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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DARREN HEYMAN,
Plaintiff,
vs.
STATE OF NEVADA EX REL. BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION ON BEHALF OF
UNIVERSITY OF NEVADA, LAS VEGAS, et al.
Defendant.

Case No. 2:15-cv-01228-RFB-GWF
ORDER

This matter is before the Court on Plaintiff’s Second Motion to Compel Defendant Rhonda Montgomery to Further Respond to Plaintiff’s Discovery Requests (ECF No. 165), filed on August 4, 2017. Defendant Montgomery filed her Response (ECF No. 180) on September 8, 2017. Defendant Montgomery also filed a Countermotion for Protective Order (ECF No. 181) to preclude the discovery sought by Plaintiff. Plaintiff filed his Reply (ECF No. 186) on September 15, 2017 and Opposition to Defendant’s Countermotion (ECF No. 187) on September 22, 2017.

BACKGROUND

1. Plaintiff’s Allegations in First Amended Complaint.

Plaintiff Darren Heyman filed a one hundred nineteen (119) page First Amended Complaint (ECF No. 28) (“*First Amended Complaint*”) on April 13, 2016. Heyman alleges that in 2013, he was enrolled in the Ph.D. program in the Hotel College at the University of Nevada Las Vegas (“UNLV”). As part of that program, he was required to pass the “Q-Exam.” Heyman alleges that on May 3, 2013, he was informed that Defendants Kristin Malek and Lisa Moll-Cain, who were also Ph.D. students, and “faculty who they had aligned themselves with,” were going to try to have Heyman “separated” from

1 UNLV if he failed the Q-Exam on his first try. On May 13, 2013, Heyman met with Dean Busser who
2 was the head of the Ph.D. program. Dean Busser asked Heyman if he planned to cheat on the Q-Exam.
3 He informed Heyman that Professors Rhonda Montgomery and Curtis Love, and Defendant Malek, had
4 accused him of planning to cheat on the exam. Heyman stated that the accusation was false. *First*
5 *Amended Complaint*, at ¶¶ 102-125.

6 Heyman alleges that Defendant Montgomery had a well-known problem with alcohol and illegal
7 controlled substances abuse, which occasionally caused her to miss classes or meetings. He also alleges
8 that Defendant Montgomery used university funds to provide alcohol to underage students; provided
9 controlled substances to students; and engaged in sexual relations with at least one student while she
10 held an administrative position. Heyman further alleges that Montgomery discriminated against students
11 based on their “sex, gender, race and/or country of national origin, and that she had a record of spreading
12 falsehoods. *Id.* at ¶¶ at 127-153,

13 Heyman alleges that prior to the cheating accusation, Defendant Love had accused him of lying
14 when he stated that Dean Busser had told him that he would be reimbursed for his expenses for an
15 academic conference. Dean Busser informed Love that Heyman was telling the truth, and this caused
16 Love to be embarrassed and angry at Heyman. Heyman alleges that Montgomery and Love resided
17 together, and that Montgomery, Love, Sarah Tanford (another professor), Malek and Moll-Cain spent
18 time with each other that was beyond the requirements of university social settings. Heyman was
19 informed by UNLV faculty that Montgomery and Malek had accused each other of starting the
20 accusation that Heyman intended to cheat on the Q-Exam. *Id.* at ¶¶ 154-165.

21 On May 13, 2013, Heyman sent an email to Defendant Donald Snyder, Dean of the Hotel
22 College, regarding the accusation made against him. Snyder informed Heyman that he had just learned
23 of the accusation and that it would be investigated. On May 16, 2013, one day before the Q-Exam,
24 Snyder sent Heyman an email stating that the accusation was a student based rumor and was “clearly not
25 the thinking or belief of the College or University.” Snyder stated that an investigation into the rumor
26 would be conducted. Snyder also offered Heyman up to one month to take the Q-Exam. Heyman took
27 the examination on May 23-24, 2013 and passed it. *Id.* at ¶¶ 173-187.

28 . . .

