

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|-----------------------------------|---|--------------------------------|
| UNITED STATES EQUAL EMPLOYMENT |) | |
| OPPORTUNITY COMMISSION, |) | |
| |) | |
| Plaintiff, |) | Civil Action 1:17-cv-01978-CKK |
| |) | |
| v. |) | |
| |) | |
| THE GEORGE WASHINGTON UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

EEOC’S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF EEOC’S MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

“Congress’ purpose in enacting the Equal Pay Act was to remedy what was perceived to be a serious and endemic problem of employment discrimination in private industry – the fact that the wage structure of ‘many segments of American industry has been based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same.’” *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974), *quoting* S. Rep. No. 176, 88th Cong., 1st Sess., 1 (1963). The solution adopted was to require that “equal work will be rewarded with equal wages.” *Id.*

Defendant violated the EPA and Title VII when Defendant deprived Sara Williams of equal pay for equal work. Beginning in 2014, when Defendant hired Williams to work as the Executive Assistant to the Athletics Director, the University paid her less than \$40,000/year. Defendant later paid a male, Michael Aresco, almost twice as much to work as the Special Assistant in the same Department supporting the same Director. When Williams was the only

Executive Assistant, the University made no effort to pay her fair compensation for the work she performed and limited her pay to below \$40,000/year. But after hiring a male in the same Department, the University approved paying him more than \$77,000/year. Defendant's HR and Compensation Departments concluded that the \$77,000/year salary was too high but approved it anyway.

In 2016, after Williams had been the Executive Assistant for almost two years, Defendant added a second administrative position to the Athletics Department. This second administrative position, called Special Assistant, was posted in January 2016 in a posting that did not say how much the position would pay and did not provide a pay range. Although the posting said the Special Assistant job required years of experience working in administration, Aresco had no such experience at the time. Nevertheless, Aresco was selected for the Special Assistant position. After selecting Aresco, but before his pay was set, the Athletics Director proposed paying him more than \$77,000/year to work as a Special Assistant, even though Williams had been earning less than \$40,000/year for performing equal work. University officials in the Human Resources and Compensation Departments concluded that the Special Assistant salary was too high but approved it anyway because, as the HR Partner Kaithlyn Kayer testified, paying Aresco \$77,000/year for the Special Assistant job was what the Athletics Director wanted.

In December 2016 Williams left the Athletics Department for another job, after realizing that Defendant would not stop or remedy the disparate pay and sex discrimination that persisted in the Athletics Department for several years. Despite having concluded that Aresco's \$77,000/year Special Assistant salary was too high (before it was approved and his Special Assistant salary was set), and despite Williams filing an internal grievance complaining about the inequities in the Department and Aresco's inflated salary, the University did nothing to resolve the disparity;

instead, Defendant dismissed Williams' grievance without raising her Executive Assistant salary by any amount.

Sex bias in the Athletics Department resulted in devaluing Williams, despite her skill, qualification, and responsibility, by characterizing and treating her like an office assistant. That does not mean Williams did not perform high-level work – she did – and that work was essential to the success of the Department. But she was not paid for that work. Once a male joined the Department and did administrative work, the employer treated and valued that work not as clerical, but as “high-level” support provided by an “advisor” or “liaison.” That double-standard is evident in Defendant's summary judgment motion. Throughout, when Defendant describes Williams' administrative work, the work is likened to that of a receptionist, office clerk, or low-level assistant who deserves to get paid less because their chief function is to make copies, print emails, or run errands. But when Defendant describes Aresco's administrative work, the work is characterized using elevated terms like liaison, administrator, or advisor. Williams managed complex and important budgets, had additional finance responsibilities, and handled detailed and complex interactions with University and external contacts, yet Defendant portrays her as deserving nothing more than low-level clerical pay. And while it is true that the Athletics Director consistently tried to minimize Williams and elevate Aresco, often taking away the most high-profile work from Williams and giving it to Aresco to justify his pay and expand his future role, Williams continued to perform equal work for less pay throughout the two years she worked in the Department.

EEOC moves for summary judgment on its EPA claim. The record establishes the prima facie elements of the Commission's EPA claim, and no material disputed facts remain as to any element. Defendant cannot avoid liability unless it proves an affirmative defense to the EPA claim, and the available affirmative defenses are strictly limited. On this record, the undisputed facts

show that Defendant cannot establish any affirmative defense available under the Act. EEOC also moves for summary judgment on its Title VII sex discrimination claim. The record establishes a prima facie case of sex discrimination, and Defendant failed to satisfy its burden to articulate a legitimate, non-discriminatory reason for its conduct. The undisputed material facts show that Defendant engaged in discriminatory pay practices and deprived Williams of equal employment opportunity in violation of Title VII. As ordered, EEOC combines this motion for summary judgment with the Commission's opposition to Defendant's pending summary judgment motion.

II. FACT SUMMARY

In support of this combined motion and opposition, EEOC filed its Statement of Facts (EEOC SOF) and Opposition to Defendant's Statement of Facts (EEOC OPP). Citations to those filings, which cite source material from the record, are provided in the summary below.

In Fall 2014, Defendant hired Sara Williams to work as the Executive Assistant to Defendant's Athletics Director, Patrick Nero. Before she was hired as Executive Assistant, Williams had significant experience supporting senior executives, and had a proven skill set relevant to the job. EEOC OPP ¶¶ 13-15. As the Executive Assistant, Williams performed work that included, but was not limited to: providing high-level administrative support to the Director of Athletics; leading the administrative function of the Athletics Director's office; coordinating administrative staff members; acting as the external face of the Athletics Director's office; functioning as the liaison to external departments for administrative and operational matters; handling project management for special projects in support of key priorities for the Athletics Department; and serving on the Athletics Department senior staff.

A. Williams had significant and wide-ranging responsibility.

Williams worked directly with the rest of the senior staff and Nero. Williams handled many

key aspects of the Department's work, including project management, contract administration, budget management, human resources and special projects.

Contracts. One of Williams' main responsibilities as Executive Assistant was contract administration. Williams was the point person for many types of contracts during her tenure in the Department, but of particular importance were the game contracts concerning the games played between Defendant and other teams. Specifically, Williams coordinated contract workflow between head coaches, Defendant's Office of General Counsel (OGC), facilities staff, and financial and business offices, gathered approvals, confirmed that contracts met OGC scrutiny, and ensured that financial obligations were met. EEOC SOF ¶¶ 15-25.

Before Williams was the Executive Assistant, each game contract had to be individually reviewed by OGC, a time-consuming process that slowed the contracting process. To improve efficiencies, Williams' created a form-fillable template that ensured the accuracy of contracts and harmonized the contract language. This template was approved by OGC and allowed OGC to approve game contracts in bulk, which improved the process. *Id.* ¶¶ 17-19.

Williams further improved the contracting process. Before Williams was the Executive Assistant, all game contracts were kept in hard copy. Williams saw the need to routinely provide updates to stakeholders, OGC, and the finance director and coaches, so she created a tracking system to maintain information in a single tool to provide updates quickly and follow up. Indeed, as Finance Director Rosemarie Sanchez Chee-Wah explained regarding the contracting process, Williams "created it. She managed it. She oversaw it ... that whole process was something that did not exist ... there was no tracking mechanism. [Before Williams] ... everything was kind of just happening and all over the place." PX G, Chee-Wah Dep. at 49-53; EEOC SOF ¶¶ 21-23. These improvements allowed Defendant to obtain approval and execute the contracts in a more timely

and accurate manner. *Id.* ¶¶ 20-23.

Williams drafted and otherwise administered other contracts, such as contracts for chartered flights. This required Williams to obtain quotes and ensure that the contract and addenda or amendments were accurate and contained everything required by Defendant's risk management department and OGC. Williams coordinated with OGC, head coaches, the finance director, Facilities, and Nero for approval and payment. Williams also negotiated certain contracts herself, including a contract with Xerox that covered two campuses, and a significant contract with Marriott to host the Senior Honors Breakfast. *Id.* ¶¶ 15-25, 82-88, 96-97.

Project Management. Another of Williams' significant responsibilities as Executive Assistant was the coordination of senior staff meetings, and project management of the tasks assigned during the meetings. During those meetings, senior staff discussed ongoing Department projects and other updates regarding important and confidential topics, including personnel decisions, budgetary decisions, student-athlete development and other student affairs. Williams created a tracking system for projects decided on and assigned during the senior staff meetings and head coaches' meetings to ensure deadlines were appropriately set and met. Before Williams was the Executive Assistant, senior staff meetings were organized and run "round robin," where each member of the senior staff provides updates. But because other members of the senior staff did not know what was going to be discussed, it was not productive. *Id.* ¶¶ 26-39. Williams created detailed agendas for senior staff meetings, collected agenda items from senior staff, proposed agenda items, and plotted agenda items based on the strategic needs of the Department, including any necessary follow-up on prior agenda items. After the meeting, Williams prepared minutes to memorialize updates and action items for the Department. *Id.*

Williams was responsible for keeping track of deadlines and reminding the staff members

when their deadlines were approaching. Williams coordinated with senior staff to assist in completing tasks and expediting processes to assure that Department goals were met. If staff members were not making progress, Williams worked to identify any gaps and intervened where possible. *Id.* ¶¶ 26-39. Praising Williams' skills, Chee-Wah testified:

Sara had the ... both the technical skill set and – the management or leadership skill set to see things through to fruition, to implement, to maintain, to cultivate, to create. Where there's—where she saw a need or a gap in operations, she would identify it. She—she was savvy enough to identify it and then knew to discuss it with the appropriate people to make sure those gaps were closed, or at least addressed appropriately.

Id.; PX G, Chee-Wah Dep. at 52.

Human Resources. Williams maintained substantial Human Resources duties as well, such as preparing offer letters for new Department employees and keeping Human Resources on track to address Department needs. For example, Williams coordinated the hiring process for two Senior Associate Athletics Directors, Ed Scott and Tanya Vogel. Williams worked closely with Human Resources Client Partner Kaithlyn Kayer, scheduled candidates for phone screens, drafted questions for interviews, assembled interview panels with head coaches, senior staff and cross-campus partners, booked travel, and handled budget allocations and reimbursements for trip expenses. Williams worked on hiring plans with Human Resources and Finance, worked with coaches on their hiring needs, and facilitated onboarding. Williams created hiring packets and set up interviews, including when Aresco failed to do so. *Id.* ¶¶ 40-54, 198-209. Williams submitted all performance reviews and created a tracker to follow up where necessary and send material to Human Resources on time. Williams also coordinated the presentation of new and significant Human Resources processes at senior staff meetings. *Id.* ¶¶ 40-54.

Budget Management. One of Williams' most significant responsibilities as Executive Assistant was budget management. During her time as Executive Assistant, Williams managed

three budgets: the Athletics Director budget, the championship budget, and the administration budget, amounting to \$1.5 million in operating expenses. For each of the budgets she managed, Williams was responsible for five-year forecasting, conducting quarterly budget reviews and monthly and weekly reconciliation, as well as processing and filing receipts and tracking expenses in day-to-day operations. Five-year forecasting, in particular, was a significant undertaking, requiring Williams to analyze where the Department had spent its budget in the previous five years and then forecasting where she saw spending in the next five-year period and ensuring that the budget reflected any anticipated changes. Williams further reconciled the budgets on her own, tracking the actual versus the forecast budget, so that she could immediately notify Nero of outstanding issues and make recommendations for moving funds, if necessary, to keep the budgets on track. Williams was also responsible for processing expense reports and claims and approving expenses that needed to be assigned to each budget. When requested funds had already been budgeted for, Williams could approve them independently; if they had not been budgeted for, Williams first discussed her recommendation regarding approval with Nero. *Id.* ¶¶ 55-70.

Basketball Support and Coordination. Williams excelled at her financial management duties and was asked to assist the Directors of Basketball Operations (DOBOs) for both men's and women's basketball with five-year forecasting for their respective teams' budget. Managing the budget was a substantial duty of the "sports administrator" role; the men's basketball budget was "the most significant budget for the Athletics sports division, most impactful, [and] most spotlighted." *Id.* ¶ 104. Williams worked on complicated issues with the budget and forecasts while training the DOBOs on forecasting methods, and she corrected and completed the forecast for submission to the Finance Director and Nero. *Id.* ¶¶ 59-62, 101-104.

Research, Briefing and Reporting. Williams prepared briefings and reports for Nero and

other Department staff. Williams coordinated Nero's reports to the University's Board of Trustees, compiling information gathered from Department members, reviewing information for completeness, addressing Trustee concerns, and aligning content with presentation goals. Williams conferred with Department staff to fill gaps or worked with Nero to get information by running reports, making calculations, or following up with head coaches. *Id.* ¶¶ 71-75.

Supervisory Responsibilities. Williams supervised two paid student employees each semester. Williams solicited recommendations from Department staff and faculty regarding hiring student employees, selected candidates to interview, conducted interviews, and hired candidates without needing further approval. Williams managed the student employees, signed their time sheets, and disciplined them, including deciding whether to terminate them. *Id.* ¶¶ 78-81.

Special Projects. Williams worked on a host of special projects. When the men's basketball team traveled to Hawaii for a tournament in December 2014, Williams helped plan the schedule of events, track RSVPs and facilitate travel arrangements, and maintained routine contact with the University President's Chief of Staff. For that trip, Williams was also responsible for authorizing a vendor for a Christmas Eve luau for 91 players and other guests. Williams performed similar tasks for other events including the Senior Honors Breakfast. She managed the Department's Nike account, which required handling contracts, quotes, procurement and tracking inventory. Williams took on the Nike account, on top of her other job duties, even though it required so much attention that coaches wanted a fulltime position devoted to the account. Williams stabilized the account including its financial records. *Id.* ¶¶ 82-104.

