

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA,

Defendants.

**DEFENDANT'S REPLY TO PLAINTIFF AND
PLAINTIFF/INTERVENOR'S OPPOSITION TO
DEFENDANTS' MOTION FOR ENTRY OF PROTECTIVE ORDER**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), ("Defendants"), respectfully reply to Plaintiff United States of America ("USA") and Plaintiff/Intervenor, Dr. Rachel Tudor's ("Tudor") Opposition to Defendant's Motion for a Protective Order [Docs. 173 and 174]. In consideration hereof, Defendants submit the following:

I. CLARIFICATION OF RELIEF SOUGHT

USA and Tudor imply in their respective filings that Defendants' Motion for Protective Order is inconsistent with the proposed Order submitted to the Court regarding the relief sought for Defendants' Motion. USA, in their response, articulate Defendants' position which is to "[prohibit] dissemination of the agreement between Defendant and

USA until after Tudor and Defendants have gone to trial or otherwise resolved their claims.” [Pl. [Doc. 173 at p. 2] citing [Doc. 156 at 4]. Inexplicably, both USA and Tudor seem to be confused by the language in the Order which seeks to restrict the dissemination of the settlement agreement (“Agreement”) to “any third party.” To ensure that there is no inconsistency, and to alleviate the concerns of both USA and Tudor, Defendants clarify they are seeking only a **temporary restriction** of dissemination of the Agreement to anyone until the conclusion of trial, or resolution of the remaining claims with Tudor, whichever occurs first. Defendants are not seeking an unlimited sealing of the Agreement or its terms. Instead, Defendants only seek a limitation of the release of the Agreement and terms for what amounts to approximately eight (8) to ten (10) weeks. At the conclusion of the trial or a resolution of the claims between Defendants and Tudor, the Agreement can be disseminated in accordance with the law and terms of the Agreement.

USA’s main argument against the imposition of a Temporary Order is that such a restriction contravenes the policies of USA. Further, USA’s argument that a temporary seal of the agreement will “make it more difficult for its terms to be effectuated” lacks any kind of credibility. [Doc. 173 at p. 5]. Specifically, USA cites a provision in the agreement prohibiting “Defendants from retaliating against any person for his or her participation in this case.” *Id.* First, Title VII protects all individuals from this type of retaliation, regardless of any settlement provision. Second, the terms of the Agreement can, and likely will, be disclosed immediately upon the conclusion of the scheduled trial or resolution of claims between Defendants and Tudor. If any person believes he/she was retaliated against for his/her participation in this case, he will be fully informed of his rights in a timely

manner, and can seek justice in any manner appropriate by law. Plaintiff spends a significant amount of its response claiming Defendants fail to provide specificity to the potential effects of dissemination of the Agreement, yet Plaintiff fails to list even one potential example of why Defendants would retaliate against anyone for their participation in this case.

Defendants' request for a temporary restraining order for a limited time is reasonable and would not prejudice USA or Tudor if granted. Contrary to USA and Tudor's implications throughout their briefs, Defendants do not seek a permanent restriction of publication of the Agreement. Defendants' request is limited both temporally and substantively.

II. DEFENDANTS' DESIRE FOR A PROTECTIVE ORDER PROHIBITING DISCLOSURE OF THE AGREEMENT WERE ARTICULATED TO USA IN NEGOTIATION OF SETTLEMENT

USA's feigned shock over Defendants' request for a temporary restraining order for the Agreement is unfounded. Throughout the course of the lengthy settlement discussions between the parties, Defendants' desire for the inclusion of a short-term confidentiality clause was repeatedly made clear to USA and its counsel.

USA consistently rebuffed Defendants' request, relying upon its alleged policy of releasing settlement agreements to the public any time they were sought, for any reason. USA justified its position by claiming Defendants could simply seek a protective order to obtain the requested confidentiality.

Defendants' position was communicated clearly; if a confidentiality clause was not included in the Agreement, Defendants would seek relief from the Court to protect their

right to a fair trial with an unbiased jury. Notably absent from USA's response was how many cases they have settled without the inclusion of a confidentiality clause, which involved a Plaintiff/Intervenor or another third party continuing on to trial. Defendants are not attempting to bar dissemination of the Agreement indefinitely. Instead, Defendants seek only to bar the release until the conclusion of the matter presently before the Court, to prevent the potential spoliation of an otherwise, unbiased jury pool.

