

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA,

Defendants.

Case No. 15-cv-324-C

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S TRIAL EXHIBITS

Pursuant to LCvR 39.4(a), Defendants respectfully move this Court for an order striking Plaintiff's trial exhibits for the reasons set forth below.

FACTUAL BASIS

1. On October 9, 2017 the undersigned's office contacted Plaintiff's counsel to begin the process of working on trial exhibits by identifying those exhibit the parties could agree to, as well as streamline exhibits for the Court.
2. The parties have exchanged marked digital copies of exhibits.
3. However, Plaintiff's digital trial exhibits that were provided on October 30, 2017 were discovery documents that were not marked and identified properly for trial, which Plaintiff's counsel had agreed to do, and is required by the Local Rules.

4. At the conclusion of Docket Call on November 1, 2017 Defendant provided Plaintiff the marked and bound copies of Defendants' trial exhibits, as required by the Local Rules.

5. On November 7, 2017 the undersigned's office emailed Plaintiff's counsel to find out when we would receive Plaintiff's properly marked trial exhibits in notebooks. *See Email dated November 7, 2017*, attached as Exhibit 1.

6. On November 9, 2017 Defendants' counsel received three (3) boxes, containing fourteen (14) notebooks of exhibits from Plaintiff's counsel. Upon review of Plaintiff's exhibits it was discovered Plaintiff's counsel did not properly mark and identify their exhibits in compliance with LCvR 39.4(a). None of the Plaintiff's exhibits contain the proper "marked" identification, which shall include the case number" AAG Bunson quickly advised Plaintiff's counsel again of the local rule requiring the parties to mark and exchange exhibits and requested when Plaintiff would be providing Defendants with them. *See Email between AAG Bunson and E. Young dated November 9, 2017*, attached as Exhibit 2.

7. It is now the eve of trial and Plaintiff's has willfully and intentionally refused to provide Defendants with properly marked and identified exhibits.

8. Pursuant to Fed. R. Civ. P. 16(f)(1)(C), the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney fails to obey a scheduling or other pretrial order.

For the above stated reasons, Defendants request the Court strike Plaintiff's exhibits for failure to comply with LCvR 39.4(a).

Respectfully submitted,

/s/ Dixie L. Coffey

DIXIE L. COFFEY, OBA #11876

JEB E. JOSEPH, OBA #19137

KINDANNE JONES, OBA #11374

TIMOTHY M. BUNSON, OBA#31004

Assistant Attorneys General Oklahoma

Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

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Email: dixie.coffey@oag.ok.gov

Email: jeb.joseph@oag.ok.gov

Email: kindanne.jones@oag.ok.gov

Email: tim.bunson@oag.ok.gov

Attorneys for Defendants Southeastern Oklahoma

State University and The Regional University

System of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November 2017, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Ezra Young
Law Office of Ezra Young
30 Devoe, 1a
Brooklyn, NY 11211-6997
Email: ezraiyong@gmail.com
Attorney for Plaintiff

Brittany Novotny
NATIONAL LITIGATION LAW GROUP, PLLC
42 Shepherd Center
2401 NW 23rd Street
Oklahoma City, OK 73107
Email: bnovotny@nationlit.com
Attorney for Plaintiff

Marie E. Galindo
1500 Broadway, Ste. 1120
Lubbock, TX 79401
Email: megalindo@thegalindolawfirm.com
Attorney for Plaintiff

/s/Dixie L. Coffey

Dixie L. Coffey

From: Lori Cornell
To: "Ezra Young"
Cc: [Brittany Novotny](mailto:Brittany.Novotny@thegalindolawfirm.com); megalindo@thegalindolawfirm.com; [Dixie Coffey](mailto:Dixie.Coffey@oag.ok.gov); [Jeb Joseph \(Jeb.Joseph@oag.ok.gov\)](mailto:Jeb.Joseph@oag.ok.gov); [Tim Bunson](mailto:Tim.Bunson@oag.ok.gov); [Kindanne Jones](mailto:Kindanne.Jones@oag.ok.gov)
Subject: RE: Tudor - Defendants' Exhibits
Date: Tuesday, November 07, 2017 7:30:00 PM
Attachments: [image001.png](#)

Ezra:

I am waiting to answer your questions regarding Defendants' trial exhibits until our team has streamlined them to prevent any confusion.

Also, as trial starts on Monday and we have yet to receive Plaintiff's notebook(s) of trial exhibits, which is required by the local rules, will you be providing these tomorrow morning at jury selection?

If not, we would insist that Plaintiff's trial exhibits be provided in notebook(s) prior to close of business on Thursday, Nov. 9, 2017. Of course, should settlement be reached tomorrow, the issue is moot.

Please advise.

