first extension as requested. (Doc. 130). Next—citing the same work demands and how close she was to finishing her Response—Plaintiff asked for a second extension for her Response—to January 7, 2022. (Doc. 131). The Court granted this second extension as requested. (Doc. 134). Thereafter, this case took an unusual turn.

B. Young's Appearance and Numerous Denied Extensions for Plaintiff's Response

On January 6, 2022, Young motioned the Court to appear *pro hac vice* on behalf of Plaintiff. (Doc. 133). That same day, Young filed Plaintiff's Third Motion for Extension of Time—

requesting a new Response deadline of January 20, 2022. (Doc. 135). On January 7, 2022, Dunlap—still Plaintiff's counsel—motioned to strike Plaintiff's Third Motion for Extension of Time from the record, (Doc. 138). Dunlap then motioned to withdraw as counsel. (Doc. 139). Afterward, Court entered several corresponding orders, which (i) granted Young's application for admission *pro hac vice* (Doc. 136); (ii) denied Plaintiff's Third Motion for Extension of Time (Doc. 141); and (iii) denied Dunlap's motion to withdraw as Plaintiff's counsel. (Doc. 144).

On January 20, 2022, Young filed Plaintiff's fourth extension—now requesting a new Response deadline of either February 18 or 19, 2022; it is unclear from the motion which date Plaintiff desired. (Doc. 152). On February 19, 2022, Plaintiff filed her Response, corresponding brief, and appendix. (Docs. 159, 160, and 161). On February 28, 2022, the Court denied Plaintiff's fourth extension request by Order and Memorandum Opinion—wherein the Court found (i) that Plaintiff failed to show good cause or excusable neglect for failing to timely file her Response and (ii) that Plaintiff had acted in bad faith. (Doc. 166). The Court further struck Plaintiff's untimely-filed Response, corresponding brief, and appendix. (Doc. 166). Afterward, Plaintiff motioned the Court to reconsider this February 28, 2022 Order and Memorandum Opinion. (Doc. 171). On March 8, 2022, the Court held a hearing on, *inter alia*, Plaintiff's first reconsideration motion. (Doc. 186).

On March 9, 2022, the Court issued a second Memorandum Opinion and Order, which denied Plaintiff's first reconsideration motion. (Doc. 181). The Court reaffirmed its finding (i) that Plaintiff failed to show good cause or excusable neglect and (ii) that Plaintiff had acted in bad faith. (Doc. 181). Afterward, Plaintiff motioned the Court, again, to reconsider this March 9, 2022 Memorandum Opinion and Order. (Doc. 183). On March 17, 2022, the Court denied this second motion for reconsideration in a third Memorandum Opinion and Order that reaffirmed the Court's

findings. (Doc. 187). The Court concluded Plaintiff's latest motion to reconsider (Doc. 183) was "overloaded with improper interpretations" of law, the Court's opinions, and the Court's record. (Doc. 187 at 3). Lastly the Court stayed proceedings "pending the Court's ruling on Defendant's [sic] motion for summary judgment." (Doc. 187). In summary, the Court granted two extensions for Plaintiff to file her Response (Docs. 130 and 134) but denied Plaintiff's several requests for extensions and reconsiderations, thereafter—including the issuance of three separate memorandum opinions and orders. (*See* Docs. 141, 166, 174, 181, and 187).

C. Plaintiff's Motion to Reopen Discovery Pursuant to Rule 56(d)

Despite the Court's stay, Plaintiff filed a Rule 56(d) motion on March 25, 2022—asking the Court to reopen discovery so that she may obtain discovery of a "tenure box":

> Professor Butler asks that this Court reopen discovery to facilitate the proffer of evidence critical to Defendants' outstanding motion for summary judgment (ECF No. 126). Professor Butler narrowly seeks production of her "tenure box" and one complementary interrogatory asking Defendants to identify the same by batesnumber [sic].

(Doc. 188 at 5).[1] Plaintiff specifically requests the Court to reopen discovery to permit her one request for production and one interrogatory on Defendants—each seeking production and identification of the tenure box, respectively. (Doc. 188 at 3-4). Plaintiff further construes the Court's stay pending adjudication of Defendants' motion for summary judgment as follows:

> As to Defendants' construction of the stay—a "stay" pauses deadlines in a case, *it does not prohibit parties from making motions, let alone bar the filing of motions that must be docketed prior to the event that automatically lifts the stay*, which in this case is a merits opinion on Defendants' summary judgment motion.

(Doc. 188 at 6) (emphasis added).

[1] Plaintiff refers to this document interchangeably as a "tenure dossier" or "tenure binder" (*See* Doc. 188 at 8).

Thus, Plaintiff's Motion and Young's conduct have raised two issues for the Court. The first issue is whether Plaintiff's Motion should be granted. The second issue is whether—considering (i) Federal Rule of Civil Procedure 11; (ii) the standards of attorney conduct adopted in *Dondi Properties Corporation v. Commerce Savings & Loan Association*, 121 F.R.D. 284, 285 (N.D. Tex. 1988); and (iii) the Court's previous orders on Plaintiff's Response—Young should be sanctioned. First, the Court has determined that Plaintiff is not entitled to discovery under Rule 56(d) because she failed to diligently pursue the tenure box. Second, the Court has determined that Young must submit to a show cause hearing to determine whether he should be sanctioned.

II. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 56(d)

The Federal Rules of Civil Procedure permit a party to "*move* for summary judgment at any time," and "the court may *grant* summary judgment any time before trial." *See Guillory v. Domtar Indus.*, 95 F.3d 1320, 1328 (5th Cir. 1996) (citation omitted, emphasis added). "Rule 56(d) allows a court to deny a summary judgment motion and extend discovery if the party opposing summary judgment 'shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition.'" *Jacked Up, LLC v. Sara Lee Corp.*, 854 F.3d 797, 815–16 (5th Cir. 2017) (quoting Fed. R. Civ. P. 56(d)). Specifically, Rule 56(d) states:

> If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or take discovery; or (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).[2] Thus, "Rule 56(d) permits 'further discovery to safeguard non-moving parties from summary judgment motions that they cannot adequately oppose.'" *Bailey v. KS Mgmt.*

[2] Most opinions that address Rule 56(d) motions refer to the movant on the Rule 56(d) motion as the "nonmovant" in accordance with Rule 56(d). *See, e.g.*, *Jacked Up, L.L.C. v. Sara Lee Corp.*, 854 F.3d 797, 816 (5th Cir. 2017).

Servs., L.L.C., 35 F.4th 397, 401 (5th Cir. 2022) (per curiam) (quoting *Curtis v. Anthony*, 710 F.3d 587, 594 (5th Cir. 2013)).

"Although Rule 56(d) motions are broadly favored and liberally granted, a party's entitlement to discovery prior to a ruling on a motion for summary judgment is not unlimited." *Branch Banking & Tr. Co. v. Lexiam Enterprises, LLC*, No. 3:15-CV-2928-M, 2016 WL 9559894, at *1 (N.D. Tex. Sept. 2, 2016) (citing *Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990)). To obtain relief under Rule 56(d), the nonmovant must show: (i) that additional discovery will create a genuine issue of material fact; and (ii) that she diligently pursued discovery. *Bailey*, 35 F.4th at 401 (quoting *Jacked Up*, 854 F.3d at 816). "If the requesting party 'has not diligently pursued discovery, [] she is not entitled to relief' under Rule 56(d)." *McKay v. Novartis Pharm. Corp.*, 751 F.3d 694, 700 (5th Cir. 2014) (quoting *Beattie v. Madison Cnty. Sch. Dist.*, 254 F.3d 595, 606 (5th Cir. 2001)); *see also Int'l Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257, 1267–68 (5th Cir. 1991).

B. Sanctions Under the Federal Rule of Civil Procedure 11

Regarding representations to the Court, Federal Rule of Civil Procedure 11 states:

> By presenting to the court a . . . written motion . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Rule 11 permits the Court to impose a sanction "on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). "On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." Fed. R. Civ. P. 11(c)(3); *see Marlin v. Moody Nat. Bank, N.A.*, 533 F.3d 374, 379 (5th Cir. 2008) (explaining the Court is required to hold a show cause hearing before sanctioning an attorney, law firm, or party under Rule 11(b)). "[A] district court should 'evaluate[ ] an attorney's conduct at the time a pleading, motion, or other paper is signed.'" *Tejero v. Portfolio Recovery Assocs.*, 955 F.3d 453, 458 (5th Cir. 2020) (quoting *Thomas v. Cap. Sec. Servs., Inc.*, 836 F.2d 866, 874 (5th Cir. 1988) (en banc) (quotation omitted)).

C. Inherent Power to Sanction and Northern District of Texas Standards for Attorney Conduct

District courts have inherent power to impose sanctions for litigation misconduct. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 51 (1991). This inherent power derives from a district court's need "to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (internal quotation marks and citation omitted). In *Dondi*, the Northern District of Texas adopted standards for attorney conduct—which include courtesy and cooperation. 121 F.R.D. 284 (N.D.Tex.1988) (en banc); *see Blastmyresume.com LP v. Hoboken Web Servs. LLC*, 214 F. App'x 423, 424 (5th Cir. 2007) (discussing *Dondi*). *Inter alia*, the Northern District of Texas adopted the following:

> (A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
> (B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.
> (C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
> (D) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

> . . . .
> (G) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.
> (H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client. []

Dondi, 121 F.R.D. at 287–88. The *Dondi* court further noted its power to promulgate such rules:

> We are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens (Rules 26(b)(1) and 26(c)) or may cause them annoyance, embarrassment, or oppression (Rule 26(c)), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court (Rules 16(f) and 37). We likewise have the power by statute to tax costs, expenses, and attorney's fees to attorneys who unreasonably and vexatiously multiply the proceedings in any case. 28 U.S.C. § 1927. We are also granted the authority to punish, as contempt of court, the misbehavior of court officers. 18 U.S.C. § 401. In addition to the authority granted us by statute or by rule, we possess the inherent power to regulate the administration of justice. *See Batson v. Neal Spelce Associates, Inc.*, 805 F.2d 546, 550 (5th Cir.1986) (federal courts possess inherent power to assess attorney's fees and litigation costs when losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons); *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 875 (5th Cir.1988) (en banc) (district court has inherent power to award attorney's fees when losing party has acted in bad faith in actions that led to the lawsuit or to the conduct of the litigation).

Dondi, 121 F.R.D. at 287. "Malfeasant counsel can expect instead that their conduct will prompt an appropriate response from the court." *Dondi*, 121 F.R.D. at 288.

III. ANALYSIS

A. Plaintiff Fails to Show She Diligently Pursued the Discovery She Now Seeks Under Federal Rule of Civil Procedure 56(d)

The Court first addresses whether Plaintiff diligently pursued discovery of the tenure box under Rule 56(d). The Fifth Circuit has recently addressed Rule 56(d) in *Bailey*, wherein the district court issued an order "which *prohibited* any 'interrogatories, requests for admissions, or depositions . . . without court approval.'" 35 F.4th at 401 (emphasis added). Thereafter, the defendant moved for summary judgment. The plaintiff timely sought extension of her deadline to respond to the summary judgment—further requesting permission to conduct further discovery,

but the district court "denied that motion without explanation." *Bailey*, 35 F.4th at 404. The plaintiff then filed a Rule 56(d) motion to defer the district court's consideration on the pending summary judgment motion until the plaintiff had the opportunity to obtain the discovery she had repeatedly requested, but again, the district court denied her requests "quickly and without explanation." *Bailey*, 35 F.4th at 401, 404. Ultimately, the district court granted the defendant's summary judgment. *Bailey*, 35 F.4th at 401. The Fifth Circuit reversed the district court's denial of the plaintiff's Rule 56(d) motion and noted:

> "there was no discovery period at all—Bailey had no opportunity to conduct discovery absent court approval. She promptly and repeatedly sought such approval. *That her requests were repeatedly denied does not reveal a lack of diligence on her part*."

Bailey, 35 F.4th at 404 (emphasis added). The Fifth Circuit has further discussed diligence in pursuing discovery sufficient for relief under Rule 56(d). *Culwell v. City of Fort Worth*, 468 F.3d 868, 872 (5th Cir. 2006) (reversing district court's denial of a Rule 56(d) motion where "plaintiffs filed their document requests more than two months before the end of the discovery period and roughly six weeks in advance of the deadline to oppose summary judgment motions."); *Int'l Shortstop*, 939 F.2d at 1267–68 (5th Cir. 1991) (concluding "the district court should have allowed [the plaintiffs] to complete discovery before ruling on [the defendant's summary judgment motion]," after the plaintiffs made several attempts to obtain the pertinent discovery).[3] Thus,

[3] In *International Shortstop*, the Fifth Circuit explained:

> [W]e are satisfied that by its multiple filings *prior to* the court's ruling on the motion for summary judgment, Shortstop adequately invoked [Rule 56(d)]. In its initial response to the motion for summary judgment, Shortstop noted that several depositions were still outstanding. Later, but *prior to* the court's ruling on the motion for summary judgment, Shortstop thrice sought a continuance of discovery and promptly alerted the district court to the discovery proceedings before the magistrate judge, requesting leave to file a supplemental memorandum in opposition to the motion for summary judgment.")

Int'l Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1267 (5th Cir. 1991) (emphasis in original).

"[w]here the [nonmovant] informs the court that its diligent efforts to obtain evidence from the moving party have been unsuccessful, a continuance of a motion for summary judgment for purposes of discovery should be granted almost as a matter of course." *Int'l Shortstop*, 939 F.2d at 1267 (internal quotation omitted); *see Bailey*, 35 F.4th at 404; *Culwell*, 468 F.3d at 872.

Nevertheless, the Fifth Circuit has likewise recognized parties' failures in diligently pursuing discovery—thereby determining that *denial* of relief under Rule 56(d) was proper. *See, e.g.*, *Jacked Up*, 854 F.3d at 816. In *Jacked Up*, the Fifth Circuit explained that the nonmovant:

> "[did] not show that it diligently pursued discovery. Jacked Up did not move to compel production of these documents during the discovery period—the first time it sought judicial assistance in obtaining these documents was in response to Smucker's summary judgment motion."

Jacked Up, 854 F.3d at 816. The Fifth Circuit has further discussed similar failures to diligently pursue discovery. *Lilli v. Office of Fin. Insts. LA*, 997 F.3d 577, 587 (5th Cir. 2021) (affirming denial of a Rule 56(d) motion when the plaintiff first sought judicial assistance in obtaining discovery in response to the defendant's motion for summary judgment—after having "dawdled for years, the plaintiffs had no right to a judicial rescue."); *Beattie*, 254 F.3d at 606 (affirming denial of Rule 56(d) motion where nonmovant had several months to depose witnesses but waited until sixteen days before the close of discovery to try to schedule witness depositions, at which point the parties could not agree on a schedule.). Thus, "[i]f . . . the nonmoving party has not diligently pursued discovery of that evidence, the court need not accommodate that party's belated request." *Int'l Shortstop*, 939 F.2d at 1267 (citation omitted). Moreover, when the Court determines a nonmovant failed to pursue discovery diligently, the Court is not required to address whether the discovery will create a genuine issue of material fact. *Beattie*, 254 F.3d at 606 ("We need not address whether [the nonmovant] has shown why she needs additional discovery to create a genuine issue of material fact, because she was not diligent.").

Plaintiff's Motion (i) accuses Defendants of not producing the tenure box; (ii) accuses Defendants of malfeasance in connection to the tenure box's whereabouts; and (iii) generally stresses the importance of the tenure box to deciding the merits of Plaintiff's case. (Doc. 188). However, none of these assertions sufficiently show how or whether Plaintiff was diligent in her pursuit of tenure box evidence. (*See* Doc. 188). Instead, Plaintiff's Motion describes piecemeal, informal attempts to obtain the tenure box. Neither Plaintiff's Motion nor her supporting declaration show *any* attempts to obtain the tenure box from the Defendants under the Federal Rules of Civil Procedure. *See generally* Fed. R. Civ. P. 26-37 (enumerating disclosure and discovery).

Plaintiff's first attempt to obtain the tenure box involves a January 26, 2016 email to Defendant Collins, asking for the "tenure report" in an effort to appeal the tenure committee's decision. (Doc. 188, Ex. 6). The record shows Plaintiff sent this email a year and a half *before* she initiated this litigation in August 2017. (Doc. 188, Ex. 6).[4] This correspondence fails show Plaintiff's diligence in obtaining the tenure box once she commenced this lawsuit. Furthermore, there is no evidence in the record that Plaintiff pursued this January 2016 request as a request for the tenure box after discovery began in this case. For those reasons, the Court must conclude that the January 26, 2016 email exchange does not demonstrate Plaintiff's diligence.

Plaintiff's next attempt to obtain the tenure box is a March 9, 2022 email exchange between Young and Defendants' Counsel. (Doc. 188 at 10, Ex. 4). This email exchange consists of (i) Young asking Defendant to identify the tenure box by bates number; (ii) Defendants' counsel declining to provide such identification but confirming the tenure box was produced; and

[4] The "tenure report" appears to have been produced in discovery as a Bates-numbered document entitled "CONFIDENTIAL TENURE AND PROMOTION REPORT — CHERYL NELSON BUTLER" is attached to Defendants' summary judgment appendix. (Doc. 128 at 55-75).

(iii) Young's allegation and theory regarding the tenure box. (Doc. 188, Ex. 4). Despite her various characterizations, Plaintiff fails to explain how this request in an email—dated several years after discovery began and several months after the agreed discovery deadline elapsed—satisfies the "diligence" requirement for relief under Rule 56(d). Plaintiff fails to provide the Court with any supporting cases showing such correspondence at this late stage of the litigation would qualify as a diligent pursuit of evidence. The Court has found no such supporting authority.[5] Therefore, the Court must conclude the March 9, 2022 email exchange does not demonstrate diligence.

Neither Plaintiff's Motion nor her attached exhibits direct the Court to any formal request for discovery—neither a disclosure, request for production, interrogatory, admission, nor deposition—that shows she requested discovery of the tenure box from Defendants at any time prior to March 25, 2022. As in *Jacked Up*, Plaintiff did not move to compel production of the tenure box during the discovery period. 854 F.3d at 816.[6] Beyond the relief requested and denied in *Jacked Up*, 854 F.3d at 816; *Lilli*, 997 F.3d at 587; and *Beattie*, 254 F.3d at 606—Plaintiff has first asked for this tenure box discovery after both the discovery and summary judgment response deadlines have elapsed.

Furthermore, the exhibits attached to Plaintiff's Motion suggest that she is unsure whether the tenure box had been already produced—as Defendants assert. Plaintiff's correspondence to Young states:

> After this hearing, Defendants still did not appear to cure by producing the dossier. *If they did so produce them in the 17,000 pages of documents Dunlap referenced, Mr. Dunlap could not find them*. Therefore, thank you for asking her for the bates numbers.

(Doc. 188, Exhibit 7 at 2) (emphasis added). Plaintiff's declaration states:

[5] Plaintiff fails to direct the Court to any authority that requires an opposing party to comply with such an email request at this late stage of the litigation, and the Court has found no such supporting authority.

[6] The Court notes, however, that Defendants moved to compel tenure documents from Plaintiff. (Doc. 56).

> I recall speaking with Mr. Dunlap on several occasions inquiring as to whether Defendants produced my tenure box. *Mr. Dunlap repeatedly told me that he had no idea whether Defendants produced my tenure box. On a few occasions, Mr. Dunlap told me tens of thousands of pages of discovery were produced but nonetheless maintained that he did not know if the tenure box was produced*. On a number of occasions Mr. Dunlap told me that he directly asked Ms. Askew about the tenure box but *the only answer he got was that it had been previously produced and that no identifying batesnumbers were shared*.

(Doc 188, Exhibit 14 at 2-3) (emphasis added).[7]

The above notwithstanding, Plaintiff nevertheless states the following to describe that she cannot present facts essential to justify her opposition to Defendant's motion for summary judgment:

> I do not believe that I can fairly demonstrate my qualifications for tenure without my tenure box since it contains all of the evidence of my qualifications in teaching, scholarship, and service.

(Doc. 188, Exhibit 14 at 3); *see* Fed. R. Civ. P. 56(d). "The nonmovant may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts . . . particularly where, as here, ample time and opportunities for discovery have already lapsed." *Sec. & Exch. Comm'n v. Spence & Green Chem. Co.*, 612 F.2d 896, 901 (5th Cir. 1980). Here, Plaintiff's vague assertion fails to show specified reasons that she cannot present facts essential to justify her opposition to Defendants' motion for summary judgment. *See* Fed R. Civ. P. 56(d). Furthermore, Plaintiff's exhibits suggest she has not reviewed the discovery to determine whether the tenure box has already been produced, which would obviate her requested relief under Rule 56(d).