1 Snyder referred Heyman to Defendant Phillip Burns, the Director of the Office of Student
2 Conduct. Heyman met with Burns on May 31, 2013. He asked Burns if he was friendly with
3 Montgomery, Love, Malek or Moll-Cain. Burns stated he was not. Burns indicated that he did not know
4 any of these individuals by name. Heyman spent over two hours with Burns providing him with
5 information about the sequence of events. He also sent Burns a detailed written account of names, dates,
6 e-mails, times, and events. Heyman alleges that Burns purposefully did not inform him that he may have
7 a Title IX claim against UNLV or the individuals involved in making the false accusation. *Id.* at ¶¶ 195-
8 207. Heyman sent Burns several emails inquiring about the investigation. Burns informed Heyman that
9 he could not question students or faculty who were not enrolled or present in school during the summer.
10 Burns met with Heyman in September 2013 and informed him that he had completed the investigation.
11 Burns stated that he only had authority over students and did not have authority over faculty. He
12 indicated that he had determined that the investigation of the students was a “he-said, she-said” situation,
13 and he recommended that no action be taken against any student. Burns also told Heyman that he was
14 largely to blame for the accusation made against him. Burns refused to tell Heyman whom he had
15 questioned and refused to provide Heyman with the investigation report. *Id.* at ¶¶ 211-227.

16 In June 2014, Heyman became aware that Burns actually did know Montgomery prior to his first
17 meeting with Heyman, and that Burns had spoken to Montgomery’s classes multiple times over the years
18 and had also socialized with her. Heyman sent an email to Snyder informing him that Burns had failed
19 to disclose his relationship with Montgomery. Snyder informed Heyman that he would no longer
20 discuss the accusation with him. Heyman was notified by UNLV’s in-house counsel that any further
21 discussion about the accusation should go through counsel. Heyman met with UNLV’s general counsel
22 and recounted what had transpired. He requested that UNLV hire an outside investigator. However, no
23 independent investigation was ever done. No one was disciplined for making the false accusation.
24 Instead, Defendant Tanford received tenure, Defendant Montgomery was promoted, and Defendant Love
25 retired with a full pension. *Id.* at ¶¶ 239-256.

26 Heyman alleges a variety of causes of action against Defendants UNLV, former University
27 President Neal Smatresk, Snyder, Shoemaker, Burns, Montgomery, Love, Tanford, Malek and Moll-
28 Cain, arising from the false accusation and subsequent investigation, including defamation, false light,

1 conspiracy, concert of action, intentional infliction of emotional distress, breach of contract based on
2 violations of UNLV's Code of Conduct, contractual and tortious breach of the covenant of good faith
3 and fair dealing, constructive fraud, deceit and misrepresentation, fraudulent inducement,
4 fraud/intentional misrepresentation, negligence, and negligent hiring, training and retention. *Id.* at ¶¶
5 292-812.

6 Heyman alleges that on September 1, 2015, he filed a request for a leave of absence from UNLV
7 until the fall of 2016 or 2017. On March 10, 2016, the UNLV Graduate College notified Heyman that he
8 was being separated from the graduate program based on his failure to return from his leave of absence.
9 On March 21, 2016, Heyman's leave of absence was reinstated and UNLV apologized for any undue
10 stress that the notice of separation caused him. Heyman's twenty-sixth through thirtieth claims for relief
11 allege claims against UNLV for intentional infliction of emotional distress, negligence, breach of
12 contract, and contractual and tortious breach of the covenant of good faith and fair dealing relating to the
13 letter of separation. His thirty-first claim for relief alleges a claim for civil conspiracy against UNLV
14 and several individual Defendants including Montgomery, apparently on the grounds that they were
15 involved in the decision to issue the separation letter. *First Amended Complaint*, at ¶¶ 1009-1096.

16 Heyman also alleged causes of action for sexual harassment against UNLV, Montgomery, Love,
17 Tanford, Burns, Malek and Moll-Cain. These claims were dismissed by the Court on March 31, 2017.
18 The Court also dismissed Heyman's claims against Defendant Smatresk and it dismissed Heyman's
19 eighteenth through twenty-fifth claims for relief which were based on the allegation that UNLV's in-
20 house counsel had filed a meritless complaint with the Nevada State Bar that Heyman was practicing law
21 without a license. *Minute Order in Chambers* (ECF No. 14); *see also First Amended Complaint*. at ¶¶
22 622-685. As a result of the Court's partial dismissal order, Plaintiff's complaint boils down to the
23 following factual claims: First, Heyman alleges that he was falsely accused of intending to cheat on the
24 Q-Exam in May 2013. Second, he alleges that UNLV and its administrators failed to conduct an
25 impartial investigation and properly discipline the faculty members and students responsible for making
26 the false accusation. Third, he alleges that Defendant improperly terminated him from the Ph.D.
27 program for failing to return from his leave of absence.

28 . . .

1 **2. Plaintiff's Motion to Compel Discovery Responses.**

2 Plaintiff moves the Court to compel Defendant Montgomery to respond to the following requests
3 for production of documents, interrogatories and requests for admissions:

4 **A. Requests for Production of Documents.**

5 **Request No. 1:** Please produce and identify all documents regarding any
6 communications generated from January 1, 2012 until present, made and/or received by
7 you, or an agent, involving all codefendants, witnesses, and any employee, faculty, staff,
8 or students of the University of Nevada Las Vegas that concern or identify Plaintiff, any
9 co-defendant, or any pertinent witness, that in any way involves any claim made in this
10 lawsuit.