Best,

Lori Cornell

Office of the Attorney General
Paralegal
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105
Telephone: 405.521.3921
Direct: 405.522.2906
Facsimile: 405.521.4518



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Save a tree. Don't print this e-mail unless it's really necessary.

From: Ezra Young [mailto:ezra@ezrayoung.com]
Sent: Friday, November 03, 2017 9:08 AM
To: Lori Cornell <lori.cornell@oag.ok.gov>
Cc: Dixie Coffey <dixie.coffey@oag.ok.gov>; Jeb Joseph <jeb.joseph@oag.ok.gov>; Tim Bunson <tim.bunson@oag.ok.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>; Brittany Novotny <BNovotny@nationlit.com>; megalindo@thegalindolawfirm.com
Subject: Re: Tudor - Defendants' Exhibits
Importance: High

Lori,

I hope you are well. Can you let me know if you have made any progress on the questions I posed below.

Additionally—based on Judge Cauthron’s instructions during the hearing on Wednesday—Tudor is reviewing her exhibits to see if any can be culled. I hope to have a slightly shorter list for you by early Monday. Can you let me know if Defendants anticipate the same? To make things a bit easier, I’m happy to run a USB drive with the culled exhibits and a redlined exhibit list over to your offices on Monday (wasting postage on mailing seems a bit silly since I will be in OKC). If for whatever reason you would prefer a direct file transfer, I’m happy to do that. Just let me know what you IT folks think will work best on your end.

Best,

Ezra

Ezra Young, Esq.
Law Office of Ezra Young
30 Devoe Street #1A
Brooklyn, NY 11211
Cell: 949-291-3185
Fax: 917-398-1849
Email: ezra@ezrayoung.com
Web: ezrayoung.com

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On Nov 1, 2017, at 12:46 AM, Ezra Young <ezra@ezrayoung.com> wrote:

Exhibit 1

Lori,

I hope you are well.

I'm writing to follow up with you on Defendants' exhibits. I would appreciate a response by close of business on 11/2/17.

Can you please provide me with an electronic copy—emailing the exhibits directly to me is fine—of:

- **Redlined or otherwise marked revised exhibit list.** I believe that we agreed to exchange lists that indicated what changes were made. Can you please provide me with a list that indicates which changes were made. The revised list that you gave me appears to have changes (for example, a handful of exhibits were withdrawn). However, it's unclear to me if other changes were made. I'd appreciate a redlined or otherwise marked list so that Tudor can narrow or remove any objections that are moot due to revisions from Defendants.
- **Exhibit 20:** I've checked the CDs and emails and do not see a copy of this exhibit. Can you please send me this exhibit.
- **Exhibit 203:** I've checked the CDs and emails and do not see a copy of this exhibit. Can you please send me this exhibit.

Also I have questions about the following:

- **Exhibit 93:** On your revised list it indicates Defendants withdrew this exhibit, but you provided an exhibit marked as 93 on the cd. Did Defendants intend to withdraw Exhibit 93?
- **Exhibit 133:**
 - Are Defendants intending to supplement discovery after the close of discovery? It appears these documents were not previously produced. Indeed, several are dated after the close of discovery. If you are supplementing discovery, can you please provide an explanation as to why this supplementation is being made now.
 - The last page (PDF page 27) is not readable. It appears that there is handwriting but it did not scan properly. Can you please send me a revised version of PDF page 27.
- **Exhibits 188, 189, 190, 191, 192, 193, 194, 195, and 196.**
 - The above noted exhibits are all listed on Defendants' list as both "audio and transcript" of various interviews. To my knowledge, the United States produced just audio of these interviews in discovery but did not produce transcripts. To my knowledge, Defendants did not produce transcripts of these interviews in the course of discovery. Is it Defendants' intention to supplement discovery out of time? Additionally, can you enlighten me as to why Defendants did not serve these transcripts prior to the eve of trial? Lastly, do Defendants have any certification from the transcriber(s) as to the accuracy of these transcripts?

As I noted previously, if you notice any additional issues with Tudor's exhibits, please do bring them to my attention. I hope we are close to done with these.

Lastly, I wanted to express my sincere thanks for your diligence on the exhibits and your continued collegiality.

Best,

Ezra

Ezra Young, Esq.
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Cell: 949-291-3185
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On Oct 28, 2017, at 10:33 AM, Ezra Young
<ezra.i.young@gmail.com> wrote:

Lori,

Confirming receipt. Thanks.

Best,

Ezra

Sent from my iPhone

On Oct 28, 2017, at 11:00 AM, Lori Cornell <lori.cornell@oag.ok.gov> wrote:

<image001.gif>

Ezra:

I have attached a revised copy of Defendants' Exs. 133, 163, 165 and 207, as I noticed while making notebooks I had failed to include all documents (133), misnumbered (163 and 165), and forgot to redact the MSJ exhibit number (207) them. Additionally, I have attached Defendants' revised (corrected) exhibit list, it was not included on the disc provided to you or Brittany.