Plaintiff fails to explain how the ordinary exercise of due diligence would not have alerted her counsel to the necessity of discovering the tenure box. Nor does Plaintiff explain why she did

[7] Dunlap remains as the lead attorney for Plaintiff.

not serve a relevant discovery request—or seek an extension of the discovery deadline—during the discovery period to obtain the tenure box. No order from the Court has prohibited such discovery during the discovery period. Indeed, the Court's filings indicate that in the final request for an extension to the discovery deadline (Doc. 116), Plaintiff asserted "[s]ignificantly, the *only* discovery Ms. Butler will conduct during the extended discovery period is the completion of . . . depositions." (Doc. 116 at 3) (emphasis added). This suggests that Plaintiff made a conscious choice to forgo discovery of the tenure box during the discovery period. As in *Spence & Green Chem. Co.*, it is undisputed that Plaintiff has had ample time and opportunities to conduct this discovery. 612 F.2d at 901.

For the reasons above, the Court must conclude Plaintiff failed to diligently pursue the discovery she now seeks in Plaintiff's Motion related to the tenure box. Thus, the Plaintiff's Motion (Doc. 188) is DENIED. The Court otherwise pretermits any further discussion of whether Plaintiff has shown why she needs additional discovery to create a genuine issue of material fact. *See Beattie*, 254 F.3d at 606; *see, e.g.*, *Harry v. Dallas Hous. Auth.*, No. 3:14-CV-0482-M, 2016 WL 67769, at *3-4 (N.D. Tex. Jan. 5, 2016), aff'd, 662 F. App'x 263 (5th Cir. 2016) (denying the plaintiff relief under 56(d) because "[the plaintiff] has not diligently pursued the discovery he now claims is essential").

B. Plaintiff and Young Shall Appear for Show Cause Hearing

Plaintiff has presented her motion as a "Motion to Reopen Discovery Pursuant to Rule 56(d)." (Doc. 188). However—considering (i) the Court's record of Plaintiff's motions and (ii) the timing, content, and requested relief of Plaintiff's Motion—the Court takes Plaintiff's Motion as

another motion for the Court to reconsider its decisions on Plaintiff's untimely Response based on a new reason: discovery regarding the tenure box, which she has not previously asserted.

In evaluating Plaintiff's Motion as of the time of it's filing on March 25, 2022, the Court recognizes this request for additional discovery occurs: (i) months after the close of discovery, (ii) after two elapsed extensions to file her Response, (iii) after failing to timely file her Response, (iv) after numerous requests for and denials of additional extensions and reconsiderations, (v) after Plaintiff's Response, corresponding brief, and appendix have been stricken, (vi) after multiple findings of Plaintiff's bad faith conduct, and (vii) during a stay of the Court's proceedings.[8] Plaintiff expressly requests to reopen discovery "to facilitate the proffer of evidence critical to Defendants' outstanding motion for summary judgment (ECF No. 126)." (Doc. 188 at 5). As concluded above, the Court declines to permit such discovery.

Assuming *arguendo* that the Court were to permit such additional discovery, such evidence would not consequently become a part of either the summary judgment evidence or Plaintiff's Response because those deadlines have elapsed. (*See* Docs. 141, 166, 174, 181, and 187); N.D. Tex. Civ. R. 7.1(e, i) (describing the 21-day reply deadline and appendix requirements); *see generally* N.D. Tex. Civ. R. 56.7 (limiting filing of supplemental evidence). For such evidence to be considered at this stage—after all dispositive motion deadlines, response deadlines, and extensions have elapsed—the Court would first have to grant an extension to Plaintiff for her Response. Fed. R. Civ. P. 6(b)(1)(B) (permitting extension of time for filings "for good cause . . .

[8] A district court has the inherent power to stay its proceedings. This power to stay is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L. Ed. 153 (1936); *Petrus v. Bowen*, 833 F.2d 581 (5th Cir.1987). This power is best accomplished by the "exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254–55, 57 S.Ct. 163.

on motion made after the time has expired if the party failed to act because of excusable neglect.").[9] But, the Court has repeatedly denied such relief because Plaintiff failed to show good cause or excusable neglect. (*See* Docs. 141, 166, 174, 181, and 187); *see* Fed. R. Civ. P. 6(b)(1)(B); N.D. Tex. Civ. R. 7.1(e, i). Moreover, the Court has specifically stricken Plaintiff's Response, corresponding brief, and appendix because Plaintiff filed them after the deadlines elapsed. (Doc. 166).

In effect, Plaintiff's Motion requests relief the Court has repeatedly denied with thorough orders and opinions. (*See* Docs. 141, 166, 174, 181, and 187). The Court is concerned by Plaintiff's Motion; her counsel's pattern of conduct in this litigation; and Plaintiff and Young's seeming lack of regard for this Court's ability to effectively manage its own docket. *See Prudhomme v. Teneco Oil Co.*, 955 F.2d 390, 392 (5th Cir. 1992) (recognizing that district courts have broad discretion to manage their dockets). The Court is further concerned by Young's filings in the context of the attorney standards of *Dondi*.[10] The Court declines to permit such behavior to proceed without scrutiny. The Court concludes it must assess—after hearing—whether Young should be sanctioned "to protect the sanctity of its decrees and the legal process" generally and to resolve this case specifically. *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 582 (5th Cir. 2005) (discussing attorney discipline in the form of contempt); *see Dondi*, 121 F.R.D. at 287; Fed R. Civ. P. 11, 16; *see generally* 18 U.S.C. § 401.

[9] Local Rules 56.7 prohibits the filing of such supplemental evidence without "permission of the presiding judge." N.D. Tex. Civ. R. 56.7.

[10] Young indicated in his application for pro hac vice that he has read "and will comply with the standards of practice adopted in *Dondi* and with the local civil rules." (Doc. 133 at 3).

IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Plaintiff's Motion to Reopen Discovery Pursuant to Rule 56(d). (Doc. 188). Furthermore, the Court **ORDERS** Plaintiff and her counsel, Ezra Young, to appear in-person for a hearing on January 19, 2023, at 10:00 a.m. in the United States District Court, 1100 Commerce Street, Courtroom 1310, Dallas, Texas 75242, to show cause as to (i) whether Young violated Federal Rule of Civil Procedure 11; (ii) whether Young violated the standards for attorney conduct adopted in *Dondi*; and (iii) whether Young should sanctioned.[11]

The Court requests the clerk of the court to direct this Order to Plaintiff Cheryl Butler and her counsel Ezra Young by both mail and email.

SO ORDERED.

2nd day of December, 2022.

ADA BROWN
UNITED STATES DISTRICT JUDGE

[11] The Court does not intend to sanction Plaintiff individually, at this time.

10

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-CV-00037-E
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRALL,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, AND	§	
SOUTHERN METHODIST UNIVERSITY,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Cheryl Bulter, filed suit in the 193rd Judicial District Court of Dallas County, Texas against Defendants. Defendants removed this case to federal court in January of 2018, at which time this case was before Judge Lindsay. As amended, Plaintiff asserted thirty counts against Defendants based on (i) defamation; (ii) fraud; (iii) negligence; (iv) breach of contract; and (v) several allegations of unlawful employment practices.

The Court previously dismissed with prejudice eight of Plaintiff's claims. (Doc. 47). On November 29, 2021, Defendants filed their motion for summary judgment, which sought dismissal of all of Plaintiff's remaining claims ("**Defendants' Motion**"). (Doc. 126). Despite requesting and receiving two extensions to file her response, Plaintiff failed to timely file a response to Defendant's Motion. On April 11, 2022, the Court issued an Order which granted Defendants' Motion. (Doc. 190). In the Order, the Court stated "[a]n opinion containing the grounds for the Court's decision is forthcoming." (Doc. 189). Hereunder, the Court explains its reasoning for granting Defendant's Motion, thereby dismissing all of Plaintiff's remaining counts:

I. BACKGROUND

A. Plaintiff's Negative Tenure Recommendation

Defendant Southern Methodist University ("**SMU**") previously employed Plaintiff. This dispute arises from a 2016 decision to deny Plaintiff tenure as a law professor. In 2011, SMU hired Plaintiff to work as an assistant law professor. Plaintiff's appointment letter informed that (i) her appointment was from August 2011 to May 2014 and (ii) "[i]f your contract is renewed you would normally be considered for a tenured appointment during the 2015-2016 academic term." Plaintiff's appointment letter further attached the law school's bylaws ("**Bylaws**") and tenure procedures and standards. Plaintiff taught at SMU from August 2011 to May 2014. In March 2014, SMU renewed Plaintiff's employment; however, the committee that evaluated Plaintiff's renewal concluded in its contract renewal report that "Professor Butler's teaching has room for improvement."

In fall of 2015, SMU began the process for determining tenure for Plaintiff. The Bylaws include the guidelines used to determine tenure ("**Guidelines**"). The Bylaws' criteria for tenure state, *inter alia*:

> A professor has two preeminent responsibilities: teaching and contributing to the growth and understanding of the law. These two responsibilities shall be given equal weight in the determination whether to award tenure or promotion to a member of the Faculty.
> . . . .
> Promotion to the rank of full professor will only be awarded to candidates who demonstrate both sustained high quality teaching and substantial and continuing contributions to the growth and understanding of the law.

(Doc. 128 at 138).

SMU empaneled a "First Tenure Committee," who raised concerns that Plaintiff's teaching was not meeting the "high quality" standard for tenure. When Plaintiff learned of the First Tenure Committee's concerns about her teaching, Plaintiff accused the First Tenure Committee of

violating her civil rights. Thereafter, the First Tenure Committee resigned, and the dean of the law school, Defendant Jennifer Collins, appointed a "Second Tenure Committee."

As part of the tenure decision, SMU required Plaintiff to provide several documents—including a personal statement, syllabi, resume of qualifications, teaching evaluations, and other materials—by November 16, 2015 ("**Tenure Box**"). Plaintiff sought an extension of her tenure decision to the following academic year (the 2016-2017 school year), which SMU Provost Harold Stanley denied. Plaintiff failed to timely submit her Tenure Box. Two other professors who were submitting to the tenure process for the law school timely submitted their respective tenure boxes.

In January 2016, the Second Tenure Committee issued its tenure report for Plaintiff ("**Tenure Report**"). Regarding Plaintiff's teaching, the Tenure Report stated:

> This committee is in unanimous agreement that Cheryl's student teaching evaluations are, on the whole, problematic and a cause for concern. As noted at the beginning of this report, we do not feel comfortable making a collective recommendation of tenure and promotion for Cheryl based on her teaching. We are in agreement that no colleague should be granted tenure and promotion under our standards unless her teaching is at least of "high quality."
>
> . . . .
>
> [W]e believe that the problems with Cheryl's teaching were perhaps understated in the [contract renewal] report.
>
> . . . .
>
> Since the renewal committee report Cheryl has taught Torts I twice (fall, 2014 & 15) and Torts II once (spring, 2015). These more recent evaluations . . . [reflect] no progress for Cheryl as a teacher. More objectively, they demonstrate a marked worsening in the quality of Cheryl's teaching and course management.
>
> . . . .
>
> [S]tudents in [Plaintiff's fall 2014 Torts I class] questioned her understanding of the material and her preparation for class. Several also complained that she repeatedly cancelled classes or terminated them early, a continuing refrain in most of Cheryl's torts evaluations[.] . . . Cheryl's evaluations for Torts II (spring, 2015) and Torts I (fall, 2015) were, on the whole, awful.
>
> . . . .
>
> [Students'] comments . . . opined that she was often unprepared for class and lacked knowledge of the subject matter.
>
> . . . .
>
> The following lengthy [student] comment . . . encapsulates the overwhelming majority of the evaluations:

> I have never had a professor more distracted and unclear. Assignments change constantly, classes are cancelled with minimal notice and rescheduled with no concern for student's other obligations. I have had to email for clarifications on assignments at least four times; I will receive one answer, then the whole class will be emailed with a different answer, and then what is discussed in class will be different than that. There's no way to prepare ahead because assignments will change the MORNING of class. She says she wants us to be fact masters, but SHE DOESN'T KNOW THE FACTS of the cases. Class discussion on cases is an excruciating line-by-line rendition of the case. It's not a creative or enlightening method of learning. Her mood swings are beyond unpredictable. One day she is energetic and wants questions and engagement, some days she's aloof and distracted, some days she wants questions, other days she acts like they should never even be asked. She is condescending; she is flippant. []
>
> . . . .
>
> Most unfortunately, many students accused Cheryl of appearing to be angry with them, of belittling and berating particular students and, generally, of acting unprofessionally toward the class.

(Doc. 128 at 60-65).

The Tenure Report further raised concerns about Plaintiff's interactions with the Second Tenure Committee:

> Cheryl is often untruthful in her dealings with her colleagues and the law school administration. By untruthful, we mean that she says things that she knows or should know are not true. She repeatedly mischaracterizes what colleagues have said, including what members of this committee have told her. She often states facts in contradiction to what she said earlier in the same conversation. . . . . She has made accusations against colleagues, including our Dean and our Provost, that are demonstrably not true.

(Doc. 128 at 74).

The Second Tenure Committee ultimately concluded in its Tenure Report that "[t]he committee agrees that Cheryl's teaching falls short of [tenure] standards. On January 13, 2016, the faculty voted on whether Plaintiff would receive tenure; the Guidelines on voting provide:

> When a Faculty member is to be considered for tenure or promotion, the Dean shall call a special meeting for that purpose.
>
> . . . .
>
> In the case of tenure consideration, only tenured members may vote.

> . . . .
> A quorum for a meeting on tenure or promotion shall consist of 75% of the group eligible to vote and the candidate shall be recommended for tenure or promotion only on the favorable vote of 60% of those eligible to vote.
> . . . .
> If promotion or tenure is not approved, the candidate shall be advised of the results of voting.

(Doc. 128 at 137).

After the faculty voted by secret ballot, Plaintiff received a negative tenure recommendation. Collins did not vote on Plaintiff's tenure recommendation. The faculty voted to recommend tenure for the other two professors who were submitting to the tenure process—one of whom is black.

B. Appeal of Negative Tenure Recommendation and Provost Recommendation

Thereafter, Butler appealed the negative tenure recommendation to Collins. Collins informed Plaintiff she would consider the appeal on materials previously provided unless Plaintiff provided additional materials by April 25, 2016. Plaintiff provided no additional materials, and Collins denied Plaintiff's negative tenure recommendation appeal on May 4, 2016. Collins presented the negative tenure recommendation to the provost of SMU, Defendant Steven Currall, by letter on May 4, 2016 ("**Collins Letter**"). The Collins Letter stated to Currall the following, *inter alia*:

> Unfortunately, I concur in my colleagues' assessment that Professor Butler has not demonstrated high quality in teaching.
> . . . .
> [T]he problems identified in the student evaluations were confirmed by extensive peer observations and other indicia of unsatisfactory teaching, including problems with syllabi, assignments, exams, and grading. . . . Professor Butler's student evaluations are in a different category than the rest of the faculty.
> . . . .
> I looked at the reports for all the tenured and tenure track professors. The two first questions go to the core of the teaching role in many ways: question 1 is "Professor demonstrated a command of the material" and question 2 is "Professor was prepared for class." Professor Butler's scores in Torts II were the lowest in the school at a 3.73 for question 1 and 3.48 for question 2; no other professor received a score in the 3's on those two questions.
> . . . .

> [Question 19] asks students to compare the professors to other professors at the school []. Professor Butler again received the lowest score in the school at 2.98 and was the only professor to receive a score in the 2's on this question.
>
> . . . .
>
> Some pervasive complaints in the student evaluations were a lack of preparation, disorganization, excessive reviews of previously covered material and, most worrisome, a lack of knowledge of tort law that manifested itself in repeated misstatements of law and confusing contradictions in class. These problems manifested themselves in the two classes I observed.
>
> . . . .
>
> [The second-observed] class was absolutely awful, both substantively and pedagogically. Inexplicably, she did not cover any new material, but instead spent the entire class session reviewing material addressed in earlier classes. This review did not involve any effort to synthesize the earlier material or provide students with an overarching conceptual framework, but instead consisted of unnecessarily detailed recitation of the facts of cases previously discussed. She did not give students an opportunity to ask any questions or use any method to assess the students' understanding of the material. She repeatedly referred to the importance courts place on "policy" arguments but without any discussion of what policy she might be talking about[.]
>
> . . . .
>
> Perhaps my biggest regret about Professor Butler is that she is unwilling or unable to accept constructive feedback about her teaching and make positive changes in response. She hears only what she wants to hear.

(Doc. 128 at 162-65).

The Collins Letter further described examples of Plaintiff's unpreparedness, including (i) her failure to begin preparing an exam "until the actual day the exam was to be given"; (ii) multiple choice questions that failed to ask a question or randomly switched the names of the parties; and (iii) failing to provide "written feedback and professorial editing [in her edited writing class] that are at the very heart of the edited writing requirement (a graduation requirements [sic] for our students)."

On May 5, 2016, Currall informed Plaintiff (i) that he could not make a positive recommendation of tenure and (ii) that Plaintiff had three weeks to appeal the negative decision to the SMU President. Plaintiff did not appeal to the SMU president. SMU paid Plaintiff for the spring 2016, fall 2016, and spring 2017 semesters.

C. Plaintiff's FMLA Leave

In summer 2015, Plaintiff sought information on Family Medical Leave Act ("**FMLA**") leave from SMU. On June 12, 2015, SMU benefits specialist Rhonda Ice Adams emailed Plaintiff with instructions and "with all forms necessary to seek FMLA leave." (Doc. 128 at 177, 191-92). This email further stated "Please note all documentation relative to FMLA should be sent to me and not provided to the Law School due to HIPPA regulations." (Doc. 128 at 191-92). On November 24, 2015, Adams again provided Plaintiff with the FMLA forms and instructions for submission.

On December 18, 2015, Plaintiff submitted FMLA forms and accompanying documentation to Adams. On December 23, 2015, Adams approved Plaintiff's FMLA leave from November 18, 2015, to December 21, 2015. Adams further approved Plaintiff's FMLA leave from (i) January 6, 2016, to February 17, 2016 and (ii) February 18, 2016, to April 11, 2016. In accordance with SMU policies, no persons outside of Human Resources at SMU ("**HR**") were authorized to make determinations on Plaintiff's FMLA leave. Only Adams made the FMLA determinations that affected Plaintiff. Adams did not share any of Plaintiff's medical information "with any employees beyond those who made FMLA determinations in HR." (Doc. 128 at 176). Adams did not share any of Plaintiff's medical information with Defendants Collins, Currall, and Stanley. Plaintiff received her full entitlement of FMLA leave for 2016.

D. Plaintiff's ADA Requests and Reasonable Accommodations

In the November 24, 2015 email to Plaintiff, Adams (i) attached "documentation needed if [Plaintiff sought] an accommodation due to impairment" and (ii) instructed Plaintiff to submit the accommodation documentation to SMU's ADA/504 Coordinator Carolyn Hernandez. SMU maintained its Americans with Disabilities Act ("**ADA**") policy and reasonable request forms ("**ADA Forms**") on its website. Nevertheless, Hernandez further provided the ADA policy and

forms to Plaintiff on December 14, 2015. On April 6, 2016, Plaintiff—for the first time—submitted her ADA reasonable accommodation request. Hernandez approved several ADA reasonable accommodations for Plaintiff including sitting during lectures; using medicines and devices; leave from classroom teaching; and not requiring Plaintiff to teach or be in the classroom during the Spring 2016 semester after exhaustion of FMLA leave. Neither Collins, Currall, Rogers, nor Stanley had any role in handling any ADA reasonable accommodations on behalf of SMU or Plaintiff. Neither Collins, Currall, Rogers, nor Stanley made any ADA determinations on behalf of Plaintiff.

E. SMU's Investigations on Plaintiff's Alleged Discrimination and Retaliation

Plaintiff did not file a formal complaint of discrimination related to denial of her tenure. Nevertheless, Plaintiff emailed Hernandez during spring 2016 complaining of discrimination and retaliation in connection with the denial of tenure. Hernandez completed an investigation, which included interviews with Collins, the First Tenure Committee, and the Second Tenure Committee. Hernandez spent months trying to obtain Plaintiff's cooperation in the investigation—including frequent calls, messages, offers to interview by Skype—but Plaintiff refused to participate in the investigation.

Plaintiff raised complaints of discrimination about how Adams handled the FMLA leave requests. SMU's chief human resources officer, Sheri Starkey, conducted a review and investigation related to Plaintiff's FMLA leave. On April 20, 2016, Starkey determined that SMU "appropriately administered [Plaintiff's] FMLA claim and that there is no discrimination." (Doc. 128 at 278). Nevertheless, Plaintiff asserted SMU violated the ADA and FMLA, which Hernandez further investigated.