11 **Request No. 2:** Please produce and identify all documents regarding any
12 communications generated from January 1, 2001 until present made and/or received by
13 you, or an agent, involving all codefendants, witnesses, and any employee, faculty staff,
14 or students of the University of Nevada, Las Vegas, that concern or identify any
15 codefendant, or any pertinent witness, that in any way involves activities beyond that
16 mandated by employment with the aforementioned people.

17 **Request No. 3:** Please produce and identify all documents regarding any activities or
18 events you attended, or intended to attend, generated from January 1, 2002 until present,
19 made and/or received by you, or an agent, involving all codefendants, witnesses, or any
20 employee, faculty, staff, or students of the University of Nevada, Las Vegas, as well as
21 any evidence that would verify attendance to said meetings/events, and any notes made at
22 that meeting, as well as a key describing any shorthand or abbreviation that you may have
23 used.

24 **Request No. 4:** Please produce and identify all documents regarding any UNLV student,
25 faculty, or staff disciplining in which you were in any way involved, including, but not
26 limited to, being involved in the instigation of a complaint, the accused, a witness, and/or
27 on a panel making decisions regarding the fate of an accused.

28 **Request No. 5:** Please produce and identify all documents identifying communications
generated from January 1, 2006 until present, made or received by you, involving any
staff, or student of the University of Nevada, Las Vegas, with whom you have had any
form of sexual relationship, including an attempt thereof, as well as any documents
identifying communication to any third party regarding that person with whom you had
that sexual relationship.

Request No. 6: Please produce and identify all documents regarding any time you have,
in any way, been involved in the hiring, firing, and/or disciplining of any employee or
student of UNLV, as well as any documents identifying communication with any other
employee regarding said admission/hiring/firing/disciplining. This includes, but is not
limited to, being on the hiring committee, involved in the instigation of a complaint, the
accused, a witness, and/or on a panel making decisions regarding the fate of an accused.

Request No. 7: Please produce and identify all documents regarding any and all
criminal, administrative, or civil proceeding to which you have been a party, regardless

1 the jurisdiction, including the arresting officer's report, if any, and any court records,
2 dispositions, settlements, etc., regardless of whether or not such records are sealed or
3 otherwise publicly unavailable.

4 **Request No. 8:** Please produce and identify all documents regarding any and all records
5 of your use of any drug prescribed or otherwise, as defined by the Drug Enforcement
6 Administration since January 1, 2000.

7 **Request No. 9:** Please produce and identify any and all records of any contracts with, as
8 well as payments made or received from, any codefendants, from January 1, 2000, or any
9 witness, as well as documentation that involves such contractual relations.

10 **Request No. 10:** Please produce and identify all documents concerning all your class
11 records while at UNLV including, but not limited to, syllabi, guest lecturers, your
12 attendance records, your student evaluations, any communication with your graduate
13 assistant(s) regarding the classes, and any evidence of any reason that required you to
14 miss attending your own class.

15 Defendant Montgomery objected to Plaintiff's requests for production on several grounds,
16 including that they are irrelevant, not proportional to the needs of the case, over broad, unduly
17 burdensome, harassing, vague and ambiguous and seek information that constitutes inadmissible
18 character evidence, and are not narrowly tailored to protect Defendant's privacy interests. Defendant
19 also objects to the requests seeking employee personnel records or student disciplinary records on the
20 grounds that they are confidential and protected from disclosure by law. It does not appear that
21 Defendant produced documents in response to any of the requests for production.

22 **B. Interrogatories.**

23 **Interrogatory No. 1:** Identify each and every person that you have communicated or met
24 with concerning any allegation that Darren cheated, or planned to cheat, on the Q-Exam,
25 together with, the date and time of said communication. Set forth the substance of each
26 communication identified in response to this Interrogatory. In responding to this
27 interrogatory, please specifically identify by Bates number any documents which support
28 your answer. If no documents exist, please specifically state so.

Interrogatory No. 3: Provide a detailed and complete description of any conversation
that you had with Darren, including, but not limited to, that in which you claim Darren
discussed cheating on the Q-Exam. In responding to this interrogatory, please
specifically identify by Bates number any documents with (sic) support your answer. If
no documents exist, please specifically state so.

Interrogatory No. 4: Provide a detailed and complete description of any conversation
that you had with any other Defendant, including, but not limited to, that in which you
claim Darren discussed planning to cheat on the Q-Exam. In responding to this
interrogatory, please specifically identify by Bates number any documents with (sic)
support your answer. If no documents exist, please specifically state so.