III. TUDOR'S CLAIM OF A WAIVER OF CONFIDENTIALITY IS WHOLLY DISINGENUOUS

Tudor argues that "for inexplicable reasons Defendants elected to serve the Agreement on Tudor without requesting or securing her promise to keep it confidential." [Doc. 174 at p. 3, fn. 2]. Once again, Tudor misleads the Court by claiming Defendants have waived confidentiality by providing Tudor with a copy of the agreement. Tudor omits that the Court had entered its Order granting Defendants' Motion for Temporary Restraining Order *prior* to Defendants production of the signed Agreement with USA to Tudor. [Doc. 158]. In fact, Defendants' counsel made that point clear in the email to Tudor's counsel with the agreement attached. (*August 31, 2017 email from Jeb Joseph to Ezra Young*, attached as Exhibit 1). In that communication, Defendants' counsel indicated, "[c]onsistent with the Court's Order today, this document should not be shared with anyone other than the named parties, and their counsel." *Id.* To further clarify that Tudor understood the confidentiality of the agreement, she indicated in her Motion to Reconsider Defendant's Temporary Restraining Order that "[l]ate 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. [Doc. 161]. Therefore,

Tudor was aware the Agreement was only being provided contingent upon the Court's Order barring its distribution to anybody else.

The purpose of providing a copy of the Agreement to Tudor was Defendants' sincere hope that it may facilitate the discussion being had by all parties that afternoon regarding the proposed stipulation of dismissal. *Id.* Unfortunately, providing the Agreement to Tudor not only failed to secure a stipulation of dismissal, but Defendants have never received any articulated reason for the withholding of Tudor's stipulation, beyond the attempted coercion by Tudor's counsel to try and secure assurances having nothing to do with the Agreement or the stipulation.

Tudor knew the sole reason Defendants provided her with a copy of the Agreement, and now Tudor seeks to expand that release for impermissible reasons.

IV. TUDOR'S REASON FOR WANTING THE RELEASE OF THE AGREEMENT IS IMPROPER

Tudor's argument for the release of the Agreement has been made abundantly clear by her Motion to Reconsider Defendants' Temporary Restraining Order. [Doc. 161]. Tudor seeks to publish the Agreement into evidence, question the Jury using the Agreement and its terms, and to attach it to motions filed with this Court. Tudor is seeking an opportunity to introduce the Agreement to the public domain to publicize it as a matter of public record prior to the conclusion of this trial.

In Tudor's response to Defendant's Motion for a Protective Order, she now states that this Agreement is necessary to prove her claim of hostile work environment and to show that Defendants' policies were deficient *prior* to this agreement. As stated in her brief, Federal Rule of Evidence 407 "generally prohibits introduction of evidence of subsequent

remedial measures where they are introduced to prove negligence or culpable conduct.” [Doc. 174 at p. 14] citing Fed. R Evid. 407. Interestingly, Tudor fails to disclose to the Court that Defendants’ policies had changed long before the present lawsuit was filed and are constantly being changed and altered in an attempt to not only be compliant with the requirements of Title VII, but also to be proactive in that endeavor.

Therefore, the reasons for Tudor’s desire to circumvent the Protective Order are clear – to publicize the case for personal gain, and to try, through voir dire and direct testimony, to suggest that Defendants’ settlement terms are evidence of illegal activity. This is wholly improper and should not be allowed.

CONCLUSION

WHEREFORE, Defendants respectfully request that the Court grant Defendants’ Motion for Protective Order.

Respectfully submitted,

/s/ Timothy M. Bunson

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Attorneys for Defendants Southeastern Oklahoma

State University and The Regional University

System of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to this Court's Order dated September 27, 2017, I served this document on counsel for Plaintiff and Plaintiff/Intervenor only, via Federal Express Overnight Delivery and electronic mail, on September 27, 2017:

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From: [Jeb Joseph](#)
To: [Ezra Young](#); ezraiyoung@gmail.com
Cc: [Tim Bunson](#); [Kindanne Jones](#); [Dixie Coffey](#); [Lori Cornell](#)
Subject: Tudor - confidential / subject to temporary injunction and not for release
Date: Thursday, August 31, 2017 2:49:09 PM
Attachments: [2017-08-30 - Fully Executed Settlement Agrmnt.pdf](#)

Dear Counsel,

Attached please find a copy of the settlement agreement between the Plaintiff, United States of America, and the Defendants, signed by all parties. Consistent with the Court's Order today, this document should not be shared with anyone other than the named parties, and their counsel. But, we wanted you to have it in case it might facilitate our discussion today regarding stipulation of dismissal.

Thank you,
Jeb

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