On December 22, 2016, Hernandez submitted her investigation conclusions to Plaintiff ("**Hernandez Letter**"). The Hernandez Letter states, *inter alia*:

> After fully investigating your allegations, [SMU's Office of Institutional Access and Equity] has discovered no evidence of discrimination and retaliation in the tenure decision. Our investigation shows that such comments were never made. Throughout the process, you were apprised of the sole basis for the tenure decision, which was that your teaching did not meet the University's standards for tenure and promotion. You appealed the initial tenure recommendation from the law faculty to Dean Collins who reviewed your appeal and again informed you (on May 4, 2016) of the basis for the denial of the appeal and for her recommendation to the Provost that you not be granted tenure. The basis was your failure to meet the University's teaching standards. Your race was not a factor.
>
> . . . .
>
> Our investigation shows that once you sought leave, SMU granted you FMLA leave in 2015 and the maximum amount of FMLA leave allowable in the 2016 calendar year. When your FMLA leave ran out, SMU granted you reasonable accommodations under the ADA. You were out of the classroom (and did not teach) for the entire spring 2016 semester on leave or as an accommodation. Thus, after fully looking at all the facts available to us, we have concluded that there was no violation of SMU's policies against discrimination and retaliation.

(Doc. 128 at 321-22).

F. Procedural History

Since removal to federal court, the case has survived (i) the dismissal of multiple counts and defendants, (ii) a case reassignment to Judge Brown, (iii) Plaintiff's show cause hearing, (iv) Plaintiff's termination of six of her attorneys, and (v) Plaintiff's suggestion of bankruptcy leading to the administrative closure of the case. In early February 2021, Defendants filed an unopposed motion to reopen the case (Doc. 108), which the Court granted on February 23, 2021. (Doc. 110). After an order extending the deadline for dispositive motions (Doc. 117), Defendants timely filed their motion for summary judgment on November 29, 2021, ("**Defendants' Motion**"). (Doc. 126). Defendants' Motion sought dismissal of all of Plaintiff's twenty-two remaining counts, categorized as follows:

1. Title IX Claim (Count 30)
2. Breach of Contract Claim (Count 9)
3. Family Medical Leave Act Claims ["**FMLA**"] (Counts 23-26)
4. Claims Under the Americans with Disabilities Act ["**ADA**"]/Rehabilitation Act ["**RA**"] (Counts 16-22)
5. Claims Under 42 U.S.C. § 1981 (Counts 10-12)

6. Discrimination Claims Under Title VII (Counts 13 and 14) and Texas Commission on Human Rights Act ["**TCHRA**"] (Counts 27 and 29)
7. Retaliation Claims under § 1981 (Count 12), Title VII (Count 15), the ADA (Count 22), and TCHRA (Count 28).

(Docs. 126, 127).

Defendants' Motion asserts Plaintiff has no evidence of an essential element on several of her counts. Furthermore, Defendants submitted summary judgment evidence to support their position that the decision to deny Plaintiff tenure was not unlawful regarding Plaintiff's remaining counts. (*See* Doc. 128, App. in Support of Defendants' Motion for Summary Judgment). Defendants' summary judgment evidence includes (i) deposition excerpts of Roy Anderson (a member of the Second Tenure Committee), Currall, and Samantha Thomas (a former director of SMU's Office of Institutional Access and Equity) and (ii) declarations from Collins, Adams, and Hernandez. Defendants further attached corresponding exhibits to each of these preceding documents in their summary judgment evidence submissions.

Plaintiff failed to timely respond to or otherwise oppose Defendants' Motion.[1] Plaintiff asserts no objections to Defendant's summary judgment evidence. Thus, Plaintiff (i) failed to provide competent summary judgment evidence to support her claims and (ii) failed to preserve any objections to Defendants' summary judgment evidence. As previously noted, the result of Plaintiff's failures is that the Court treats Defendants' facts as undisputed. (Doc. 187, at 4-5); (Doc. 166, at 8).

[1] Plaintiff's objections and response to Defendants' Motion were the subject of several motions to extend Plaintiff's deadlines and motions for reconsideration. The Court has adjudicated and addressed those motions. *See* (Docs. 166, 181, 187).

II. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate when the pleadings and evidence on file show "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine dispute of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248, 106 S. Ct. 2505. A court must view all evidence and draw all reasonable inferences in the light most favorable to a party opposing a summary judgment motion. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). A court "may not make credibility determinations or weigh the evidence" in ruling on the motion. *Reeves*, 530 U.S. at 150, 120 S. Ct. 2097; *Anderson*, 477 U.S. at 254-55, 106 S.Ct. 2505.

The moving party bears the initial burden of showing the court there is no genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A party with the burden of proof on an issue "must establish beyond peradventure all of the essential elements of the claim or defense to warrant judgment in his favor." *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis omitted). When, as here, a nonmovant bears the burden of proof, the movant may demonstrate it is entitled to summary judgment either by (1) *submitting evidence that negates the existence of an essential element of the nonmovant's claim or affirmative defense*, or (2) *arguing there is no evidence to support an essential element of the nonmovant's claim or affirmative defense*. *Celotex*, 477 U.S. at 322–25, 106 S.Ct. 2548 (emphasis added). There is "no genuine issue as to any material fact [if] a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 323, 106 S. Ct. 2548.

Once the movant has made this showing, the burden shifts to the nonmovant to establish there is a genuine issue of material fact so that a reasonable jury might return a verdict in its favor. *Celotex*, 477 U.S. at at 324, 106 S.Ct. 2548. "[C]onclusory allegations, speculation, and unsubstantiated assertions" will not satisfy the nonmovant's burden. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1). A court "resolve[s] factual controversies in favor of a nonmoving party . . . only when an actual controversy exists, that is, when both parties have submitted evidence of contradictory facts." *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 525 (5th Cir. 1999).

B. Effect Of Failing to Respond to Summary Judgment

"A party opposing such a summary judgment motion may not rest upon mere allegations contained in the pleadings, but must set forth and support by summary judgment evidence specific facts showing the existence of a genuine issue for trial." *Ragas v. Tennessee Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (citing *Anderson*, 477 U.S. at 255–57, 106 S. Ct. 2513–14). The Fifth Circuit has explained:

> The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim. . . . "Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915–16 & n. 7 (5th Cir.), *cert. denied*, 506 U.S. 832, 113 S.Ct. 98, 121 L.Ed.2d 59 (1992).

Ragas, 136 F.3d at 458.

Nevertheless, "[t]he failure to submit evidence in response to a summary judgment motion does not permit a court to enter a 'default' summary judgment." *Potasznik v. McGee*, 3:16-CV-155-L, 2019 WL 859579, at *2 (N.D. Tex. Feb. 22, 2019) (citing *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988)). Indeed,

> [i]f a party fails ... to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . (2) consider the fact undisputed for purposes of

> the motion [and] (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it[.]

Fed. R. Civ. P. 56(e)(2)-(3). In other words, "[a] court is allowed . . . to accept the movant's facts as undisputed when there is no competent evidence to refute or oppose the summary judgment." *Potasznik*, 2019 WL 859579, at *2 (citing *Eversley*, 843 F.2d at 174). In *Eversley*, the Fifth Circuit affirmed the trial court's grant of summary judgment—explaining:

> [T]he district court accepted as undisputed the facts so listed in support of MBank's motion for summary judgment. In our opinion, the district court acted properly in doing so and, *since Eversley made no opposition to the motion, the court did not err in granting the motion as MBank's submittals made a prima facie showing of its entitlement to judgment*.

Eversley, 843 F.2d at 174 (emphasis added).

III. ANALYSIS

Defendants' Motion and attached summary judgment evidence demonstrates that Defendants are entitled to summary judgment on all of Plaintiff's remaining claims as Defendants (i) have submitted evidence that negates the existence of an essential element of each of Plaintiff's claims or (ii) have otherwise asserted no evidence supports an essential element of Plaintiff's claims—and the Court has found none. *Celotex*, 477 U.S. at 322–25, 106 S.Ct. 2548; Fed. R. Civ. P. 56(a). Plaintiff failed to respond to Defendants' Motion or otherwise object to Defendants' summary judgment evidence. Plaintiff failed to offer evidence to refute or oppose Defendants' Motion. *See* Fed. R. Civ. P. 56(e)(2)-(3). Therefore, Plaintiff failed to carry her burden "to establish there is a genuine issue of material fact" as to her claims. *Celotex*, 477 U.S. at 324, 106 S. Ct. 2548. Nevertheless, we next address each remaining claim to determine whether to grant summary judgment—that is, whether Defendant's Motion and supporting materials, including the facts

considered undisputed, show that Defendants are entitled to summary judgment. *Celotex*, 477 U.S. at 323, 106 S. Ct. 2548.[2]

A. Breach of Contract Claim (Count 9)

Under Texas law, the elements of a breach of contract claim are:

(1) a valid contract exists;
(2) the plaintiff performed or tendered performance as contractually required;
(3) the defendant breached the contract by failing to perform or tender performance as contractually required; and
(4) the plaintiff sustained damages due to the breach.

Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd., 574 S.W.3d 882, 890 (Tex. 2019). As pleaded, Plaintiff asserts her breach of contract claim solely against SMU. Defendants assert summary judgment is appropriate because there is no evidence of breach. (Doc. 127, at 32). Despite Plaintiff's failure to respond to Defendants' Motion, Plaintiff's pleadings assert SMU breached the employment contract by (i) failing to follow its Bylaws regarding academic due process; (ii) violating its Bylaws by engaging in fraud by denying that the faculty accused Plaintiff of wrongdoing and used those accusations to deny tenure; (iii) allowing and encouraging law faculty to violate state bar ethical rules; (iv) failing to follow its procedures with respect to academic tenure; (v) allowing its dean and supervisor to place medical information in her employment file and or to use her application for ADA or FMLA leave, and her complaints about alleged ADA or FMLA discrimination as grounds to deny or in any way consider her application for tenure and promotion; (vi) applying its tenure standards in a discriminatory manner based on race; (vii) failing to provide clear, consistent and nondiscriminatory guidelines on how to meet

[2] The Court notes that several of Plaintiff's counts are asserted against Collins, Currall, Rogers, or Stanley in their individual capacities. As shown hereunder, Plaintiff has failed to raise a genuine issue of material fact as to any of her remaining claims. Correspondingly, the Court pretermits any adjudication of whether Plaintiff may assert such against Collins, Currall, Rogers, or Stanley individually because such determination is unnecessary.

SMU's tenure standards; (viii) refusing to uphold its own Policy regarding nondiscrimination, affirmative action and equal employment; (ix) failing or refusing to address Plaintiff's reports of discrimination; (x) targeting and "singl[ing] out" Plaintiff "because she spoke up for herself by asserting her civil rights under the University Code"; (xi) failing to provide Plaintiff with a copy of the Tenure Report or other documents in her "tenure dossier"; (xii) "intentional and or reckless disregard for the core values of the AALS"; (xiii) failing to comply with various AALS bylaws, articles, and values; (xiv) violating various AAUP statement on principles, bylaws, and values; and (xv) violating several ABA accreditation standards. (Doc. 12 at 108-11).

After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's alleged breach of contract assertions. To the contrary, the record of Plaintiff's contract with SMU and corresponding Bylaws and Guidelines contain either (i) no such agreement(s) or (ii) terms that rebut Plaintiff's allegations of breach. Furthermore, the remaining record shows Defendants did not breach any agreement with Plaintiff. For example, the record shows the process for Plaintiff's tenure decision comported with Plaintiff's contract, Bylaws, and Guidelines as (i) the Second Tenure committee worked with Plaintiff regarding tenure; (ii) the Second Tenure Committee prepared a Tenure Report on Plaintiff; (iii) Collins convened a tenure meeting vote; (iv) Plaintiff's potential tenure was evaluated under the standards in the Bylaws and Guidelines; (v) a quorum of the law school faculty members voted on Plaintiff's tenure by secret ballot; and (vi) after Plaintiff appealed the negative tenure decision, Defendants followed the corresponding tenure appeal processes. Furthermore, the record further shows none of Plaintiff's medical information was included as a basis to deny tenure. The record is devoid of evidence of Defendants (i) allowing or encouraging law faculty to violate state bar ethical rules; (ii) using medical information or other FMLA or ADA documents to deny Plaintiff's tenure; or (iii) discriminating against Plaintiff based on her race, sex, gender, or other

protected status. Indeed, no evidence in the record shows Defendants violated any of Plaintiff's civil rights regarding her breach of contract claim.

Plaintiff directs us to no evidence in support of her breach of contract claim. Assuming arguendo that evidence of a breach of contract exists, the Court declines to sift through the record to find such evidence and has no obligation thereof. *See Ragas*, 136 F.3d at 458; Fed. R. Civ. P. 56(c)(3) ("The court need consider only the cited materials); *see, e.g.*, *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). Plaintiff's failure to respond, object, or otherwise submit evidence to oppose Defendants' Motion permits the Court to accept as undisputed the facts so listed in support of Defendants' Motion. *Eversley*, 843 F.2d at 174. Notwithstanding, the record shows Plaintiff received a negative tenure recommendation because her teaching failed to meet the "high quality" tenure standard—and not for any other reason.

The Court has found no evidence in the record of the third element of Plaintiff's breach of contract claim. Breach is an essential element of Plaintiff's breach of contract claim. *Pathfinder Oil*, 574 S.W.3d at 890. Here, no evidence of breach exists to support Plaintiff's breach of contract claim. Without evidence of breach, the Court must conclude no genuine issue of material fact exists on Plaintiff's breach of contract claim. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's breach of contract claim. The Court dismisses Plaintiff's breach of contract claim (Count 9).

B. 42 U.S.C. § 1981, Title VII, and the TCHRA Claims of Hostile Work Environment, Discrimination, and Retaliation Claims (Counts 10–15 and 27-28)

Plaintiff asserts, in parallel, several counts of hostile work environment, discrimination, and retaliation under (i) 42 U.S.C. § 1981; (ii) Title VII; and (iii) Texas Labor Code Chapter 21

(referred herein as the Texas Commission on Human Rights Act or "**TCHRA**").[3] 42 U.S.C. § 1981 provides for equal rights under the law. *See* 42 U.S.C. § 1981. Plaintiff's counts 10 to 12 are based on 42 U.S.C. § 1981. "[T]he purpose of Title VII is to protect employees from their employers' unlawful actions." *Simmons v. UBS Fin. Servs., Inc.*, 972 F.3d 664, 667 (5th Cir. 2020), cert. denied, 209 L. Ed. 2d 125, 141 S. Ct. 1382 (2021) (quoting *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 178, 131 S. Ct. 863, 870, 178 L. Ed. 2d 694 (2011)). Plaintiff's counts 13 to 15 are based on Title VII. *See* 42 U.S.C. § 2000e, *et seq*. Like Title VII, the TCHRA serves to protect employees from their employers' unlawful actions. *Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473, 474 (Tex. 2001) (explaining that one of the TCHRA's purposes is to provide for the execution of the policies of Title VII.).[4] Plaintiff's counts 27 and 28 are based on the TCHRA.

"When used as parallel causes of action, Title VII and section 1981 require the same proof to establish liability. . . . Similarly, the law governing claims under the TCHRA and Title VII is identical." *Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 404 at n.2 (5th Cir. 1999).[5] Thus, as the proofs for these parallel claims are identical, the Court analyzes each of these claims together.

---

[3] The Court recognizes that the Commission on Human Rights has been replaced with the Texas Workforce Commission's civil rights division. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 798 n.1 (Tex. 2010) (citing TEX. LAB. CODE ANN. § 21.0015). Throughout this memorandum opinion and order, the Court refers to Texas Labor Code Chapter 21 as the TCHRA.

[4] The Texas Supreme Court has explained that claims asserted under the TCHRA should be analyzed in the same manner as its federal analogues. *See Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 633–34 (Tex. 2012) (citations omitted) ("Because one of the purposed of the TCHRA is to 'provide for the execution of the policies of Title VII of the Civil Rights Act of 1964,' we have consistently held that those analogous federal statutes and the cases interpreting them guide our reading of the TCHRA."); *Wal-Mart Stores, Inc. v. Canchola*, 121 S.W.3d 735, 739 (Tex. 2003) (noting the *McDonnell Douglas* burden shifting analysis applies to TCHRA disability discrimination cases); *Pegram v. Honeywell, Inc.*, 361 F.3d 272, 285 (5th Cir. 2004) (discussing disability discrimination under the TCHRA as parallel to the ADA).

[5] *See, e.g.*, *Gorman v. Verizon Wireless Texas, L.L.C.*, 753 F.3d 165, 170 (5th Cir. 2014) ("The substantive law governing Title VII and TCHRA retaliation claims is identical.")

i. Hostile Work Environment Claims (Counts 10 and 13).

To establish a claim of hostile work a plaintiff must prove she:

> (1) belongs to a protected group; (2) was subjected to unwelcome harassment; (3) the harassment complained of was based on his membership in the protected group; (4) the harassment complained of affected a term, condition, or privilege of employment; and (5) the employer knew or should have known of the harassment in question and failed to take prompt remedial action.

Johnson v. PRIDE Indus., Inc., 7 F.4th 392, 399–400 (5th Cir. 2021) (citing *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002)) (addressing a hostile work environment claim under 42 U.S.C. § 1981); *see, e.g.*, *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 651 (5th Cir. 2012) (addressing the same elements of a hostile work environment claim asserted under Title VII). Plaintiff has asserted her hostile work environment based on race discrimination, and it is undisputed that Plaintiff belongs to a protected group—she is a black woman.

"Whether an environment is hostile or abusive depends on a totality of circumstances, focusing on factors such as the frequency of the conduct, the severity of the conduct, the degree to which the conduct is physically threatening or humiliating, and the degree to which the conduct unreasonably interferes with an employee's work performance." *Weller v. Citation Oil & Gas Corp.*, 84 F.3d 191, 194 (5th Cir. 1996). "To affect a term, condition, or privilege of employment, the harassment must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment." *Saketkoo v. Administrators of Tulane Educ. Fund*, 31 F.4th 990, 1003 (5th Cir. 2022) (citing *Aryain v. Wal-Mart Stores Tex. LP*, 534 F.3d 473, 479 (5th Cir. 2008)). "To be actionable, the challenged conduct must be both objectively offensive, meaning that a reasonable person would find it hostile and abusive, and subjectively offensive, meaning that the victim perceived it to be so." *Shepherd v. Comptroller of Pub. Accts. of State of Texas*, 168 F.3d 871, 874 (5th Cir. 1999); *see generally Hernandez*, 670 F.3d at 651.

Defendants assert that Plaintiff has not created a genuine issue of material fact as to her hostile work environment claims "because there is no evidence of harassment based on race or otherwise." (Doc. 127 at 51). Plaintiff has presented no evidence in support of her hostile work environment claims. Plaintiff's pleading repeatedly asserts various types of harassment, but "pleadings are not evidence of the facts alleged therein." *Pullman Co. v. Bullard*, 44 F.2d 347, 348 (5th Cir. 1930).[6] No evidence in the record shows Plaintiff was subjected to unwelcome harassment based on her protected group membership as a black woman. After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of hostile work environment. Thus, the record is devoid of any evidence of the third through fifth essential elements of Plaintiff's hostile work environment claims.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and the Court must grant summary judgment in favor of Defendants. *See, e.g.*, *Davis v. Realpage, Inc.*, 3:18-CV-0986-D, 2020 WL 1325201, at *19 (N.D. Tex. Mar. 20, 2020) (Granting summary judgment to the employer after noting the plaintiff's evidence was "woefully insufficient for a reasonable jury to find that Davis was subjected to a hostile work environment."). Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's hostile work environment claims. The Court dismisses Plaintiff's hostile work environment claims based on 42 U.S.C. § 1981 and Title VII (Counts 10 and 13).

[6] The Court notes that, in her pleadings, Plaintiff repeatedly complains of being called a liar or otherwise untruthful, which is a charge not based in any protected group. *See Johnson v. PRIDE Indus., Inc.*, 7 F.4th 392, 399–400 (5th Cir. 2021); *see, e.g.*, *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 651 (5th Cir. 2012); *Cavalier v. Clearlake Rehab. Hosp. Inc.*, No. CIV. A. H-07-678, 2008 WL 2047997, at *5 (S.D. Tex. May 12, 2008), aff'd, 306 F. App'x 104 (5th Cir. 2009) (explaining in a case wherein the complainant was called a "liar several times" that "the alleged harassment was not so severe or pervasive as to result in a hostile and abusive working environment.").

ii. Race Discrimination (Counts 11, 14, and 27)

As pleaded, Plaintiff's theory of race discrimination is based on Defendants' failure to promote her to a tenured professor. "It is unlawful to terminate an employee 'because of her race.'" *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 825 (5th Cir. 2022) (citing 42 U.S.C. § 2000e-2(a)(1); 42 U.S.C. § 1981). Plaintiff has presented no direct evidence of discrimination. Because Plaintiff "does not present direct evidence of discrimination, she must satisfy the *McDonnell Douglas* burden-shifting framework." *Owens*, 33 F.4th at 825 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *Sanders v. Christwood*, 970 F.3d 558, 561 (5th Cir. 2020)). The Court analyzes employment discrimination claims arising under both 42 U.S.C. § 1981 and Title VII using the *McDonnell Douglas* burden-shifting framework. *Owens*, 33 F.4th at 825 (citations omitted). The Fifth Circuit has described the *McDonnell Douglas* burden-shifting framework as follows:

> Under that framework, [a complainant] must make out a prima facie case of discrimination. *Watkins v. Tregre*, 997 F.3d 275, 281 (5th Cir. 2021). If she succeeds, [an employer] must respond with a "legitimate, nondiscriminatory reason" for terminating [the complainant]. *Id.* at 282. Then the burden shifts back to [the complainant], who must counter with substantial evidence that [the employer's] proffered reason is pretextual. *Id.*

Owens, 33 F.4th at 825. To establish a prima facie case of race discrimination based on failure to promote, Plaintiff must show:

> (1) he was not promoted, (2) he was qualified for the position he sought, (3) he fell within a protected class at the time of the failure to promote, and (4) the defendant either gave the promotion to someone outside of that protected class or otherwise failed to promote the plaintiff because of his race.