B. The Special Assistant job was created for Aresco.

In Fall 2015, Nero moved Michael Aresco to the main office for the Athletics Department, also known as Athletics Department Administration, where Williams already had been working as

the Executive Assistant. Before any new position was approved or posted, Nero said Aresco would start working in Administration; on August 31, 2015, Nero announced at a senior staff meeting that Aresco would “begin to transition responsibilities to more administration.” *Id.* ¶ 107. By that time, Nero had preselected Aresco for a new job in Administration that would later be called the Special Assistant. *Id.* ¶¶ 105-138. Long before that position was approved or posted, Nero told a senior staff member in September 2015 that Aresco would transition to a new position in Administration and support senior staff. *Id.* ¶106.¹

At the time, Williams already had been working in Administration as the Executive Assistant, and the work Nero planned to give Aresco was work that Williams already was doing. However, once Aresco was given the Special Assistant position in Administration, the University paid him almost twice what it had been paying Williams to perform equal work. Defendant engaged in discriminatory pay practices before and after the University hired Aresco as the Special Assistant, continuing until Williams left the Athletics Department. *Id.* ¶¶ 105-172.

Not only did Nero create the Special Assistant job for Aresco and preselect him, he also allowed Aresco to help get the position approved and posted. EEOC OPP ¶¶ 186, 189. After considering the job and an appropriate pay range, Kayer identified the job as “Executive Special Assistant” with a typical hiring range salary of \$49,000-\$67,400.² EEOC SOF ¶ 135. The Athletics Department ignored the typical pay range and insisted that Defendant pay him \$77,000/year. Although Kayer and the Compensation Department said that salary was too high,

¹ Aresco had a different, and non-administrative, job in Facilities, where he got a non-competitive promotion that more than doubled his salary. Nero approved the promotion and pay raise because Aresco asked for them. EEOC SOF ¶¶ 108-116.

² Originally, Nero proposed creating the new job using a materially different title. Nevertheless, Nero’s June 2015 proposal suggested the position would function in an administrative support role. EEOC SOF ¶¶ 105-106.

it was approved because that's what the Athletics Director wanted. EEOC SOF ¶¶ 148-167.

C. The Special Assistant job was posted and Defendant selected Aresco.

On January 5, 2016, Defendant posted the Special Assistant position and it was open for three days to internal applicants only. *Id.* ¶ 132. The Special Assistant posting described the job as follows: “leading the administrative function of the Office of the Director of Athletics and Recreation,” “coordinating administrative staff members,” “maintaining the external face of the Office the Director of Athletics and Recreation,” “act[ing] as liaison to external departments for administrative and operational matters,” and “acting as a project manager for special projects.” *Id.*

Those responsibilities also described Williams’ job as Executive Assistant except that the Executive Assistant was required to do *more*. The Special Assistant job posting and the Executive Assistant Job Description emphasized the same two key responsibilities: (1) organizing, coordinating, and keeping on task internal staff in the Office of the Director of Athletics and Recreation; and (2) serving as a liaison or interface for the Director of Athletics and Recreation with constituents external to the Department. The Executive Assistant also required additional duties: overseeing daily calendars, managing travel, managing budgets, and managing student employees and maintaining files. *Id.* ¶¶ 119, 132. Defendant concedes that the Executive Assistant Job Description filed with EEOC’s motion as PX A is the official University description for Williams’ job. *Id.* ¶ 2.

Williams was qualified for the Special Assistant position. The job posting identified the “minimum qualifications” as a “bachelor’s degree plus 2 years of relevant professional experience” and the “preferred qualifications” as “4+ years administrative experience in similar role managing a senior executive.” EEOC OPP ¶¶ 192-193, 199. The experience needed for the job, according Kayer, was providing “high-level executive support” to an administrator which she

said is “more office management, leading committees, special projects, things along those lines.” EEOC SOF ¶ 153. When the job was posted, Aresco had only worked in Administration for a few months, and that was in an interim and undefined capacity. *Id.* ¶¶ 107-108. When the job was posted, Aresco did not have 2 years of relevant professional experience (a minimum qualification in the posting) nor did he have experience in a similar role managing a senior executive (a preferred qualification in the posting). *Id.*; EEOC OPP ¶ 317. By contrast, Williams had both the minimum and the preferred qualifications. EEOC OPP ¶¶ 13-14; PX J, Williams Dep., Ex. 1. When the job was posted, Williams had five years of experience providing high-level executive support. *Id.*

Despite Williams’ qualifications for the position, and the fact that position described her job, she was deterred by Human Resources Manager Mike Kohn, Aresco and Vogel, all of whom made it clear that it would be futile to apply. On September 15, 2015, Williams and Aresco discussed about the new job being created in Administration. Aresco told Williams that Nero had offered him the position and Aresco said that Williams should not apply for it because that would cause controversy and make her look bad. Williams also discussed the position with Kohn, who said that Aresco would be selected for the role when it was posted. Kohn also told Williams that Nero planned to post the position so that it “seemed” like a fair and transparent process. Then, in November 2015, Vogel and Williams met to discuss Williams’ career goals. Vogel made clear that Williams should look elsewhere for employment opportunities. *Id.* ¶¶ 120-129. Having been told that the Special Assistant job was for Aresco and that he would be selected for it, Williams did not apply for the job. *Id.* ¶ 129.

D. Defendant did not transfer Aresco to the Special Assistant job.

In an effort to justify Aresco’s inflated Special Assistant salary, which the HR and Compensation concluded was too high, Defendant argues that Aresco was merely “transferred” to

Special Assistant. There was no bona fide transfer and there is no competent record evidence to support Defendant's argument. If Aresco had transferred from Facilities to Administration, there would have been no need to create a new job, satisfy an extended approval process, reclassify the job according to its function, propose a new salary within new salary ranges attached to the newly created position, post the position, purportedly require people to apply and compete for the position, interview Aresco, and "select" him after applying the position requirements to his candidacy, application, and whatever other criteria the University claims to have considered.

Even if Defendant characterized hiring Aresco as a transfer he was not entitled to any particular salary and calling the change a transfer does not justify the pay disparity. Employees who transfer are not entitled to keep higher pay from a previous position; for example, when Kayer transferred from her Special Assistant position to HR Partner, she had to take a pay cut. EEOC SOF ¶¶ 169-172. Further, Defendant's transfer argument cannot serve as a defense to the EPA claim. Even if hiring Aresco as Special Assistant was a bona fide transfer, and even if it were undisputed that Aresco was guaranteed to keep a salary he earned for performing a different job in Facilities, that does not explain why, after decided to pay Aresco \$77,000 per year to perform work equal to Williams, Defendant did not increase Williams' pay (in any amount) so that she received equal pay for equal work.

E. Athletics selected Aresco and proposed paying him \$77,000/year.

There was no bona fide selection process for hiring the Special Assistant. After the posting closed, Vogel conducted a short interview with Aresco. While University policy required hiring managers to interview three candidates and Kayer recommended that Vogel conduct an interview with another person, Vogel did not do so. Vogel knew that Athletics intended to hire Aresco long before the Special Assistant position was created or posted and that Aresco knew the position had

been created for him. EEOC SOF ¶¶ 133-134, 137; EEOC OPP ¶ 187.

Once Vogel selected Aresco for the position, she prepared a justification for the selection, proposed his salary, and provided the information to Kayer. Vogel confirmed that she and Nero proposed to pay Aresco \$77,000/year to work as the Special Assistant. The Hiring Proposal included a range of available pay for the Special Assistant position (Entry Rate: \$49,000-\$58,800; Emerging Rate \$60,660-\$74,140; and Expert Rate \$67,400-\$80,088). EEOC SOF ¶¶ 138- 172. The Entry Rate would have limited Aresco's Special Assistant pay, at least at the outset, to the range of \$49,000-\$58,800. While \$49,000/year is more than Williams earned to perform equal work, proposing that salary would have greatly reduced the pay disparity. Instead, the Athletics Department proposed paying Aresco a salary at the high end of the "Expert Rate" which ranged from \$67,400-\$80,880, and the University approved it. *Id.*

After Athletics selected Aresco for the Special Assistant position, Defendant's system flagged that Aresco's salary was out of range, necessitating review by Kayer and the Compensation Department. Kayer and Compensation concluded that the Special Assistant salary was too high but approved it anyway because, as Kayer testified, paying Aresco \$77,000/year for the Special Assistant job was what the Athletics Director wanted. EEOC SOF ¶¶ 148-167.

F. Williams and Aresco performed equal work.

Williams and Aresco performed the same core tasks: project management, contract administration, budget management, human resources support, and special projects. While Aresco provided project management for the "leadership team" meetings, Williams provided that function for both the senior staff meeting and the head coaches meeting.

Nero's testimony shows that Aresco and Williams did substantially similar work related to Department meetings. EEOC OPP ¶ 263 ("[Aresco] ... kept us on task to make sure that we were

making the decisions and we were having the discussions that we said we would.”). Williams did the same thing, but for two standing meetings with many more staff to consider; Williams not only took on that role but *improved* its efficiency. EEOC SOF ¶¶ 26-39.

Williams and Aresco also worked on contract administration. Aresco handled some human resources contracts, but Williams was responsible for the voluminous game contracts. Williams also improved the efficiency of the game contracting process. While Nero said that Aresco also worked on “drafting” the Nike contract, the record evidence shows that the Nike contract was in already place, that the extension was the same contract, and that Aresco simply forwarded the contract to Nero. By contrast, Williams negotiated a significant contract with Marriott and worked to enter into a new contract with Xerox. EEOC SOF ¶¶ 15-25, 83-84, 175-177.

Williams and Aresco managed budgets, but Williams managed three budgets while Aresco managed only one. The quality of Aresco’s work on the budget was so poor that he needed hand-holding (thus eliminating the alleged justification for his higher pay). But when Williams worked on the budgets, she “knocked it out of the park.” *Id.* ¶¶ 223-224. The Finance Director testified that she was “hand holding” Aresco, and what he could not do Williams “would knock out of the park, end of story.” *Id.* While Defendant states that Aresco was somehow involved in a “Strategic Plan” to decrease the Department’s budget, without any contemporaneous evidence that he did that, Williams was tasked with actually finding that cost savings in her budgets. EEOC SOF ¶¶ 174-175, EEOC OPP ¶ 182. Williams also took on the Nike account; Nike required so much attention that a full-time staffer could have been hired to manage the account. EEOC SOF ¶ 89.

Williams performed the most critical duties of a sport administrator like managing the men’s basketball budget, which was the “most significant budget for the Athletics sports division.” EEOC SOF ¶¶ 69, 101-104. Williams assisted DOBOs for men’s and women’s basketball with

their respective budget plans, potential revenue streams from games, and the five-year forecasts, among other things. *Id.* ¶¶ 59, 69; PX I, Williams Decl. ¶¶ 38-39. Williams reviewed, corrected and prepared the forecast for submission to the Finance Director and Nero. *Id.*

Williams' supervisory responsibilities included hiring and managing two student employees each semester. Williams selected which candidates to hire, all without the need for any further approval. Williams would manage their workload, approve their time sheet, and discipline, including termination student employees when required. EEOC SOF ¶¶ 79-80; EEOC OPP ¶¶ 61, 64-65, 74. By contrast, Aresco was not responsible for deciding any disciplinary matters regarding the rowing team, and Defendant classified his sports administrator duties as "Marginal." EEOC OPP ¶ 295.³

Williams also coordinated the men's basketball team's travel to Hawaii in December 2014, where Williams planned the schedule of events, facilitated travel arrangements and answered questions for representatives of the President's office. This is in stark contrast to the Japan Trip that Aresco initially worked on, where Nero negotiated the terms of the contract, the Japanese Basketball Association planned all in-country travel and events, and Anthony Travel organized the flights from D.C. to Japan. There to, Nero ultimately reassigned Williams to reconcile the budget for the Japan trip, as she had done for previous team travel. Williams' also worked on a host of other special projects, including the Student Athlete Special Commencement, the Senior Honors Breakfast, Athletics Council projects and student-athlete compliance work, and others. EEOC SOF ¶ 94.

Aresco's contributions to operational efficiency were very limited. Concerning HR

³ Aresco had some sports administrator functions before he became the Special Assistant and, therefore, Defendant cannot justify much, if any, part of his \$77,000/salary as money he was paid to do that work. EEOC SOF ¶ 281.

policies, Aresco told senior staff about recommendations Kayer made and he documented those policies in the meeting minutes or otherwise. Any policy changes had to receive final approval from the Provost. EEOC SOF ¶¶ 188-190. Williams, on the other hand, improved Department processes such as game contracts, agendas/strategic goal organization, and compliance. *Id.* ¶¶ 18, 22, 30, 100.

Williams and Aresco worked on Defendant's championship program but Williams' contributions were more significant. Aresco filled out forms for championship bids which, in the only example produced in this litigation (prepared before Aresco became the Special Assistant), consisted of a 12-page form requesting basic information about facilities. EEOC SOF ¶ 178. There is no contemporaneous evidence that Aresco did anything more. Williams managed the championship budget, which required greater skill, effort, and responsibility. EEOC SOF ¶¶ 56, 61, 210-211.

Williams coordinated updates for Department meetings by compiling and reviewing information, identifying and filling gaps, and creating presentations. EEOC SOF ¶¶ 73, 74, 75, 76, 94. While Aresco assisted with similar updates, Williams also performed those duties for the University-wide Athletics Council meetings. *Id.* ¶¶ 76, 94.

