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EXHIBIT 6

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ARDELI BEAULIEU,
Plaintiff,

v. Case No. 3:07cv30/RV/EMT

THE BOARD OF TRUSTEE OF THE
UNIVERSITY OF WEST FLORIDA,
Defendant.
_______________________________/

ORDER

This cause is before the court upon Plaintiff's Motion to Compel Defendant to Designate a Rule 30(b)(6) Witness to Testify on its Behalf Upon Oral Examination and Request for Miscellaneous Relief, and documents in support (Docs. 57–59), and Defendant's response thereto (Doc. 61). Plaintiff has also filed a Motion for Discovery Continuance and Miscellaneous Relief, and documents in support (Docs. 62–63).[1]

I. BACKGROUND

Plaintiff, proceeding pro se, initiated this action by filing a three-count complaint against Defendant alleging: (1) employment discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2006); (2) libel, slander, and defamation regarding a job performance evaluation authored by Defendant's employees; and (3) libel, slander, and defamation regarding Defendant's responses to the Equal Employment Opportunity Commission's ("EEOC") investigation of Plaintiff's EEOC claim of employment discrimination (*see* Doc. 1 at

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[1]To the extent Plaintiff seeks an extension of the discovery deadline, her motion shall be granted and the discovery deadline shall be extended to October 31, 2007. To the extent Plaintiff seeks "relief" for Defendant's production of certain documents beyond the thirty (30) days allowed for it to respond to requests for production, her motion shall be denied. Plaintiff clearly states that Defendant produced, albeit beyond the deadline, the documents she requested, and the court concludes that no "relief" is appropriate or warranted (*see* Doc. 62 at 7, ¶¶ 20–21).

4–5). For relief, Plaintiff demands compensatory damages, punitive damages, and injunctive relief (*see id.* at 6). Defendant moved to dismiss Counts II and III of the complaint on the basis of sovereign immunity (*see* Doc. 7), and on August 24, 2007, the undersigned recommended that Defendant's motion to dismiss Counts II and III be granted (*see* Doc. 49). Defendant also moved to dismiss Plaintiff's demand for punitive damages (*see* Doc. 7), and the undersigned recommended that Defendant's motion to dismiss Plaintiff's demand for punitive damages be granted (*see* Doc. 49). On October 2, 2007, the district court adopted this court's recommendation in part and dismissed Counts II and III of Plaintiff's complaint on the basis of Eleventh Amendment immunity (*see* Doc. 64 at 1–2). The district court also granted Defendant's motion to dismiss Plaintiff's demand for punitive damages (*see id.*). Finally, the district court ordered that Plaintiff's allegation of retaliation in line twelve (12) of Count I of the complaint be stricken and that Plaintiff's request for an injunction "preventing hiring of culpable employees" be stricken (*see id.*).

II. DISCUSSION

In the instant motion, Plaintiff seeks an order of the court compelling Defendant to designate a representative to testify on its behalf under Rule 30(b)(6) of the Federal Rules of Civil Procedure (*see* Doc. 57 at 1–6). Plaintiff also requests that the court reconsider its order of July 18, 2007 (Doc. 23 at 14–15) directing Plaintiff to serve all future discovery requests (e.g., notices of deposition, requests for production, interrogatories, or requests for admission) relating to Defendant's employees (or former or current University of West Florida ("UWF") employees) on Defendant's counsel (*see id.* at 6–8).[2] In response, Defendant argues that Plaintiff's motion to compel a Rule 30(b)(6) witness "lacks legal support" because Plaintiff has not described "with reasonable particularity the matters on which examination is requested" (Doc. 61 at 6 (emphasis removed)). Defendant also argues that Plaintiff never submitted a notice of deposition under Rule 30(b)(6), but admits that Plaintiff "has corresponded with defense counsel to try to set up a deposition" under

[2]Plaintiff also requests that the court "carefully evaluate and review Plaintiff's [correspondence with Defendant on September 11, 2007] to determine whether Plaintiff should be allowed appropriate relief under the Federal Rules of Civil Procedure for any or all [d]iscovery requested" (Doc. 57 at 9). The court will not parse a six-paged, single-spaced letter from Plaintiff to Defendant to ferret out discovery issues not specifically identified by Plaintiff in the instant motion. Thus, to the extent Plaintiff requests that the court rule on any discovery issues presented in her September 11, 2007 letter to Defendant's counsel, except as otherwise specifically discussed below, her motion shall be denied.

Rule 30(b)(6) for nearly six weeks (*id.* at 1, 2). Next, Defendant argues that there is no need for the court to reconsider its order of July 18, 2007, because Plaintiff has been able to obtain discovery from former or current UWF employees by depositions, document requests, and requests for admission without interference from Defendant's counsel (*see id.* at 7–8). Furthermore, Defendant states that Plaintiff's request to directly contact former or current UWF employees to conduct discovery will result in a "fishing expedition" seeking information that would be irrelevant to the instant case (*see id.* at 8–9). The court will address each issue in turn.