Autry v. Fort Bend Indep. Sch. Dist., 704 F.3d 344, 346–47 (5th Cir. 2013) (addressing claims asserted under Title VII); *see Bright v. GB Bioscience Inc.*, 305 F. App'x 197, 201 at n.3 (5th Cir. 2008) ("We evaluate claims of race discrimination under § 1981 using the same analysis as those under Title VII."). It is undisputed that Plaintiff meets the first and third elements.

Defendants assert no genuine issue of material fact exists as to Plaintiff's race discrimination claims because (i) Plaintiff cannot show she was qualified for the position of a tenured Associate Professor and (ii) there is no evidence that she was denied the promotion based on race. (Doc. 127, at 52, 54). Plaintiff has presented no evidence in support of her race discrimination claims. After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of race discrimination related to her denial of tenure and promotion.

To the contrary, as discussed hereinabove, the record shows Plaintiff was denied tenure and promotion because her teaching fell short of the "high quality" tenure standard—and not because of her race. The record is otherwise devoid of any evidence of the second or fourth essential elements of Plaintiff's race discrimination, denial of tenure and promotion claims.[7] That is, Plaintiff has failed to support—by summary judgment evidence—specific facts showing the existence of a genuine issue as to (i) whether she was qualified for a tenured position and (ii) whether the defendant either gave the promotion to someone outside of her protected class or otherwise failed to promote the plaintiff because of her race. *See Ragas*, 136 F.3d at 458; *Autry*, 704 F.3d at 346–47.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to make out a prima facie case of discrimination. Thus, the Court must grant summary judgment in favor of Defendants. *See Esquivel v. McCarthy*, 3:15-CV-1326-L, 2016 WL

[7] In regards to the fourth element—"the defendant either gave the promotion to someone outside of that protected class or otherwise failed to promote the plaintiff because of his race"—the Court notes that the record shows one of the professors who achieved tenure in the 2015-2016 tenure voting class was also black. *Autry v. Fort Bend Indep. Sch. Dist.*, 704 F.3d 344, 346–47 (5th Cir. 2013).

6093327, at *8 (N.D. Tex. Oct. 18, 2016).[8] Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's race discrimination claims. The Court dismisses Plaintiff's race discrimination-failure to promote claims based on (i) 42 U.S.C. § 1981; (ii) Title VII; and (iii) the TCHRA (Counts 11, 14, and 27).

iii. Retaliation (Counts 12, 15, and 28).

As pleaded, Plaintiff's theory of retaliation is based on the adverse employment actions of (i) the denial of tenure and (ii) a failure to investigate her claims of hostile work environment and discrimination. As with her claim(s) of race discrimination, Plaintiff has presented no direct evidence of retaliation. Thus, the Court must "apply the *McDonnell Douglas* burden-shifting framework in determining whether [Plaintiff] has established a prima facie case of retaliation." *Richards v. Lufkin Indus.*, L.L.C., 804 F. App'x 212, 215 (5th Cir. 2020) (addressing retaliation claim asserted under Title VII).

> To establish a prima facie case of retaliation, a Plaintiff must show the following:
>
> 1) she engaged in a protected activity; 2) she suffered an adverse employment action; and 3) there is a causal connection between the two.

Owens, 33 F.4th at 835 (addressing a retaliation claim under Title VII and 42 U.S.C. § 1981). "'An employee has engaged in protected activity when she has (1) 'opposed any practice made an

[8] In *Esquivel*, as here, the plaintiff failed to respond to a motion for summary judgment. Nevertheless, Court determined no genuine issue of material fact existed with respect to the plaintiff's failure to promote claim as

> Esquivel . . . has not presented evidence that either the position was filled by someone who was not Hispanic, or that she was not promoted because of her race. Esquivel has also not presented evidence that she was replaced by someone who is male, or evidence that another similarly situated male student, was promoted from a Student Trainee in Physical Science to GS-7 Environmental Scientist. Accordingly, Esquivel fails to prove, or create a genuine dispute of material fact, that the GS-7 Environmental Scientist position was filled by someone who is not Hispanic or female, or that she was not promoted because she is Hispanic or female.

Esquivel v. McCarthy, No. 3:15-CV-1326-L, 2016 WL 6093327, at *8 (N.D. Tex. Oct. 18, 2016).

unlawful employment practice' by Title VII or (2) 'made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing' under Title VII.'" *Thompson v. Somervell Cnty., Tex.*, 431 F. App'x 338, 341 (5th Cir. 2011) (quoting *Douglas v. DynMcDermott Petroleum Operations Co.*, 144 F.3d 364, 372 (5th Cir. 1998) (internal citations omitted)). "Adverse employment decisions are ultimate employment decisions such as hiring, granting leave, discharging, promoting, . . . compensating, or demoting. *Thompson v. Microsoft Corp.*, 2 F.4th 460, 470 (5th Cir. 2021) (internal quotation omitted).[9]

"A 'causal link' is established when the evidence demonstrates that 'the employer's decision to terminate was based in part on knowledge of the employee's protected activity.'" *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 684 (5th Cir. 2001) (quoting *Sherrod v. Am. Airlines, Inc.*, 132 F.3d 1112, 1122 (5th Cir. 1998)). Thus, an employer cannot retaliate against an employee if the employer's decisionmaker for the adverse employment decision did not know that the employee had engaged in protected activity at the time of the alleged retaliatory actions. *Watts v. Kroger Co.*, 170 F.3d 505, 512 (5th Cir. 1999) (concluding decisionmaker could not have retaliated based on protected activity of which it was unaware)); *see also Manning v. Chevron Chem. Co., LLC*, 332 F.3d 874, 883 n.6 (5th Cir. 2003) ("If the decisionmakers were completely unaware of the plaintiff's protected activity, then it could not be said (even as an initial matter) that the decisionmakers might have been retaliating against the plaintiff for having engaged in that activity."). "[T]he mere fact that some adverse action is taken after an employee engages in some protected activity will not always be enough for a prima facie case." *Owens*, 33 F.4th at 835 (quoting *Swanson v. GSA*, 110 F.3d 1180, 1188 n.3 (5th Cir. 1997)). "To establish causality, the

[9] Courts use the terms "adverse employment action" and "adverse employment decision" interchangeably. *See, e.g.*, *Thompson v. Microsoft Corp.*, 2 F.4th 460, 470 (5th Cir. 2021); *Pegram v. Honeywell, Inc.*, 361 F.3d 272, 282 (5th Cir. 2004) ("an adverse employment action consists of ultimate employment decisions such as hiring, granting leave, discharging, promoting, and compensating" (internal quotation omitted)).

protected activity and the adverse action must have "very close" temporal proximity, and 'a five month lapse is not close enough . . . to establish the causal connection element of a prima facie case of retaliation.'" *Newbury v. City of Windcrest, Texas*, 991 F.3d 672, 679 (5th Cir. 2021) (quoting *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 305 (5th Cir. 2020)).

Here, Defendants assert that Plaintiff (i) cannot meet the causation element of her retaliation claims and (ii) cannot demonstrate that SMU's legitimate, nonretaliatory reasons for denying her tenure are a pretext for retaliation." (Doc. 127, at 56). Plaintiff has presented no evidence in support of her retaliation claims.

First, it is unclear from the record and pleadings precisely *which* protected activity Plaintiff asserts prompted the alleged retaliation and *when* the protected activity began to occur. Plaintiff's pleadings make general references to engaging in protected activity—including by "complaining to the Human Resources Department and her superiors" or "complain[ing] too much about discrimination." (Doc. 12 at 132). But, such vague statements in her complaint, without any reference to an unlawful employment practice does not constitute protected activity. *See Paske v. Fitzgerald*, 785 F.3d 977, 986 (5th Cir. 2015) ("This court ha[s] consistently held that a vague complaint, without any reference to an unlawful employment practice under Title VII, does not constitute protected activity.") (internal quotation omitted).[10] There is no such corresponding evidence in the record to support such claims of protected activity. Neither Plaintiff nor Defendants direct the Court to evidence of a specific instance of Plaintiff engaging in a protected activity that occurred before Plaintiff's negative tenure recommendation.

Second, the record shows no evidence of a causal connection between any protected activity—assuming arguendo Plaintiff engaged in protected activity—and adverse employment

[10] Notwithstanding, "pleadings are not evidence of the facts alleged therein." *Pullman Co. v. Bullard*, 44 F.2d 347, 348 (5th Cir. 1930).

actions. Regarding SMU's adverse employment action of Plaintiff's negative tenure recommendation, the record shows SMU followed the Bylaws and Guidelines for the tenure process. Furthermore, the record is (i) devoid of evidence that the faculty discussed or otherwise relied upon Plaintiff's complaints of discrimination in making Plaintiff's negative tenure recommendation; (ii) devoid of evidence that Plaintiff received discriminatory treatment in comparison to similarly situated employees; and (iii) devoid of any other evidence that suggests Plaintiff's negative tenure recommendation was motivated by Plaintiff's engagement in any protected activity. Indeed, the record shows that the faculty was the decisionmaker for Plaintiff's denial of tenure, and no evidence in the record suggests the faculty considered or otherwise knew of Plaintiff's protected activities. *See Medina*, 238 F.3d at 684; *Manning*, 332 F.3d at 883 n.6.

Regarding SMU's alleged adverse employment action of an alleged failure to investigate Plaintiff's claims of hostile work environment and discrimination, the record contains no evidence of such failure. Instead, the record shows Defendants made efforts to address Plaintiff's claims of hostile work environment and discrimination: Defendants conducted investigations as enumerated above, held meetings regarding Plaintiff's concerns, and made changes to her courses—accommodating her specific requests. Notwithstanding, the record contains no evidence that such a failure to investigate Plaintiff's claims of hostile work environment and discrimination constituted an adverse employment action because no evidence in the record suggests that such an investigation would constitute an "ultimate employment decision[]." *Thompson*, 2 F.4th at 470. Thus, the Court concludes Plaintiff's allegation that SMU failed to investigate Plaintiff's claims of hostile work environment and discrimination—assuming arguendo that SMU failed such to complete such an investigation—was not an adverse employment action.

After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of retaliation based on (i) 42 U.S.C. §

1981; (ii) Title VII; and (iii) the TCHRA. That is, Plaintiff has failed to support—by summary judgment evidence—specific facts showing the existence of a genuine issue of material fact on the element of whether a causal connection existed between her protected activity and an adverse employment action. *See Ragas*, 136 F.3d at 458; *Autry*, 704 F.3d at 346–47.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to make out a prima facie case of retaliation. Thus, the Court must grant summary judgment in favor of Defendants. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's retaliation claims. The Court dismisses Plaintiff's retaliation claims based on (i) 42 U.S.C. § 1981; (ii) Title VII; and (iii) the TCHRA (Counts 12, 15, and 28).

C. RA, ADA, and TCHRA Claims of Hostile Work Environment, Discrimination, Segregation, And Retaliation (Counts 16–22)

"Both of these statutes prohibit employment discrimination against qualified individuals with disabilities . . . . The [RA] and the ADA are judged under the same legal standards, and the same remedies are available under both Acts." *See Kemp v. Holder*, 610 F.3d 231, 234 (5th Cir. 2010) (citations omitted). Accordingly, these statutes are interpreted in the same manner. *See Frame v. City of Arlington*, 657 F.3d 215, 223–24 (5th Cir. 2011) (noting the RA and ADA are interpreted "*in pari materia.*"). The Court analyzes each of these claims together. Furthermore, TCHRA claims based on disability discrimination are interpreted in the same manner as ADA disability discrimination claims. *See Williams v. Tarrant Cnty. Coll. Dist.*, 717 F. App'x 440, 444–45 (5th Cir. 2018)

i. Plaintiff's claims for "segregation in the workplace" (Count 18) and "invasion of medical privacy" (Count 20) under the RA or ADA are not cognizable.

The Court has located no language from the RA, ADA, or precedential case law that recognizes a cause of action for "segregation in the workplace" (Count 18) or "invasion of medical privacy" (Count 20) under the RA or ADA. Correspondingly, Defendants assert they are entitled

to summary judgment on these causes of action because the Fifth Circuit has not recognized such claims based on the RA or ADA as actionable. Without support in the RA, ADA, or other precedent, the Court declines to recognize Plaintiff's "segregation in the workplace" and "invasion of medical privacy" claims as pleaded under the RA and ADA.[11] Assuming arguendo such claims were recognized, Plaintiff failed to provide summary judgment evidence to support such claims. As such, the record contains no evidence in support of such claims.

Thus, the Court must grant summary judgment in favor of Defendants. The Court GRANTS Defendants' Motion as to Plaintiff's "segregation in the workplace" and "invasion of medical privacy" claims based on the RA and ADA. The Court dismisses Plaintiff's corresponding claims (Counts 18 and 20).

ii. Plaintiff's claim for "associational discrimination" (Count 19) is not an "explicitly" recognized cause of action under RA or ADA.

The Court has located no language from the RA, ADA or precedential case law that recognizes a cause of action for "associational discrimination" (Count 19). In unpublished opinions, the Fifth Circuit has not "explicitly recognized a cause of action for discrimination based on association with a handicapped individual, nor [has it] described what such a claim requires." *Spencer v. FEI, Inc.*, 725 F. App'x 263, 267 (5th Cir. 2018) (citing Grimes v. Wal-Mart Stores Texas, L.L.C., 505 F. App'x 376, 380 n.1 (5th Cir. 2013)). In *Spencer*, the Fifth Circuit explained:

> "[i]f such an action were viable, a prima facie case of associational discrimination would require that the Plaintiff show: 1) her qualification for the job, 2) an adverse employment action, 3) the employer's knowledge of the employee's disabled relative, and 4) that the adverse employment action occurred under circumstances

[11] The Court notes, however, that "segregation" is typically viewed under the ADA as a theory included within the term "discrimination." 42 U.S.C. § 12112(b)(1) (The term "discrimination" "includes limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee."). Thus, such a claim would be subsumed by Plaintiff's disability discrimination claims—addressed hereunder (Counts 17 and 29).

> raising a reasonable inference that the relativee's disability was a determining factor in the employer's adverse action."

Spencer, 725 F. App'x at 267 (quoting *Grimes*, 505 F. App'x at 380). Defendants assert "[t]he Court should determine that Plaintiff's associational discrimination claim based 'on her association with an immediate family member' is not a valid ADA claim[.]" (Doc. 127, at 42). However, the Court need not adjudicate the validity of such claims and pretermits discussion of the validity of such claims. Unpublished opinions are not precedential before this Court. *See* Fed. R. App. P. 32.1; U.S. Ct. of App. 5th Cir. R. 28.7 and 47.5.4 ("Unpublished opinions issued on or after January 1, 1996, are not precedent[.]").

Without support in the RA, ADA, or other precedent, the Court declines to recognize Plaintiff's "associational discrimination" claim as pleaded under the RA and ADA. Assuming arguendo such a claim was recognized, Plaintiff failed to provide summary judgment evidence to raise a genuine issue of material fact. Under the test proposed in *Spencer* for "associational discrimination," no evidence in the record raises a fact issue for elements one, three, and four. *See Spencer*, 725 F. App'x at 267.

This opinion should not be construed as recognizing a cause of action for associational discrimination under RA or ADA. Instead, this opinion is noting that, if such a cause of action *were* recognized in the Fifth Circuit, Plaintiff would have failed her summary judgment burden. Since the Fifth Circuit has not recognized such a claim for associational discrimination, the Court must grant summary judgment in favor of Defendants. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's "associational discrimination" claim based on the RA and ADA. The Court dismisses Plaintiff's corresponding claim (Count 19).

iii. No Evidence In The Record Exists To Support Essential Elements Of Plaintiff's Remaining RA, ADA, and TCHRA Claims: Disability-Based Harassment (Count 16); Disability Discrimination (Count 17); Failure-to-Accommodate (Count 21); and Retaliation (Count 22)

1) Disability-Based Harassment (Count 16)

To establish a hostile-work environment, disability-based harassment claim under the ADA, Plaintiff must demonstrate:

> 1) that she belongs to a protected group; 2) that she was subjected to unwelcome harassment; 3) that the harassment complained of was based on her disability or disabilities; 4) that the harassment complained of affected a term, condition, or privilege of employment; and 5) that the employer knew or should have known of the harassment and failed to take prompt, remedial action.

Credeur v. Louisiana, 860 F.3d 785, 795–96 (5th Cir. 2017) (citation omitted); *see Thompson*, 2 F.4th at 471 (affirming summary judgment against a plaintiff after the Court concluded employer's statements were no more than "a few harsh words"). "Further, the harassment must be sufficiently pervasive or severe to alter the conditions of employment and create an abusive working environment." *Credeur*, 860 F.3d at 796. The standard for a disability-based harassment claim is "fairly high." *Flowers v. S. Reg'l Physician Servs.*, 247 F.3d 229, 236 (5th Cir. 2001).

Defendants assert Plaintiff has neither (i) evidence of harassment nor (ii) evidence of harassment pervasive or severe enough to alter the conditions of her employment. Plaintiff has presented no evidence in support of her hostile work environment claims. No evidence in the record shows Plaintiff was subjected to unwelcome harassment based on a disability. After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of hostile work environment as based on the RA or ADA. The record is devoid of any evidence of the third through fifth essential elements of Plaintiff's hostile work environment claims.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and the Court must grant summary judgment in favor of Defendants. *See, e.g.*, *Gowesky v. Singing River Hosp. Sys.*, 321 F.3d 503, 510 (5th Cir. 2003) ("It is not difficult to conclude on this slender evidence that no actionable disability-based harassment occurred). Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's hostile work environment claim based on the RA and ADA. The Court dismisses Plaintiff's hostile work environment claims based on the RA and ADA (Count 16).

2) Disability Discrimination (Counts 17 and 29)

As pleaded, Plaintiff's theory of disability discrimination under both the ADA and TCHRA is based on Defendants' failure to promote her to a tenured professor. The ADA prohibits employment discrimination against a qualified individual based on the individual's disability. 42 U.S.C. § 12112(a); *E.E.O.C. v. LHC Grp., Inc.*, 773 F.3d 688, 694 (5th Cir. 2014). Courts apply the same framework for an ADA claim that they apply for a TCHRA claim. *Williams*, 717 F. App'x at 444–45 ("Because TCHRA parallels the language of the [ADA], Texas courts follow ADA law in evaluating TCHRA discrimination claims. . . . The following ADA analysis therefore applies equally to the TCHRA.") (internal quotation omitted).

As discussed hereinabove, Plaintiff has presented no direct evidence of discrimination; thus, Plaintiff must satisfy the *McDonnell Douglas* burden-shifting framework. *Caldwell v. KHOU-TV*, 850 F.3d 237, 241 (5th Cir. 2017). "To establish a prima facie discrimination claim under the ADA, a plaintiff must prove: 1) that he has a disability; 2) that he was qualified for the job; and 3) that he was subject to an adverse employment decision on account of his disability." *Thompson*, 2 F.4th at 470 (citing *E.E.O.C. v. LHC*, 773 F.3d at 697).[12] "Adverse employment

[12] The Court notes that Plaintiff's Count 29 TCHRA disability discrimination claim, as pleaded, does not refer to any specific facts of an adverse employment decision. Nevertheless, the record contains evidence of only one employment action that constitutes an adverse employment action—Plaintiff's negative tenure

decisions are ultimate employment decisions such as hiring, discharging, promoting, [] compensating, or demoting." *Thompson*, 2 F.4th at 470. (internal quotations and citations omitted). "Once a plaintiff establishes a prima facia case, the burden shifts to the employer to articulate a legitimate nondiscriminatory reason for its actions. The plaintiff then has the burden to prove that the employer's explanation was a pretext for discrimination." *Thompson*, 2 F.4th at 470. (internal quotations and citations omitted).

It is undisputed that Plaintiff had a disability and suffered an adverse employment action—Plaintiff's negative tenure recommendation. Defendants assert there is no evidence in the record to support Plaintiff's second essential element of disability discrimination—whether Plaintiff was qualified for tenure. (Doc. 127, at 47).

Plaintiff has presented no evidence in support of her disability discrimination claims. After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of disability discrimination related to her denial of tenure and promotion. To the contrary, as discussed hereinabove, the record shows Plaintiff was denied tenure and promotion because her teaching fell short of the "high quality" tenure standard—that is, Plaintiff did not qualify for tenure.