G. Nero tried to eliminate Williams' position in Athletics.

After Aresco moved into the main administrative office, Nero tried to reassign many of Williams' duties to Aresco (particularly the higher-level functions), such as contracts administration, human resources, and budget management. Nero's efforts were unsuccessful because Aresco did not have the skills necessary to do the work, did not make sufficient effort to learn how to do the work, and did not accept responsibility for completing the work.

Nero first tried to reassign Williams' higher-level work to Aresco but the reassignments

never materialized because, as Chee-Wah testified, Aresco did not understand how to complete that work. Nero also tried to reassign Williams' game contract duties, but Aresco could not do the work so it was reassigned to Williams. Nero also tried to reassign Williams' human resources duties, but Williams continued to perform them because Aresco's work was poor or incomplete, such as when he caused at least one employee to go without pay for more than a month. When Williams discovered the problem, she created the hiring packet for the employee that evening and sent it to be processed. EEOC SOF ¶¶ 209-211, 223-224. Aresco was supposed to coordinate interviews for the Softball Head Coach position but did not do the work. *Id.* ¶¶ 204-205. Williams had to coordinate those interviews, as she had done in the past. *Id.*

Shortly after Aresco was hired, and while he was still struggling with basic skills needed for the job, Defendant tried to eliminate Williams' job. EEOC SOF ¶¶ 224-228. When the Department asked to eliminate Williams' position, Chee-Wah and Kayer became concerned that there was no legitimate rationale for terminating Williams. *Id.* ¶¶ 229-232. Chee-Wah testified that Nero "transitioning all of Sara's duties to Mike ... [and] then putting Sara's position up for the RIF ... look[ed] intentional." *Id.* The proposal to eliminate Williams did not follow University protocol. *Id.* The proposal was not included in the Department's five-year plan, nor was it reviewed and vetted by other University departments, such as human resources, OGC, and the Provost's office, nor was there any business rationale provided that would justify the elimination. *Id.* ¶ 232.

During the same period, Nero began to ask Williams to perform more menial tasks, including personal errands. EEOC SOF ¶¶ 224-229. For example, in August 2015, the same month Nero announced Aresco would move to Administration, Nero asked Williams to go to his home to wait for Comcast to hook up his cable. Nero later asked Williams to pick up his medication

from a pharmacy, pick up his tuxedo from the dry-cleaner, and get him coffee. EEOC SOF ¶¶ 219. At the same time Nero tried to reassign her some of her duties, but Aresco did not have the skill to do fulfill complete them, did not make sufficient effort to do quality work, and did not accept responsibility for completing the work assigned. *Id.* ¶¶ 210-212, 218, 223-224.

H. Defendant knew Williams was underpaid but ignored the disparity.

In 2016, the Athletics Department was audited by Baker Tilley in order to “understand the current fiscal responsibilities and overall functions” of the audited positions within the Department, to “identify any additional headcount that is necessary to support financial stewardship within the [D]epartment”, and to “ensure that positions are properly classified and compensated.” EEOC SOF ¶¶ 301-313. The Audit found that Williams was “currently perform[ing] many aspects of the Finance Associate role.” *Id.* The “typical hiring range” for the Finance Associate position was “\$49,000 - \$67,000”—*the same* “typical hiring range” as the *Special Assistant position*. Williams’ recommended salary as Finance Associate was \$49,000—\$9,098 more than she was then being paid for the same work she performed as Executive Assistant. *Id.* It was further recommended that Williams, along with two other employees, receive “bonuses with merit” because they were “performing many of the Finance Associate responsibilities.” *Id.* ¶ 311-312. While the two other employees received those recommended bonuses, Williams did not. *Id.* The Audit confirmed that Williams’ was underpaid. EEOC SOF ¶¶ 301-313.

I. Williams did not breach confidentiality.

The University did not conclude that Williams breached confidentiality, and the record shows she was consistently trusted to handle confidential matters. EEOC OPP ¶¶ 108-114, 201. Williams was “one of the individuals that had access to and [Defendant’s] confidential

information” as part of her job duties including budgetary and other financial information, human resources information and personnel salaries, and student information. *Id.* For example, Williams’ managed the championship budget, which was confidential because “all of the coaches are vying for funding allocations” and “until [Nero] is ready, he [did not] want certain coaches to know that he gave money to this team and not this team.” *Id.* That information was so confidential that Chee-Wah would be notified “months in advance of when [the Department] actually [told] the coaches.” Despite Nero’s purported concerns regarding Williams’ access to confidential information as early as November 2014, Williams managed the championship budget throughout her tenure. *Id.* Nero also accused Kayer of breaching “confidentiality,” and used that to force her out. *Id.* ¶¶ 257-258.

There is no record support for Defendant’s assertion that the adverse action taken was justified by Nero’s belief that Williams was untrustworthy. In fact, it was Nero whose trustworthiness was in question and he did not maintain confidences. That Defendant tolerated Nero’s untrustworthiness and that his colleagues felt they could not trust “anything he does or says” shows that Defendant’s attacks on Williams are pretextual. *Id.* EEOC SOF ¶¶ 264-266. Chee-Wah was assigned to oversee the Department to stay aware of “any inappropriate activity” and to “not trust anything that [Nero] does or says.” *Id.* In sum, Nero’s purported concerns regarding confidentiality are a deflection from his own attempts to “avoid accountability.” *Id.* ¶ 696. Chee-Wah further testified that Williams did not share information inappropriately, but that “[Nero] wasn’t happy with what [Williams] was sharing with whom” because “[Nero] was being exposed for certain things that were against University policies and procedures.” EEOC OPP ¶ 108. Williams, for example, initially reviewed student-athlete end of year surveys to flag questions or concerns from students for Nero to review. That work was removed from Williams portfolio

only after Williams’ flagged a comment from a student that implicated Nero’s knowledge of and indifference to student concerns. *Id.* ¶ 112.

J. There was a pattern of discrimination against women in Athletics.

Multiple women testified that Nero discriminated against them. Kayer testified that Nero refused to work with her “because of gender” and her duties were reassigned purportedly because of a “breach of confidentiality” amidst “discussion about [Nero’s] reception to [Kayer] as a female.” Chee-Wah testified that Nero avoided meeting with her and tore up the financial reports she provided to him. She soon discovered that Nero was lying to her supervisors telling them “that [she] wasn’t meeting with him . . . and he didn’t have insider information, [when] in actuality, Nero was avoiding meeting with [her].” Mary Jo Warner worked in the Department for more than thirty years and served as a Senior Associate Director for twenty years; she “loved” her job until she began working Nero, who began to strip away her duties. Then, in June 2013, Nero told Warner that he would “take [her] title and [her] compensation.” Warner informed the University’s Provost of Nero’s treatment, but he never responded to Warner. Perhaps most concerning, Danya Ellman, another Assistant Athletics Director, lodged an equal pay claim regarding Aresco. EEOC SOF ¶¶ 252, 254, 261-275.

The pattern of discrimination against women in the Athletics Department was ignored until Defendant received an anonymous tip that Nero had “become the talk of the recruiting world for being a sexually aggressive creep” and that the evidence would be published that the University became concerned with Nero’s conduct. Nero announced his resignation eight days after the tipster told Defendant the evidence would be published. *Id.* ¶¶ 276-284.

K. Defendant hired a woman to replace Aresco and paid her less.

After Aresco resigned from the Special Assistant position in March 2017, Defendant

changed the Special Assistant job title to Administrative Assistant III, a title that made it seem like a low-level clerical position. Although the job title was changed from Special Assistant to Administrative Assistant III, Defendant *did not change the position description*. The position description for Administrative Assistant III contained the same job duties that were in the position description for the Special Assistant job that Aresco was paid more than \$77,000/year to perform. Having changed the *job title* to make the Special Assistant sound more like a low-level clerical position, Defendant reduced the pay from \$77,000/year to an hourly rate of \$19.88-\$25.87 (\$41,350-\$53,809/year), and then hired a woman to fill that job. EEOC SOF ¶¶ 315-320.⁴

III. LEGAL STANDARD

Summary judgment is proper where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “The mere existence of some factual dispute is insufficient on its own to bar summary judgment; the dispute must pertain to a ‘material’ fact.” *Hammel v. Marsh USA Inc.*, 206 F. Supp. 3d 219, 228 (D.D.C. 2016) (Kollar-Kotelly, J.). “Only disputes over facts that affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Conclusory assertions offered without any factual basis in the record cannot create a genuine dispute sufficient to survive summary judgment.” *Hammel*, 206 F. Supp.3d at 228 (citing *Ass'n of Flight Attendants–CWA, AFL–CIO v. Dep't of Transp.*, 564 F.3d 462, 465–66 (D.C. Cir. 2009)).

⁴ In March 2016, Williams filed an internal grievance reporting the pay disparity and asking Defendant to fix it. Defendant did not remedy the disparity or raise her salary. Instead, Defendant *summarily changed Aresco's job title* to make him sound more like a manager. ECF 10-1, PID 8 (Defendant concedes it “renamed” Aresco as Assistant Athletics Director); PX Q, Fair Dep., Ex. 12 (statement of Vickie Fair confirming that when Aresco's job title was changed to Assistant AD his job duties did not change). *See also* EEOC OPP ¶ 103. The job title change was nothing more than a post-hoc attempt to support Aresco's inflated salary.

IV. ANALYSIS

The Court should grant EEOC's motion for summary judgment on its Equal Pay Act and Title VII claims and deny Defendant's motion for summary judgment. EEOC has established its *prima facie* Equal Pay Act case, and Defendant cannot establish its affirmative defense. EEOC has also established its *prima facie* Title VII case, and Defendant cannot articulate a legitimate, non-discriminatory reason for the adverse actions it took against Williams. Defendant further cannot establish its defense of unclean hands or its *Kolstad* defense. EEOC has established Defendant's liability under both the Equal Pay Act and Title VII and that Defendant cannot prove its asserted defenses. As such, EEOC requests that this Court enter an order granting EEOC's summary judgment motion and denying Defendant's summary judgment motion.

A. EEOC is entitled to summary judgment on the EPA claim.

To establish a *prima facie* case under the EPA, the plaintiff "must show that an employer pays different wages to employees of opposite sexes 'for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.'" *Goodrich v. Int'l Bhd. of Elec. Workers, AFL-CIO*, 712 F.2d 1488, 1491 (D.C. Cir. 1983) (quoting 29 U.S.C. § 206(d)(1)). The EPA does not require a plaintiff to "prove discriminatory intent" because the disparity in pay between the genders for performing substantially similar work is the discrimination the statute prohibits. *Savignac v. Day*, 539 F. Supp. 3d 107, 109 (D.D.C. 2021); *EEOC v. Md. Insur. Admin.*, 879 F.3d 114, 120 (4th Cir. 2018) (collecting cases). "Once a plaintiff has made the required *prima facie* showing, under the EPA, the burdens of production *and* persuasion shift to the defendant-employer to show that the wage differential was justified by one of four affirmative defenses listed in the statute:" including "a differential based on any other factor other than sex." *Md. Insur. Admin.*, 879 F.3d at 120 (citing

Brinkley–Ob v. Hughes Training, Inc., 36 F.3d 336, 344 (4th Cir. 1994)); 29 U.S.C § 206(d)(1). A defendant-employer must not only show that its proffered affirmative defense “*could* explain the wage differential, but that that the proffered reasons *do in fact* explained the wage disparity.” *Md. Insur. Admin.*, 879 F.3d at 120.

The prima facie case does not require “identical work”—instead, it requires a showing that the work requires “substantially similar” skill, effort, and responsibility. *Goodrich*, 712 F.2d at 1492. In determining whether the work is substantially similar, “it is the job as a whole, not just selected aspects of it that must form the basis for comparison.” *Goodrich v. Int’l Bhd. of Elec. Workers, AFL-CIO*, 815 F.2d 1519, 1524 (D.C. Cir. 1987); accord *Freyd v. University of Oregon*, 990 F.3d 1211, 1220 (9th Cir. 2021) (collecting cases). “The inquiry focuses on the primary duties of each job, not those which are incidental or insubstantial.” *Id.* Extra duties cannot distinguish two jobs if those other tasks would typically be performed by personnel at lower pay. *Id.* (citations omitted). “[I]n comparing two jobs, only the skills actually required by those jobs, not the abilities of the persons currently in those positions are relevant.” *Id.* (citing *Hein v. Oregon College of Educ.*, 718 F.2d 910, 914 (9th Cir.1983)). The determination of whether the work is substantially similar in skill, effort, and responsibility “is not dependent on job classification or titles” but on “actual job requirements and performance.” *Baker-Notter v. Freedom F., Inc.*, No. CV 18-2499 (RC), 2022 WL 798382, at *7 (D.D.C. Mar. 15, 2022) (quoting 29 C.F.R. § 1620.13(e)). “[A] wage differential is justified only if it compensates for an appreciable variation in skill, effort or responsibility between otherwise comparable job work activities.” *Laffey*, 567 F.2d at 449.

The controlling definitions of skill, effort and responsibility focus on the degree or level of the operative term—not the subject matter. For example, “responsibility” means the “degree of accountability required in the performance of the job, with emphasis on the importance of the job

obligation.” 29 C.F.R. § 1620.17(a). Similarly, differences in the type of effort are not relevant; instead, “jobs may require equal effort in their performance even though the effort may be exerted in different ways on the two jobs.” 29 C.F.R § 1620.16(a); *Baker-Notter v. Freedom F., Inc.*, No. CV 18-2499 (RC), 2022 WL 798382, at *8 (D.D.C. Mar. 15, 2022). Likewise, the regulation defining skill speaks in terms of “the amount or degree of skill” required for the compared positions, rather than a specific set of skills. 29 C.F.R. § 1620.15(a).

