

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
DR. RACHEL TUDOR,	)	
	)	
Plaintiff/Intervenor,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF/INTERVENOR DR. RACHEL TUDOR’S  
REQUEST FOR CLARIFICATION OF THE  
AUGUST 31, 2017 TEMPORARY RESTRAINING ORDER**

Dr. Tudor respectfully requests that the Court clarify that the Temporary Restraining Order entered on August 31, 2017 (ECF No. 158) allows Tudor to address the substance of the compromise agreement recently struck between Defendants and the United States and allows her to attach the compromise agreement as an exhibit to her responsive briefing to Defendants’ motion for protective order (ECF Doc. 156). A change in

circumstance, fairness to Tudor, and the public's interest in access to pretrial motion papers and pertinent documents all weigh in favor of such an interpretation of the TRO.

***Change: Defendants have served Tudor with a copy of the compromise agreement.*** Late in the afternoon on August 31, 2017—after this Court entered the TRO—Defendants' counsel Jeb Joseph emailed Tudor's counsel Ezra Young an electronic copy of the executed compromise settlement agreement. Joseph sent the compromise agreement to Young without direct prompt from Tudor's private counsel and without first securing Tudor's agreement to keep the document or its terms confidential.<sup>1</sup>

***Fairness: Tudor needs to make reference to the compromise agreement in her responsive briefing to Defendants' motion for protective order.*** Defendants' motion seeks to restrain Tudor's public speech regarding this case until the resolution of her claims as well as effectively seeks to exclude the compromise agreement from evidence and otherwise seeks to restrain Tudor from posing questions to the jury which suggest any history of settlement efforts in this matter and the existence of the compromise agreement itself. In order to respond to Defendants' motion

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<sup>1</sup> *Contra* ECF No. 157 at 3 n.1 (representing to this Court that “Defendants have no objection to disclosing the Settlement Agreement to Plaintiff/Intervenor (Tudor), if Plaintiff/Intervenor will agree to maintain its confidentiality, and be bound by the confidentiality provisions set forth in the Settlement Agreement.”).

(Defs. Motion, ECF No. 156), Tudor must necessarily reference the terms and substance of the compromise agreement. Indeed, it is hard to imagine how risk of tainting the jury pool or any of the other issues raised by Defendants can be meaningfully assessed if the substance of Tudor's briefing is artificially restricted and the Court kept in the dark as to the contents of the compromise agreement.

It is only fair that the TRO be construed to allow Tudor to respond to Defendants' motion without undue restriction upon the publicly accessible docket of this Court. Defendants' motion for protective order is a matter of public record since Defendants did not file it under seal. Defendants' motion puts into issue the terms and substance of the compromise agreement and seeks expansive relief from the Court which, if granted, would severely impair Tudor's ability to zealously prosecute her case during dispositive motion practice and up through jury selection and trial. In light of Defendants' unilateral decision to disseminate the compromise agreement to Tudor without securing confidentiality as well as Tudor's representation to this Court that she will not make any statements to the media regarding the compromise agreement while the TRO is in effect, equities weigh in favor of allowing Tudor to engage in the motion practice described herein.

If Tudor takes such actions, it should not run afoul of this Court's TRO because Tudor only seeks to engage in motion practice before this Court on

Defendants' unsealed motion for protective order. Beyond engaging in motion practice of the ilk described herein, neither Tudor nor any of her attorneys, representatives, or agents will make any statements to the media regarding the compromise agreement or its terms while the TRO is in effect.

**Public Interest:** As per Defendants, there is a growing national interest in civil rights cases involving transgender Americans, and this case in particular is of public concern (ECF Doc. 156 at 6). The public's interest in access to pretrial motions and documents is strongly in favor of allowing Tudor to address the terms of the compromise agreement and file a copy of the settlement agreement as an exhibit to her response to Defendants' motion. *See, e.g., United States v. Erie County, N.Y.*, 763 F.3d 235, 239 (2d Cir. 2014) ("O]ur Constitution, and specifically the First Amendment to the Constitution, [...] protects the public's right to have access to judicial documents."); *Vasquez v. City of New York*, 2012 WL 4377774 at \* 3 (S.D.N.Y. Sep. 24, 2012) ("access to written documents filed in connection with pretrial motions is particularly important in the situation [...] where no hearing is held and the court's ruling is based solely on the motion papers.") (cleaned up); *Texas v. Wilde*, 2015 WL 858310, at \*10 (D. Md. 2015) (Denying defendants' motion to seal parties' settlement agreement with confidentiality provision attached to defendants' motion to dismiss, in breach of contract action, because there was inadequate justification to seal the document,

which was presumptively accessible to the public under the common law and the First Amendment).

Dated: September 5, 2017

/s/ Ezra Young  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2017, 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)