The record is otherwise devoid of any evidence of the second essential element of Plaintiff's disability discrimination, denial of tenure and promotion claim. That is, Plaintiff has failed to support by summary judgment evidence specific facts showing the existence of a genuine issue on the element of whether she was qualified for a tenure position. *See Ragas*, 136 F.3d at 458; *Autry*, 704 F.3d at 346–47. Defendants do not challenge the third element of Plaintiff's disability discrimination claim—whether the "adverse employment decision *on account of*

---

recommendation. Thus, the Court takes Plaintiff's negative tenure recommendation as the complained-of adverse employment action in her TCHRA disability discrimination claim.

[Plaintiff's] disability." *Thompson*, 2 F.4th 460 (emphasis added). Nevertheless, the record contains no evidence that Plaintiff's negative tenure recommendation occurred on account of her disability. Thus, Plaintiff has failed to raise a genuine issue of material fact as to both the second and third elements of her disability discrimination claims.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to make out a prima facie case of discrimination. Thus, the Court must grant summary judgment in favor of Defendants. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's disability discrimination—denial of tenure and failure to promote claims based on the ADA and TCHRA. The Court dismisses Plaintiff's disability discrimination claims (Counts 17 and 29).

3) Failure-to-Accommodate (Count 21)

"Under the ADA, it is unlawful for an employer to fail to accommodate the known limitations of an employee's disability." *Credeur*, 860 F.3d at 792 (internal quotation omitted). A failure-to-accommodate claim requires a showing that: "1) the plaintiff is a qualified individual with a disability; 2) the disability and its consequential limitations were known by the covered employer; and 3) the employer failed to make reasonable accommodations for such known limitations." *Weber v. BNSF Ry. Co.*, 989 F.3d 320, 323 (5th Cir. 2021) (citing *Credeur*, 860 F.3d at 792). "An employee who needs an accommodation because of a disability has the responsibility of informing her employer." *E.E.O.C. v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 621 (5th Cir. 2009). If a plaintiff is not a qualified individual, the Court's inquiry ends. *Weber*, 989 F.3d at 323. To prove she is a qualified individual under ADA, Plaintiff must show either: (i) she could perform the essential functions of her job despite her disabilities; or (ii) that a reasonable accommodation

of her disabilities would have enabled her to perform the essential functions of the job. *Weber*, 989 F.3d at 324.

"'Essential functions' are those duties that are fundamental to the job at issue." *Kapche v. City of San Antonio*, 176 F.3d 840, 843 (5th Cir. 1999). The Fifth Circuit has explained:

> [A] job function may be considered essential if, for example, (1) the purpose of the position is the performance of that function, (2) only a limited number of employees are available among whom the performance of that function can be delegated, or (3) an employee is hired because of his expertise or ability to perform a specialized function. To aid in the determination of whether a function is essential, a court may consider as evidence a variety of factors including, but not limited to, (1) the employer's judgment as to which functions are essential, (2) written job descriptions prepared before advertising or interviewing applicants for the job, (3) the amount of time spent on the job performing the function, and (4) the work experience of both past and current employees in the job.

Kapche, 176 F.3d at 843 (footnotes omitted). Essential functions do "not include the marginal functions of the position." 29 C.F.R. § 1630.2(n)(1).

"The ADA requires employers to make '[m]odifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position[.]'" *E.E.O.C. v. LHC*, 773 F.3d at 698 (quoting 29 C.F.R. § 1630.2(o)(1)(ii)). Under the ADA, the term "reasonable accommodation" may include:

> job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C.A. § 12111(9)(B). "'The ADA provides a right to reasonable accommodation, not to the employee's preferred accommodation.'" *Jennings v. Towers Watson*, 11 F.4th 335, 344 (5th Cir. 2021) (quoting *E.E.O.C. v. Agro Distrib.*, LLC, 555 F.3d 462, 471 (5th Cir. 2009)).

Plaintiff's theory for her failure-to-accommodate claim was that "Defendants failed to make a reasonable accommodation in the form of a delayed vote on her application for tenure and promotion." (Doc. 12, at 123). Based on the complaint, Plaintiff appears to suggest that achieving tenure was the essential job function that she could perform, if only she had a reasonable accommodation in the form of a delayed tenure vote. (*See* Doc. 12, at 123). Defendants assert Plaintiff cannot show she is qualified under the ADA because (i) tenure is not an essential function of her job as a law professor, (ii) delaying the tenure vote is not a reasonable accommodation, and (iii) Defendants accommodated Plaintiff's disabilities regarding her essential functions in teaching.

Plaintiff has presented no evidence in support of her failure to accommodate disability claims. After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to the first element of Plaintiff's allegations of Defendants' failure to accommodate Plaintiff's disabilities under the ADA. To the contrary, the record shows that Plaintiff's achieving tenure was not an "essential function" in light of the *Kapche* factors, as (i) no evidence shows achieving tenure was "fundamental" or "essential" to Plaintiff's position as a teacher at SMU's school of law and (ii) the record of agreements between Plaintiff and SMU show that achieving tenure was based on several conditions for promotion and a faculty vote. *See Kapche*, 176 F.3d at 843.[13] Here, the record shows Plaintiff failed to meet the "high quality" of teaching standard to achieve tenure. Additionally, there is no evidence in the record that suggests that Plaintiff's requested delay of her tenure vote would have constituted a "reasonable accommodation." That is, no evidence in the record shows that a delayed vote on Plaintiff's

[13] Notwithstanding, Plaintiff's failure to respond to summary judgment also means that, for summary judgment purposes, she does not dispute Defendants' factual contention that "tenure is not an essential function of her job." (Doc. 127, at 44) (citing Doc. 128, at 118–19).

application for tenure would have constituted a "modification or adjustment" to Plaintiff's work environment, manner, or circumstances that would enable her to perform the essential functions of her job as a teacher. *See E.E.O.C. v. LHC*, 773 F.3d at 698; 29 C.F.R. § 1630.2(o)(1)(ii); 42 U.S.C. § 12111(9)(B).

Plaintiff has failed to support by summary judgment evidence specific facts showing the existence of a genuine issue on whether she was a qualified individual—(i) whether achieving tenure was an "essential function" of her job; or (ii) whether her acclaimed "reasonable accommodation" of delaying the vote on her tenure would have enabled her to perform an essential function of her job. The Court must conclude Plaintiff has failed to carry her summary judgment burden, and the Court must grant summary judgment in favor of Defendants. *See, e.g.*, *Credeur*, 860 F.3d at 795 (affirming trial court's grant of employer's summary judgment to the employer after concluding plaintiff was not a qualified individual). Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's failure to accommodate claim. The Court dismisses Plaintiff's failure to accommodate claim (Count 21).[14]

4) Retaliation (Count 22)

Like her claims of retaliation under (i) 42 U.S.C. § 1981; (ii) Title VII; and (iii) the TCHRA, Plaintiff's theory of retaliation under the ADA is based on the adverse employment actions of the denial of tenure and a failure to investigate her claims of ADA discrimination. The ADA prohibits retaliation against those who exercise their ADA rights. *See Lyons*, 964 F.3d at 304. Plaintiff has presented no direct evidence of ADA retaliation; therefore, Plaintiff must satisfy

[14] The Court notes that Plaintiff's Count 29 based on TCHRA disability discrimination mentions, in a single sentence: "[t]he Plaintiff alleges that the Defendant failed to accommodate her disability and ultimately fired her in violation of Chapter 21 of the Texas Labor Code." The Court makes no determination as to whether Plaintiff properly pleaded a failure-to-accommodate claim under the TCHRA. However, on this record, such a claim would be subject to dismissal under the same analysis as her ADA failure-to-accommodate claim.

the *McDonnell Douglas* burden-shifting framework. *Lyons*, 964 F.3d at 304. The Fifth Circuit has enumerated the elements for such a claim as follows:

> To establish a prima facie case of unlawful retaliation under the ADA, the plaintiff must show that: (1) she engaged in an activity protected by the ADA, (2) she suffered an adverse employment action, and (3) there is a causal connection between the protected activity and the adverse action.

Lyons, 964 F.3d at 304. Notwithstanding that the protected activity must fall under activity protected by the ADA, the second and third elements of an ADA retaliation follow the same analysis as a retaliation claim asserted under Title VII. *Garner v. Chevron Phillips Chem. Co., L.P.*, 834 F. Supp. 2d 528, 540 (S.D. Tex. 2011).

Here, Defendants assert Plaintiff cannot meet the causation standard because Plaintiff's engagement with activity protected by the ADA—requesting reasonable accommodations—occurred *after* Plaintiff's negative tenure recommendation. Plaintiff has presented no evidence in support of her retaliation claims.

Again, as with her retaliation claims under on (i) 42 U.S.C. § 1981; (ii) Title VII; and (iii) the TCHRA, it is unclear from the record and pleadings precisely *which* protected activity Plaintiff asserts prompted the alleged retaliation and *when* the protected activity began to occur. Plaintiff's pleadings make general references to engaging in protected activity—including by requesting accommodation under the ADA. *Tabatchnik v. Cont'l Airlines*, 262 F. App'x 674, 676 (5th Cir. 2008) ("It is undisputed that making a request for a reasonable accommodation under the ADA may constitute engaging in a protected activity."). But such vague statements in her complaint, without any reference to an unlawful employment practice, does not constitute protected activity. *See Paske*, 785 F.3d at 986.[15] Here, the only competent evidence in the record

[15]Again, the Court does not consider pleadings as evidence. *See Pullman Co.*, 44 F.2d at 348.

of Plaintiff engaging in protected activity under the ADA is her request for an accommodation, submitted to SMU for the first time on April 6, 2016.

As discussed above, the only adverse employment action Plaintiff suffered is her negative tenure recommendation, which occurred on January 13, 2016. Thus, the Court must conclude no temporal proximity existed between Plaintiff's April 6, 2016 engagement in protected activity and the January 13, 2016 adverse employment action, as the protected activity occurred *after* the adverse employment action. Otherwise, the record shows no evidence of a causal connection between any protected activity and Plaintiff's negative tenure recommendation. Indeed, the record is devoid of any other evidence that shows Plaintiff's negative tenure recommendation was motivated by Plaintiff's engagement in any activity protected by the ADA. Instead, the record shows that the faculty was the decisionmaker for Plaintiff's denial of tenure, and no evidence in the record suggests the faculty considered or otherwise knew of Plaintiff's protected activity under the ADA. *See Medina*, 238 F.3d at 684; *Manning*, 332 F.3d at 883 n.6.

After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of ADA retaliation. That is, Plaintiff has failed to support—by summary judgment evidence—specific facts showing the existence of a genuine issue of material fact on the element of whether a causal connection existed between her protected activity under the ADA and an adverse employment action. *See Ragas*, 136 F.3d at 458; *Autry*, 704 F.3d at 346–47.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to make out a prima facie case of ADA retaliation. Thus, the Court must grant summary judgment in favor of Defendants. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's ADA retaliation claim. The Court dismisses Plaintiff's retaliation claims based on the ADA (Count 22).

D. FMLA Claims (Counts 23-26).

"The FMLA grants 'an eligible employee' up to twelve weeks of annual unpaid leave for 'a serious health condition' that prevents him from performing the functions of his job." *Tatum v. Southern Co. Servs.*, 930 F.3d 709, 713 (5th Cir. 2019); *Campos v. Steves & Sons, Inc.*, 10 F.4th 515, 526 (5th Cir. 2021). "An employer may not interfere with the exercise of any right provided under the Act, nor may it 'discharge . . . any individual for opposing any practice made unlawful' by the Act." *Tatum*, 930 F.3d at 713. "In the absence of direct evidence of discriminatory intent, [the Court applies] the *McDonnell Douglas* framework to determine the reason for an employee's discharge." *Tatum*, 930 F.3d at 713. (citations omitted).

i. Plaintiff's claims for harassment (Count 24) and invasion of privacy (Count 25) and are not cognizable under FMLA.

The Court has located no language from the FMLA or precedential case law that recognizes a cause of action for "harassment" (Count 24)[16] or "invasion of medical privacy" (Count 25) under the FMLA. Correspondingly, Defendants assert they are entitled to summary judgment on these causes of action because neither the Fifth Circuit nor other district courts within the Fifth Circuit have recognized such claims based on the FMLA as actionable. *See Smith-Schrenk v. Genon Energy Servs., L.L.C.*, No. H-13-2902, 2015 WL 150727, at *4 n.60 (S.D. Tex. Jan. 12, 2015) ("Plaintiff has not cited to and the court has not found any case wherein a federal court has recognized a FMLA cause of action based on hostile work environment harassment."); *Wilson v. Nat'l Ass'n of Letter Carriers, Branch No. 2730*, No. CV 01-2736, 2006 WL 8455827, at *4 (E.D. La. May 4, 2006)("the FMLA does not create an actionable right to privacy under 29 C.F.R.

[16] The Court notes that Plaintiff's pleading on Count 24 asserts "harassment" and a "retaliation" causes of action under the FMLA. The Court addresses further addresses the "retaliation" claim, hereunder.

§ 825.307."). Here, Plaintiff has provided no briefing, authority, or evidence to support either cause of action for "harassment" or "invasion of medical privacy" under the FMLA.

Without support in the FMLA or other precedent, the Court declines to recognize Plaintiff's "harassment" and "invasion of medical privacy" claims as pleaded under the FMLA. Assuming arguendo such claims were recognized, the record contains no evidence in support of those claims, and Plaintiff failed to provide summary judgment evidence to support them.[17] Thus, the Court must grant summary judgment in favor of Defendants. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's "harassment" and "invasion of medical privacy" claims based on the FMLA. The Court dismisses Plaintiff's corresponding claims (Counts 24 and 25).

ii. No Evidence in the Record Exists to Support Plaintiff's Claims of FMLA Interference (Counts 23 and 26) or FMLA Retaliation (Count 24).

1) FMLA Interference with FMLA Leave (Count 23)

"A prima facie case of FMLA interference requires an employee to show that: 1) he was an eligible employee; 2) his employer was subject to FMLA requirements; 3) he was entitled to leave; 4) he gave proper notice of his intention to take FMLA leave; and 5) his employer denied the benefits to which he was entitled under the FMLA." *Campos*, 10 F.4th at 526 (citation omitted). The employee also must show that the violation prejudiced her. *Campos*, 10 F.4th 515, 526 (citation omitted). "Once the plaintiff states a prima facie claim, it is the employer's burden on summary judgment to articulate 'a legitimate non-discriminatory reason for the employment action at issue,' which then may be rebutted if 'the plaintiff raise[s] an issue of material fact that the

[17] Furthermore, even if the Court were to construe Plaintiff's FMLA harassment claim as a claim for hostile work environment under the ADA—as the *Smith-Schrenk* court construed such an FMLA harassment claim—there is no evidence in the record of harassment that would constitute such a claim, as discussed above regarding Plaintiff's Count 16. *See generally Smith-Schrenk v. Genon Energy Servs., L.L.C.*, No. H-13-2902, 2015 WL 150727, at *4-5 (S.D. Tex. Jan. 12, 2015).

employer's proffered reason was pretextual.'" *Hester v. Bell-Textron, Inc.*, 11 F.4th 301, 306 (5th Cir. 2021) (quoting *Caldwell*, 850 F.3d at 245).

Whether SMU denied Plaintiff's benefits entitled under the FMLA, is an essential element of Plaintiff's FMLA interference with leave claim. *Campos*, 10 F.4th 515, 526. Defendants assert they are entitled to summary judgment on Plaintiff's FMLA interference claim because they did not deny Plaintiff any FMLA benefit for which she was entitled to receive. (Doc. 127, at 25–26). Plaintiff has presented no evidence in support of her claim. The Court has found no evidence in the record in support of this claim. To the contrary, the record shows that SMU did not deny Plaintiff any FMLA benefit: (i) Plaintiff informed SMU of a desire to take FMLA leave in Summer of 2015; (ii) Adams repeatedly sent Plaintiff instructions and forms to seek FMLA leave; (iii) Plaintiff submitted her FMLA forms on December 18, 2015; and (iv) SMU granted the full amount of FMLA leave Plaintiff was entitled to for calendar years 2015 and 2016.

Thus, the record shows—and Plaintiff does not dispute—that SMU granted the FMLA leave she was entitled to. After review of the record, the Court has found no evidence that would raise a genuine issue of material fact as to any of Plaintiff's allegations of Defendants' interference with her FMLA leave. Notwithstanding, there is no evidence in the record that shows SMU denied Plaintiff's benefits entitled under the FMLA—the fifth essential element to Plaintiff's FMLA interference with FMLA leave claim.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and the Court must grant summary judgment in favor of Defendants. *See Hunt v. Rapides Healthcare Sys. LLC*, 277 F.3d 757, 768 (5th Cir. 2001) (citations omitted) ("If an employee has received her entitlements under the FMLA, she does not have an FMLA claim regardless of the quality of the notice that she received."). Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's

interference with FMLA leave claim. The Court dismisses Plaintiff's interference with FMLA leave claim (Count 23).

2) FMLA Retaliation Claim (Count 24)

"The FMLA prohibits retaliation against those who exercise their FMLA rights." *Campos*, 10 F.4th at 527. "A prima facie showing of FMLA retaliation requires that a plaintiff show: 1) she was protected under the FMLA; 2) she suffered an adverse employment action; and 3) she was treated less favorably than an employee who had not requested leave under the FMLA or the adverse decision was made because she sought protection under the FMLA." *Campos*, 10 F.4th at 527 (citation omitted). "The final element requires proof of a causal link." *Campos*, 10 F.4th at 527 (citation omitted). When considering the causal link, the Court "shall consider 'temporal proximity' between the FMLA leave, and the termination." *Mauder*, 446 F.3d at 583.

As discussed hereabove, the only adverse employment action Plaintiff suffered was not being promoted through the tenure process—Plaintiff's negative tenure recommendation. Defendants assert they are entitled to summary judgment on Plaintiff's FMLA retaliation claim because no evidence in the record shows a causal connection (i) between Plaintiff's FMLA leave or seeking protection under the FMLA and (ii) the decision to not promote Plaintiff through the tenure process. Plaintiff has presented no evidence in support of her claim. The Court has found no evidence in the record in support of this claim.

The record contains no evidence that Plaintiff's negative tenure recommendation involved the consideration of any FMLA request or protection under the FMLA. To the contrary, the record shows Plaintiff was denied tenure and promotion because her teaching fell short of the "high quality" tenure standard—Plaintiff did not qualify for tenure. The record is otherwise devoid of any evidence of the third essential element of Plaintiff's FMLA retaliation claim. That is, Plaintiff has failed to support by summary judgment evidence specific facts showing the existence of a

genuine issue on the element of whether "she was treated less favorably than an employee who had not requested *leave under the FMLA* or the adverse decision was made *because she sought protection under the FMLA*." *Campos*, 10 F.4th at 527 (emphasis added); *Mauder*, 446 F.3d at 585 (affirming dismissal of FMLA retaliation claims after determining plaintiff's "explanations are conclusory and he has produced no evidence in the record that he was discharged because he requested FMLA leave.").

Furthermore, the undisputed facts show Defendants—through the First and Second Tenure Committees—contemplated that Plaintiff may have not qualified for tenure before Plaintiff requested FMLA leave. Defendants are not required to change course simply because Plaintiff asked for and received all the FMLA leave she was entitled to take. *See Mauder*, 446 F.3d at 584 (citing *Clark County School District v. Breeden*, 532 U.S. 268, 121 S. Ct. 1508, 149 L. Ed. 2d 509 (2001)). Defendants' decision to "proceed[] along lines previously contemplated, though not yet definitively determined, is no evidence whatever of retaliatory causality." *Clark*, 532 U.S. at 272.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to make out a prima facie case of FMLA retaliation. Thus, the Court must grant summary judgment in favor of Defendants. *See Mauder*, 446 F.3d at 584. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's FMLA retaliation claim. The Court dismisses Plaintiff's FMLA retaliation claim (Count 24).

3) FMLA Interference with Job Restoration (Count 26)

"The FMLA provides, in part, that an employee 'shall be entitled, on return from [a qualified] leave—(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.'" *Nero v. Indus. Molding Corp.*, 167 F.3d 921, 925 (5th Cir. 1999) (quoting 29 U.S.C. § 2614(a)(1)). "An

employee is not entitled to 'any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.'" *Shirley v. Precision Castparts Corp.*, 726 F.3d 675, 681 (5th Cir. 2013) (quoting 29 U.S.C. § 2614(a)(3)(B)). "However, the FMLA does not impose a strict liability standard requiring employers, in all circumstances, to reinstate employees following their FMLA leave." *Hester*, 11 F.4th at 306.

> Accordingly, an employee claiming a violation of his right to reinstatement must actually be entitled to the position to which he seeks reinstatement. . . . Thus, although denying an employee the reinstatement to which he is entitled generally violates the FMLA, denying reinstatement to an employee whose right to restored employment had already been extinguished—for legitimate reasons unrelated to his efforts to secure FMLA leave—does not violate the [FMLA].