Defendant paid Williams nearly *half* what it paid Aresco, and both Williams and Aresco worked in the same office, and thus under similar working conditions.⁵ The evidence further shows that Williams and Aresco were performing jobs that required substantially similar skill, effort and responsibility with substantial common tasks. Although Williams and Aresco were staffed in the Athletic Department, their jobs were *not* primarily positions that required or used their respective Athletics experiences. Instead, the primary duties of Williams and Aresco were to provide project, financial, administrative and human resources support.

Despite controlling law that this Court is to look to “actual job requirements and performance,” Defendant argues that Williams’ job duties are cabined by its reading of her job description. Defendant spends a substantial amount of time seeking to equate the listed duties to percentages of time while ignoring the substance of Williams’ testimony and the record evidence. Contrary to Defendant’s averment that Williams spent “80% of her time” on “clerical duties,” Williams’ testified, across dozens of pages of testimony, that time was spent handling special projects and events for the Department, acting as a liaison between Nero and the athletics team

⁵ “Similar working conditions” encompasses “surroundings” which “measure the elements, such as toxic chemicals or fumes, regularly encountered by a worker,” and “hazards,” which “take into account their *physical* regularly encountered, their frequency and the severity they can cause.” 29 C.F.R § 1618(a) (emphasis added); *Laffey*, 567 F.2d 429, 453 n 153. “[E]mployees performing jobs requiring equal skill, effort, and responsibility are likely to be performing them under similar working conditions.” 29 C.F.R. at § 1618(b).

and other stakeholders, including the Board of Trustees, working with OGC, preparing briefings, working with human resources, and managing budgets. Filing, placing meetings on calendars (as opposed to working to optimize the schedule of Nero and the senior staff), booking Nero's individual travel (as opposed to team travel)—were not her primary duties, and Aresco also performed similar work.

Defendant points to illusory differences that do not change the required “skill, effort or responsibility” of the two positions. Defendant first points to Aresco's human resources duties, which amounts to managing the Human Resources budget, working with Kayer to post the job openings and putting together job descriptions. Williams' did the same—and more—including instances where Aresco failed to execute, and she stepped in at the last minute. Defendant then points to a single contract, Jennifer Rizzotti, to support its allegation that Aresco “researched” other contracts through a database, but Vogel testified that she did not recall if Aresco performed that research. And even if he had, Williams also provided substantial research support for the Department. Otherwise, Defendant relies on the fact that Aresco routed the contract through its contract approval process; Williams did the *same thing but for many more contracts*. Ultimately, Nero and Vogel negotiated the Rizzotti contract, not Aresco, and OGC drafted the contract.

Defendant attempts to convert Aresco's coordination and research regarding policies into actual policy-making authority. Aresco maintained no such authority. Instead, Kayer would provide Aresco policy recommendations, he would “research” what other universities were doing with similar policies, then when the leadership team made decisions regarding those policies, Aresco would make sure the decision was reduced to writing. Policies changes, agreed to by the Department, had to receive final approval from the provost. Here too, Williams routinely provided substantially similar research and coordinated with other departments, including human resources

and reduced decisions to writing. But more importantly, while Aresco “researched” policies, Williams *created and operationalized* processes to support Department goals.

Defendant also tries to cast Aresco’s additional duties with the rowing team as an important distinction. Not so. First, Aresco testified that his sports administrator duties “were other duties as assigned,” which Defendant classified as “Marginal.” Second, Defendant recognized that the budgetary responsibilities were one of the most important duties of a sports administrator, and Williams performed those responsibilities for both the men’s and women’s basketball team—the most important teams for Defendant—taking over for a Senior Associate Athletic Director. Moreover, Aresco’s additional supervisory duties were minimal: he did not discipline Davis, did not approve his leave requests, did not direct him how to coach, and he did not have authority to increase his salary. Because the Equal Pay Act looks to primary job duties of comparators, minor supervisory responsibilities do not “warrant a finding of unequal responsibility.” *Laffey*, 740 F.2d at 1084. Williams, on the other hand, hired, supervised, approved hours and disciplined two student employees, overseeing their day-to-day work.

Finally, Defendant points to Aresco’s involvement in the Championship bid process to support its claim that the two jobs were dissimilar. It seeks to do so by inflating Aresco’s role in the Championship bid process, which simply included filling out a template form. Indeed, the “typical” bid packet is a 12-page form that asks for simple information, and record evidence indicates there were no “bid meetings,” even for important bids and that Aresco delayed completing the template even when asked to do so by Vogel, further evidencing the relative unimportance of those duties.

Defendant also points to duties that are immaterial while ignoring the record at bar. For example, Defendant asserts that Aresco “spearheaded” Defendant’s Japan trip, but the record

indicates that the trip which was negotiated by Nero and planned by Anthony Travel and the Japanese Basketball Association. Williams, on the other hand, actually executed on Defendant's Hawaii trip, organizing events and planning travel. Similarly, Defendant argues that Aresco participated in leadership meetings, but describes the *exact* work that Williams did for both the senior staff and head coaches' meetings, "following up after the meetings to ensure that the initiatives discussed during those meetings were accomplished." (ECF No. 112-1 at 34.) Defendant also claims that Aresco drafted the Nike contract, but the record evidence shows that he simply forwarded the former Nike contract to Nero, and—despite being in control of relevant documents—do not provide any contemporaneous evidence that Aresco did more. While Aresco may have routed that contract through for approval, Williams did the same thing for the much more voluminous game contracts. Defendant further attempts to minimize Williams work by saying that those contracts used a template but ignores that the "OGC-approved" contract that Williams used *was created by her* to increase efficiency.

Fatal to Defendant's false stratification of two positions is what Defendant ignores. Financial responsibilities, in particular, are an important factor when determining whether positions are substantially similar. *See Johnson v. Washington Metro. Area Transit Auth.*, No. 19-CV-3534 (CRC), 2022 WL 4547527, at *3 (D.D.C. Sept. 29, 2022) ("[F]inancial-related responsibilities like the power to commit an organization's funds" are a "major" factor in determining whether positions are substantially equal under the Equal Pay Act.). This is perhaps why Defendant all but ignores Finance Director Chee-Wah's testimony. Chee-Wah testified Williams was responsible for three budgets—and, in part because of Nero's discriminatory actions towards Chee-Wah, such as freezing her out of meetings and tearing up budgets—Williams budget responsibilities were all the more important. Williams was required to routinely approve budget

line items and was the “throat to choke.” While Aresco also maintained budget responsibilities, those responsibilities were not as significant, and his skill at executing those responsibilities was much more limited. These responsibilities were so important to the Department that it conducted an audit to ensure fiscal responsibility. Even if there are some slight differences in jobs duties between the positions, the fact that Williams was responsible for and skillfully executed those duties prove the prima facie case. It is irrelevant that responsibility is exerted in different ways. *See Mulhall v. Advance Security, Inc.*, 19 F.3d 586, 592–93 (11th Cir. 1994) (finding two positions had equal responsibility where “[o]ne vice president manage[d] money primarily and people secondarily; the other manage[d] people and things primarily and money secondarily”).

Given that the job duties were so similar, it is no surprise that Defendant sought to move Williams’ duties to Aresco and eliminate her position (while ignoring University policy): it understood that the positions were fungible. *Allison v. United States*, 39 Fed. Cl. 471, 475 (Fed. Cl. 1997) (evidence that two positions are fungible proves the prima facie EPA case); *EEOC v. Enoch Pratt Free Libr.*, 509 F. Supp. 3d 467, 478 (D. Md. 2020) (same). Defendant unsupported attempts to inflate Aresco’s position while minimizing Williams, pointing to duties that are illusory or considered solely in an unsupported declaration cannot allow it to overcome summary judgment, especially where it was in control of documents relevant to its claims. *See Scott v. Harris*, 550 U.S. 372, 380 (2007).

B. Defendant cannot establish an affirmative defense.

Defendant relies on the “residuary” affirmative defense to the EPA, which requires it to prove that the pay differential was based on a “bona fide use of ‘other factors other than sex.’” *Goodrich v. Int’l Bhd. of Elec. Workers, AFL-CIO*, 712 F.2d 1488, 1493 (D.C. Cir. 1983) (citing *County of Washington v. Gunther*, 452 U.S. 161, 170 (1981)). The residuary affirmative defense

affords no “convenient escape for the Act’s basic command,” and must be applied in a gender-neutral manner. *Id.* at 1493 n. 11. The residual defense “comprises only job- related factors, not sex” and must be rooted in “legitimate differences in responsibilities or qualifications for specific jobs.” *Rizo v. Yovino*, 950 F.3d 1217, 1224, 1226 (9th Cir. 2020) (collecting cases); *Goodrich v. Int’l Bhd. of Elec. Workers, AFL-CIO*, 815 F.2d 1519, 1523 (D.C. Cir. 1987) (“valid business purposes” is insufficient on its own to prove that the wage differential was based on a bona fide factor other than sex). That is because “[w]ithout a job-relatedness requirement, the factor-other-than-sex defense would provide a gaping loophole in the statute through which many pretexts for discrimination would be sanctioned.” *Aldrich v. Randolph Central School District*, 963 F.2d 520, 525 (2d. Cir. 1992).

Where there are significant disparities in pay, “[t]he employees’ salaries themselves are the strongest evidence that sex played a part in determining salaries.” *EEOC. v. Shelby Cnty. Gov’t, Bd. of Cnty. Comm’rs*, 707 F. Supp. 969, 984 (W.D. Tenn. 1988); *Crabtree v. Baptist Hosp of Gadsden, Inc.*, No. 82-AR-1849-M, 1983 WL 30400, at *9 (N.D. Ala. Dec. 7, 1983), *aff’d*, 749 F.2d (11th Cir. 1985) (“From the evidence here the difference in pay between the male officers and the single female officer was so disparate that it cannot be attribution to anything but sexual discrimination or to an indifference to the requirement of equal treatment of the sexes in employment. In fact and in law, these amount for the same thing.”).

Defendant bears the burden to prove with competent evidence that its proffered reasons *do in fact* explain the wage disparity; that burden is “necessarily a heavy one.” *Maryland Ins. Admin.*, 879 F.3d at 120–21 (4th Cir. 2018) (collecting cases). Specifically, Defendant must explain through “contemporaneous evidence ... that the decisions to award” Aresco his substantially higher salary was “*in fact* made pursuant” to its stated affirmative defenses. *Id.* at 123. Defendant

must prove that its affirmative defense accounts for the entire wage differential. *See, e.g. Gosa v. Bryce Hosp.*, 780 F.2d 917, 919 (11th Cir. 1986) (“[Defendant] was simply unable to prove that the entire wage disparity was attributable to factors other than sex.”).

Defendant half-heartedly asserts that Aresco’s pay was justified because of his degree in business administration and his previous experience. Defendant’s only support for its position that his degree is relevant are its bald statements, without *any* evidence, let alone contemporaneous evidence, cannot sustain its affirmative defense on summary judgment. *Md. Insur. Admin.*, 879 F.3d at 120. That is especially so where the Special Assistant position only required a bachelor’s degree, which Williams’ held. In particular, courts have rejected degree qualifications where, as in the case, defendant made no showing that the degree was a prerequisite to employment or that the defendant “derived any great benefit” from the qualification. *Bullock v. Pizza Hut, Inc.*, 429 F. Supp. 424, 430 (M.D. La. 1977); *EEOC v. First Citizens Bank of Billings*, No. CV-80-45, 1983 WL 1987, at *6 (D. Mont. Feb. 14, 1983), *aff’d*, 758 F.2d 397 (9th Cir. 1985) (“The defendant’s subjective determination that education justifies the difference in pay . . . is not, alone, sufficient to rebut plaintiff’s prima facie case. Surely education is a factor in almost every situation involving wages. However, defendant has failed to offer evidence that the slightly broader education of [the comparator] was important in relation to the performance of the position.”). This is especially true where, as here, it is clear that Aresco’s skill was *less* than Williams’ skill with respect to duties related to his degree—specifically the budgetary and financial responsibilities.

Defendant fares no better on its reliance of Aresco’s work experience in non-administrative positions. Defendant’s Human Resources personnel testified that the relevant work experience for a Special Assistant would be “office management, leading committees, special projects, things along those lines.” Defendant’s Compensation leadership, Ann Hess, testified that Aresco’s

compensation was flagged because he did not have the relevant administration experience necessary to justify his salary. Defendant's own policies and procedures regarding pay correctly considered *administrative* experience, not Defendant's post-hoc explanation that Aresco's experience in a non-administrative Athletics position justified his pay. Experience that is not job-related cannot be used as an "other factor other than sex." *Md. Ins. Admin.*, 879 F.3d at 123;

Defendant also asserts that Aresco's transfer from facilities into the Special Assistant position was a lateral move and that Defendant typically does not reduce an employee's salary when he or she makes a lateral move. But hiring Aresco was not a transfer and, even if it was, permitting an employee who transfers to retain higher pay for a different position was not gender-neutral, was not applied consistently, and does not explain the disparity. An employer asserting the residual defense must establish that it is using a "gender-neutral factor" which is "applied consistently" and "in fact explains the compensation disparity." EEOC Compliance Manual, Section 10: Compensation Discrimination, No. 915.003 (12/5/2000), at §10-IV. Where an employer "exercise[s] discretion each time it assigns a new hire to a specific step and salary" it is not applying the factor consistently. *Md. Ins. Admin.*, 879 at 123; *Keziah v. W.M. Brown & Son, Inc.* 888 F.2d 322, 326 (4th Cir. 1989) ("One of the things undermining the company's defense is the pure subjectivity of the salary-setting process."). For these reasons and others, "prior wages do not qualify as 'any other factor other than sex,' and [an employer] cannot use this factor to defeat [an employee's] prima facie case." *Rizo*, 950 F.3d at 1232.