A. Rule 30(b)(6) Deposition of Defendant UWF Board of Trustees

Plaintiff seeks an order compelling Defendant to designate a Rule 30(b)(6) representative to testify on its behalf (Doc. 57 at 1, 9). Plaintiff argues that she "served her first request for a Rule 30(b)(6) witness deposition on July 27, 2007 . . . [with] [a]dditional requests, similar in context . . . on 8/6/2007; 8/15/2007; 8/24/2007; 8/27/2007; 9/5/2007; [and] 9/11/2007 without remedy" (*id.* at 2). Plaintiff's exhibits show that her "request(s) for a Rule 30(b)(6) witness deposition" consisted entirely of letters sent to Defendant's attorney concerning, among a myriad of other discovery issues, a Rule 30(b)(6) deposition of Defendant UWF Board of Trustees (*see, e.g.*, Doc. 58, Ex. A at 4, ¶ 12 (Plaintiff's request of September 11, 2007 for a Rule 30(b)(6) deposition); *id.*, Ex. E at 1 (Defendant's response to Plaintiff's request of September 11, 2007); *id.*, Ex. D at 1–2 (Defendant's response to Plaintiff's request of September 5, 2007); *id.*, Ex. C at 2, ¶ 5 (Defendant's response to Plaintiff's request of August 24, 2007); *id.*, Ex. B at 1–2, ¶ 5 (Defendant's response to Plaintiff's request of August 8, 2007 for a Rule 30(b)(6) deposition)).[3] In response, Defendant first argues that

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[3]The court notes that Defendant does not dispute that Plaintiff requested that it designate a Rule 30(b)(6) witness for deposition by letter dated July 27, 2007 (Doc. 61 at 2). Further, Defendant alleges that Plaintiff's multiple requests for a Rule 30(b)(6) deposition culminated in Plaintiff's September 11, 2007 request (*see id.* at 2–5; *see also* Doc. 58, Ex. E at 1–2 (Defendant's letter to Plaintiff explaining that her letter of September 11, 2007 "merely restate[s] [her] prior positions or requests without further explanations")). In relevant part, Plaintiff's letter of September 11, 2007 provided as follows.

> Under Rule 30(b)(6), Plaintiff requires that the defendant Board of Trustees of [UWF] designate a person, as required under Rule 30(b)(6) to testify. The deponent must be able to testify fully and completely about all specific facts and details concerning any matter within the following documents to the best of their knowledge: (1) the May 19, 2006 Instructor Evaluation (2 pages); (2) the Interim Faculty Evaluation on Plaintiff for spring term 2006 (two (2) pages); (3) the End-of-Term Faculty Evaluation [of] Plaintiff for spring term 2006 (two (2) pages) (4) Plaintiff's July 3, 2006 response to the May 19, 2006 Instructor Evaluation (approx. seven (7) pages); (5) Plaintiff's attempt to file grievance [sic] with UWF Human Resources (one (1) page); (6) Ms. Moore's May 8, 2006

"Plaintiff has never submitted a notice of deposition" for the Rule 30(b)(6) deposition that is the subject of the instant motion to compel (Doc. 61 at 1), but Defendant also states that "Plaintiff initially sought a 30(b)(6) witness by letter dated July 27, 2007" (*id.* at 2) and admits in a letter to Plaintiff concerning the Rule 30(b)(6) deposition that "[i]t is clear that you desire a witness for deposition under Rule 30(b)(6), and we sincerely wish to cooperate" (Doc. 58, Ex. D at 1–2).[4]

> Letter to Plaintiff (one (1) page); (7) UWF's October 2006 response to the EEOC on Plaintiff (Pages 1 thru [sic] 19 of 19); (8) UWF amendment(s) to UWF's October 2006 response to the EEOC on Plaintiff, if any (unknown number of pages); (9) UWF's response to the EEOC on Plaintiff's amended complaint, if any (unknown number of pages) (10) Plaintiff's 18-page PRO SE complaint filed in United States District Court Northern Florida Pensacola Division[;] [and] (11) Transcript of Ms. Faria's Investigative Interviews of Dr. Metcalf-Turner, Ms. Moore, and Ms. Cara Zimmer[] (First Request for Production of Documents Pages 144–170). The preceding eleven (11) documents are hereby identified with reasonable particularity as the matters on which oral examination of the witness is requested. Defendant's counsel has a busy schedule, so please select three (3) or more dates on which you are available for the Rule 30(b)(6) deposition. Once you provide me with three (3) or more dates, under the Rules, on which you are available, I will immediately select a date for the Rule 30(b)(6) deposition from the dates you offer. I will immediately notify Defendant's counsel of the date, time and location of the deposition via written notice. Plaintiff will schedule the deposition at the offices of Hitchcock & Associates, Inc.; 111 South Baylen Street, P.O. Box 13253; Pensacola, FL 32591-3253. Please schedule this deposition immediately in order for it to be completed before the end of discovery. Plaintiff first requested a Rule 30(b)(6) deposition over one month ago. Please advise Plaintiff if she needs to subpoena [Defendant's employee], via Defendant's counsel, for a Rule 30(b)(6) deposition as allowed under the Rules or whether a Defendant employee will volunteer as you have suggested in the past. . . . (Plaintiff has previously requested this deposition on: 7/27/2007; 8/6/2007 and 8/15/2007; 8/24/2007; 8/27/2007; 9/5/2007).

(Doc. 58, Ex. A at 4, ¶ 12 (modifications added)).

[4]In particular, the court notes that Defendant's counsel corresponded extensively with Plaintiff concerning a Rule 30(b)(6) witness. For example, in his letter of August 10, 2007, Defendant's counsel specifically addressed Plaintiff's request for a Rule 30(b)(6) deposition (*see* Doc. 58, Ex. B at 1–2, ¶ 5). In relevant part, Defendant's counsel wrote:

> Deposition of 30(b)(6) witness. Please clarify the subjects you set forth in your letter for the witness to prepare for testimony. For example, what aspects of the May 19, evaluation will be the subject of inquiry? This is unclear, because the supervisor who wrote the evaluation has already been deposed (Ms. Moore). Thus, we have no information regarding the topics you would require. Similarly, the EEOC response has already been the subject of inquiry in Ms. Faria's deposition, and Ms. Faria signed the EEOC response. The same comments relating to Ms. Faria apply to your requests labeled as [(7), (8), and (9)]. Your request labeled ([10]), which simply relates to your 18-page Complaint, is particularly vague, and we require specified issues for the witness.