1 **Interrogatory No. 6:** Provide a detailed list of any and all online accounts that you may
2 have, or had, from April 2012 to date, including, but not limited to, email, social media,
3 personal or work related accounts, etc., as well as any and all names that you use in those
4 accounts. In responding to this interrogatory, please specifically identify by Bates number
5 any documents with (sic) support your answer. If no documents exist, please specifically
6 state so.

7 **Interrogatory No. 8:** Provide a detailed and complete list of any and all individuals with
8 whom you have had a sexual history, other than your spouse at the time, including any
9 form of sexual conduct, including kissing, and/or genital contact, including the dates,
10 times, and places and whether or not they were a student of UNLV at the time, and in
11 which college they were enrolled.

12 **Interrogatory No. 9:** Provide a detailed and complete list of any and all meetings that
13 you have had with any other Defendant, not mandated by the State of Nevada contractual
14 requirements, in particular any social meetings that you may have had which did not
15 involve a sanctioned event regarding the State of Nevada.

16 **Interrogatory No. 10:** Provide a detailed and complete list of any and all meetings that
17 you have had with any other Defendant, during which, what appeared to be, marijuana, or
18 any other federally illegal narcotic(s) was seen, smelled, ingested, as well as the name the
19 person who provided the narcotic(s) at the time, to whom that person gave the narcotic(s),
20 and the name of the person who in any manner smoked or ingested the narcotic(s).

21 **Interrogatory No. 11:** Provide a detailed and complete list of any and all meetings and
22 communications you had with Phillip Burns since you began your working for the State
23 of Nevada to date. Please include any in-person or phone conversations, emails, notes,
24 letters, texts, contact through social media, instant messaging, etc., between you and
25 Burns. In responding to this interrogatory, please specifically identify by Bates number
26 any documents which support your answer. If no documents exist, please specifically
27 state so.

28 **Interrogatory No. 12:** Provide a detailed and complete list of any and all Defendants
who told you that they had a sexual history with UNLV students, or UNLV students who
told you that they had a sexual history with a Defendant, as well as the name of the
Defendant, and the name of the student(s), as well as any details of that encounter which
the Defendant or student informed you.

Interrogatory No. 13: Provide a detailed history of any communications that you had
about Plaintiff with Lisa Moll-Cain from April 2012 to date, as well as any
communications that you had with Lisa Moll-Cain about Plaintiff during the same time
period. Please include any in-person or phone conversations, emails, notes, letters, texts,
contact through social media, instant messaging, etc., between you and Burns. In
responding to this interrogatory, please specifically identify by Bates number any
documents which support your answer. If no documents exist, please specifically state
so.

Interrogatory No. 14: Provide a detailed history of any time that you were on any
committee that involved admissions, hiring, disciplining, as well as the names, ethnicity,
race, sex, gender and country of origin, of any candidates/accused, and your
recommendations regarding selection or discipline of the candidates/accused, at any time
in your academic or professional career. In responding to this interrogatory, please

1 specifically identify by Bates number any documents with (sic) support your answer. If
2 no documents exist, please specifically state so.

3 **Interrogatory No. 15:** Provide a detailed history of any time during your academic or
4 professional career that you consciously told another person a fact that you knew not to be
5 true. In responding to this interrogatory, please specifically identify by Bates number any
6 documents which support your answer. If no documents exist, please specifically state
7 so.

8 **Interrogatory No. 16:** Provide a detailed history of any time during your academic or
9 professional career that you had a graduate student or graduate assistant drive a vehicle in
10 which you were a passenger and there were no other student passengers. Please include
11 the dates, times, pick-up destination points, and the purpose of any such transportation.
12 Please also be certain to describe all of the individuals within the vehicle at the time.

13 **Interrogatory No. 17:** Provide a detailed list of names of any graduate assistants and
14 professional assistants that you may have had since starting working for the State of
15 Nevada, as well as their names, contact information, ethnicity, race, sex, gender, and
16 country of origin.

17 **Interrogatory No. 18:** Describe in detail any psychological, psychiatric, or mental-
18 health related treatment you have received in the time since you have started working for
19 the State of Nevada UNLV, including, but not limited to, treatment related to substance
20 abuse and/or addiction. Your response should include, but is not limited to, the nature of
21 treatment, the name and contact information of each medical provider, and the dates of
22 treatment, as well as any instances of use between and after any treatment, and the name
23 and contact information of anyone at UNLV, past or present, who you told about the
24 treatment, their position within the university, and when you told them.