As discussed above, Kayer testified that when she made a "lateral move" from Special Assistant to Human Resources, her pay was cut by \$10,000/year. Even if hiring Aresco were characterized by the University as a transfer or lateral move, it could not constitute a "factor other than sex" under the EPA because Kayer, a female who was transferred, was not allowed to retain

her higher pay when she transferred. Further, the transfer theory cannot justify the pay disparity as a matter of law, in part because it does not account for the entire wage differential. Defendant's Audit concluded that Williams was *significantly* underpaid, that Williams was entitled to a pay raise to the same hiring range as Aresco for the Special Assistant position, and that she was entitled to a bonus for work already performed. But Defendant did not raise her pay, increase her salary range, or pay her a bonus. Thus, even if Defendant could establish a consistently applied policy on transfers or lateral moves, it cannot rely on Aresco's previous salary in Facilities to justify why Williams did not earn equal pay for equal work.

C. EEOC is entitled to summary judgment on the Title VII claim.

Title VII makes it unlawful for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Title VII “reflects the American promise of equal opportunity in the workforce and shields employees from certain pernicious forms of discrimination.” *Figueroa v. Pompeo*, 923 F.3d 1078, 1082–83 (D.C. Cir. 2019). Summary judgment is analyzed under the familiar *McDonnell Douglas* method of proof. “At the first stage, the [plaintiff]-employee must establish a prima facie case. If she does, ‘the burden then shifts to the [defendant]-employer to articulate a legitimate, nondiscriminatory reason for its action.’ If the employer meets its burden of production, the ‘burden then shifts back’ to the employee, who must prove that, despite the proffered reason, she has been the victim of intentional discrimination.” *Id.* at 1086 (quoting *Wheeler v. Georgetown Univ. Hosp.*, 812 F.3d 1109, 1113–14 (D.C. Cir. 2016)). Where the defendant does not make an adequate evidentiary proffer of its legitimate non-discriminatory reason after the prima facie case is supported “then the [d]istrict [c]ourt ‘must find

the existence of the presumed fact of unlawful discrimination and must, therefore,’ issue summary judgment in [the plaintiff’s] favor.” *Figueroa v. Pompeo*, 923 F.3d 1078, 1095 (D.C. Cir. 2019) (citing *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 510 n. 3 (1993)); *Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1293 (D.C. Cir. 1998) (“[I]n the absence of a legitimate explanation, we infer the existence of an illegitimate one.”).

“The precise requirements of prima facie [employment discrimination] case can vary depending on the context.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). “Given the Supreme Court’s emphasis on flexibility, [the D.C. Circuit has] adopted a more general version of the prima facie case requirement: ‘the plaintiff must establish that (1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) the unfavorable action gives rise to an inference of discrimination.’” *Chappell-Johnson v. Powell*, 440 F.3d 484, 488 (D.C. Cir. 2006) (quoting *Brown v. Brody*, 199 F.3d 446, 452 (D.C. Cir. 1999)). Where there is a coordinate EPA claim, a Title VII plaintiff may establish a prima facie case by demonstrating that she is a member of a protected class and that the “job she occupied was similar to higher paying jobs occupied by males.” *Brinkley-Obu v. Hughes Training, Inc.*, 36 F.3d 336, 343 (4th Cir. 1994) (citations omitted) (emphasis added). This is a “relaxed standard of similarity” as compared to EPA claims. *Id.* It is uncontested that Williams is a woman, and, as explained below, the evidence makes clear that adverse employment actions were taken against Williams because of her sex.

Title VII makes it “an unlawful employment practice ... to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). In the phrase ““terms, conditions, or privileges of employment,” the Congress “evince[ed] a[n] ... intent to strike at the

entire spectrum of disparate treatment ... in employment.” *Chambers v. Dist. of Columbia*, 35 F.4th 870, 874 (D.C. Cir. 2022) (en banc) (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986)). “Title VII prohibits all discrimination with respect to terms and conditions of employment;” the statute does not distinguish between “subtle” and “overt” discrimination, “economic” and “non-economic” discrimination, or “tangible” and “intangible” discrimination. *Id.* “[I]t is difficult to imagine a more fundamental term or condition of employment than the position itself.” *Id.* (quotations omitted). “Once it has been established that an employer has discriminated against an employee with respect to that employee’s ‘terms, conditions, or privileges of employment’ because of a protected characteristic, the analysis is complete.” *Id.* at 874–75.

EEOC does not plead a failure-to-promote claim, and even if it did, the prima facie case would be met because where—as here—it would be futile to apply for a position because of a discriminatory practice, she need not show she applied for the job at all. *See Lathram v. Snow*, 336 F.3d 1085, 1089 (D.C. Cir. 2003) (citing *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977)). Indeed, where an employee’s “failure to apply” was “a function of the allegation discrimination,” it is not necessary to engage in the application process. *See Prince v. Rice*, 453 F. Supp.2d 14, 28 (D.D.C. 2006). Instead, the basis of the claim is that Defendant “denied her an opportunity for advancement” that it gave to male employees. *See Chappell-Johnson v. Powell*, 440 F.3d 484, 488 (D.C. Cir. 2006) (“This is a perfectly acceptable way to try to satisfy her prima facie burden.”). Defendant’s discriminatory actions impacted Williams’ salary at the time and in the future. Where employment actions result in consequences “affecting . . . future employment opportunities,” those actions also sound in Title VII. *Wiley v. Glassman*, 511 F.3d 151, 157 (D.C. Cir. 2007). The Title VII claim looks to Defendant’s “activity before, during, and after the process of selecting Aresco for the Special Assistant role.” *EEOC v. George Washington Univ.*, No. CV

17-1978 (CKK), 2019 WL 2028398, at *6 (D.D.C.).

Defendant discriminated against Williams because of sex. Before moving into administration, Aresco was granted a nearly \$30,000 raise and non-competitive promotion to Athletics Director after *he requested it from Nero* because he was “asserting himself” into additional duties. Then when Aresco wanted to shift from facilities into administration, Nero gave him the Special Assistant position even though he did not have any experience doing similar administrative duties. When Human Resources and Compensation agreed that Aresco’s \$77,000 salary for the Special Assistant position—which required 8 years of relevant administrative experience—was too high, Nero and the Department pushed it through anyways even though University policy makes clear that his change in position would be “voluntary demotion” instead of a lateral transfer. During the interview process, too, Defendant flouted University policy by not interviewing three candidates and Vogel refusing Kayer’s advice that she work with an additional interviewer. Still, Aresco was selected for the position while multiple employees deterred Williams from applying so as to avoid creating controversy.

After Aresco was selected for the position, Nero began attempting to reassign all of Williams’ duties to Aresco. He was unsuccessful only because Aresco could not perform. Yet, despite Aresco’s poor performance, Nero sought to eliminate Williams’ position, again in violation of University policy, and assigned her diminutive tasks, such running errands. Williams, however, continued performing her previous duties, in part because Nero refused to engage with other women at the University, including Chee-Wah.

As described above, Williams and Aresco performed the substantially similar duties, yet she was paid nearly half as much as Aresco. But perhaps just as malignant is how Defendant now claims that Williams needed to “stay in her lane,” but when Aresco “asserted” himself into

additional responsibilities, his salary was nearly doubled and granted a new position. Williams requested similar treatment, and was not only denied, but completely ignored. While Defendant points to a *single* instance where Williams failed to cancel a lunch meeting to justify the need for her to “stay in her lane,” the record indicates that Aresco routinely failed to perform his duties as Special Assistant—in one case, leading to an employee going without pay for over one month—and granted additional promotions.

Indeed, soon after Williams’ filed her internal discrimination complaint, Defendant reclassified Aresco’s position as an Assistant Athletic Director Management Stream, granting Aresco further opportunities to advance in salary, even though Compensation and Human Resources previously confirmed he did not have the required experience for the position and that his position did not qualify for Management Stream because he did not have appropriate supervisory authority. Nevertheless, the reclassification was processed in violation of policy.

Although Williams had the experience required for the Special Assistant position, unlike Aresco, she was denied the opportunities granted to Aresco. Just as Aresco had done previously, when Ed Scott’s position was vacated, and Williams was asked to take on some of his duties, she requested that she be considered and given the opportunity to take on even more responsibility. Unlike Aresco, however, she was not only denied that position but outright ignored by Nero.

A plaintiff-employee may probe an inference of discrimination through a host of ways: “pointing to evidence that the employer treated other, similarly situated employees better; that the employer is ‘lying about the underlying facts’ of its decision; that there were ‘changes and inconsistencies’ in the employer’s given reasons for the decision; that the employer failed to ‘follow established procedures or criteria’; or that the employer’s ‘general treatment of minority employees’ . . . was worse than its treatment of non-minorities.” *Allen v. Johnson*, 795 F.3d 34, 40

(D.C. Cir. 2015) (quoting *Brady v. Off. Of Sergeant at Arms*, 520 F.3d 490, 495 and n. 3 (D.C. Cir. 2008)). The plaintiff may also show an inference of discrimination by rebutting an employer's stated legitimate, non-discriminatory reason. *Id.* (citing *George v. Leavitt*, 407 F.3d 405, 413 (D.C. Cir. 2005)). Moreover, evidence of statements regarding the protected group, or praising those outside the protected group are sufficient to prove intent—and are direct evidence of illegal discrimination. *See Steele v. Mattis*, 899 F.3d 943, 946 (D.C. Cir. 2018).

As emphasized above, nearly every step of Aresco's hiring process violated the University's "established procedures and criteria" from the interview process, his selection, the setting of his pay, and the reclassification of his role. That alone is enough to establish an inference of discrimination. EEOC takes this opportunity, however, to emphasize that Nero also treated women less favorably than men. Nero also refused to work with Kayer, a contemporary of Williams, because of her gender, and used the same non-credible reason: that she breached confidentiality while seeking to hold Nero and Defendant accountable for his actions. Likewise, Chee-Wah testified that Nero lied to her supervisors, trashed her budget reports, and refused to meet with her in order to avoid accountability. Not long before Williams worked in the Department, Nero minimized Warner, who worked in the Athletics Department for more thirty years and threatened to take her title and compensation. There was even another pay complaint regarding Aresco. Defendant was well aware of these complaints and did nothing until Nero's conduct became public information. Taken together, these actions certainly prove an inference of discrimination.

Vogel summarized Nero's treatment of women, telling Williams after she was verbally accosted by Nero, "A man can walk into the director's office and have one conversation and then a job is created for him, but that is not the same for women." For these reasons, EEOC has

established its *prima facie* case under Title VII, and EEOC requests that the Court grant EEOC's motion and deny Defendant's motion.

D. Defendant did not satisfy its burden.

Once a plaintiff establishes the *prima facie* case of discrimination, the burden shifts to the employer "to articulate a legitimate, non-discriminatory reason for its action." *Figueroa*, 923 F.3d at 1087. "An employer cannot satisfy its burden of production with insufficiently substantiated assertions." *Id.* In order to prove a legitimate, non-discriminatory reason, the employer must meet four criteria. First, the employer must present competent admissible evidence. *Id.* Second, that evidence must allow the factfinder to find that "the employer's action was motivated by a nondiscriminatory reason," thereby "raising a genuine issue of fact as to whether the employer intentionally discriminated against the employee." *Id.* Third, "the nondiscriminatory explanation must be legitimate and facially credible in light of the proffered evidence." Finally, "the evidence must present a clear and reasonably specific explanation" because "a plaintiff cannot be expected to disprove a defendant's reasons unless they have been articulated with some specificity." Employers may not use subjective standards as "cover for discrimination" because "[plaintiffs lack the resources (and the clairvoyance) to guess how their respective decisionmakers interpreted the criteria and to explain away each standard at trial." *Id.*

Like in *Figueroa*, Defendant has provided vague and non-credible reasons for the actions taken against Williams. *See, e.g., Lindahl v. Air France*, 930 F.2d 1434, 1438 (9th Cir. 1991) ("vague explanations about overall qualifications" are not sufficient to make out a legitimate, nondiscriminatory reason). Defendant has failed to make a proper showing of its legitimate, non-discriminatory reasons, and EEOC is entitled to summary judgment.

Defendant once again reasons that Arseco's experience and education account for the pay

differential, and once again, they fail. Defendant itself determined that Aresco's experience did not qualify him for the pay he received. That alone dooms Defendant's stated reasons, as explained above. Defendant offers up an additional reason: a vague explanation that Williams breached confidentiality—the same reasoning it gave for Kayer's transfer. Nero's perceptions of confidentiality are the exact type of subjective standard the D.C. Circuit disallows. *Figueroa*, 923 F.3d at 1087. Defendant attempts to create an articulable standard for what is considered “confidential” by saying the word “protocol” without producing any such protocol during this litigation or otherwise explaining what that non-existent “protocol” entails. Such bald attempts cannot be credited. That is especially true where multiple witnesses have testified that Nero uses confidentiality in order to avoid accountability. In any case, Williams work throughout her time as the Executive Assistant required access and use to confidential information, despite Nero's allegations that soon into he perceived her as unable to maintain confidentiality, including managing highly confidential budgets and entrusting highly confidential information regarding coaches and students into her care. Defendant's vague and non-credible reasons do not pass muster; summary judgment should be entered for EEOC.