(*id.* (numerical labeling modified to match September 11, 2007 request)). In a subsequent letter on August 27, 2007, Defendant's counsel again informed Plaintiff that Defendant did not understand the matters that she had enumerated as the subjects of her Rule 30(b)(6) request (*see* Doc. 58, Ex. C at 2, ¶ 5). Defendant's counsel wrote:

> Deposition of 30(b)(6) witness. Please refer to our prior correspondence. We still do not understand what you wish to ask about these various documents. Your request is particularly confusing, for example, because you are asking about the May 19, 2006 evaluation, written by Ms. Moore. You have already deposed Ms. Moore. Thus, you must not be seeking to inquire about the content of the

Second, Defendant argues that Plaintiff's requests for a Rule 30(b)(6) deposition were confusing and unclear because the subjects enumerated by Plaintiff were previously the subject of other depositions or other discovery (*see* Doc. 61 at 2–5). Therefore, because Plaintiff's Rule 30(b)(6) request did not describe "with reasonable particularity the matters on which examination is requested," Defendant argues that Plaintiff is not entitled to an order compelling it to designate a Rule 30(b)(6) witness for deposition by Plaintiff (*see id.* at 6). In particular, Defendant argues that Plaintiff's apparent "request regarding a witness to testify regarding her [c]omplaint[] could not be more overbroad" (*id.* at 7).

Rule 37(a)(2)(B) of the Federal Rules of Civil Procedure Provides that if "a corporation or other entity [(hereinafter "organization")] fails to make a designation under Rule 30(b)(6) . . . the discovering party may move for an order compelling . . . a designation . . . ." Rule 30(b)(6) of the Federal Rules of Civil Procedure provides:

> A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

> evaluation. The same is true regarding the EEOC response, written by Ms. Faria, whom you deposed. Thus, you are requesting a person to testify relating to documents that have already been covered with the drafters. . . .
>
> The only matter that we can reasonably conclude from your varied requests, is that you wish to depose a person as a records custodian. If you do not provide more information, we will assume that this is your request, and we will provide a records custodian.

(*id.*). In his next letter to Plaintiff on September 5, 2007, Defendant's counsel stated:

> It is clear that you desire a witness for deposition under Rule 30(b)(6), and we sincerely wish to cooperate. Nevertheless, we are concerned that you continue to avoid responding to our requests for the specific information sought. We will not repeat our various requests again here. We will simply ask you to please provide the necessary information detailed in prior letters to you.

(*id.*, Ex. D at 1–2). By her letter of September 11, 2007, Plaintiff rejected Defendant's offer to provide a records custodian (who apparently would have provided testimony concerning Defendant's handling of the records Plaintiff enumerated in her Rule 30(b)(6) request) (*see id.*, Ex. A at 4, ¶ 12).

"Rule 30(b)(6) should not be read to confer some special privilege on a corporate deponent responding to this type of notice." King v. Pratt & Whitney, a Div. of U. Techs. Corp., 161 F.R.D. 475, 476 (S.D. Fla. 1995). The procedure outlined in Rule 30(b)(6) should also be distinguished from the situation where a party wants to take the deposition of a specific individual associated with an organization. *See* WRIGHT, MILLER & MARCUS, 8A FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2103 at 32 (2d ed.1994). The person responding to a Rule 30(b)(6) deposition must testify on behalf of the organization (i.e., corporation, partnership, association, or government agency). *See* Fed. R. Civ. P. 30(b)(6); WRIGHT, MILLER & MARCUS, 8A FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2103 at 30–32 (2d ed.1994). "When [an organization] . . . designates a person to testify on its behalf [under Rule 30(b)(6)], the [organization] appears vicariously through that agent." Resolution Trust Corp. v. S. Union Co., Inc., 985 F.2d 196, 197 (5th Cir. 1993).

It is inappropriate for an organization simply to refuse to designate a witness for a properly noticed Rule 30(b)(6) deposition. *See, e.g.*, Strauss v. Rent-A-Center, Inc., No. 6:04-cv-1133 -Orl-22KRS, 2007 WL 2010780, at *1 (M.D. Fla. July 6, 2007). Rather, the Rules require "the party seeking to narrow the scope of the requested discovery to bring a motion for a protective order under Rule 26(c)." *Id.* (citing WRIGHT, MILLER & MARCUS, 8A FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2103 at 31 & 31 n. 2 (2d ed.1994) (collecting cases)); *see also* New England Carpenters Health Benefits Fund v. First DataBank, Inc., 242 F.R.D. 164, 165 (D. Mass. 2007) ("If the party receiving the notice believes that the notice is improper for some reason, that party does not have the right to refuse to obey the deposition notice on any ground . . . [but must] seek [] protection pursuant to Rule 26(c) . . . .").