25 Defendant Montgomery objected to these interrogatories on grounds that they are irrelevant, not
26 proportional to the needs of the case, over broad, unduly burdensome, seek privileged information,
27 improperly seek information which constitutes inadmissible character evidence, and are not narrowly
28 tailored to protect Defendant's privacy interests. Defendant also objects to interrogatories seeking
information in employee personnel files or student disciplinary records on the grounds that they are
confidential and protected from disclosure by law.

Except for Interrogatory No. 4, Defendant Montgomery did not answer any of the interrogatories.
In answer to Interrogatory No. 4, she stated: "As to the part of this interrogatory that requests
information concerning conversations in which [Defendant] claim[s] Darren discussed planning to cheat
on the Q-Exam", Defendant states that no such conversations have taken place." *See Motion* (ECF No.
165), pg. 53.

...

1 **C. Requests for Admissions.**

2 **Request No. 1** asks Defendant to admit that she “had had sexual intercourse with ****.”

3 Request No. 2 asks her to admit that she “had any intentional sexual contact, including kissing, or any
4 type of genital contact with UNLV students in the Hotel College other than ****. Defendant objected to
5 these requests on the grounds that they are irrelevant, harassing, abusive, and solely intended to
6 embarrass.

7 **Request No. 14** asks Defendant to admit that at some point prior to August 2013 she
8 communicated with Kristin Malek about UNLV faculty and staff beyond that required by UNLV
9 employment. **Request No. 17** asked her to admit that she would send Kristin Malek text messages
10 about other UNLV faculty, staff, and/or students. **Request No. 18** asked her to admit that Kristin Malek
11 would send her text messages about other UNLV faculty, staff, and/or students beyond that required by
12 UNLV employment. Defendant objected to these requests as irrelevant, vague, ambiguous and
13 confusing, over broad, unduly burdensome and as also presenting an improper hypothetical.

14 **Request No. 22** asks Defendant to admit that she has communicated to people that she has a
15 license to smoke marijuana. **Request No. 23** asks her to admit that she has a state issued license to
16 smoke marijuana. Defendant objected to these requests on the grounds that they are irrelevant,
17 harassing, abusive, and solely intended to embarrass, and also seek privileged information.

18 **Request No. 34** asks Defendant to admit that prior to June 2013 she had reason to believe who
19 Phillip Burns was. Defendant objected to this request on the grounds that it is vague, ambiguous, and
20 unintelligible in its entirety such that she cannot determine the assertion she is requested to admit.

21 **Request No. 35** asked her to admit that prior to June 2013 she and Phillip Burns had spoken on more
22 than one occasion. Defendant objected to this request on the grounds that it unreasonable and unduly
23 burdensome to expect a witness to recall all conversations with a particular person that have occurred at
24 any point in time and to then determine whether two or more such conversations occurred prior to a
25 specific date more than three years ago.

26 **Request Nos. 49 and 50** ask Defendant to admit that she has been to rehabilitation centers for
27 alcohol abuse and drug abuse. **Request No. 58** asks her to admit that she willingly and knowingly
28 consumed federally illegal narcotics prior to June 2016. Defendant objected to these requests on the

1 grounds that they are irrelevant, harassing, abusive, and solely intended to embarrass and seek privileged
2 information.

3 **Request Nos. 60 and 61** ask Defendant to admit that she has used her personal phone to
4 communicate with or to contact Kristin Malek. Defendant objected to these request on the grounds that
5 they are harassing, abusive, and irrelevant. She also objects on the grounds that they infringe her privacy
6 interests.

7 DISCUSSION

8 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that “[p]arties may obtain
9 discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and
10 proportional to the needs of the case, considering the importance of the issues at stake in the action, the
11 amount in controversy, the parties’ relative access to relevant information, the parties’ resources, and the
12 importance of the discovery in resolving the issues, and whether the burden and expense of the proposed
13 discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible
14 in evidence to be discoverable.”

15 The intent of the 2015 amendments to Rule 26(b) was to encourage trial courts to exercise their
16 broad discretion to limit and tailor discovery to avoid abuse and overuse, and to actively manage
17 discovery to accomplish the goal of Rule 1 “to secure the just, speedy, and inexpensive determination of
18 every action and proceeding.” *Roberts v. Clark County School District*, 312 F.R.D. 594, 601–04 (D.
19 Nev. 2016). The court, quoting Chief Justice Roberts’ 2015 Year-End Report, states:

20 The 2015 amendments to Rule 26(b)(1) emphasize the need to impose
21 “reasonable limits on discovery through increased reliance on the
22 common-sense concept of proportionality.” The fundamental principle of
23 amended Rule 26(b)(1) is “that lawyers must size and shape their
24 discovery requests to the requisites of a case.” The pretrial process must
25 provide parties with efficient access to what is needed to prove a claim or
26 defense, but eliminate unnecessary and wasteful discovery. This requires
27 active involvement of federal judges to make decisions regarding the
28 scope of discovery.