Failing to articulate a [legitimate non-discriminatory] reason properly ‘is the legal equivalent of ... having produced no reason at all.’” *Figueroa*, 923 F.3d at 1087 (quoting *Patrick v. Ridge*, 394 F.3d 311, 320 (5th Cir. 2004)). “A rush to the third prong may deprive the employee of *McDonnell Douglas*'s un rebutted presumption of discrimination created by the *prima facie* case.” *Id.* (citing *Loyd v. Phillips Bros., Inc.*, 25 F.3d 518, 524 (7th Cir. 1994); *Hill v. Seaboard Coast Line R.R. Co.*, 767 F.2d 771, 774-75 (11th Cir. 1985)). Assuming, for argument, that Defendant did meet its burden to establish a legitimate non-discrimination reason, its reasoning is a pretext for discrimination. As explained above, there is substantial uncontroverted evidence that

Defendant did not consider Aresco’s education or experience to justify his pay, that Defendant routinely violated University policy, that Nero used “confidentiality” as an escape hatch for accountability, and that he discriminated against other women throughout his tenure at Defendant, in one case making the same argument he does here—a breach of confidentiality. As such, Defendant’s inability to identify a legitimate, non-discriminatory reason is fatal to its defense of EEOC’s claims, and summary judgment should be entered for EEOC.

E. EEOC is entitled to summary judgment on the unclean hands defense.

Despite this Court’s determination that EEOC “appears to have met its obligations to conciliate the Title VII claims,” by “inform[ing] the employer about the specific allegation, as the Commission typically does in a letter announcing its determination of ‘reasonable cause,’” *EEOC v. George Washington Univ.*, No. CV 17-1978 (CKK), 2019 WL 2028398, at *9 (D.D.C. May 8, 2019) (citing *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645 (2015)), Defendant stated that EEOC’s “conduct in this matter, including its withholding of secret purported evidence and its failure otherwise to engage in the conciliation process in good faith as required by statute and *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645 (2015), evidence its unclean hands.” Def.’s Responses to EEOC’s Interrogatories at No. 16. Defendant is incorrect as a matter of law and fact.

First, where—as here—the Federal Government acts in the public interest the unclean hands defense is unavailable as a matter of law. *SEC v. Gulf & Western Ind., Inc.*, 502 F.Supp. 343, 348 (D.D.C.1980) (“[T]he doctrine of unclean hands is clearly without merit because it may not be invoked against a governmental agency which is attempting to enforce a congressional mandate in the public interest.”); *SEC v. Sprecher*, No. 92–2860, 1993 WL 544306, *2 (D.D.C.1993) (“[A]n unclean hands defense does not lie in a civil enforcement action brought by a federal agency. ”).

Second, even if that were not the case, EEOC complied with the statutory requirements. In *Mach Mining*, the Supreme Court strictly limited judicial review over EEOC's conciliation efforts: all that is required is for EEOC to have (1) communicated in some way about an alleged unlawful employment practice; and (2) tried to engage the employer in some form of discussion to remedy the alleged discriminatory conduct. *Mach Mining*, 135 S. Ct. at 1655–66. This review is “relatively barebones” because EEOC exercises “extensive discretion to determine the kind and amount of communication with an employer appropriate in any given case.” *Mach Mining, LLC*, 135 S. Ct. at 1649. EEOC was not required “lay all its cards on the table.” *Id.* at 1654. To the contrary, after disclosing what the employer has done and which employees ... have suffered as a result, *id.* at 1656, “the Commission was not obligated to disclose any further information or its sources to meet its limited conciliation obligation.” *George Washington Univ.*, 2019 WL 2028398, at *9.

In support of its conciliation efforts, EEOC provided a Declaration from Director Mindy Weinstein stating that EEOC “performed the obligations” set forth in *Mach Mining* “but that its efforts have failed.” *See Mach Mining*, 135 S. Ct. at 1656 (observing that such an affidavit “will usually suffice to show that [EEOC] has met the conciliation requirements). In that Declaration, Weinstein affirms first that the Commission issued a Letter of Determination describing the actions taken by Defendant and the employee who suffered as a result. *See Decl. of Mindy Weinstein* (ECF No. 15-1.) It then confirms that, before issuing a conciliation failure notice, EEOC engaged in conciliation communications with Defendant in an attempt to eliminate and remedy the alleged unlawful practices. *Id.* Those efforts did not secure a conciliation agreement on terms acceptable to the Commission. *Id.* Defendant has provided no competent evidence suggesting otherwise. Defendant's unclean hands defense with respect to the Commission thus fails as a matter of law and fact, and EEOC is entitled to summary judgment.

F. EEOC is entitled to summary judgment on the *Kolstad* defense.

The *Kolstad* defense is an assertion that Defendant’s purported good faith efforts to comply with Title VII bar an award of punitive damages. *See Kolstad v. American Dental Ass’n*, 527 U.S. 526 (1999). The Supreme Court held that a punitive damages are available where an employer acts “in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages.” *Id.* at 536. Specifically, the inquiry focuses on whether Defendant acted with reckless disregard towards “the federally protected rights of [the] *aggrieved individual*”—in this case Williams. *Id.* at 534 (emphasis added). Because the focus of the *Kolstad* defense is on Defendant’s actions towards a specific individual, it is not sufficient for Defendant to simply have anti-discrimination policies. Defendant must *implement* those policies with respect to Williams. *Passantino v. Johnson & Johnson Consumer Prod., Inc.*, 212 F.3d 493, 517 (9th Cir. 2000) (“The purpose of Title VII . . . would be undermined if those policies were not implemented and were allowed instead to serve only as a device to allow employers to escape punitive damages.”).

Defendant seeks to use its policies as such an escape hatch, and it cannot do so. As it relates to Williams—the aggrieved individual that Defendant must actually seek to act in “good faith” towards—it failed woefully. Not only did Defendant refuse to produce information or documents regarding the ultimate question presented by *Kolstad*, its course of action evidences that it sought to use its policies as an “shield” from punitive damages and not as a prophylactic against discrimination. As described above, Defendant flouted nearly every policy it had regarding the selection, hiring and compensation of Aresco in the Special Assistant position, while Williams’ internal discrimination complaint languished, she was ignored by Nero and denied compensation Defendant determined she was entitled to. No reasonable jury could find that Defendant acted in good faith. For these reasons, Defendant cannot establish its *Kolstad* defense, and the Court should

grant EEOC's summary judgment motion.

V. CONCLUSION

For the reasons asserted herein, as well as in EEOC's Statement of Facts and its Response to Defendant's Statement of Facts, EEOC respectfully requests that the Court grant EEOC's summary judgment motion and deny Defendant's summary judgment motion.

Respectfully submitted,

/s/ Dylan Cowart

Dylan T. Cowart

Trial Attorney

U.S. Equal Employment Opportunity Commission

Baltimore Field Office

31 Hopkins Plaza, 14th Floor

Baltimore, MD 21201

dylan.cowart@eeoc.gov

Telephone: 443-220-1852

Facsimile: 410-209-2221

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Dylan Cowart

Dylan Cowart

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|-----------------------------------|---|--------------------------------|
| UNITED STATES EQUAL EMPLOYMENT |) | |
| OPPORTUNITY COMMISSION, |) | |
| |) | |
| Plaintiff, |) | Civil Action 1:17-cv-01978-CKK |
| |) | |
| v. |) | |
| |) | |
| THE GEORGE WASHINGTON UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

EEOC'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
EEOC'S MOTION FOR SUMMARY JUDGMENT

I. Williams was denied equal pay for equal work.

1. In September 2014, Defendant hired Sara Williams to work in the Athletics Department as the Executive Assistant. PX I, Williams Decl. ¶¶ 1, 4; PX J, Williams Dep. 20-21, Ex. 2.

2. During this litigation, Defendant filed an Executive Assistant Job Description in the Docket and said that it constituted the official University position description for the Executive Assistant position that Williams held. ECF No. 10-5, p. 2; ECF No. 10-1, p. 12, n. 2.

3. The Executive Assistant Job Description that Defendant identified as Williams' official job description is attached as PX A.

4. From 9/15/14 to 12/11/16, Defendant paid Williams less than \$40,000 per year to work as the Executive Assistant in Defendant's Athletics Department. PX B, EEOC000252.

5. On 1/5/16, Defendant posted a Special Assistant position in the Athletics Department. PX C, Vogel Dep. Ex. 8.

6. The Special Assistant job posted on 1/5/16 did not say how much money the job would pay to the person hired for the job, nor did it provide a range of pay. Id.

7. The Special Assistant job was posted for internal consideration only and closed after three days on 1/8/16. PX C, Vogel Dep. Ex. 5, Ex. 8.; PX D, Aresco Dep. Ex. 5.

8. Before the Special Assistant position was posted, Michael Aresco, a male who had been moved from Facilities to administration, spoke with Patrick Nero, the Athletics Department Director, “about taking over” the Special Assistant position. PX D, Aresco Dep. 157:14-158:14.

9. Defendant hired Aresco for the Special Assistant job that was posted on 1/5/16. PX C, Vogel Dep. Ex 9 at Interrog. 6.

10. Defendant did not offer to hire Williams for the Special Assistant job that Defendant hired Aresco to fill, nor did Defendant offer her the opportunity to transfer to that job. PX E, EEOC000254-261.

11. Defendant paid Michael Aresco more than \$77,000/year to work as the Special Assistant in the Athletics Department. PX F, Hess Dep. Ex. 4 at GWU_001196-001197.

12. During the entire period when Williams worked as the Executive Assistant, Defendant paid her less to work as the Executive Assistant than Defendant paid Aresco to work as the Special Assistant. PX B, EEOC000252.

13. Patrick Nero was Williams’ immediate supervisor when she was the Executive Assistant and he approved Williams’ pay. PX CC, Def’s Resp. to EEOC’s 1st Interrog., p. 11-12.

14. Nero was Aresco’s immediate supervisor when he was the Special Assistant and he approved Aresco’s pay. PX C, Vogel Dep. Ex. 9 at Interrog. 3; PX C, Vogel Dep. 6 (explaining the use of Aresco’s Facilities salary to fund the Special Assistant position).

15. When Williams worked as the Executive Assistant, one of her main responsibilities was contract administration. PX I, Williams Decl. ¶ 5.

16. Concerning contract administration, Williams coordinated workflow between the Athletics Director Patrick Nero, head coaches, the University's Office of General Counsel (OGC), University facilities staff, and the University business office to draft and obtain all appropriate signatures on game and team contracts, ensure space was reserved for the subject games, track contract progress and history, and ensure payment on any outstanding financial obligations under the contracts. PX J, Williams Dep. 23-24, 162-166, Ex. 2, p. 6-7, Ex. 14, p. 1; PX G, Chee-Wah Dep. 25-26, 48-50, 52-53.

17. When Williams started working as the Executive Assistant, each game contract needed to be individually reviewed and approved by OGC, resulting in a time-consuming process that slowed the approval process for game contracts. PX I, Williams Decl. ¶ 27.

18. Recognizing an opportunity to capture efficiencies in the contracting process, Williams created a form-fillable template with standardized language that ensured the accuracy of game contracts. Id.

19. The template that Williams created was approved by OGC, and its use enabled OGC to approve multiple game contracts in bulk, which significantly increased the speed of the contract approval process. Id.

20. Williams also created another new system for contract management. PX G, Chee-Wah Dep. 48:11-50:14.

21. Before Williams was the Executive Assistant, all game contracts were kept in hard copy in a binder, before and after completion, but each time a stakeholder needed an update,

Williams had to go through a time-consuming process to determine where the contract was in the drafting and approval process. PX I, Williams Decl. ¶ 32.

22. Williams created a system to track where each contract was in the approval process so that she could easily provide the necessary information to any party who needed it, further improving the efficiency of contract routing and approval. Id.; PX G, Chee-Wah Dep. 48:11-50:14.

23. Indeed, Williams created and managed the whole process of contract approval. PX G, Chee-Wah Dep. 48:11-49:19, 52:20-53:6.

24. Williams was also responsible for a Xerox contract. PX J, Williams Dep. 65-66. Williams handled machine maintenance, price negotiation, and she streamlined the contract. Id.

25. Williams also negotiated a \$23,000 contract with Marriott for a student event. PX J, Williams Dep. 184:10-20.

26. Williams was also responsible for coordinating senior staff and head coaches' meetings and project management for tasks assigned in the meetings. PX I, Williams Decl. ¶ 5.

27. During senior staff meetings, the senior staff discussed ongoing Department projects and other updates regarding important and confidential topics that impacted many aspects of the Department, including personnel decisions, budgetary decisions, and student-athlete development and affairs. PX I, Williams Decl. ¶ 11.

28. Williams also scheduled head coaches' meetings and senior staff meetings, created the agendas for those meetings, attended them, and took minutes for them. PX J, Williams Dep. 176:6-13, Ex. 14.

29. Before Williams started working as the Executive Assistant, senior staff meetings were run “round robin,” with each senior staff member providing updates about their projects, which was not conducive to collaboration among the staff. PX I, Williams Decl. ¶ 12.

30. To increase productivity and efficiency, Williams created detailed agendas for senior staff and head coaches’ meetings by contacting senior staff or head coaches to ask whether they had items to place on the agenda, proposing agenda items herself, and plotting items into the agenda based on their strategic importance to the Department. PX I, Williams Decl. ¶ 10; PX J, Williams Dep. 178:15-24.

31. In creating the agenda, Williams also included follow-up on prior agenda items to provide updates. PX J, Williams Dep. 178:25-179:4.

32. After the senior staff meetings, Williams was responsible for ensuring tasks assigned to senior staff at the meetings came to fruition by keeping track of the deadlines that were set and reminding the responsible senior staff member when the deadline was approaching. PX I, Williams Decl. ¶ 13.