In New England Carpenters, the court explained that "it is indeed good practice to discuss any issues respecting a 30(b)(6) deposition notice with the party which noticed the deposition in an attempt to work out an agreement, [but] in the absence of an agreement, a party cannot decide on its own to ignore the notice"; rather, if a party contends that the notice was defective or improper in some way, the party must seek a protective order under Rule 26(c). 242 F.R.D. at 166 (emphasis removed). "What is not proper practice is to refuse to comply with the notice, put the burden on the party noticing the deposition to file a motion to compel, and then seek to justify non-compliance in opposition to the motion to compel." *Id.* Furthermore, in Alexander v. F.B.I., 186 F.R.D. 137,

139–40 (D.D.C. 1998), the court addressed a dispute over the notice provided for a Rule 30(b)(6) deposition of a defendant government agency ("defendant agency").[5] In Alexander, plaintiffs enumerated seven broad categories of pertinent 30(b)(6) testimony in a letter sent to defendant agency. *Id.*[6] Defendant agency argued that plaintiffs' description in their initial notice and in their re-notice of deposition did not describe with reasonable particularity the matters on which examination was requested because the notices stated only the broad general topic to be examined (i.e., defendant agency's computer systems and a particular database). *See id.* The court rejected defendant agency's argument, however, and found that the notices were sufficient and further that the letters between the parties sufficiently described the subject matter of the 30(b)(6) deposition. *See id.* at 140. The court noted that "[a]lthough [plaintiffs'] letter obviously did not fall within the four corners of plaintiffs' notice of deposition, defendant [agency] was clearly put on notice of the subject matters on which [the 30(b)(6) witness] would be expected to testify." *Id.*

In this case, Plaintiff's request for a Rule 30(b)(6) deposition was improper. Specifically, Plaintiff made her request for a Rule 30(b)(6) deposition in a letter addressing a host of other discovery issues.[7] Further, Plaintiff's "notice" of a Rule 30(b)(6) deposition evolved over time and

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[5]Unlike in the case at bar, defendant agency in Alexander designated a Rule 30(b)(6) witness and the deposition proceeded. 186 F.R.D. at 139. Unhappy with the information elicited from the first witness, Plaintiffs sought to compel defendant agency to re-designate a 30(b)(6) witness to address matters that the first 30(b)(6) witness could not fully testify to in the first 30(b)(6) deposition. *See id.* at 139, 140–41.

[6]The letter enumerated the following seven categories of pertinent testimony.
(1) what systems (including equipment and databases) are used to provide these functions;
(2) who is responsible for maintaining and operating the systems (including compliance with applicable laws and regulation to presidential/federal records);
(3) what instructions, guidelines, rules and training are provided to officials and appointees in connection with these systems;
(4) what information is collected and stored on the systems;
(5) how information stored may be retrieved (and, if necessary, reconstructed);
(6) who has access to the systems and how is such access controlled and monitored. (This would include information about access control, inventory and property tracking methodologies concerning computers and e-mail devices and systems assigned and/or accessible to, and actually accessed by, Defendants [] (and their assistants, including interns, and volunteers) since 1992); and
(7) other relevant testimony and testimony that may lead to relevant evidence.
Alexander, 186 F.R.D. at 139.

[7]It is apparent that Plaintiff understands the general form to be used in noticing a deposition (*see, e.g.*, Doc. 63, Ex. K at 1–3 (a notice of deposition, entitled "Plaintiff's Notice Requiring Defendant to Designate a Rule 30(b)(6) Witness to Testify on Defendant's Behalf," served on Defendant on September 28, 2007 requesting examination on the

became broader and less specific as the parties discussed the issues on which Plaintiff wished to question the 30(b)(6) representative. Moreover, Plaintiff's "notice" was also overbroad because it did not specify with reasonable particularity the matters on which examination was requested. *See, e.g.*, Reed v. Bennett, 193 F.R.D. 689, 692 (D. Kan. 2000) (finding that a notice indicating that areas of inquiry would include, but not be limited to the areas specifically enumerated, was overbroad and remarking that "[a]n overbroad Rule 30(b)(6) notice subjects the noticed party to an impossible task. . . . Where, as here, the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible."). Although Plaintiff's requests are unclear and overbroad, Defendant failed to comply with, or alternatively, properly object to Plaintiff's request for deposition under Rule 30(b)(6). In particular, Defendant has not sought a protective order under Rule 26(c) and instead has brought its objections to the court's attention only in response to Plaintiff's motion to compel.[8] *See* New England Carpenters, 242 F.R.D. at 166 (explaining that it "is not proper practice [] to refuse to comply with [a Rule 30(b)(6)] notice . . . and then seek to justify non-compliance in opposition to [a] motion to compel"). Therefore, both parties have failed to follow the proper procedure to establish or object to a Rule 30(b)(6) deposition. Accordingly, Plaintiff's motion to compel shall be denied without prejudice.

Given, however, that Plaintiff may re-serve a proper notice of a Rule 30(b)(6) deposition on Defendant's counsel,[9] and considering the issues raised by Defendant in its response to Plaintiff's

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same eleven (11) documents Plaintiff identified in her prior letter(s) to Defendant)). *See also supra* footnote 3 (enumerating the same topics). In this September 28, 2007 notice, Plaintiff also conditions the setting of this deposition "upon the approval of the [c]ourt" (*see* Doc. 63, Ex. K at 2) (emphasis in original). For the reasons explained *infra*, this deposition shall not be had under the terms specified by Plaintiff; however, Plaintiff may re-notice a Rule 30(b)(6) deposition with a proper description of the topics to be addressed at the deposition.

[8]Although Defendant failed to seek a protective order, Defendant's counsel attempted to resolve this matter without court intervention. Defendant's counsel's efforts are appreciated, and in light of the court's order advising the parties to exhaust every possibility of resolution before bringing a future discovery dispute to the court (*see* Doc. 48 at 3), it is understandable that Defendant's counsel was reluctant to involve the court.