312 F.R.D. at 603. *See also Nationstar Mortgage v. Flamingo Trails No. 7*, 316 F.R.D. 327, 331
(D.Nev. 2016).

The party opposing discovery has the burden of showing that it is irrelevant, overly broad, or
unduly burdensome. *Graham v. Casey’s General Stores*, 206 F.R.D. 251, 253-4 (S.D.Ind. 2000); *Fosbre*

1 *v. Las Vegas Sands Corp.*, 2016 WL 54202, at *4 (D.Nev. Jan. 5, 2016); *Izzo v. Wal-Mart Stores, Inc.*,
2 2016 WL 593532, at *2 (D.Nev. Feb. 11, 2016). When a request is overly broad on its face or when
3 relevancy is not readily apparent, however, the party seeking discovery has the burden to show the
4 relevancy of the request. *Desert Valley Painting & Drywall, Inv. v. United States*, 2012 WL 4792913, at
5 *2 (D.Nev. Oct. 9, 2012) (citing *Marook v. State Farm Mut. Auto. Ins. Co.* 259 F.R.D. 388, 394-95
6 (N.D. Iowa 2009)). The 2015 amendments to Rule 26(b) have not changed these basic rules, although
7 they must now be applied with a greater emphasis on proportionality. As the court in *In re Bard IVC*
8 *Filters Products*, 317 F.R.D. 562, 563 (D.Ariz. 2016), states:

9 Relevancy alone is no longer sufficient—discovery must also be
10 proportional to the needs of the case. The Advisory Committee Note
11 makes clear, however, that the amendment does not place the burden of
12 proving proportionality on the party seeking discovery. The amendment
13 “does not change the existing responsibilities of the court and the parties
14 to consider proportionality, and the change does not place on the party
15 seeking discovery the burden of addressing all proportionality
16 considerations.” Rule 26, Advis. Comm. Notes for 2015 Amends. Rather,
17 “[t]he parties and the court have a collective responsibility to consider the
18 proportionality of all discovery and consider it in resolving discovery
19 disputes.”

20 A party responding to a request for production under Rule 34 has an affirmative duty to seek and
21 produce relevant documents within her possession, custody and control. *Envtech, Inc. v. Suchard*, 2013
22 WL 4899085, at *2 (D.Nev. Sept. 11, 2013) (citing *A. Farber and Partners, Inc. v. Garber*, 234 F.R.D.
23 186, 189 (C.D.Cal. 2006)). *See also Casun Invest, A.G. v. Ponder*, 2017 WL 3925417, at *2 (D.Nev.
24 Sept. 6, 2017). The fact that other parties have produced similar documents is not a valid reason for the
25 responding party not to produce relevant documents or information. If the responding party does not
26 have responsive documents, she must provide an explanation of the search she conducted for responsive
27 documents “with sufficient specificity to allow the court to determine whether the party made a
28 reasonable inquiry and exercised due diligence.” *Id.* (quoting *Rogers v. Giurbino*, 288 F.R.D. 469, 485
 (S.D.Cal. 2012)). To the extent that Defendant states that responsive documents exist, but are protected
 from disclosure by the attorney-client privilege, work product doctrine or other privilege, she should so
 state and provide a privilege log.

 Plaintiff is entitled to obtain discovery relating to his allegations that he was falsely accused of
 intending to cheat on the Q-Exam in May 2013, and regarding the circumstances relating to the March

1 2016 letter notifying him that he was being separated from the graduate program for failing to return
2 after the expiration of his leave of absence. Many of Plaintiff's discovery requests are directed at
3 obtaining information or admissions relating to the allegations that Defendant Montgomery used or
4 abused alcohol and controlled substances, that she engaged in sexual relations with a student, and that
5 she discriminated against students on the basis of their sex, gender, race, or national origin. The Court
6 sustains Defendant's objections to most of these discovery requests. Information regarding Defendant
7 Montgomery's alleged use or abuse of alcohol or controlled substances, or her sexual conduct is
8 irrelevant to the extent it is sought for purposes of impeaching her character for truthfulness. There is no
9 relevant basis for inquiring into Defendant Montgomery's sexual history or behavior. Plaintiff may,
10 however, explore the nature of Defendants' relationships with each other. *See Order* (ECF No. 188).
11 While Defendant Montgomery's alleged alcohol or substance abuse problem could be relevant to her
12 ability to perceive and recall relevant events, the Court will not require Defendant Montgomery to
13 produce her private medical or mental health treatment records relating to alleged alcohol or substance
14 abuse problems.