33. Williams created a system for tracking projects and ensuring that deadlines were appropriately set and met. Id. ¶ 14.

34. Williams prepared minutes for senior staff and head coaches’ meetings to memorialize updates and action items from the meetings, which included analyzing what should be shared. PX I, Williams Decl. ¶ 15; PX J, Williams Dep 78:18-79:20, Ex. 14, p. 1.

35. Williams also coordinated separately with members of senior staff to assist them in completing tasks and expediting processes necessary to assure completion of tasks and meeting goals. PX I, Williams Decl. ¶ 16; PX G, Chee-Wah Dep. 54:1-55:19.

36. If a member of the Athletics Department was not properly responding to emails or communicating properly, Williams' interceded to assure open lines of communication. PX I, Williams Decl. ¶ 17; PX G, Chee-Wah Dep. 98:3-10.

37. In December 2014, Williams emailed an Assistant Athletic Director to try to track down the second half of an incident report regarding a sensitive matter, instructing him to provide the second half by the following Monday. PX I, Williams Decl. ¶ 18. When he did not meet the deadline, Williams emailed him again to ask for compliance. Id.

38. After a senior staff meeting, Williams called another meeting with Brian Sereno, Nicole Early, and Steven Farmer, the Director of Basketball Operations, to discuss the game times for the men's and women's basketball schedule for the season and make decisions about the schedules. PX I, Williams Decl. ¶ 17; PX H (EEOC0001069-0001073).

39. Williams convened and led the meeting with Sereno, Early, and Farmer, and followed up to ensure decisions were scheduled and implemented. PX I, Williams Decl. ¶ 17.

40. Williams performed hiring and HR duties until Aresco was hired as the Special Assistant. PX I, Williams Decl. ¶ 77; PX J, Williams Dep. 248:7-18, 249:1-249:22.

41. After hiring Aresco as Special Assistant, Nero directed Williams to train Aresco in the hiring and HR duties that she was performing as Executive Assistant PX I, Williams Decl. ¶ 77; PX J, Williams Dep. 249:1-250:3.

42. Williams helped Human Resources prepare offer letters for new Athletics Department employees and kept HR on track to address Department needs. PX J, Williams Dep. 215:3-13; PX I, Williams Decl. ¶ 21.

43. Williams coordinated the hiring process for two new Senior Associate Athletics Directors, Tanya Vogel and Ed Scott, including drafting offer letters and communicating about offer acceptance. PX I, Williams Decl. ¶¶ 19-20; PX J, Williams Dep. 248:14-18.

44. When the Senior Associate Athletics Director position was posted, Williams kept Kaithlyn Kayer, HR Client Partner/Manager, on track with sending the resumes to Williams to provide to Nero and explained Nero's priorities and interests for applications he wanted to review to Kayer. PX I, Williams Decl. ¶¶ 20-21.

45. For a Senior Associate Athletics Director position, Williams scheduled all of the candidates' phone screens, helped develop phone screen questions, assembled panels of head coaches, senior staff, and cross-campus partners to interview the candidates, and set full-day interview schedules. PX I, Williams Decl. ¶ 20; PX C, Vogel Dep. 39:20-41:25.

46. In addition, Williams booked the candidates' travel and lodging and handled budget allocations and reimbursements for expenses associated with their trips. PX I, Williams Decl. ¶ 20; PX C, Vogel Dep. 39:20-41:25.

47. Williams also worked on hiring plans. PX I, Williams Decl. ¶ 22; PX G, Chee-Wah Dep. 40:8-40:18, 43:16-45:7.

48. Williams' responsibilities for hiring plans included collecting and reviewing start dates, working with coaches to determine hiring needs and intentions, facilitating onboarding, and collecting data and documents to assure synergy between Human Resources and finance. Id.

49. In 2014 and 2015, Williams assisted Human Resources with the Athletics Department performance evaluation process. PX I, Williams Decl. ¶ 23; PX J, Williams Dep. 245-246.

50. The performance evaluation process was important because staff pay increases were determined, in part, by performance appraisals. PX I, Williams Decl. ¶ 23.

51. Williams created a tracking system to ensure receipt of all performance reviews and follow-up with reviewers about outstanding reviews. PX I, Williams Decl. ¶ 24.

52. After collecting the performance reviews, Williams ensured that Nero and all reviewers had signed the reviews and then gave them to Kayer. PX J, Williams Dep. 246:15-20.

53. Williams also coordinated the presentation of new or significant Human Resources processes at senior staff meetings. PX I, Williams Decl. ¶ 25.

54. When Defendant was planning to use a new classification system for position descriptions and compensation, Williams worked with Human Resources to summarize and distill the information and facilitated a presentation about the new system to the senior staff and the Department at large. Id.

55. As Executive Assistant, Williams had budget management responsibilities. PX J, Williams Dep. 38:10-21, 48:10-49:7; PX G, Chee-Wah Dep. 33:15-34:20.

56. Williams managed three budgets that had combined discretionary operations budgets in excess of \$1.5 million and a significantly higher combined total value: the Athletics Director budget, the championships budget, and the administration budget. PX I, Williams Decl. ¶¶ 34, 35; PX J, Williams Dep. 48:10-23, 167:6-16, Ex. 21; PX G, Chee-Wah Dep. 87:4-89:11, 92:7-96:9.

57. For each of the three budgets she managed, Williams was responsible for five-year forecasting, conducting quarterly budget reviews, and monthly and weekly reconciliation, as well as processing and filing receipts and tracking expenses in day-to-day operations. PX I, Williams Decl. ¶ 36; PX J, Williams Dep. 48:19-49:22.

58. Five-year forecasting required Williams to analyze where Department finances were spent in the previous five years, to project where finances may go in the next five years, and to ensure that each budget reflected those predictions. PX J, Williams Dep. 167-168; PX G, Chee-Wah Dep. 98:17-100:20.

59. In 2016, Williams assisted the Directors of Basketball Operations (DOBOs) for both men's and women's basketball with their respective budget plan, team travel including chartered flights, equipment and uniforms, identifying potential revenue streams from games, and preparing the five-year forecasts for their teams' budgets. PX I, Williams Decl. ¶ 38. Because the DOBOs were new to their positions, Williams trained them on appropriate methods of completing the forecast, and Williams reviewed, corrected and prepared for completion the forecast for submission to the Finance Director and Nero. PX I, Williams Decl. ¶¶ 38-39.

60. Williams also managed the completion of the budget planning template for the Athletics Department as a whole, assuring that the appropriate parties promptly executed their duties. PX G, Chee-Wah Dep. 98:11-16.

61. In managing the athletic director, championship, and administration budgets, Williams met with Nero quarterly to review the budgets and compare actual spending to forecast budgets. PX J, Williams Dep. 168:16-23.

62. Williams worked closely with the Finance Director, Rosemarie Chee-Wah, to review spending plans on a regular basis, ensure budgets were appropriately accounted, and ensure the budget planning process was on track in support of Nero's budget responsibilities for the entire Department. PX I, Williams Decl. ¶ 40; PX G, Chee-Wah Dep. 36:4-40:7; 105:6-106:2.

63. Williams also reconciled the budgets on her own on a monthly basis, tracking actual versus forecast budget, so that she could immediately notify Nero of outstanding issues and make

recommendations for moving funds, if necessary, to keep the budgets on track. PX J, Williams Dep. 168:23-7; PX G, Chee-Wah Dep. 125:14-21, 150:9-151:2, 262:1-264:10.

64. On a daily or weekly basis, in managing the budgets, Williams was responsible for processing expense reports and claims and approving expenses that needed to be assigned to each budget. PX J, Williams Dep. 169:8-170:2; PX G, Chee-Wah Dep. 156-159, 161-164.

65. When requested funds had already been budgeted for, Williams could approve them independently; if they had not been budgeted for, Williams first discussed her recommendations regarding approval with Nero. PX I, Williams Decl. ¶ 41.

66. The Finance Director confirmed that Williams “was acting on behalf of [Nero] as the ... budget manager, so she had full authority to review and approve spending to those orgs” as a typical part of her responsibility to manage budgets assigned to her. PX G, Chee-Wah Dep. 162:4-10.

67. Expenditures from the budgets Williams managed had to be approved before they went for review as a matter of accountability. PX G, Chee-Wah Dep. 160:10-162:14, Ex. 10.

68. Regarding budgets, Williams had high-level responsibility. As the Finance Director testified, “[Williams] needs to be responsible or held accountable for any expenses that come through that – to make sure that they are, the business rationale is legitimate for it or she’s going to – she’s the – basically the throat to choke.” PX G, Chee-Wah Dep. 162:11-16.

69. Williams’ budget management responsibilities mirrored to budgets handled by some sport administrators, although she was more skilled in budget management than many sports administrators. PX G, Chee-Wah Dep. 98:17-99:21, 160:10-162:14.

70. The Finance Director often had to tell others in the Athletics Department how to handle budgets and manage them, but Williams already understood that job and had experience working on budgets in the Department. PX G, Chee-Wah Dep. 98:17-99:21.

71. Williams' duties also included preparing Nero for meetings/events by gathering information and preparing briefing folders. PX J, Williams Dep. 68-70; 92-93; Ex. 7, pp. 31-33.

72. To create briefing folders, Williams gathered information for talking points, provided bios of other participants so that Nero understood what they might be speaking about or where they were coming from, and provided information about other persons from the University or donors who were planning to attend. PX I, Williams Decl. ¶ 57; PX J, Williams Dep. 37:17-38:8, 94:1-17.

73. Williams also provided updates to prepare Nero for board meetings. PX J, Williams Dep. 25:1-13.

74. To prepare Nero for board meetings, Williams contacted other Athletics Department staff members to gather information for Nero's report to the board; reviewed that information to ensure that it was complete, addressed the board's concerns, and aligned with the presentation planned for the meeting; and compiled the pertinent information for Nero. PX I, Williams Decl. ¶ 59; PX J, Williams Dep. 26:7-24.

75. If Williams' preparation for board meetings revealed gaps in information provided, she went back to the Department staff with specific questions to fill the gaps or worked with Nero to get the information by running reports from available tools, making necessary calculations, or following up with head coaches. PX J, Williams Dep. 26:25-27:12.

76. In overseeing Nero's calendar and meetings, Williams scheduled meetings between Nero and other Athletics Department staff as well as other University constituents and external parties, including the University president and provost. PX J, Williams Dep. 71:2-77:2.

77. Williams' responsibility for drafting and sending correspondence on behalf of Nero included managing, drafting and sending emails from the GW athletic director (GWAD) email account, which was Nero's public-facing email account. Id. at 40:21-42:15.

78. As Executive Assistant, Williams supervised two paid student employees each semester. PX I, Williams Decl. ¶ 42; PX J, Williams Dep. 166-167, Ex. 14.

79. As Executive Assistant, Williams had complete responsibility for managing and hiring student employees. PX J, Williams Dep. 45:2-17.

80. Regarding student employees, Williams solicited recommendations for applicants, selected student candidates for interview, conducted the interviews, and selected candidates to hire for student positions without the need for further approval. PX I, Williams Decl. ¶ 43.

81. As Executive Assistant, Williams worked with senior staff to determine appropriate projects for student workers, managed the workloads of student workers, signed their time sheets, and disciplined them when necessary. Id. ¶ 44.

82. Williams also planned travel for some men's and women's basketball games and championships. PX I, Williams Decl. ¶ 46; PX J, Williams Dep. 172-173, Ex. 14.

83. In handling team travel, Williams worked with coaches and the Director of Basketball Operations, coordinated with travel agencies, and handled contracts regarding flights to ensure the trips were successful. PX I, Williams Decl. ¶ 47.

84. The team travel Williams coordinated ranged from chartering flights for a single game to coordinating a Hawaii trip for a men's basketball tournament, which included multiple events Williams planned. Id. ¶ 48.

85. Organizing the travel to Hawaii was complicated, with multiple last-minute changes and additions, which required Williams to engage in significant oversight and ongoing communication with the travel agency. It also required confirming compliance with conference rules and regulations regarding travel. Id. ¶ 49.

86. For the Hawaii trip, Williams worked closely with the DOBO to plan the schedule of events, track RSVPs, and answer questions for representatives of the President's office and the University Office of Military and Veteran Affairs because a high-ranking member of the military was involved in the trip. Id. ¶ 50.

87. For the Hawaii trip, Williams arranged for and authorized payment to an outside vendor for an event that included transportation for 91 players and other guests. Id. ¶ 51.

88. Williams also planned and arranged a last-minute post-game reception for Nero and the President's office. Id.

89. Williams took on the Nike account even though it required so much attention that coaches wanted a full-time staffer devoted to the account. PX J, Williams Dep. 174-175, Ex. 14.

90. When she took on the Nike inventory, Williams found that the finances were a mess, with invoices that had not been paid or processed, and she exchanged hundreds of emails with Nike Game Day to straighten out the account. Id. 175:4-14.

91. In her management of the Nike account, Williams also assisted with ordering team equipment. Id. 174:1-22, Ex. 14.

92. Williams' involvement with Nike required her to provide significant oversight of the account, which included handling "purchase orders, meaning contracts, agreements, and then you know, actually getting quotes and sending them through our procurement division and seeing that through." PX G, Chee-Wah Dep.45:15-21.

93. Williams' management of the Nike account also required her to coordinate coaches' "comp monies" associated with their Nike spending, track Nike orders, and coordinate with the facilities department to assure receipt and remedy any errors with shipment. Id. 46:1-48:3.