[9]The Rule 30(b)(6) deposition that Plaintiff noticed on September 28, 2007, with the same list of eleven (11) documents identified as the topics for the deposition (*see* Doc. 63, Ex. K), shall be quashed. *See* Fed. R. Civ. P. 37(a)(4)(C) (authorizing the court to enter a protective order under Rule 26(c)(2) that the discovery may be had only on specific terms and conditions when a motion to compel is granted in part and denied in part); Reed, 193 F.R.D. at 692 (noting that "[b]ecause . . . the court has quashed the Rule 30(b)(6) notice issued by plaintiff on March 15, 2000, no such deposition will take place until a Rule 30(b)(6) notice complying with this order is issued"). If Plaintiff so desires, she may re-notice a 30(b)(6) deposition of Defendant with a proper description of the topics to be discussed as described in

motion to compel, further discussion of a Rule 30(b)(6) deposition is appropriate. "[N]ormally the process associated with depositions under Rule 30(b)(6) operates extrajudicially. Good cause exists to intervene only when there has been a compelling and sufficient demonstration that the procedures specified in the Rule have not been or cannot be followed." New World Network Ltd. v. M/V Norwegian Sea, No. 05-22916-CIV, 2007 WL 1068124, at *2 (S.D. Fla. Apr. 6, 2007) (citing McKesson Corp. v. Islamic Republic of Iran, 185 F.R.D. 70, 79 (D.D.C. 1999)) (internal quotations, citations, and modifications omitted). In King, the court explained that Rule 30(b)(6) best functions as follows:

> 1) Rule 30(b)(6) obligates the responding [organization] to provide a witness who can answer questions regarding the subject matter listed in the notice.
>
> 2) If the designated deponent cannot answer those questions, then the [organization] has failed to comply with its Rule 30(b)(6) obligations and may be subject to sanctions, etc. The [organization] has an affirmative duty to produce a representative who can answer questions that are both within the scope of the matters described in the notice and are "known or reasonably available" to the [organization]. Rule 30(b)(6) delineates this affirmative duty.
>
> 3) If the examining party asks questions outside the scope of the matters described in the notice, the general deposition rules govern (i.e., Fed. R. Civ. P. 26(b)(1)), so that relevant questions may be asked and no special protection is conferred on a deponent by virtue of the fact that the deposition was noticed under 30(b)(6).
>
> 4) However, if the deponent does not know the answer to questions outside the scope of the matters described in the notice, then that is the examining party's problem.
>
> This interpretation does not render the "describe with reasonable particularity" language "superfluous"; rather, it imposes an obligation on [an organization] to provide someone who can indeed answer the particular questions presaged by the notice.[[10]] Rule 30(b)(6) does not limit what can be asked at deposition.

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more detail *infra*.

[10]The court notes that the designating party has a duty to prepare the 30(b)(6) witness to testify on matters not only known by the individual deponent, but on those matters that should be reasonably known to the designating party (e.g., the organization itself). *See* Alexander, 186 F.R.D. at 141 (citing Fed. R. Civ. P. 30(b)(6) ("The persons so designated shall testify as to matters known or reasonably available to the organization")). "Obviously, the purpose of a Rule 30(b)(6) deposition is to get answers on the subject matter described with reasonable particularity by the noticing party, not to simply get answers limited to what the deponent happens to know." Alexander, 186 F.R.D. at 141.

> . . . The reason for adopting Rule 30(b)(6) was not to provide greater notice or protections to [organizational] deponents, but rather to have the right person present at deposition. The Rule is not one of limitation but rather of specification within the broad parameters of the discovery rules.

161 F.R.D. at 476. Indeed, the procedure to be followed is for an organizational deponent "to object to the designation topics that are believed to be improper and give notice to the requesting party of those objections, so that they can either be resolved in advance or otherwise. The requesting party has the obligation to reconsider its position, narrow the scope of the topic, or otherwise stand on its position and seek to compel additional answers if necessary, following the deposition." New World, 2007 WL 1068124, at *4 (emphasis in original).[11] *Cf.* King, 161 F.R.D. at 476 ("This Court sees no harm in allowing all relevant questions to be asked at a Rule 30(b)(6) deposition or any incentive for an examining party to somehow abuse this process.").

Here, many of Defendant's objections to the topics enumerated in Plaintiff's requests for a Rule 30(b)(6) deposition are based on the fact that discovery has already been conducted on the same issues (*see* Doc. 61 at 6–7). For example, Defendant contends that the authors of certain evaluations which were enumerated as topics for the 30(b)(6) deposition have already been deposed by Plaintiff (*id.* at 6). Thus, Defendant states that it cannot ascertain a suitable 30(b)(6) witness because it is unsure what topics Plaintiff intends to cover (*see id.*).

The court agrees with Defendant. Plaintiff has provided a listing of eleven (11) documents, including her entire complaint, and has not described with any particularity the topics on which she wishes to examine Defendant's 30(b)(6) representative. Moreover, many of the documents' authors have already been examined by Plaintiff and it is unclear what exactly she wishes to obtain from the Rule 30(b)(6) representative that is to be designated by Defendant. Accordingly, if Plaintiff wishes

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[11]As the New World court explained, this procedure is best because

> the deponent's answers to relevant questions at the deposition will have a great deal of impact upon the strength of the arguments in support of or against a motion to compel. The answers provided will give the Court a factual record with which to judge whether a particular topic or question asked should be compelled or not. And that forces a responding party to ensure that the witness provides as much relevant or possibly relevant information as possible given the liberal scope of discovery provided by Rule 26 to forestall the necessity for a motion to compel.