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Direct: 405.522.2906
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<image003.png>

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<Ex 207 - Excerpts frm SEOSU Rsp to EEOC Requ for Info.pdf>

<Ex 133 - Docs Rcv'd frm Schools Intervenor Applied to.pdf>

<Ex 163 - Knapp - EEOC Handwritten Notes.pdf>

<Ex 165 - EEOC Typed Questions for DMcMillan.pdf>

<!Defendants' Revised Exhibit List.pdf>

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To: "Ezra Young"
Cc: [Brittany Novotny](mailto:Brittany.Novotny@megalingolawfirm.com); megalindo@thegalindolawfirm.com; [Dixie Coffey](mailto:Dixie.Coffey); [Jeb Joseph \(Jeb.Joseph@oag.ok.gov\)](mailto:Jeb.Joseph@oag.ok.gov); [Tim Bunson](mailto:Tim.Bunson); [Kindanne Jones](mailto:Kindanne.Jones)
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<image003.png>

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<Ex 163 - Knapp - EEOC Handwritten Notes.pdf>

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<!Defendants' Revised Exhibit List.pdf>

Exhibit 1

From: [Tim Bunson](#)
To: [Ezra Young](#)
Cc: [Dixie Coffey](#); [Jeb Joseph](#); [Kindanne Jones](#); [Brittany Novotny](#); megalindo@thegalindolawfirm.com; [Lori Cornell](#)
Subject: RE: Tudor - Defendants' Exhibits
Date: Thursday, November 09, 2017 11:29:05 AM

Ezra:

I see no reason to discuss the matter any further.

Sincerely,

Tim

From: Ezra Young [mailto:ezra@ezrayoung.com]
Sent: Thursday, November 09, 2017 11:22 AM
To: Tim Bunson <tim.bunson@oag.ok.gov>
Cc: [Dixie Coffey](mailto:dixie.coffey@oag.ok.gov) <dixie.coffey@oag.ok.gov>; [Jeb Joseph](mailto:jeb.joseph@oag.ok.gov) <jeb.joseph@oag.ok.gov>; [Kindanne Jones](mailto:kindanne.jones@oag.ok.gov) <kindanne.jones@oag.ok.gov>; [Brittany Novotny](mailto:Brittany.Novotny@nationlit.com) <Brittany.Novotny@nationlit.com>; megalindo@thegalindolawfirm.com; [Lori Cornell](mailto:Lori.Cornell@oag.ok.gov) <Lori.Cornell@oag.ok.gov>
Subject: Re: Tudor - Defendants' Exhibits

Tim,

Defendants have, to date, not provided us with all their exhibits—despite repeated requests, and have repeatedly refused to answer good faith questions about other irregularities. To make things easier long ago, we agreed to lists and then digital copies. At some point, Defendants started insisting physical pre-marked notebooks be provided. I'm frankly unclear why you insist that's necessary at this point.

In contrast, Dr. Tudor has, in good faith, provided you with clean exhibit lists, promptly made corrections where errors were discovered, provided you with mutual options to access electronic copies (including a physical device with electronic copies on it), and now printed binders with exhibits which you claim are deficient only because they don't have the case number marked on them. A reasonable response would be to politely alert me to the issue you see and to quickly work to resolve it to save counsel, the Court, and the taxpayers of Oklahoma money on resolving the issue. Honestly, if the only thing your clients have going for them is that the exhibits don't have the Case number marked on them, I guess you have to run with it.

To the extent it is helpful: I'm very sorry the printer left off the Case number. You are a bit new to this case, but the rest of us have been on it for awhile.

Feel free to attach this email as an exhibit to your motion.

Best,

Ezra

From: [Tim Bunson](mailto:Tim.Bunson)
To: [Ezra Young](mailto:Ezra.Young)
Cc: [Dixie Coffey](mailto:Dixie.Coffey); [Jeb Joseph](mailto:Jeb.Joseph); [Kindanne Jones](mailto:Kindanne.Jones); [Brittany Novotny](mailto:Brittany.Novotny); megalindo@thegalindolawfirm.com; [Lori Cornell](mailto:Lori.Cornell)
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To the extent it is helpful: I'm very sorry the printer left off the Case number. You are a bit new to this case, but the rest of us have been on it for awhile.

Feel free to attach this email as an exhibit to your motion.

Best,

Ezra

Exhibit 2

Sent from my iPhone

On Nov 9, 2017, at 11:04 AM, Tim Bunson <tim.bunson@oag.ok.gov> wrote:

Ezra:

You have Defendants' position below that you are not in compliance with the local rule. Defendants are also of the opinion that you have grossly mischaracterized the agreement we had regarding exhibits and have acted in bad faith throughout the discussions to date. As it is clear that you are choosing not to provide properly marked exhibits in compliance with the local rules and per our agreement because of an alleged "glitch with your printer," we will seek our redress with the Court and thank you for your timely response.