Hester, 11 F.4th at 306 (internal quotations and citations omitted).

Defendants have sought summary judgment on this claim. In her pleading, Plaintiff complains that she was not reinstated to teaching in the classroom and that she did not receive reimbursement for "standard work expenses related to research." Here, the record is devoid of evidence in support of Plaintiff's FMLA interference with job restoration claim. To the contrary, the record shows (i) Plaintiff did not teach during the spring 2016 semester—during her second period of her FMLA leave; (ii) SMU paid Butler during this period; and (iii) SMU paid Plaintiff for her terminal year—the Fall 2016 to Spring 2017 school year. The record shows that, during this final school year, Plaintiff was free to work on her research and other scholarship of her choosing. Plaintiff presented no evidence in support of her FMLA interference with job restoration claim. Thus, there is no evidence in the record that she was entitled to reinstatement specifically to a teaching position with SMU or receipt of expenses of any kind as a condition of her work. Otherwise, the record is devoid of evidence that Plaintiff, during the fall 2016 to spring 2017 school

year, did *not* receive "equivalent employment benefits, pay, [or] other terms and conditions of employment." *Nero*, 167 F.3d at 925.

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to make out a prima facie case of FMLA interference with job restoration. Thus, the Court must grant summary judgment in favor of Defendants. *See Mauder*, 446 F.3d at 584. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's FMLA interference with job restoration claim. The Court dismisses Plaintiff's FMLA interference with job restoration claim (Count 26).

E. Burden Shifting, Pretext, and Causation

The court acknowledges that Plaintiff failed to provide summary judgment evidence to support—or otherwise raise a genuine issue of material fact on—any of her discrimination or retaliation claims. As discussed above, Plaintiff has failed to make out a prima facie case for discrimination and retaliation as required and the burden does not shift to the Defendants. *See, e.g.*, *Haynes v. Pennzoil Co.*, 207 F.3d 296, 301 (5th Cir. 2000) (ending its analysis and affirming district court's grant of summary judgment after concluding plaintiff "failed to establish a prima facie case of racial discrimination under Title VII"); *Owens* 33 F.4th at 835 (applying the *McDonnell Douglas* framework to a retaliation claim under Title VII and 42 U.S.C. § 1981). Nevertheless—assuming arguendo that Plaintiff met her burden to show a prima facie case—it is undisputed that Defendants presented a "legitimate, non-discriminatory reason" for denying Plaintiff's negative tenure recommendation. *Owens*, 33 F.4th at 835; *Eversley*, 843 F.2d at 174. Here, the record shows Defendants' decision was based on Plaintiff failing to meet the "high quality" standard of teaching required for tenure under SMU's Bylaws and Guidelines.

Thus, the burden shifts back to Plaintiff to show Defendants' reason for the negative tenure recommendation was pretextual. Under the third step of the *McDonnell Douglas* framework, the

burden would shift back to Plaintiff to present evidence proving the reasons stated by the employer were not its true reasons, but were a pretext for discrimination, or the reasons were not credible. *Reeves*, 530 U.S. at 143, 120 S. Ct. 2097; *Owens*, 33 F.4th at 825. Under the third step of the mixed-motive framework, the plaintiff must "offer sufficient evidence to create a genuine issue of fact that the employer's reason, although true, is but one of the reasons for its conduct, another of which was discrimination." *Castay v. Ochsner Clinic Found.*, 604 F. App'x 355, 356 (5th Cir. 2015) (internal quotation omitted).

i. Pretext Under McDonnell Douglas

To establish pretext under the third step of *McDonnell Douglas*, a complainant "may attempt to establish that he was the victim of intentional discrimination 'by showing that the employer's proffered explanation is unworthy of credence.'" *Reeves*, 530 U.S. at 143, 120 S. Ct. at 2106 (quoting *Texas Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 256, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207 (1981)). On discrimination claims, the plaintiff "must counter with substantial evidence" that the employer's proffered reason is pretextual. *Owens*, 33 F.4th at 825 (addressing discrimination claims under 42 U.S.C. § 1981 and Title VII). On claims of retaliation, Plaintiff must show that the adverse employment action would not have occurred "but for" her engagement in protected activity. *Long v. Eastfield Coll.*, 88 F.3d 300, 308 (5th Cir. 1996) (adjudicating retaliation claim under Title VII); *Mayberry v. Mundy Cont. Maint. Inc.*, 197 F. App'x 314, 317 (5th Cir. 2006) (adjudicating a retaliation claim under 42 U.S.C. § 1981 and Title VII); *Seaman v. CSPH, Inc.*, 179 F.3d 297, 301 (5th Cir. 1999) (adjudicating retaliation claim under the ADA). The "but for" causation standard is more difficult to prove than prima facie causation. *Evans v. City of Houston*, 246 F.3d 344, 354 (5th Cir. 2001) ("This court has explicitly held that the "causal link" required in prong three of the prima facie case for retaliation is not as stringent as the "but for" standard."); *see Strong v. Univ. Healthcare Sys., L.L.C.*, 482 F.3d 802, 808-09 (5th Cir. 2007)

(discussing "very close" temporal proximity as potentially sufficient to meet prima facie standard but insufficient to meet "but for" causation standard).[18]

Here, Plaintiff has failed to present any evidence showing Defendants' reasons for denying her tenure were pretextual or unworthy of credence. *See, e.g.*, *Hassen v. Ruston La Hosp. Co., LLC*, 932 F.3d 353, 357 (5th Cir. 2019) ("[The plaintiff] doesn't present any new evidence or point to any overlooked evidence that, if true, would prove that the hospital's stated reasons are mere pretext. . . . Thus, [the plaintiff] hasn't carried her burden."). The record shows that Plaintiff's March 2014 contract renewal and both tenure committees raised concerns regarding Plaintiff's teaching months before Plaintiff's negative tenure recommendation. Furthermore, in lieu of Plaintiff's failure to respond to Defendant's Motion, the Court considers the facts of Plaintiff's failure to achieve the "high quality" of teaching, required for tenure, as undisputed. *Eversley*, 843 F.2d at 174.

Plaintiff has failed to direct the Court to evidence that Defendants' acts relating to an adverse employment action were pretextual or unworthy of credence, and the Court has found no such evidence in the record. Thus, no substantial evidence exists in the record to support Plaintiff's claims of discrimination. Furthermore, Plaintiff has failed to direct the Court to evidence that the adverse employment action—Plaintiff's negative tenure recommendation—would not have occurred but for Plaintiff's engagement in protected activity, and the Court has found none in the record. Thus, the record is devoid of any evidence that would support Plaintiff's burden under the third step of the *McDonnell Douglas* framework. Considering Plaintiff's discrimination and

[18] *See generally*, *Garcia v. Pro. Cont. Servs., Inc.*, 938 F.3d 236, 242 (5th Cir. 2019) ("Plaintiffs who could prove but-for causation at the prima facie stage would essentially be able to satisfy their ultimate burden of persuasion without proceeding through the pretext analysis." (internal quotation omitted))

retaliation claims, the Court must conclude SMU's reason for Plaintiff's negative tenure recommendation were neither pretextual nor otherwise unworthy of credence.

ii. FMLA Retaliation and Causation ("But For" and Mixed-Motive Causation Standards)

Should a plaintiff make out a prima facie claim for FMLA retaliation, the analysis proceeds to burden-shifting. *See Campos*, 10 F.4th at 527. However—provided (i) the employer articulates a legitimate, nondiscriminatory reason for the adverse employment action and (ii) the burden shift back to the plaintiff—courts in the Fifth Circuit do not necessarily follow the "but for" causation standard of the *McDonnell Douglas* framework in FMLA retaliation cases. *See Wheat v. Fl. Parish Juvenile Justice Com'n*, 811 F.3d 702, 706 (5th Cir. 2016) ("Neither [the Fifth Circuit], nor the Supreme Court, has decided whether the heightened "but for" causation standard required for Title VII retaliation claims applies with equal force to FMLA retaliation claims."). "[I]t is unclear whether a mixed-motive causation standard is ever proper for FMLA retaliation claims." *Adams v. Memorial Hermann*, 973 F.3d 343, 353 (5th Cir. 2020). In *Richardson v. Monitronics International, Incorporated*, the Fifth Circuit endorsed the mixed-motive causation standard as one option a district court may apply to FMLA retaliation claims. 434 F.3d 327, 334 (5th Cir. 2005). However, *Richardson's* viability is "dubious" in light of two recent Supreme Court cases suggesting the mixed-motive causation standard might not be proper for FMLA retaliation claims. *Adams*, 973 F.3d at 353 (citing *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 180, 129 S. Ct. 2343, 2352, 174 L. Ed. 2d 119 (2009); *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338, 362-63 (2013)); *see also Ion v. Chevron USA, Inc.*, 731 F.3d 379, 389-90 & n.11 (5th Cir. 2013) (noting that *Gross* and *Nassar* "limited the applicability of the mixed-motive framework" in other employment discrimination statutes but leaving the question of their effect on FMLA claims "for another day"). The Fifth Circuit stated "only that a court ought to apply the

'mixed-motive framework in appropriate cases.'" Adams, 973 F.3d at 353 (quoting *Richardson*, 434 F.3d at 334). "A court may give a mixed-motive instruction if it has before it substantial evidence that both a legitimate and an illegitimate (i.e., more than one) motive may have played a role in the challenged employment action." *Adams*, 973 F.3d at 352–53 (internal quotation omitted).

In discussing the mixed-motive framework, the Fifth Circuit has explained:

> To survive a motion for summary judgment under that framework, the employee must first set forth a prima facie case of FMLA retaliation. *Id*. at 390. The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id*. If the employer does so, "the burden shifts once more to the employee to offer sufficient evidence to create a genuine issue of fact that the employer's reason, although true, is but one of the reasons for its conduct, another of which was discrimination." *Id*.

Castay, 604 F. App'x at 356 (citing *Ion*, 731 F.3d at 380).

As discussed above, Plaintiff failed to assert a prima facie case of FMLA retaliation. Assuming *arguendo* that Plaintiff met her prima facie burden on her FMLA retaliation claim, Plaintiff nevertheless fails to meet either (i) the "but for" causation standard under the *McDonnell Douglas* framework or (ii) the "mixed-motive" causation standard.[19] Again, no evidence in the record shows that the adverse employment action—Plaintiff's negative tenure recommendation—would not have occurred "but for" Plaintiff's engagement in protected activity under the FMLA. The record shows Plaintiff received a negative tenure recommendation because she failed to meet SMU's "high quality" standard for teaching. There is no evidence of the record of another motive for Plaintiff's negative tenure recommendation. That is, there is no substantial evidence supporting a conclusion that both a legitimate and an illegitimate (i.e., more than one) motive may have played

[19] In lieu of precedent from the Fifth Circuit, the Court declines to address which causation standard is appropriate for FMLA retaliation claims. Furthermore, as there is no evidence in the record to support Plaintiff's FMLA retaliation claim, the Court need not reach such a determination.

a role in the challenged employment action. *See Adams*, 973 F.3d at 354. No evidence in the record creates a genuine issue of fact that the employer's reason—Plaintiff's failure to achieve the "high quality" standard for teaching—is but one of the reasons for its conduct, another of which was discrimination. Indeed, the Plaintiff has presented no evidence of discrimination to the Court, and the Court has found no evidence of discrimination in the record. The Court must conclude Plaintiff's FMLA retaliation claim involves neither pretext nor mixed-motives.[20]

F. Title IX Claim (Count 30)

Title IX states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." 20 U.S.C. § 1681(a). As pleaded, Plaintiff's Title IX claim appears to be based on sex discrimination. "Title IX does not afford a private right of action for employment discrimination on the basis of sex in federally funded educational institutions." *Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997). "Title VII provides the exclusive remedy for individuals alleging employment *discrimination* on the basis of sex in federally funded educational institutions." *Lakoski v. James*, 66 F.3d 751, 753 (5th Cir. 1995) (emphasis added); *see, e.g*, *Taylor-Travis v. Jackson State Univ.*, 984 F.3d 1107, 1118 (5th Cir.), cert. denied, 211 L. Ed. 2d 28, 142 S. Ct. 101 (2021) (discussing the same and distinguishing employment discrimination and employment retaliation).[21]

---

[20] "If a district court does not have substantial evidence before it supporting a conclusion that both a legitimate and illegitimate motive may have played a role in the employment action, then the court would not abuse its discretion in determining that the case does not involve mixed motives." *Wilson v. L&B Realty Advisors, LLP*, No. 3:20-CV-2059-G, 2022 WL 102564, at *17 (N.D. Tex. Jan. 11, 2022) (citing *Adams v. Mem'l Hermann*, 973 F.3d 343, 354 (5th Cir. 2020)).

[21] "Despite the general rule, Fifth Circuit precedent provides that there are some exceptions to Title VII preemption of Title IX claims made by employees of federally funded institutions." *Stollings v. Tex. Tech. Univ.*, No. 5:20-CV-250-H, 2021 WL 3748964, at *12 (N.D. Tex. Aug. 25, 2021). However, none of the exceptions apply to this case.

Defendants assert that Plaintiff's Title IX claim falls within the exclusivity of Title VII employment discrimination based on sex in federally funded educational institutions. *See Lakoski*, 66 F.3d at 754). Plaintiff has presented no evidence in support of her Title IX claim. The Court has found no evidence in the record in support of Plaintiff's Title IX claim.

As pleaded, Plaintiff's allegations appear to be based on the kind of employment discrimination Title VII was designed to address rather than the sex-based discrimination in education programs or activities that Title IX was designed to prohibit. *See Salazar v. S. San Antonio Indep. Sch. Dist.*, 953 F.3d 273, 276 (5th Cir. 2017) (adjudicating a student's sexual harassment claim against a school district). Moreover, Plaintiff failed to provide evidence that her Title IX allegations could be tied to any of the exceptions to Title VII's exclusivity. *See, e.g.*, *Taylor-Travis*, 984 F.3d at 1118 (explaining the test for a Title IX retaliation claim that is not covered by Title VII).

The Court must conclude Plaintiff has failed to carry her summary judgment burden, and Plaintiff has failed to assert a valid Title IX claim. Thus, the Court must grant summary judgment in favor of Defendants. *See Lakoski*, 66 F.3d at 753. Therefore, the Court GRANTS Defendants' Motion as to Plaintiff's Title IX claim. The Court dismisses Plaintiff's Title IX claim (Count 30).

IV. CONCLUSION

Although Defendant's summary judgment evidence supports a few elements of Plaintiff's various prima facie burdens, the record before the Court is not sufficient to carry Plaintiff's burdens on any of her claims. Plaintiff does not otherwise raise a genuine issue of material fact on her claims. The Court is therefore persuaded that summary judgment in favor of Defendants is appropriate. *See, e.g.*, *Sterling v. United States*, No. 3:18-CV-0526-D, 2020 WL 1529184, at *2 (N.D. Tex. Mar. 31, 2020) (dismissing claims on summary judgment due to absence of evidence in support of claims); *Associates Health & Welfare Plan v. Mack*, 3:98-CV-1725-G, 1999 WL

102813, at *1 (N.D. Tex. Feb. 19, 1999) (dismissing claims on summary judgment due to absence of evidence in support of claims). For the above reasons, Defendants' Motion for Summary Judgment (Doc. 126) is GRANTED. All of Plaintiff's remaining counts (Counts 9 to 30) are hereby dismissed with prejudice.

SO ORDERED.

January 19, 2023.

Ada Brown
UNITED STATES DISTRICT JUDGE

11

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-CV-00037-E
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRALL,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, AND	§	
SOUTHERN METHODIST UNIVERSITY,	§	
	§	
Defendants.	§	

ORDER

On January 19, 2023, the Court held the show cause hearing for Ezra Young on as to cause as to (i) whether Young violated Federal Rule of Civil Procedure 11; (ii) whether Young violated the standards for attorney conduct adopted in *Dondi Properties Corporation v. Commerce Savings & Loan Association*, 121 F.R.D. 284, 285 (N.D. Tex. 1988); and (iii) whether Young should sanctioned. (Doc. 191, 194). Having considered Young's response, (Doc. 192), and the testimony and discussions before the Court at the hearing, the Court finds and concludes Young's actions and conduct before the Court as sanctionable. However, at this stage of the proceedings, the Court declines to sanction Young.

The Court previously addressed the background of this case in its December 2, 2022 Memorandum Opinion, Order, and Order to Show Cause ("Prior Opinion"). (Doc. 191). In the Prior Opinion, the Court addressed the standards regarding sanctions under Federal Rule of Civil Procedure 11 and the standards for attorney conduct adopted in *Dondi*. (Doc. 191). For those

reasons, the Court declines to repeat the background and corresponding standards addressed in the Prior Opinion in this Opinion.

I. YOUNG'S ACTIONS ARE SANCTIONABLE

By the Court's Prior Opinion, Young was informed of the bases of the Court's concerns relative to his violations of Federal Rule of Civil Procedure 11 and the attorney standards in *Dondi*. On January 19, 2023—the day of Young's show cause hearing—Young filed his Response of Mr. Ezra Young to Order To Show Cause ("Young's Response"). (Doc. 192). Young's Response attached no evidence or declaration. Notwithstanding, Young's response fails to provide any persuasive explanation for his inappropriate conduct in his representation of Butler. Rather, Young's Response emphasize his lack of candor, his lack of remorse for his inappropriate conduct, and his unwillingness to recognize the impropriety of his conduct, and his inability to conduct litigation properly and ethically or to have an understanding of how it should be conducted. *Inter alia*, Young's Response appears to directly disparage the integrity and competency of the Court:

> In the mix, this Court was distracted from it's obligation to decide this case on the merits.

(Doc. 192 at 7).

> [T]he Court's annoyance with Young's filings appear to evidence the Court's displeasure with having to make merits decisions on those motions. But the Court's displeasure alone is not enough to establish bad faith.

(Doc. 192 at 27). Young's Response repeatedly mischaracterizes both the record before the Court and this Court's own previous opinions. During the hearing, Young proceeded to disrespect the Court. Young interrupted the Court on several occasions; spoke with a condescending demeanor toward the Court; and appeared to attempt relitigation of issues that have already been addressed in several opinions.

The Court finds from the evidence before the Court, the hearing before the Court, and Young's conduct since his appearance in this case that Young has repeatedly engaged in conduct unbecoming a member of the Bar of this court for each of the reasons stated in this order and in each of the previously issued orders mentioned above; that he lacks the ability to conduct litigation properly, for each of those reasons; and, that he has engaged in unethical conduct for each of those reasons. The Court must find and conclude that Young's conduct in this proceeding have been sanctionable. The Court finds and concludes that Young's conduct violated both Federal Rule of Civil Procedure 11 and the attorney standards for attorney conduct adopted in *Dondi*. *See* Fed. R. Civ. P. 11; *see generally Dondi*, 121 F.R.D. 286-92. Based on the present record, the Court finds and concludes Young's conduct regarding discovery—months after the expiration of the discovery period and without corresponding diligence—as presented for an improper purpose: to harass, cause unnecessary delay, and needlessly increase the cost of litigation. Fed. R. Civ. P. 11. (*See* Doc. 191). The Court finds and concludes Young is not conscious of his broader duty to the judicial system and that his conduct does not square with the practices we expect for counsel practicing in this district. *See Dondi*, 121 F.R.D. 286-92.

II. THE COURT DECLINES TO SANCTION YOUNG

Although the Court finds and concludes Young's conduct was sanctionable, the Court declines to sanction Young. Demonstrably, all of Plaintiff's remaining claims have been dismissed with prejudice. (*See* Doc. 193). The Court declines to impose any sanction on Young. However, the Court cautions Young and any counsel practicing within the Northern District—moving forward—to reflect the attorney standards promulgated in *Dondi*. *See* Fed. R. Civ. P. 11; *Dondi*, 121 F.R.D. 286-92.

III. CONCLUSION

The Court imposes no sanction on Ezra Young.

SO ORDERED.

19th day of January, 2023.

ADA BROWN
UNITED STATES DISTRICT JUDGE

12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	**CIVIL ACTION NO. 3:18-CV-00037-E**
v.	§	
	§	
JENNIFER M. COLLINS,	§	
STEVEN C. CURRAL,	§	
JULIE FORRESTER ROGERS,	§	
HAROLD STANLEY, AND	§	
SOUTHERN METHODIST	§	
UNIVERSITY	§	

PLAINTIFF CHERYL BUTLER'S
NOTICE OF APPEAL

PLEASE TAKE NOTICE that Professor Cheryl Butler hereby appeals to the United States Court of Appeals for the Fifth Circuit from the following orders: Motion to Dismiss (ECF No. 47), Denying Plaintiff's Second Amended Motion for Reconsideration (ECF No. 67), Denying Plaintiff's Third Motion for Extension of Time (ECF No. 141), Finding as Moot Plaintiff's Motion to Strike ECF No. 138 (ECCF No. 143), Denying Mr. Andrew Dunlap's Motion to Withdraw as Counsel (ECF No. 144), Denying Plaintiff's Motion to File Opposition to Summary Judgment Out of Time (ECF No. 166), Denying Motion for Reconsideration (ECF No. 181), Denying Motion for Reconsideration (ECF No. 187), Denying Rule 56(d) Discovery (ECF Nos. 189, 191), Granting Summary Judgment (ECF Nos. 190, 193), and Order to Show Cause and Related Order re Ezra Young (ECF Nos. 193, 195).