2007 WL 1068124, at *4.

to proceed with a 30(b)(6) deposition of Defendant, she must provide a specific notice of deposition that identifies with reasonable particularity the matters on which she is requesting examination. In general, the topics identified by Plaintiff should not have been previously covered by other discovery, and during the deposition Plaintiff should not needlessly duplicate questions previously asked of other witness or seek other information that she already has by virtue of responses to other discovery devices. *See, e.g.*, Banks v. Office of Senate Sergeant-at-Arms, 222 F.R.D. 7, 19 (D.D.C. 2004) (noting that "the parties [should identify] topics that will insure that the 30(b)(6) depositions are meaningful exercises in ascertaining information that has not been previously discovered or are necessary to ascertain the position [defendant] took or takes as to factual and legal issues that have arisen"). For example, it would be proper for Plaintiff to seek 30(b)(6) "testimony regarding [Defendant's] decision [not to rehire her], the individuals involved in making that decision and the roles they played, and [Defendant's] communications with the EEOC . . . regarding [Plaintiff's] claim that her termination violated the [Title VII] laws," if this information has not been previously discovered. *See* Strauss, 2007 WL 2010780, at *2. It would also be proper for Plaintiff to seek "information on [Defendant's] policies and procedure" regrading employment discrimination claims. *See id.*, at *3. In Brindell v. Saint Gobain Abrasives Inc., 233 F.R.D. 57, 58 (D. Mass. 2005), a case founded in part upon a claim of Title VII race discrimination and retaliation, the court found Plaintiff's request for a Rule 30(b)(6) deposition appropriate with respect to the following topic:

> Defendant's investigations and purported good faith efforts to address workplace discrimination, retaliation and/or disparate treatment, through its purportedly comprehensive, effective and well-publicized policies, including any action taken by the [d]efendant to ensure that these policies were actually followed with respect to promotions and with respect to discipline at the Worcester Facility between January 1999 and the date of [p]laintiff's termination [February 6, 2002].

Moreover, other courts have found the following topics proper in the context of an employment discrimination lawsuit.

> 1. The purpose . . . of the . . . Candidate Selection Worksheet . . . .
> 2. The use made . . . of the ... Candidate Selection Worksheet . . . .
> 3. The reason . . . for the omission of information concerning several co-workers . . . from the . . . Candidate Selection Worksheet . . . .
> 4. Any written guidelines that Defendant used, followed, relied upon or consulted in connection with the preparation of the electronic [] Candidate Selection Worksheet

. . . .

Hinds v. Spring/United Mgt. Co., No. 05-2362-KHV, 2007 WL 99598, at *3 (D. Kan. 2007);[12] *see also* EEOC v. Thorman & Wright Corp., 243 F.R.D. 421, 424 (D. Kan. 2007) (noting that proper notice of a Rule 30(b)(6) deposition in an employment discrimination and retaliation case was provided by a notice calling for defendant to designate one or more persons to give testimony concerning "1) the purpose of each [d]efendant entity; 2) the date each [d]efendant entity was created and, if applicable, disbanded; 3) assets held or controlled by each entity; 4) the number of employees for each entity from January 1, 2002 through July 31, 2004; 5) all business operations in which each entity is involved; and 6) the ownership of each entity").[13] Plaintiff is advised that the court has not concluded that these areas of inquiry are appropriate or relevant in the instant case; they are merely offered as examples of areas that have been approved by courts in other cases. If Plaintiff chooses to re-notice a 30(b)(6) deposition, she is cautioned to narrowly tailor her notice and to limit it to matters that have not previously been discovered. Further, Plaintiff's Rule 30(b)(6) notice must specifically identify the topics upon which she wishes to question a 30(b)(6) representative of Defendant.

In summary, Plaintiff's motion to compel Defendant to designate a Rule 30(b)(6) witness pursuant to her prior notices of deposition shall be denied.[14] Plaintiff may re-notice a 30(b)(6) deposition of Defendant in accordance with proper procedures and in light of the discussion

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[12]In Hinds, plaintiff alleged that defendant treated similarly situated employees outside his department more favorably by allowing them to retain their positions and assume some job duties which plaintiff had been performing. *See* 2007 WL 99598, at *1. During a 30(b)(6) deposition of defendant, plaintiff sought information regarding defendant's treatment of employees outside his department who were listed on Candidate Selection Worksheet(s). *See id.*, at *1, *3.

[13]Although general discovery principles contained in Rule 26(b)(1) describe the scope and extent of discovery; all of which is fair game for questioning in the deposition of Rule 30(b)(6) witnesses, the court cautions Plaintiff that the Rules require only that Defendant produce a 30(b)(6) witness who is competent to testify to the matters that she has described with reasonable particularity in her notice of deposition. *See* Fed. R. Civ. P. 30(b)(6). In Thorman & Wright, the court also noted that "[t]o allow [Rule 30(b)(6)] to effectively function, the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute." 243 F.R.D. at 426 (emphasis supplied).

[14]Also, the Rule 30(b)(6) deposition of Defendant that Plaintiff noticed on September 28, 2007 shall be quahsed. *See* Fed. R. Civ. P. 37(a)(4)(C); Fed. R. Civ. P. 26(c)(2); Reed, 193 F.R.D. at 692. If Plaintiff desires, she may re-notice the deposition as described in this order.

provided *supra*. If Plaintiff's notice is again improper, Defendant may seek a protective order from the court.

B. Plaintiff's Request to Contact Defendant's Employees Directly

In the instant motion, Plaintiff also requests that this court reconsider its order of July 18, 2007, directing that Plaintiff serve all future discovery requests relating to Defendant's employees (or former or current UWF employees) on Defendant's counsel (Doc. 57 at 6–8). Specifically, Plaintiff seeks this court's permission to request sworn affidavits from fourteen (14) former or current employees of UWF regarding the working environment that existed at UWF (*id.* at 6).[15] In order to enable her to do so, Plaintiff also requests that Defendant provide her with addresses for these fourteen (14) witness (*id.*). Plaintiff argues that certain affidavits submitted with the instant motion support her claim regarding the existence of "a hostile work environment" (*id.* at 6–7; *see also* Doc. 1 at 5, ¶ 14 (Plaintiff's complaint alleging that Defendant "maintained a hostile work environment")). Finally, Plaintiff contends that she had a professional and cordial working relationship with her former co-workers and thus can request such affidavits without unduly burdening or annoying the relevant individuals (*see id.* at 8). In response, Defendant argues that Plaintiff has been free to conduct discovery in a variety of methods and that Defendant has no obligation to secure affidavits from witnesses on Plaintiff's behalf (*see* Doc. 61 at 7–8). With respect to the subject matter of the affidavits, Defendant argues that Plaintiff has not stated a claim for hostile work environment under Title VII and that this court should not authorize her to go on a discovery fishing expedition (*see id.* at 8–9).