15 In addition to the fact than many of Plaintiff's discovery requests are irrelevant or over broad,
16 they are also not proportional to the needs of the case. Plaintiff was questioned in May 2013 about an
17 alleged accusation that he intended or was planning to cheat on the Q-Exam. He denied the accusation
18 and was subsequently advised by the Dean of the Hotel College that the accusation was a student based
19 rumor and was "clearly not the thinking or belief of the College or University." *Id.* at ¶ 176. Plaintiff
20 then took the Q-Exam examination and passed it. This is not a case in which the University took
21 adverse action against Plaintiff based on an accusation that was false. Similarly, Plaintiff was notified in
22 March 2016 that he was being separated from the Ph.D. program for failing to return from his leave of
23 absence. The letter was retracted 11 days later, and Plaintiff continued on his leave of absence. While
24 Plaintiff is entitled to conduct reasonable discovery into the facts and circumstances relating to these two
25 events, they do not warrant wide ranging discovery into the University's or Defendant administrators'
26 alleged discrimination against students or faculty. Nor does it warrant discovery into the the facts and
27 circumstances relating to disciplinary action against other students or faculty.

28 In the interests of moving this case forward, however, the Court will order Defendant to provide

1 substantive responses to discovery requests that can be reasonably limited to relevant and discoverable
2 information.

3 **Request for Production No. 1** is clearly overbroad, but reasonably encompasses documents that
4 may contain relevant information. In response to this request, Defendant Montgomery is ordered to
5 produce any nonprivileged documents in her possession, custody or control that contain information
6 regarding possible cheating on the May 2013 Q-Exam. This includes nonprivileged information
7 regarding statements allegedly made by Plaintiff, Defendant Montgomery or others regarding cheating
8 on the Q-Exam. It also includes documents relating to the investigation of the accusation, such as
9 communications between individuals regarding the investigation, or statements made by Defendant
10 Montgomery or others regarding whether Plaintiff may have intended to cheat on Q-Exam. Defendant
11 Montgomery is also ordered to produce any nonprivileged documents in her possession, custody or
12 control relating to the March 2016 letter to Plaintiff regarding his alleged failure to return from his leave
13 of absence and separating him from the Ph.D. program.

14 **Request for Production No. 7** seeks all documents regarding any and all criminal,
15 administrative or civil proceeding in which Defendant Montgomery has been a party. This request is
16 also clearly overbroad. However, if Defendant has possession, custody or control of any records relating
17 to a prior felony conviction or conviction of a crime involving dishonesty or falsehood, then she should
18 produce such records. *See* Fed.R.Evid. 609. Likewise, if Defendant Montgomery has any records
19 pertaining to a civil or administrative proceeding in which she was accused of dishonesty or
20 untruthfulness, she should produce such records. *See* Fed.R.Evid. 608.

21 Defendant's objection to **Request for Production No. 9** is sustained. While it may be relevant
22 to inquire into the financial relationship between a party and another party or witness, this request is
23 clearly over broad in seeking all contractual relations with co-defendants and any payments received
24 from co-defendants or witnesses. Defendant Montgomery was an employee of Co-Defendant UNLV
25 and was paid a salary. Plaintiff has not shown the relevance of Defendant's employment contract or of
26 her salary. Defendant Montgomery also is not required to respond to Requests for Production Nos. **2, 3,**
27 **4, 5, 6, 8, and 10.**

28 . . .

1 **Interrogatory Nos. 1, 3, and 4**, although inartfully worded, seek relevant information regarding
2 Defendant Montgomery’s knowledge of any communications with other persons regarding the allegation
3 that Plaintiff planned to cheat on the Q-Exam and any conversations that Defendant Montgomery may
4 have had with Plaintiff about the Q-Exam. Interrogatory No. 3 also seeks information about
5 communications that Plaintiff and Defendant Montgomery may have had on other topics. The nature
6 and extent of the communications between Plaintiff and Defendant Montgomery is generally relevant.
7 Plaintiff has indicated that he had little or no contact with Defendant Montgomery. It therefore does not
8 appear unduly burdensome for Defendant to answer this inquiry.