Additionally, Professor Butler respectfully requests that if she prevails on appeal and this case is remanded, that it be reassigned to a different judge in the Northern District. For reasons that will be elevated on appeal, docketing a request for recusal of the Honorable Judge Ada Brown prior to the entry of final judgment would have been futile.

Dated: January 19, 2023

Respectfully submitted,

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)
LAW OFFICE OF EZRA YOUNG
210 North Sunset Drive
Ithaca, NY 14850
P: (949) 291-3185
ezra@ezrayoung.com

ATTORNEY FOR PLAINTIFF
PROFESSOR CHERYL BUTLER

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2023, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)

13

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

CHERYL BUTLER,	)	3:18-CV-00037-E
Plaintiff,	)	
VS.	)	DALLAS, TEXAS
JENNIFER M. COLLINS, ET AL	)	
Defendants.	)	MARCH 8, 2022

TRANSCRIPT OF

STATUS CONFERENCE

VOLUME 1

BEFORE THE HONORABLE ADA E. BROWN

UNITED STATES DISTRICT JUDGE

MR. YOUNG: Okay.

THE COURT: We had the Robinson firm, who, if I recall correctly, was accused of the same misconduct that now dear Mr. Dunlap is being accused of. So this -- this notion that it's the lawyer's fault and she's the victim is not a new tale. So -- so that -- that sort of goes to -- to the credibility of it. You know, we have the bankruptcy filing.

And so let's talk about, in Document 147, which is your original motion for reconsideration of motion to withdrawal and substitute counsel.

MR. YOUNG: Yes, Your Honor.

THE COURT: Yes. In your first paragraph, your first real paragraph in the argument section --

MR. YOUNG: Yes, Your Honor.

THE COURT: -- you cite a Hernandez case, which was written by a judge I know well, Judge Horan. And I think you are citing it for the proposition that somehow I owe you an explanation when I deny your -- your motion to reconsider. And I want to disabuse you of that notion. I think you need to go back and take a look at that case.

Because I read it this morning --

MR. YOUNG: Uh-huh.

THE COURT: -- and it establishes the test that's used, but in Texas, at least in the Northern District -- I don't know how they do it in New York -- I don't owe you an

answer other than denied or granted.

MR. YOUNG: Your Honor --

THE COURT: I'll -- I'll give you -- I'm going to give you an answer, but you're not entitled to that. So I want to make that clear.

MR. YOUNG: Uh-huh.

THE COURT: The other thing I want to talk to you about is, in your argument, you say, it's hard to ascertain why the Court would delay Mr. Dunlap's transition out of this matter.

And I want to point to something I -- I spent last night kind of looking around in the record. And I looked at something you recently filed, and it was -- it was an e-mail chain between you and Mr. Dunlap. And I think it was dated March 6th or 7th. So it -- very recent. It was in March of this year.

MR. YOUNG: Yes, Your Honor.

THE COURT: And you were seeking information from him about the case. Like substantive information.

And so, one of the reasons that I think kicking him off the case would be inappropriate is, as I see from your e-mails, you need him. You don't know everything about this case. You don't have all the materials you need or you wouldn't be e-mailing him, asking him for them.

And if we go March 3rd or 4th, and you are still

Circuit courts, that -- yeah, that an attorney's motion to withdraw -- let's see. That is the Northern District case.

Yeah, you -- you seem to believe that it is somehow my burden to explain to you whether I think something's good cause. And that's -- teeter-totter's kind of backwards there. It is you having to explain to me if there is good cause.

MR. YOUNG: Uh-huh.

THE COURT: I make that determination. And then, under the law, even if you do have good cause, I can still deny it.

So I just want to be real clear on how that rule works. Because when I read this, and I read your -- I read all your paperwork, you seem to think that you are entitled to some reasoned opinion on my -- on my denial. And you, in fact, are not. So I just want to disabuse you of that so that -- so that, you know, we understand what the law really is.

So understanding that I decline to follow and adopt Third Circuit cases, under Fifth Circuit law, tell me, please, what your good cause is one month before trial.

MR. YOUNG: Yes, Your Honor. But if I may just briefly say something else to help the framing here.

I realize I'm from New York State. I'm actually not originally from here. I don't practice in New York

State. I practice all around the nation. Practiced a lot in Texas federal courts, in the Fifth Circuit, in a very weird, volatile case that I don't want to talk about. I respect this jurisdiction's rules.

When I cite cases for the Court, I am always mindful of the circuit in which we're in, of the district court in which we are in. Occasionally, if there is a good opinion that sensibly explains a rule that applies nationwide, I'll cite to that good explanation because I want to give the Court clarity. I'm not making a request that obviously you -- that you adopt the law of a different circuit. And I -- for the purposes of appeal only, Your Honor, I'll say I respectfully disagree with the Court, simply because I want to preserve the issue. We need not get into it.

THE COURT: Well, tell me what issue we're preserving so I may respond. What are you preserving?

MR. YOUNG: Yes, Your Honor. The way I understand the requirement of the Court for releasing counsel -- and actually, Your Honor, you previously said for the withdrawal of the Robinson firm, I believe, that this was actually -- that normally would terminate counsel under, I believe, the Texas Rules of Professional Responsibility, requires withdrawal.

Aside from that, my understanding is that there's a

requirement to explain why you deny something. Not in like a robust way, but only so the reviewing court knows why you did what you did. That's why if you -- if you grant something in electronic order, which is completely obviously permissible, and obviously a good way to manage the docket, you don't need to say anything. Because -- unless it's being challenged. And these things weren't challenged, so you -- the Court need not waste its time. Where it's denied, if you don't tell the parties why it's denied, it -- they are operating blindly, and as is the court over it.

THE COURT: And as a former appellate judge, I've got to disagree. You know, there are some things that you absolutely are entitled to a reasoned opinion on. Something within my discretion, like "yes" or "no," no, you're not.

And let me point you to -- you give me a Third Circuit case that says, and I quote, denying withdrawal after counsel has been terminated is improper. As the Third Circuit recently observed, keeping terminated counsel on the case serves no meaningful purpose. Consequently, withholding it -- withholding withdrawal is an abusive discretion because withdrawal would be required at that point.

I spent last night with coffee and Westlaw, and I didn't find anything that said anything like that in the Fifth Circuit, did you?

MR. YOUNG: I did, Your Honor. I would have to

look back. It's been a busy couple months.

THE COURT: Well, I -- if you found it --

MR. YOUNG: I did, but --

THE COURT: -- wouldn't you have cited it in your brief, instead of something from the Third Circuit?

MR. YOUNG: Again, Your Honor, I'm happy to adjust my motion practice in your court to suit your preferences. My job here is to help the Court.

THE COURT: No, no. Let me clear this up. I'm not arguing with how you law -- how you -- how you write. You write well. It's just that two of the cases that you cite, when I read them, do not, in fact, stand for what you say they stand. And so that means that I have to read everything, because I don't know if you are citing it for what it really says.

So take it from me, you know, let's just -- just believe me when I say, I do not owe you a reasoned opinion on denying your motion. Any of them.

MR. YOUNG: Okay, Your Honor.

THE COURT: And what I'm giving you an opportunity to do, which you are not entitled to, but I'm giving you to be gracious, is an opportunity to tell me now what your good cause is.

MR. YOUNG: Yes, Your Honor. Thank you for that. I was just writing that down, Your Honor. Thank you for the

14

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

CHERYL BUTLER,	)	3:18-CV-00037-E
Plaintiff,	)	
VS.	)	DALLAS, TEXAS
JENNIFER M. COLLINS, ET AL	)	
Defendants.	)	JANUARY 19, 2023

TRANSCRIPT OF

SHOW-CAUSE HEARING

VOLUME 1

BEFORE THE HONORABLE ADA E. BROWN

UNITED STATES DISTRICT JUDGE

---

different forum here. We're not remote. We're not on Zoom. You may be nervous, and I understand that; and I'll factor that in. But I caution you and your client that we're not going to have a repeat of what we had before.

MR. YOUNG: Yes.

THE COURT: So I want to give both sides an opportunity to fully discuss this with this Court. I have an open mind and heart, but please do not talk over me. When Ms. Askew gives her presentation, please do not talk over her. It creates a problem for our court reporter.

I do understand people are nervous. I understand Zoom is -- is a different world. So that's not -- that is not something I'm considering. That is not something I'm holding against you; I just want to make clear that we're not going to have that.

Now, this was before you came on the case. And this was with the prior lawyers, but Ms. Butler talked over the Court so much in earlier hearings that it created a problem. And this is in live hearings.

So, Ms. Butler, I'm glad you are here today. I'm glad to see you. Let me make clear to you that if you speak when you are not spoken to or -- and when you are not asked to speak, I will hold you in contempt. So I want to show you the respect you are entitled to, but you must show it to me too.

So if it is appropriate for you to give input, I

will certainly give you an opportunity to do that. But in the past, you have weighed in when other people were advocating and when the Court was trying to speak, and it disrupted proceedings. I have no wish to hold you in contempt. But I also don't want to play any games and have shenanigans today.

So I just want to make very clear from the outset what the outcome will be if you do that again. Are you clear on that?

MR. YOUNG: Say, "Yes, Your Honor."

MS. BUTLER: Yes, Your Honor.

THE COURT: And so if it's appropriate for you to give input, I will certainly ask for that. I will show you the utmost respect.

And you, too, Mr. Young. So I just ask for the same in response.

So we're here today -- I received your response that you filed this morning, Mr. Young. And I'm making reference to Document Number 192.

Ms. Askew, it was filed this morning. I don't know if you've had an opportunity to --

MS. ASKEW: We received it. It was filed at 7 o'clock. We have not gone through in it detail, but I will respond to some of it.

THE COURT: Absolutely, okay.

So I received the response this morning. I did

was time for you to get your stuff together. And so I wanted to give you ample time to find whatever it was you thought you had to bring to make these claims against this woman, that on their face appear to be completely false.

And so I'm giving you -- remember, how this works. I am not your adversary; I am the fact-finder and decision maker. And I am deciding what your fate is. So you need to come correct. Let's get out of the weeds, and you tell me why you accused Ms. Askew of these things and what you got to support it.

So, go.

MR. YOUNG: Yes, Your Honor.

Going back to the transcript exhibit, there is a statement by Ms. Askew, in the context of her request for discovery, where she asks that Professor Butler produce the tenure stuff.

THE COURT: Okay.

MR. YOUNG: Ms. Askew said on the record she doesn't know -- I believe she used the phrase "tenure dossier." That is the equivalent term for "tenure box" -- she doesn't know what it is, and she requested it being produced by my client, who said, I don't have it.

THE COURT: Okay.

MR. YOUNG: In addition to that -- and that is on the record hearing -- there is an e-mail, which the order to

show cause order references --

THE COURT: Uh-huh.

MR. YOUNG: -- that Ms. Butler sent in 2016 to SMU Law requesting the return of the box.

That's important, just so the Court understands, because if for some reason you don't get the job the first time, you need your box back, because that's all of the evidence of what you've done in your career.

THE COURT: And let me throw in, for the record, just to inject for anyone who might hear this on appeal. In fairness, we're talking about production of things and who gave what to who. And so just for context for you, because I don't -- what number lawyer are you? I can't remember.

MS. ASKEW: Six.

THE COURT: You are number six. So you may not know everything about one through five. But your client has a disturbing past with this Court that -- of not giving things she says she has.

MR. YOUNG: Uh-huh.

THE COURT: And I think -- I don't know how much talking you did to other lawyers. But she made claims that she had a whole bunch of recordings that --

Ms. Askew, did you ever get everything she claimed she had?

MS. ASKEW: We did -- we got some of it. It's

So you -- clearly you did not review it. Because I reviewed it yesterday, and what she says is in there is in there. So again, going back, I don't know what it is you think she didn't do, and I'm asking you again to be very specific about that. You know, yesterday, again, somebody charged with human trafficking, and you have to list in counts what somebody did.

So you have accused her of gross misconduct. And you keep talking about this 56(f) motion, and generalized things and -- but I need you to point to something concrete where you asked her for something you are legally entitled to that you did not get. What is that?

MR. YOUNG: Me, personally, I asked her. And my requests are memorialized in those e-mails.

THE COURT: Okay.

MR. YOUNG: Beyond that --

THE COURT: And so let me pause you there. Do you agree with me that -- let's go hypothetically. I mean, I looked at it. I'm the fact-finder; I'm the credibility determiner. I looked at what she made reference to, and it appeared to me she fully complied with the request. I think she gave you the tenure box. I believe that to be true. I'm finding that fact on the record.

I believe she produced it more than once. I believe that it was in your hands and that it was used in a

deposition because -- I believe that to be true. And I'm the fact-finder, and I've been here longer than you. And my job is to find facts and determine credibility.

So I find it not credible so far that you had a good-faith basis to accuse her of misconduct. I have read the e-mails, and -- and it does not say what you say it says. So let's set that aside now, because I have this -- I have -- I'm disabusing you of the notion that that gets you where you need to be.

MR. YOUNG: Yes.

THE COURT: You have not shown cause why I should not sanction you. That didn't work. What else you got?

MR. YOUNG: In addition to that --

THE COURT: Okay. Well, "in addition to that" --

MR. YOUNG: -- I talked to --

THE COURT: -- just so you know, that didn't get you there. So in addition -- you are not building on anything; you have nothing. So what do you have now other than your e-mail?

MR. YOUNG: In addition, I reviewed the --

THE COURT: Okay. Back up, back up. I just told you you had nothing, and you say "in addition" again. It's not in addition; you hear me? I'm the fact-finder. You think I'm your adversary and you are writing a brief. You have nothing. You need to accept that reality. I determine where

you -- if you'll approach the podium, please, sir, I've got some very pointed questions for you. And then I will allow an opportunity for you to talk to me uninterrupted.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Certainly. Yeah, absolutely. Take your time. We've got a minute.

MR. YOUNG: Yes, Your Honor.

THE COURT: So let me -- before I -- before I hand it off to you, I earlier made a statement on obtaining records -- I'm sorry, so before the break, I said I would afford you an opportunity to respond. And so let me ask you a very -- let me give you the headline here, because I want you to stay in your lane.

Do you have any reply to Ms. Askew's presentation that either, one, is not already in your filing; and, two, does not retread upon what we have already discussed today? New information. It must be new.

MR. YOUNG: I do, Your Honor, if you could give me one moment to --

THE COURT: I certainly will. Yes, I will.

MR. YOUNG: Okay. And to clarify, not in the filing and it does not retread previous things we've discussed today?

THE COURT: New information. I am open to hearing new information you have. And you may take -- feel free -- I

know this is an important --

MR. YOUNG: Yes.

THE COURT: -- hearing, so you may take a moment to collect yourself if you need to.

MR. YOUNG: Yes, Your Honor.

THE COURT: Sure.

Oh, and I will also remind you, when I looked at the proceedings from last time, I asked you to make an apology to Ms. Askew. Did you ever do that? Did you ever make that apology?

MR. YOUNG: I don't believe I did on the record. I would need to double-check e-mail. I think there was an e-mail. I can't remember what it was in connection with, where I realized that I used her -- Ms. Askew's first name, Kim, when I had intended to use Defendant's.

THE COURT: Well, and I -- you know, I don't want to get too in the weeds, but that might be appropriate. And I don't think it would just be because you called her Kim.

MR. YOUNG: No, no, Your Honor. I meant -- I think -- again, I can't recall the context. And I can look through the e-mails and try to find them all.

THE COURT: You can do that. But I'm just -- I'm trying to give you kind of a cue here, I think from what I've heard so far, that might be appropriate. You don't have to do that, but I think that's something you should consider.

That -- that might be appropriate.

MR. YOUNG: Yes, Your Honor.

I can say today in court, while we're on the record, Ms. Askew, I very much respect you. And when I first introduced myself to you, I actually told her -- if you don't mind me telling the Court, too -- I remember Ms. Askew testifying at Justice Sotomayor's confirmation hearing, I believe, on behalf of the ABA, correct?

THE COURT: And if I can pause you for just a second. To her point about being nationally respected, I think that kind of is an important fact. Not just anybody shows up at Justice Sonia Sotomayor's stuff.

MR. YOUNG: I'm aware, Your Honor. But --

THE COURT: Okay. Have you ever been at a Supreme Court anything, where you were part of it?

MR. YOUNG: Filed with it, conferred with justices, yes. Not --

THE COURT: Okay.

MR. YOUNG: -- not at a senate confirmation hearing, though. I was a -- a witness and a recommender for a gentleman in the Western District who was nominated and --

THE COURT: But you probably didn't chair the committee.

MR. YOUNG: No, of course not.

THE COURT: Okay.

MR. YOUNG: But what I was saying is, when I first was on the case, I -- her name sounded very familiar and I couldn't pinpoint it. And I realized that I had watched those confirmation hearings, because as a Latino, it was a very proud moment to have our first Latina justice.

THE COURT: It was proud for everybody in America.

MR. YOUNG: Yes, it was very -- but to me personally, because that was right before I started law school.

THE COURT: So you of all people understand how important it is to show appropriate respect to minority women?

MR. YOUNG: Yes, Your Honor. I can say right now in court, I had no intent or desire to label Ms. Askew as being personally responsible. I have pointed to statements she has made on behalf of her clients as their advocate.

THE COURT: That's -- I understand -- let me pause you for just a second. I understand that is your perception. You know, it's this Court's job to make fact-findings and determinations. I can tell you I find that not very credible.

Your attacks upon her, in this Court's experience; and I have some, were personal, inappropriate, vengeful; threatening; harassing; and wildly inappropriate and unprofessional. And so that you -- you know, I just -- Mr. Young, you are so tone deaf. I just -- I don't know what to do. I mean, you come up here. I hint to you that you

should apologize for your misbehavior. You -- you just -- you seem incapable of that. And I think that's the very least that you owe Ms. Askew at this point.

You know, you call a woman of color by her first name like you know her. I don't know if you know the history of this -- off the record.

(Off-the-record discussion.)

THE COURT: So I do not mean to make this a racial issue, because I don't think that you meant to make it a racial issue at all. So I'm not. But I think it would be disingenuous to not point out that Ms. Askew is a woman of color, entitled to incredible respect, and that I'm troubled by your actions. And that you didn't behave this way to anyone else in the case gives me pause. And I'll leave it at that.

MR. YOUNG: Thank you, Your Honor.

Okay. Let me respond to the points that Ms. Askew raised --

THE COURT: Please.

MR. YOUNG: -- if I may.

THE COURT: And remember, this has to be new information.

MR. YOUNG: Yes. I'm going through point by point to which I have a response.

For many of the motions that I filed, as is

required by the local rules, I sought conferral with Ms. Askew and her co-counsel, as is required.

THE COURT: Let me ask you about that real quick.

MR. YOUNG: Yes, Your Honor.

THE COURT: Now, when you sought conferral, in this district, which you seek conferral, you don't seek conferral at 11:58 p.m. and then file it at midnight. So when you say you sought conferral, my recollection is that that was not necessarily done.

And correct me if I'm wrong, Ms. Askew. I see you nodding. I think some of those requests to confer were a bit of an ambush. Is that your recollection, Ms. Askew?

MS. ASKEW: Yes, it is.

THE COURT: Yeah. So in this district, per Dondi and gentlemanly behavior we expect, when you confer with someone, when you attempt to confer, it must be meaningful. And just as I have given you due process, courtesy and respect, and a right to respond, that is exactly what conferring is. It doesn't mean I send you a missive and say, if you don't respond in five minutes I'm filing it. That is not what we mean here in Texas.

Now, I don't know how you do it in New York. Maybe that is acceptable behavior there. But part of the purpose of this hearing is to tell you what is acceptable here, and I can tell you that that is not.

And so I'm not sure I would stand too hard on the leg that I conferred. Because my recollection -- I don't feel comfortable making a fact-finding, because I don't have it before me. But my recollection is that your attempts to confer were not always what this Court could call meaningful and in good faith.

Proceed.

MR. YOUNG: Yes, Your Honor.

For every filing for which conferral was required, or for which I thought a conferral could result in no motion practice, as Dondi requires, all of these were made via e-mail. I apologize, I believe actually I was being hospitalized at that point. I've had --

THE COURT: And that --

MR. YOUNG: -- I sent that one e-mail late at night --

THE COURT: -- let me pause you. Let's not talk over each other.

I can tell you that that is information I have literally never heard before in my life.

Ms. Askew, have you ever heard that before?