Initially, the court notes that the issue of whether Plaintiff has stated a claim for hostile work environment under Title VII is not presently before the court and as such the court expresses no opinion on the matter. With respect to the instant motion to compel discovery, the Federal Rules of Civil Procedure allow discovery of any relevant, non-privileged material that is admissible or

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[15]Plaintiff requests permission to collect the affidavits of: Dr. Michael Yots, Ms. Lesly Baroni, Ms. Kay Mckenzie, Mr. John Sumlin, Ms. Errin Skelly, Ms. Cara Zimmer, Ms. Elodie Pereira, Ms. Phyllis Lubbers, Mr. Rhett Roberts, Ms. Lisa Roberts, Ms. Melanie Fernandez, Ms. Deborah Zennuge, Mr. Keith Goldschmidt, and Ms. Ann Riley (*see* Doc. 57 at 6; Doc. 58, Ex. A at 6, ¶¶ 10, 11). The court notes that Plaintiff has submitted the affidavits of Dr. Yots and Ms. Baroni in support of the instant motion (*see* Doc. 59, Exs. A, C (affidavits of Dr. Yots); *id.*, Exs. B, D (affidavits of Ms. Baroni)). Apparently, Plaintiff wishes to have Dr. Yots and Ms. Baroni provide further information concerning the working environment at UWF by separate affidavits (*see* Doc. 57 at 6; Doc. 58, Ex. A at 6, ¶ 10).

reasonably calculated to lead to admissible evidence. Fed. R. Civ. P. 26(b)(1). The overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result. *See* United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958). Courts construe relevancy "broadly to encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978) (citing Hickman v. Taylor, 329 U.S. 495, 501 (1947)). Relevant information is discoverable even if it is not admissible at trial, "if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). The Federal Rules of Civil Procedure strongly favor full discovery whenever possible. *See id.*; Moore v. Armour Pharmaceutical Co., 927 F.2d 1194, 1197 (11th Cir. 1991). In addition, "discovery is not limited to issues raised by the pleadings." Oppenheimer, 437 U.S. at 351. Discovery is expected to be accomplished voluntarily with minimal judicial intervention. *See* Bell v. Brary and Gillespie, LLC, No. 6:05-CV-355-ORL-19JG, 2006 WL 923741, *1 (M.D. Fla. 2006).

Here, as noted above, Plaintiff seeks the permission of this court to contact fourteen (14) former or current UWF employees for the purpose of obtaining a sworn statement from each of them about the working environment experienced by Plaintiff at UWF (*see* Doc. 57 at 6–9; Doc. 58, Ex. A at 3, ¶¶ 10, 11 (Plaintiff's letter to Defendant listing the relevant former or current UWF employees)). Initially, the court determines that the subject matter of Plaintiff's inquiries is relevant to her complaint of employment discrimination and likely to lead to relevant or admissible information. Moreover, statements from these witnesses appear to be relevant even if, as Defendant's argue, Plaintiff has not stated a claim for hostile work environment under Title VII. This determination, however, does not mean that Plaintiff is entitled, under the Federal Rules of Civil Procedure, to "request affidavits" from non-party witnesses that are former or current UWF employees.[16]

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[16]The court is aware of no civil discovery procedure that permits Plaintiff to "request affidavits" from non-party witnesses. *Cf.* Fed. R. Civ. P. 33 (interrogatories to parties); Fed. R. Civ. P. 36 (requests for admissions from parties). One possible discovery tool that Plaintiff could use to gather this information is the deposition of a non-party witness.

Still, Plaintiff should be permitted to investigate her claims without first gaining Defendant's approval. Therefore, Plaintiff's motion shall be granted to the extent that the court will permit her to directly contact and interview any of the fourteen (14) witnesses identified in this motion <u>who have not previously been deposed or provided affidavits</u>. Plaintiff is advised that these witnesses are not required to provide sworn statements or even talk to Plaintiff if they do not wish to do so.[17] To facilitate her contact with these witnesses, Defendant shall be ordered to provide to Plaintiff their last known addresses. In all other respects, the court's prior order shall remain in effect; as such, any notice of deposition or similar discovery request by Plaintiff concerning any former or current UWF employee still must be served only upon Defendant's counsel (*see* Doc. 43 at 14–15).