As to your questions regarding Defendants exhibits and your erroneous assessment that Defendants "have repeatedly violated the local rule and are out of compliance with its letter and spirit," Defendants do not agree with your position or your statement. Further email regarding your questions will be addressed in a follow-up email.

Sincerely,

Tim

From: Ezra Young [<mailto:ezra@ezrayoung.com>]

Sent: Thursday, November 09, 2017 10:49 AM

To: Tim Bunson <tim.bunson@oag.ok.gov>

Cc: Dixie Coffey <dixie.coffey@oag.ok.gov>; Jeb Joseph <jeb.joseph@oag.ok.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>; Brittany Novotny <BNovotny@nationlit.com>; megalindo@thegalindolawfirm.com; Lori Cornell <lori.cornell@oag.ok.gov>

Subject: Re: Tudor - Defendants' Exhibits

Tim,

It was nice seeing you early this morning.

I'm sorry there appears to have been a glitch with our printer. My understanding, though is that you are in possession of physical copies of all of Dr. Tudor's exhibits—on top of the electronic copies, which we both exchanged, weeks ago, with the understanding, that that is how we would satisfy the local rule. Now that you have brought this to my attention, I will most certainly make sure that exhibits introduced at trial and copies given to the court bear the case number on each and every page.

Point of clarification: Are Defendants insisting that we reprint 14 3-inch binders worth of documents in a bit more than an hour solely so that you can have copies

Exhibit 2

that identify the case number on each page? If so, please put that in writing and do explain how you are prejudiced by this inadvertent error.

Additionally, it would be helpful if Defendants would kindly provide Dr. Tudor with either digital or hard copies of Defendants missing exhibits—Defendants, as you know, have repeatedly violated the local rule and are out of compliance with its letter and spirit. We are still missing any copies of Exhibits 23 and 203 (I assume you are not using these at trial, and we will object to you attempting to introduce them at trial).

Also, I have questions remaining regarding the following exhibits:

- * Exhibit 93: On your revised list it indicates Defendants withdrew this exhibit, but you provided an exhibit marked as 93 on the cd. Did Defendants intend to withdraw Exhibit 93?

- * Exhibit 133:

- * Are Defendants intending to supplement discovery after the close of discovery? It appears these documents were not previously produced. Indeed, several are dated after the close of discovery. If you are supplementing discovery, can you please provide an explanation as to why this supplementation is being made now.

- * The last page (PDF page 27) is not readable. It appears that there is handwriting but it did not scan properly. Can you please send me a revised version of PDF page 27.

- * Exhibits 188, 189, 190, 191, 192, 193, 194, 195, and 196.

- * The above noted exhibits are all listed on Defendants' list as both "audio and transcript" of various interviews. To my knowledge, the United States produced just audio of these interviews in discovery but did not produce transcripts. To my knowledge, Defendants did not produce transcripts of these interviews in the course of discovery. Is it Defendants' intention to supplement discovery out of time? Additionally, can you enlighten me as to why Defendants did not serve these transcripts prior to the eve of trial? Lastly, do Defendants have any certification from the transcriber(s) as to the accuracy of these transcripts?

Please let me know as soon as possible about the above.

Best,

Ezra

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On Nov 9, 2017, at 10:34 AM, Tim Bunson
<tim.bunson@oag.ok.gov> wrote:

Ezra:

After reviewing the exhibits you delivered this morning, it is clear that the exhibits do not comport with the local rules. For your reference and edification the rule Defendants site is the following:

LCvR39.4(a)

Marking and Disclosure. Unless otherwise ordered, all exhibits and documents which are to be introduced in evidence are to be marked for identification introduced in evidence are to be marked for identification, which shall include the case number, and physically exchanged or exhibited to opposing counsel at least 3 business days before submission of the pretrial report.

Your exhibits are simply notebooks with tabs in them which are insufficient to satisfy the rule. Furthermore, Defendants have extended to you more than enough time to comply with the rule and deliver a proper set of exhibits. At this point, it is clear that Plaintiff is not acting in good faith with the agreement we had regarding exhibits. In fact, Defendants supplied Plaintiff with properly marked exhibits on November 1, 2017 following the docket call as per our agreement. As such, Defendants demand a properly marked set of Plaintiff's exhibits no later than 12 p.m. Central time. If Plaintiff is incapable of complying with this request, we will have no other option than to inform the Court of Plaintiff's failure and seek whatever recourse the Court deems appropriate.

Sincerely,

Tim Bunson
Assistant Attorney General
Office of the Attorney General
Litigation Unit

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Oklahoma City, Oklahoma 73105
Telephone: 405-522-2925

<image001.gif>

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