9 **Interrogatory No. 6** asks Defendant Montgomery to identify her email, text messaging or other
10 social media accounts since April 2012. As stated above, Defendant Montgomery is required to produce
11 nonprivileged documents that contain information relevant to the claims in this action. Such
12 information could be contained in Defendant Montgomery’s social media accounts. Both parties have
13 cited *Roberts v. Clark County School District*, 312 F.R.D. at 608, in support of their respective positions
14 on Interrogatory No. 6. The defendant in *Roberts* sought information relating to plaintiff’s alleged
15 emotional distress. The court ordered plaintiff to identify all of the social media sites on which she had
16 an account from 2011 to the present. The court further required plaintiff’s counsel to review the
17 contents of those accounts and to produce any content that contained a reference to the lawsuit. The
18 Court enters a similar order here. Defendant Montgomery shall provide access to her social media
19 accounts to her attorney, who shall review the content of those accounts and produce any relevant,
20 nonprivileged content contained therein.

21 Defendant’s objections to **Interrogatory No. 9** are sustained because a request to identify all
22 meetings or contacts that Defendant Montgomery may have had with any other Defendants is simply
23 overbroad and irrelevant. While it is not improper for Plaintiff to inquire into the nature and extent of
24 Defendant Montgomery’s relationship with other Defendants or individuals involved in the subject
25 events, the Court will not attempt to revise such an overbroad interrogatory to confine it to relevant
26 information.

27 **Interrogatory No. 11** is modified to require Defendant Montgomery to describe the nature and
28 extent of her professional or personal contacts, if any, with Defendant Phillip Burns prior to, during, and

1 after the investigation into the cheating accusation. Plaintiff alleges that Defendant Burns told him at
2 their first meeting that he was not friendly with Defendant Montgomery and did not know her by name.
3 Plaintiff alleges that he subsequently discovered, however, that Burns had previously spoken to
4 Montgomery's classes and that Burns and Montgomery had socialized with each other. The
5 interrogatory, as modified, therefore requests relevant information.

6 **Interrogatory No. 13** is also modified to require Defendant Montgomery to describe any
7 communications she had with Defendant Lisa Moll-Cain about Plaintiff from April 2012 to the present.
8 Plaintiff clarifies that the reference in this interrogatory to "Burns" was a typo and was intended to
9 reference Defendant Moll-Cain.

10 Defendant is not required to answer **Interrogatory Nos. 8, 9, 10, 12, 14, 15, 16, 17, and 18.**

11 Defendant's objections to **Requests for Admission Nos. 14, 17 and 18** as vague and over broad
12 are sustained. The nature and extent of Defendant Montgomery's and Defendant Malek's relationship is
13 relevant, however, given the implicit allegation that they acted in concert to defame Plaintiff and cause
14 him to be removed from the Ph.D program. Communications between these Defendants regarding
15 Plaintiff or the investigation of the accusation are obviously also relevant. Nothing in this order
16 precludes Plaintiff from pursuing relevant discovery on these matters through properly worded requests
17 for admissions or other discovery methods.

18 **Requests for Admissions Nos. 34 and 35** are not necessarily irrelevant. The Court agrees with
19 the Defendant, however, that these requests are so inartfully worded, that Defendant cannot reasonably
20 determine what it is asked to admit or deny. If Plaintiff desires that Defendant admit that she had a
21 professional or personal acquaintance with Defendant Burns at any particular point in time, then he
22 should serve a request for admission that clearly states such a request. Finally, **Requests Nos. 60 and**
23 **61**, are sufficiently relevant and clearly stated that Defendant will be required to admit or deny them.

24 Defendant is not required to answer **Requests for Admission Nos. 1, 2, 22, 23, 49, 50, and 58.**


25 Accordingly,

26 **IT IS HEREBY ORDERED** that Plaintiff's Second Motion to Compel Defendant Rhonda
27 Montgomery to Further Respond to Plaintiff's Discovery Requests (ECF No. 165) is **granted**, in part, as
28 follows: Defendant Montgomery is ordered to respond to **Requests for Production Nos. 1 and 7;**

1 **Interrogatory Nos. 1, 2, 3, 4, 6, 11, and 13; and Requests for Admissions Nos. 60 and 61** in
2 accordance with the foregoing provisions of and as modified in this order. Defendant shall serve her
3 responses to these discovery requests within fourteen (14) days of the filing of this order. Defendant is
4 not required to respond to the other discovery requests.

5 **IT IS FURTHER ORDERED** that Defendant Montgomery’s Countermotion for Protective
6 Order (ECF No. 181) is **granted** with respect to Plaintiff’s discovery requests that seek information
7 regarding the use or abuse of alcohol, controlled substances, sexual conduct or behavior, and alleged acts
8 of discriminatory conduct against other persons.

9 DATED this 27th day of September, 2017.

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12 GEORGE FOLEY, JR.
13 United States Magistrate Judge
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