III. SANCTIONS

The remaining issue is whether either party is entitled to fees. Federal Rule of Civil Procedure 37(a)(4)(C) provides:

> [i]f the [motion to compel] is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the

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See, e.g., Fed. R. Civ. P. 30. Plaintiff is clearly aware of the procedure for obtaining a deposition and has utilized it to obtain the deposition of other non-party witnesses (*see, e.g.*, Doc. 40 at 1 (modifying by court order a subpoena Plaintiff caused to issue for the deposition of Dr. Michael Yots)). Furthermore, it is unclear how many depositions Plaintiff has conducted to date and Plaintiff has not alleged that she has conducted a total of fewer than ten (10) depositions in the instant case (*Cf.* Doc. 26 at 2 (directing in a final scheduling order that the total number of depositions to be taken shall be limited as set forth in the Federal Rules of Civil Procedure)). *Cf. also* Fed. R. Civ. P. 30(a)(2)(A) (providing that the total number of depositions to be taken in a case, unless otherwise modified by the court, is restricted to ten (10) depositions for each plaintiff, defendant, or third-party defendant). Regardless, if Plaintiff were to request fourteen (14) depositions, she would clearly exceed the number of depositions authorized in this case (*see* Doc. 26 at 2 (limiting the number of depositions to ten (10) for each party as specified in the Rules)). Therefore, Plaintiff must not be seeking to depose the fourteen (14) witnesses she has identified. Moreover, even if she could conduct depositions of all fourteen (14) witnesses, the court notes that under Rule 30, leave of court is required if a party wishes to conduct a second deposition of a person previously deposed in the case. *See* Fed. R. Civ. P. 30(a)(2)(B). Therefore, to the extent that Plaintiff may be seeking to depose an individual that she has already deposed in this case, such as Dr. Yots and Ms. Baroni, Plaintiff would not be entitled to do so because she has failed to show that she did not previously have ample opportunity to obtain the information sought. *See* Fed. R. Civ. P. 30(a)(2)(B) (providing that a party must satisfy the standards of Rule 26(b)(2), absent agreement of the parties, to conduct a second deposition of a person previously deposed in the case); *see also* Fed. R. Civ. P. 26(b)(2)(C) (providing that the court may limit discovery if the party seeking discovery has had ample opportunity to obtain the information sought).

[17]The court notes, assuming Plaintiff has not exceeded the total number of depositions authorized in this case, that Plaintiff could depose any witness with information relevant or likely to lead to relevant or admissible information in this case. *See, e.g.*, Fed. R. Civ. P. 30(a)(1). Furthermore, a non-party witness's attendance may be compelled by a subpoena as provided in Rule 45.

motion among the parties and persons in a just manner.

Fed. R. Civ. P. 37(a)(4)(C). The court "has wide latitude in imposing sanctions for failure to comply with discovery." Aziz v. Wright, 34 F.3d 587, 589 (8th Cir. 1994). "Rule 37 sanctions are to be applied diligently." In re Stauffer Seeds, Inc., 817 F.2d 47, 49 (8th Cir. 1987). Where the producing party's actions necessitate the motion to compel, or where the objections and failure to respond are not substantially justified, an award of sanctions is appropriate. Starcher v. Corr. Med. Sys., Inc., 144 F.3d 418, 421–22 (6th Cir. 1998). Further, a party against whom a motion to compel is enforced may only avoid payment of sanctions by demonstrating that his position is substantially justified. Rickels v. City of South Bend, 33 F.3d 785, 787 (7th Cir. 1994). A "motion is substantially justified if it raises an issue about which there is a genuine dispute, or if reasonable people could differ as to the appropriateness of the contested action." Doe v. Lexington-Fayette Urban County Gov't, 407 F.3d 755, 766 (6th Cir. 2005) (citing Pierce v. Underwood, 487 U.S. 552, 565 (1988)).

In the instant case, the court does not consider the award of sanctions to either party to be appropriate, as each side was granted some relief.

Accordingly, it is **ORDERED**:

1. Plaintiff's Motion for Discovery Continuance and Miscellaneous Relief (Doc. 62) is **GRANTED in part and DENIED in part.**

A. Plaintiff's motion is **GRANTED** to the extent that the discovery deadline is hereby extended to October 31, 2007, and the deadline for dispositive motions is hereby extended to November 30, 2007.

B. Plaintiff's motion is **DENIED** to the extent Plaintiff seeks "relief" for Defendant's production of certain documents beyond the thirty (30) days allowed for Defendant to respond to Plaintiff's requests for production.

2. Plaintiff's Motion to Compel Defendant to Designate a Rule 30(b)(6) Witness to Testify on its Behalf Upon Oral Examination and Request for Miscellaneous Relief (Doc. 57) is **GRANTED in part and DENIED in part.**

A. Plaintiff's motion to compel Defendant to designate a witness(es) under Rule 30(b)(6) is **DENIED without prejudice.** Plaintiff may re-serve a Rule 30(b)(6) notice of deposition on Defendant and may conduct a Rule 30(b)(6) deposition of Defendant only upon providing

Defendant with a specific notice of deposition that identifies with reasonable particularity the matters on which she is requesting examination in light of the discovery that has been conducted to date and as discussed in more detail in the body of this order.

B. Plaintiff's motion for a modification of this court's order of July 18, 2007 directing Plaintiff to serve all future discovery requests relating to Defendant's employees (or former or current UWF employees) on Defendant's counsel (Doc. 57 at 6–8) is **GRANTED** to the extent Plaintiff is permitted to directly contact and interview any of the fourteen (14) witnesses she has identified in this motion who have not previously been deposed or provided affidavits. Defendant shall provide to Plaintiff the last known addresses of these witnesses.

C. In all other respects, Plaintiff's motion is **DENIED** as more specifically set forth in the body of this order.

3. Plaintiff's notice of deposition under Rule 30(b)(6), served on Defendant on September 28, 2007 (Doc. 63, Ex. K), is **QUASHED**. Plaintiff may re-serve a notice of deposition on Defendant under Rule 30(b)(6) as discussed in the body of this order.

4. Neither party is awarded fees or expenses in connection with any of the motions.

DONE AND ORDERED this 4th day of October 2007.

/s/ Elizabeth M. Timothy
ELIZABETH M. TIMOTHY
UNITED STATES MAGISTRATE JUDGE