MS. ASKEW: I was never aware --

THE COURT: So that is new information. And I appreciate -- I asked you for new information, but I -- perhaps you were hospitalized each and every time you were

supposed to meaningfully confer. I'm going to give you the benefit of the doubt on that one.

MR. YOUNG: I only brought that up to the point of I believe my recollection is that's why it was sent so late on that particular instance.

THE COURT: I don't think there was just one instance. But again, I'll give you the benefit of the doubt on that one. We'll put that to the side. Go ahead.

MR. YOUNG: Thank you, Your Honor.

I would have preferred to have conferred with Ms. Askew, or any of Defense counsel, via phone, or when it was safe, in person. That request was denied.

THE COURT: So let me pause there.

MR. YOUNG: Yes.

THE COURT: So let's go back to this concept of entitlement. So you are not entitled to pick the means in which you confer. I have never in my practice conferred with somebody in person who was in New York. So I don't know if what -- your expectation was that Ms. Askew was going to hop on a Southwest flight, show up at LaGuardia; knock on your door and tell you yes or no, but that is just not realistic, in this Court's opinion.

So I don't know if you have heard this crazy thing we've been doing for 20 years called e-mail, but that is how most professionals correspond. And so you may like it your

may, but this is not McDonald's, where you get to pull up and say I want it with some cheese.

So you are not entitled -- see, and this goes back, Mr. Ezra, like you just don't get it. You don't get to pick how people do stuff. She doesn't have to do it your way. It isn't McDonald's. And that you stand up, when I give you an opportunity to tell me why I shouldn't like do things to you, and have sanctions that could possibly end your career, at least in this district, that one of the things you think is important for me to know is that you can't have it your way at McDonald's, tells me you still don't get it. You just don't get it.

I mean, you sending her an e-mail missive demanding that she respond in ten minutes is not meaningful conferring. But arguendo, if you did it five days before, you are not entitled to make her talk to you a certain way. That is not how things work. And I've got to tell you, your sense of entitlement is as troubling as your actions. I mean, you are bold enough to put in writing that this Court doesn't like to do its job, and that's the real problem, and also I'm distracted. Your judgment is askew.

You know, and that you get up here -- and this is your rebuttal. This is your shot to show cause why I should not sanction you. And one of the things that you think is important, in your limited air time to point out, is that she

won't meet with you in person, because you like it that way.

No, that's what this Court heard. Listen to me. I'm not unintelligent. I'm a Mensa girl. I can take a test. I'm not so clueless that I don't know when people are super entitled. So if you think that's important for this Court to consider, I note the fact that Ms. Askew did not have it your way, like she worked at McDonald's and you asked for a hamburger with some cheese. Move on.

MR. YOUNG: May I please finish the sentence?

THE COURT: See, now -- I want to note the condescending tone in which you said that. "May I please finish the sentence"? Do I work for you, sir? I mean, I'm a public servant in the sense that I am your judge, but you just talked to me like I worked at McDonald's. May I please have my burger? Your disrespect is so pervasive.

I told you I would give you a chance to have some air time, and I'm going to. I'm going to let you have that. But the tone in which you talk to this Court is the tone in which I don't speak to my cleaning lady. I don't know if you know this. You don't run this show. You are a litigant before the Court. I have graciously allowed you to appear. But your tone: May I have some time, may I -- read that back, Nikki, please.

MS. ASKEW: May I please finish my sentence.

THE COURT: Am I your child? I mean, Mr. Young,

you -- I -- I really -- I've got to tell you, you perplex me. I am trying every way I can to show you some grace. You are the most clueless, offensive -- you know, at every turn I'm trying to help you, and you can't get out of your own way.

So let the record reflect for the Fifth Circuit that the words say that, but the tone in which Counsel said them was disrespectful.

I do not work for you, sir, in the sense that I am your servant. So you cannot have it your way. It is not McDonald's. I'm not making your burger; I'm not cleaning your house.

So try that again in another tone and it may work. Go ahead. In a non-condescending tone, if you are capable of that, without entitlement, you may ask this Court as if this Court has the power to grant it or deny it. Can you try that?

MR. YOUNG: I will attempt my best, Your Honor.

I appreciate the opportunity, Your Honor. I do not believe I am entitled to my preferences on discretionary things between counsel. What I intended to mean to the Court, and apologies -- I -- I apologize for the tone or any sense of disrespect. No disrespect for this Court.

THE COURT: I -- I really think you don't get it.

I mean, Ms. Askew, I -- I mean, I have made some bad-faith findings. But at this moment, I truly do believe that there is a disconnect. I think you are truly unaware of

how you come across, because I do not think anyone would be as -- you are clearly an intelligent man. I do not think -- it is so -- statements against interest, like hearsay. It is so against your interest to behave this way, that the only thing I can do to explain it, in my mind, is that you are unaware of it.

You know, and I've got to tell you, that is deeply troubling. And I don't know how to tell you how to fix it. That no judge has called this to your attention before -- I don't know what kind of judges you've been in front of, but I am really hard to offend. And you have not offended me; you've just concerned me. Because I've got to tell you, I don't understand. And I'm just going to keep it 100 percent with you on this one. I do not understand how you have kept your law license for -- how many years have you been a lawyer?

MR. YOUNG: Since 2014, Your Honor.

THE COURT: Okay. Well, if you want to have it in 2024, I would really encourage you to do some reflective thought. Because I'll tell you, I -- I pride myself on my judicial temperament. I don't go around half-cocked, accusing people of things. But your behavior's really distressing. And that you come to your show-cause hearing -- and I've got to tell you, your show-cause hearing is as bad of a train wreck as your behavior that led you here.

You know, you saying to a federal judge, when it's

you in the hot seat, if I can please talk without disruption, please, I really think you don't get it. Like I -- I get that you are not trying to offend me; I think you just don't get it.

So proceed.

MR. YOUNG: As a means of respectful explanation, I'm autistic to the extent --

THE COURT: That does explain a lot. Actually, it does.

MR. YOUNG: -- to the extent my tone or word choice might seem idiosyncratic, especially when I'm in regions I do not live in.

THE COURT: Okay. I do appreciate that.

MR. YOUNG: Sometimes it misaligns. I'm fine with that being on the record.

THE COURT: And -- and I tell you, I am -- you actually have shared new information, because I really do feel like we're ships passing in the night. Now, that does not excuse all of your behavior; that does go some way to explaining the disconnect, though.

So I can show you some grace on that, and I appreciate you being forthcoming about that. I've got a cousin with autism. And he does not mean to be offensive; he just misses social cues. And so that could explain some of this, so I appreciate that.

MR. YOUNG: Correct. If the Court desires it, I can explain my particular limitations.

THE COURT: I don't need that. I believe you. You are an officer of the court.

MR. YOUNG: Okay.

THE COURT: I can tell you, either side, if you want to seal this record, because we're talking about some kind of confidential stuff here --

MR. YOUNG: I have no problem leaving it open.

THE COURT: Okay. I don't need to delve further into that, but I do -- that is new information and that is -- explains -- that helps explain some of this.

MR. YOUNG: Okay. And again, I -- if the Court needs anything on that.

THE COURT: No, no. I believe you. You are an officer of the court.

MR. YOUNG: Okay. With that context, I do not believe I am entitled to things -- most things in life, honestly, as anyone else. Nor do I believe I am entitled to favors from opposing counsel, or my preference of means of communication or that sort of thing.

I had elevated that it was, in fact, my preference to communicate via different means because the Court had asked why were so many of these things done via e-mail. That was Ms. Askew's preference, which I honored. I think I only sent

one voicemail to Ms. Askew, and that was before she expressed her preference.

THE COURT: That is new information, and I appreciate you sharing it.

MR. YOUNG: Yes, yes. I would also say, as context, I do not believe I ever addressed Ms. Askew by her first name via e-mail until after she started signing her e-mails with her first name.

It's my general understanding that once someone does that, which I do too, you know, with students, with everyone, that that's acceptable. If it had been told to me by Ms. Askew she does not want correspondence outside of her title, I would have followed and honored her request.

THE COURT: So I will let you talk again, but I just have a question for you. I don't think she ever called you Ezra.

Did you, Ms. Askew? I don't think you ever did.

MS. ASKEW: And, you know, you can send me an e-mail, you can communicate with me any way. I -- I'm hearing this for the first time. I just -- and in courtrooms, you know, we know lawyers very well. We call them by their surnames because, again, it is an honor of the Court, is what we're honoring. And that is part of what's -- you know, was missing here.

THE COURT: So I'll give you that one. And again,

we'll wipe that to the side and I'll just give you the benefit of the doubt and note that as a social cue. I sign everything by my first name and you have managed not to call me Ada all day.

So you may proceed.

MR. YOUNG: To that point, Your Honor, 188-4, which is -- I can't remember what it's an exhibit to -- is an e-mail from Ms. Askew to me, where she calls me by my first name.

THE COURT: Okay. And as I said, I wiped that to the side. You are not on trial for -- and you're not on trial at all. But you are not show caused for calling her Kim. I just -- when we're pointing out kind of conduct that is not -- that is concerning, there is certainly no local rule against calling people by their first name. By custom, I -- I can't think of ever calling someone by their first name, and I have known Ms. Askew for 23 years. And so in court, she is Ms. Askew.

If you saw her out socially and you were a friend of hers, you might call her Kim. But, you know, the fact that you have managed to not call me Ada during the last couple of years tells me that you don't just look at a signature line and decide that is what you call somebody. But whatever. Again, I'll wipe that to the side, if she called you your name and you called her her name.

But that is just another -- I'm just floating up a

flag here on the Titanic, telling you that that's a signal you missed. And so as a means of showing courtesy to women lawyers, you know, it -- off the record.

(Off-the-record discussion.)

THE COURT: Back on the record.

MR. YOUNG: Okay. Thank you.

THE COURT: Professor Young, please continue.

MR. YOUNG: Thank you, Your Honor.

Without rehashing other points, I will review the various filings and I will reach out to Ms. Askew. And --

THE COURT: I don't know that that would be helpful at this point. If I -- off the record.

(Off-the-record discussion.)

THE COURT: Back on the record.

MR. YOUNG: Okay, Your Honor.

Okay. As to -- one point that Ms. Askew made was that the e-mail stating that other law professors had seen the docket, I intended that as a courtesy --

THE COURT: How so?

MR. YOUNG: -- in the sense --

THE COURT: How so? Why did she -- And I'm going to let you answer, but just -- I'm going to give you the question that I have in my mind.

Why would that be information that mattered to her, that other professors are -- I mean, I -- I get that -- I

don't think it would be probably news to Ms. Askew, as she is an incredibly intelligent woman, that people from SMU may have an interest in the case. So let's push that to the side.

That there is a random professor at Emory who is following, I guess that could -- I mean, that is something that is important to you, but I just -- you know, part of what I do is determine credibility here. And so maybe to shortcut this, if you're going to tell me that you had no idea that by mentioning that this posse of people are watching her; that somehow you are intending to give her a heads-up and do her a favor, I can tell you that that is something I'm not going to buy.

So you go ahead and say what you need to say, Professor Young. But I can tell you that I have common sense, and that that e-mail was a threat. And there is no other way a person with common intelligence could read it.

Saying that my group of friends are watching, and you better give me an extension that would be malpractice, that is just not a reasonable read. So I find that not credible, but you go ahead and say what you want to say, Professor Young.

MR. YOUNG: I intended it as information for Ms. Askew's client, to the extent they care about that. I --

THE COURT: Why would they?

MR. YOUNG: -- intended it as a courtesy.

THE COURT: Why would they care that some professor -- I mean, I'm just talking common sense here. Why --

MR. YOUNG: Yes.

THE COURT: -- why would SMU, a prominent school with a sterling reputation in Texas -- you don't know that because you are not here -- but why would they care that one of your friends at Emory is watching? That doesn't make any sense, Professor Young. Why did they care -- what -- why does that matter to them? How does that move this litigation forward?

I mean, I haven't heard that this person from Emory was about to apply to become a professor at SMU. Why would they give a darn? That just doesn't make sense. I mean, I -- you know, going back to -- to something Ms. Askew said earlier, that I think you should maybe reflect upon, this Court deals in facts. That fact -- that -- what -- what does that fact yield, other than to let her know -- I mean, I used to be a criminal prosecutor, okay? I've -- I deal with -- nobody ever says I'm coming to murder you. You look at their actions in the context.

And so in the context of that e-mail, there is no reasonable read -- and I'm making a credibility finding here -- there is no reasonable read that that was not a threat. I mean, nobody at SMU cares what somebody at Emory

thinks about some nonsense. And this case, it turned out -- turned out to be nonsense.

So there's no Law360 article; you're not certing this up to Justice Sotomayor. No one is watching this case. You may have a friend or two, but, you know, people are not sitting, waiting for CNN to find out how this case ends.

So this notion that there is somehow this public interest in -- and whether or not discovery is reopened in your tenure-box case is not a thing. It's just not a thing. And so asking this Court to believe, with a straight face, at your show-cause hearing, where I determine your fate, at least in this district, that you meant goodness in your heart when you told her that someone she could care less about, from a school she isn't connected to, that they care about this case, I think had you meant that, you would have said, Professor Whoever is watching. And she would have ignored it, because it -- it has nothing to do with anything.

And so if you want this Court to believe that that was not a threat, I find that not credible. But you may continue, Professor Young.

MR. YOUNG: In an e-mail I don't believe was docketed, I think I explained to Ms. Askew the significance of that for law schools. I'm --

THE COURT: Okay. And let me jump in for just a second.

MR. YOUNG: Yes.

THE COURT: Why would she care about that? I mean, that doesn't make any sense either. Let's say every law school is watching. This case turned out to be trash. That is why it is not here anymore. There was a lot of allegations and not a lot of proving. And so this notion that you have somehow besmirched SMU's reputation in this community is deeply misplaced.

Your case fell apart. The wheels are off the bus and the bus has crashed. That is why you have no case. And so that happened before you got on the bus. It -- it was -- the discovery had -- had ended, summary judgment was over; the case was going to go to trial. And I'm not a psychic and Miss Cleo, but I can tell you it wasn't going to end well.

Your client's evidence was thrown out because she didn't put it forward. There was no prima fascia case that could be made, because all the claims she made turned out to be nonsense. She claimed that all these things happened; and if they did or not, she couldn't prove them. And this Court deals in facts. The jury deals in facts. From everything I have seen in this case; and I have been on this rodeo longer than you, sir, there was nothing to send to a jury had it gone. That is why there is nothing left now.

And the rodeo was over when you joined the ride. Discovery had closed. There was no prima fascia case. She

claimed there were all these transcripts, and that's why you were arguing that it's up to them; they've got all this money. You were trying to put the wheels back on the bus. I'm not stupid. The Titanic had sunk, was on the ground; the plates had broken when you joined the ride.

And so this notion somehow that people are watching this case, it was over. You -- you -- you didn't even file summary judgment. The case was on its last legs. It had died. I had made bad-faith findings. I thought you read them, but maybe you didn't.

But this -- this -- please, please, please do not insult this Court by trying to get me to believe that you were somehow lending Ms. Askew a hand and letting her know how damaging your client's non-case was to SMU. SMU's reputation is -- is still standing. This case went nowhere for a reason. And your client's evidence was thrown out at a hearing you did not attend. So, yeah, she was told to put up or it was not admissible. And it never came.

Am I recalling it correctly, Ms. Askew?

MS. ASKEW: That is correct.

THE COURT: Yeah. So there was nothing -- there was nothing -- yeah. You were -- I mean, going back to common sense, the reason you wanted to reopen discovery was because you were missing something; and it is called evidence. If you had some, you would not have been so entitled and disgruntled.

You didn't have anything.

And so, you know, this notion that -- you take on a case -- I mean, the first clue is that you are the seventh lawyer. I can tell you, I'm a single woman. I don't date men who have six prior ex-wives, because the common element in all of them is that the relationship failed with them in it.

And so, you know, you have to ask yourself when you come on, if I'm attorney number seven, and these other attorneys who are in good standing with this Court; not pro hac like yourself, but honorable members before this Bar; not here on a favor, or on grace, you know, you have to ask yourself what is going on with the case where I'm number seven.

So, you know, that you didn't have that self-reflection -- so -- I'll let you continue uninterrupted, Professor Young. But I don't buy this, what you are selling me, that I was just giving Ms. Askew a heads-up because SMU might care what people think. Because nobody's reading this but you. And if you think this is some case that was going to get certed up for the Honorable Justice Sotomayor to chew on, I don't know what bone you think there is left. Because there was no evidence; there was -- discovery had closed a long time before you came. That is why you were filing motions to reconsider and trying to flex on her, because you had nothing.

And if you had had something, you may not have done

that. I don't know, maybe you flex when you have something. I don't know. But the -- but please do not try to sell me this. You know, I don't want to sound like Judge Judy, but you are peeing on my leg and telling me it is raining. So I'm not buying that. Move on.

MR. YOUNG: Okay. Your Honor, I would need to find it on the docket. I was unable to pull it up here, but I believe in the summary judgment filings that were struck, I did mention --

THE COURT: Okay. Well, you can stop right there, because they were struck. So I'm not relitigating stuff I've decided. You are going back over things in your filings, and we're going to move on. So --

MR. YOUNG: If --

THE COURT: -- no, no, no. Stop, stop, stop. You don't talk over me. That is one of -- you just -- you don't get it, Professor Young. You don't get it, Professor.

So anything new? And by new I mean not filed and ruled on, has no opinion that I've already written; you haven't already said today at the hearing; that's not in your response, new.

MR. YOUNG: In re- --

THE COURT: I'm going to give you one more shot at it, because we've been here a long time. It is 3 o'clock. And I've given you lots of time to show cause, not just

why, but it was given. So move on. What you got? One more shot.

MR. YOUNG: To Ms. Askew's suggestion to the Court that there should be monetary sanctions --

THE COURT: The Court is strongly considering that. The -- she had to respond to a lot. E-mails, threatening to sic a posse of unknown, unnamed -- I mean, I've got to tell you, it reminds me of my prosecution days where, if you testify as a witness, I'm going to send my gang of bandits and make them not testify. You were going to sic some law professors on her.

So go ahead, what you got to say to that?

MR. YOUNG: Under Rule 11, because this is a sua sponte sanction --

THE COURT: So it's -- all -- well, I guess -- I mean, I think you have -- I think you have filed paperwork regarding sanctions earlier.

MS. ASKEW: I did, but this is the Court's.

THE COURT: This is the Court's. This one is sua sponte.

But let me refresh your recollection so that you can include it in your answer.

This Court has made bad-faith findings before, and has earlier already determined the credibility of -- and so it's clear -- I think I made it explicit, but just so we're

all on the same page, your client has not been forthcoming with this Court, has flagrantly violated the Court's rules. And it was because of that, that evidence was not admissible.

And so she has not behaved credibly, ethically, appropriately; and has been vexatious in her litigation. You have supported it and conspired and done it yourself. I make that finding on the record. You acted in bad faith.

That e-mail was a threat. It was. You -- you don't have to agree with me. You probably won't. I don't expect you to. It would be against your interest to. But it was, and I make that finding.

I also find you not credible, Professor Young. That you come today with this song and dance about how "I was just trying to help somebody" is just ridiculousness. So if that is what you would like to float up to the Fifth Circuit, if that is your best argument for -- for why I shouldn't sanction you, then, Professor Young, that's what you got.

So I've given you ample time. I'm going to give you a minute or two to wrap up and say whatever it is you want to say, because I told you I'd give you a little air time. So say whatever you want to say and then we're going to close this hearing.

MR. YOUNG: Thank you, Your Honor, for that opportunity to speak.

THE COURT: You're welcome. And let it reflect I'm

going to let you speak without -- for a minute or two with no interruption. You just say whatever you think is appropriate at your show-cause hearing.

MR. YOUNG: Thank you, Your Honor.

THE COURT: You're welcome.

MR. YOUNG: I do not believe that there is reason to sanction me, for the reasons I already put on the record. Beyond that, I would say the following:

To the extent the Court wishes to issue monetary sanctions, and I can file a brief on this if desired, sua sponte Rule 11 sanctions cannot impose monetary penalties.

THE COURT: Okay. Well, we'll see -- I think we have more tools than that at our disposal. But you know what, that sounds like a great brief for the Court of Appeals. So, hey, maybe you can make some law on that.

MR. YOUNG: Yes. Yes, Your Honor.

In addition to that, Your Honor, I will point out --

THE COURT: And I will let you go uninterrupted. Go ahead.

MR. YOUNG: Thank you, Your Honor.

To the extent that the Court has found that certain discovery was actually produced, I'll point out, there is no evidence on the docket that it was, in fact, produced.

Ms. Askew referenced depositions that occurred

CERTIFICATE OF SERVICE

I certify that on May 2, 2023, I electronically filed the foregoing Record Excerpts of Plaintiff-Appellant Cheryl Butler using the Court's CM/ECF systems, which constitutes service under the Court's rules.

/s/ Ezra Young
Ezra Ishmael Young
LAW OFFICE OF EZRA YOUNG

Counsel for Professor Cheryl Butler