94. As Executive Assistant, Williams was responsible for coordinating Athletics Council meetings, Student Athlete Special Commencement, and the Senior Honors Breakfast. PX J, Williams Dep. 134:23-135:9, Ex. 13.

95. Throughout her second year as Executive Assistant, Williams worked on numerous special projects. Id.

96. In handling the Student Athlete Special Commencement, Williams coordinated with the central events team to book a theater, ensured that invitations went out, prepared for the provost and a student commencement speaker, and helped the student speaker. PX I, Williams Decl. ¶ 55; PX J, Williams Dep. 183:9-14.

97. In handling the Senior Honors Breakfast, Williams negotiated a \$23,000 contract with Marriott. PX I, Williams Decl. ¶ 52; PX J, Williams Dep. 184:10-20.

98. Regarding the Senior Honors Breakfast, Williams also negotiated better rates for the student gifts that constituted a significant cost, researched vendors, obtained quotes, reviewed samples, engaged in a bidding process with vendors, invited guest speakers, invited student athlete's parents, and prepared a presentation and slide show. Id. ¶ 53; PX J, Williams Dep. 184:10-20.

99. Williams also worked with the Associate Athletics Director for Compliance to track student athletes and employee compliance data. PX J, Williams Dep. 132-135, 187, Ex. 12-14.

100. During her first year as Executive Assistant, Williams worked with Compliance and improved processes to make them more efficient and helpful for students, such as identifying and piloting a better way to complete student athlete book requests. Id. 132:2-25, Ex. 12.

101. Williams also took on sport administrator functions for an extended period, including managing the men's basketball budget. PX J, Williams Dep. 50-51, 53; PX G, Chee-Wah Dep. 126:7-11; PX I, Williams Decl.

102. When Ed Scott left the University, Nero asked Williams to take on the task of managing the men's basketball budget. PX J, Williams Dep. 50:21-51:4; PX G, Chee-Wah Dep. 118:13-119:14.

103. Williams conducted forecasting and planning for future years and provided updates to Nero. PX J, Williams Dep. 51:2-4; PX G, Chee-Wah Dep. 119:11-14, 127:21-128:8.

104. The men's basketball budget is the most significant and most spotlighted budget for the Athletics sports divisions. PX G, Chee-Wah Dep. 121:6-12.

II. Defendant paid a male more than twice what it paid Williams.

105. In early June 2015, Nero began the process to create a new position by completing a Position Justification Form to be reviewed and approved by the provost; at the time, the new position was called Assistant Athletics Director in Administration. PX P, Nero Dep. 22:17-25:11; PX K, Kayer Dep. 93:20-94:22, Ex. 5.

106. Nero initially wanted the new position to be a Chief of Staff-type position that primarily served him, PX P, Nero Dep. 44:1-9, Ex. 5; PX K, Kayer Dep. 186:16-22, Ex. 8, p. 5-6,

but by September 2015, Nero decided the position should support all senior staff in Athletics administration. PX P, Nero Dep. Ex. 5; PX C, Vogel Dep. Ex. 3.

107. On 8/31/15, Nero announced at a senior staff meeting that Michael Aresco would “begin to transition responsibilities to more administration.” PX I, Williams Decl. ¶ 67. Around the same time, Aresco moved into the main administrative office. PX P, Nero Dep. 21-22, 45:16-19, 47:6-9; PX D, Aresco Dep., 144-145, 146-147; PX K, Kayer Dep. 205:9-16; PX C, Vogel Dep. 55-56, 107:19-21.

108. Before moving into the administrative office, Aresco worked in Facilities. PX D, Aresco Dep. 66:6-20.

109. Aresco’s annual salary as Director of Events in Facilities was \$48,960. PX L, GWU_001345.

110. Aresco testified that in June of 2014, as Director of Events, he began “asserting” himself by taking on additional responsibilities outside of his own job duties. PX D, Aresco Dep. 17:2-7, 37:17-38:1, 133:22-134:3.

111. In the Fall of 2014, Aresco met with Nero and told him he had a job offer. PX D, Aresco Dep. 133:1-14. At that time, Aresco also told Nero he had been “doing additional responsibilities since, say, mid-summer,” and that he would “like to be recognized for that.” Id. 133:16-20.

112. In response, Nero promoted Aresco to Assistant Athletic Director for Operations, Events, and Facilities and increased his salary to \$75,000. Id. 133:15-134:3; PX P, Nero Dep. 15:20-17:11, Ex. 1.

113. Aresco named the pay for his new position. PX M, GWU_024367. On 10/24/14, just two weeks before Nero authorized Aresco’s promotion, Hamluk emailed Nero asking, “Did

[Aresco] ever come back to you with a salary number?” to which Nero responded “75k.” PX M, GWU_024367.

114. Aresco did not have to apply for the Assistant Athletic Director position. PX D, Aresco Dep. 134:4-5.

115. Instead, the University’s EEO office and Compensation team approved of Aresco’s appointment to the position as a “noncompetitive promotion.” PX N, GWU_001206.

116. At that time, Nero also awarded Aresco a \$13,000 bonus, which he claims was intended to compensate Aresco for the time he had spent overseeing Facilities on an interim basis. PX P, Nero Dep. 11:25-12:16; PX O, GWU_001340-001341.

117. By September 2015, Williams knew that a new administration position was in development and she had seen the June 2015 PJF describing a position that sounded very much like her job. PX I, Williams Decl. ¶ 66.

118. The September 2015 summary of the Special Assistant job described the same work that Williams was performing as Executive Assistant. PX K, Kayer Dep. Ex. 5.

119. Williams’ official Executive Assistant Job Description said she provided administrative support for the Director; coordinated workflow between the Director and the University; planned and managed the Director’s meetings, coordinated with staff on briefings and donor contact; assisted in managing the Director’s budgets; served as the administrative interface between the Director, the University, Conference colleagues, and others; and worked on hiring and managing student employees. PX A; ECF No. 10-5, p. 2.

120. On 9/15/15, Williams and Aresco discussed the new administration position during an event at the Smith Center. PX I, Williams Decl. ¶¶ 68-70; PX J, Williams Dep. 143-145.

121. At the event on 9/15/15, Aresco told Williams that the new administration position had been created for him, promised to him, and that Williams should not apply for it. Id.

122. During his deposition, Aresco confirmed that he discouraged Williams from applying for the new position. PX D, Aresco Dep. 163:18-164:18.

123. In October 2015, Williams asked then-Senior HR Client Partner for Athletics, Mike Kohn, about the new position. PX I, Williams Decl. ¶ 71.

124. Kohn told Williams that Aresco already was acting in the position and confirmed he would be selected for it when the job posted. Id.; PX J, Williams Dep. 211-212, 216-217.

125. Kohn told Williams that because moving Aresco to the new position would be a lateral move, Nero did not have to post or advertise the new position, but he planned to post it so it would seem like a fair and transparent process. PX I, Williams Decl. ¶ 71.

126. In approximately November 2015, Tanya Vogel made clear to Williams that the new position was not for her. PX I, Williams Decl. ¶¶ 73-75.

127. When they met in approximately November 2015, Williams told Vogel that she had been working very closely with Hamluk before he left and that her ultimate goal was to be an assistant or associate athletics director in athletics administration. Id.

128. After hearing Williams say she wanted to be an assistant or associate athletics director, Vogel said that it did not look like that was an option for her at the University and suggested that she consider how to position herself better for the next opportunity. Williams' immediate understanding from Vogel's response was that the new position in administration would be permanently filled by Aresco. Id.

129. Williams did not apply for the Special Assistant position because she was told by an HR Client Partner that the position was intended for Aresco; was told by Vogel that advancing

to an assistant athletics director wasn't going to happen; was told the position was for Aresco and not to apply, because if she did, it would "create controversy" PX I, Williams Decl. ¶ 680-76; PX E, EEOC000256 – 000261.

130. Before the new position was posted in January 2016, the position was changed from Assistant Athletics Director to Special Assistant. PX K, Kayer Dep. 197:9-198:20; 200:20-201:5.

131. The job changed to a Special Assistant position because the duties of the job more appropriately aligned with the Special Assistant classification title. Id.

132. The Special Assistant job posting identified administrative support work, coordinating workflow, serving as interface between the Director and others, handling projects, and serving as senior staff. PX A; ECF No. 15-1, p. 8-9.

133. The University's expectation was for Aresco to "apply and be selected for" the newly created Special Assistant position. PX K, Kayer Dep. 205:9-22.

134. On 12/15/15, Vogel sent an email to the Interim Finance Director discussing how to move forward with the posting of the new position – which Vogel's referred to as the Special Assistant position. Id.

135. On 1/4/16, Kayer updated the Special Assistant description in the PeopleAdmin 7 system. PX S, Alrutz Dep. 35-36, 38-39, 160-162, 179-180, Ex. 13 at GWU_059229-059230. That system update identified the job as Executive Special Assistant with a typical pay range of \$49,000 to \$67,400. PX S, Alrutz Dep. 184:8-185:5, Ex. 13 at GWU_059230.

136. On 1/5/16, Special Assistant position was posted. PX C, Vogel Dep. Ex. 8.

137. Vogel interviewed Aresco for the Special Assistant job after the posting closed, and the interview lasted less than 30 minutes. PX C, Vogel Dep. 131:13-133:24.

138. Aresco was selected as Special Assistant. PX K, Kayer Dep. 210-212, Ex. 7.

139. The Hiring Proposal selecting Aresco for the Special Assistant position was entered in the PeopleAdmin 7 system on 1/22/16. Id.; PX F, Hess Dep. 93-94, Ex. 4 at GWU_001196-97.

140. The Hiring Proposal listed Aresco's title as Special Assistant in Athletics with a proposed salary of \$77,257.21. PX F, Hess Dep. 93-94, Ex. 4 at GWU_001196-001197.

141. Vogel and Nero "were involved in the decision to pay [Aresco] approximately \$75,000 per year as Special Assistant." PX C, Vogel Dep. Ex. 9 at Interrog. 3.

142. Kayer advised Aresco that his new job was Special Assistant, not Assistant Athletics Director. PX K, Kayer Dep. Ex. 4.

143. Defendant's Compensation Department works with HR to review compensation and advise if a proposed salary is appropriate. PX F, Hess Dep. 16:8-17:21; 60-65.

144. Defendant's Compensation Department reviews hiring proposals referred by HR when a proposed salary is outside of the applicable range. PX F, Hess Dep. 64:11-65:15.

145. In Defendant's pay system, each pay grade is split up into three ranges. PX F, Hess Dep. 65:6-10. The typical hiring range is the minimum salary at the bottom of the entry range to the midpoint of the emerging range. Id. 65:16-19.

146. The Special Assistant Hiring Proposal identified three available pay ranges for the job: Entry Rate \$49,000-\$58,800; Emerging Rate \$60,660-\$74,140; and Expert Rate \$67,400-\$80,880. PX F, Hess Dep. 97:9-16, Ex. 4 at GWU__001197.

147. The Hiring Proposal for Aresco proposed paying him \$77,257.21 a year, within the "Expert" range, to work as the Special Assistant. PX F, Hess Dep. 93-94, Ex. 4.

148. After Defendant selected Aresco for the Special Assistant job, his Hiring Proposal was sent to Defendant's Compensation Department. PX F, Hess Dep. 74-79, Ex. 3; PX K, Kayer Dep. 214-219.

149. On 1/22/16, Aresco's proposed salary was sent to the Department of Compensation for a Compensation Out of Range Review through the PeopleAdmin 7 system. PX K, Kayer Dep. 109:18-110:4, 213-216, Ex. 7, pg. 7; PX F, Hess Dep. 74-79, Ex. 3.

150. Defendant's Compensation Department determined that the salary of \$77,257.21 was too high to pay Aresco to work in the Special Assistant position and advised against paying Aresco \$77,257.21. Id.; PX F, Hess Dep. 69-70, 74:16-79, 98-99, Ex. 3 at GWU_005892; PX K, Kayer Dep. 219:17-220:16.

151. The Compensation Department documented its advice against paying Aresco \$77,257.21 to work as Special Assistant. PX F, Hess Dep. 69-70, 78-79, 98-99, Ex. 3, pg. 6.

152. Kayer also concluded that Defendant should not pay Aresco \$77,257.21 to work as the Special Assistant in the Athletics Department because that salary was too high. PX K, Kayer Dep. 20-21; 219-220.

153. Kayer described the experience relevant to the Special Assistant job as providing "high level executive support to an administrator," which is "more office management, leading committees, special projects, things along those lines," than a background in facilities and operations. PX K, Kayer Dep. 20:17-21:15, 27:9-17, 219:13-220:13.

154. Although Kayer and Compensation concluded the salary in the Hiring Proposal for Aresco to work as Special Assistant was too high, Kayer tried to get the salary approved as a "lateral transfer" because that is what Nero wanted. PX K, Kayer Dep. 220-221, Ex. 3, pg. 6.

155. The Compensation Department entered a note in Defendant's system warning that the Athletics Department should "not to try to inflate the salary any more without cause." PX F, Hess Dep. 83:15-84:8.

156. After the Compensation Department approved Aresco's salary as a "lateral transfer," the hiring proposal eventually was sent to Fair for an "EEO/AA Review." PX K, Kayer Dep., Ex. 7.

157. The University's EEO office was required to review every hiring proposal to ensure equal employment opportunity and that diverse candidates were considered. PX Q, Fair Dep. 127:12-128:6, Ex. 1 at GWU_008425.

158. The EEO review is intended to include a "comprehensive analysis "of the position description, an assessment of whether the chosen candidate meets minimum qualifications, and an assessment of the applicant pool as a whole to determine whether there are diversity concerns." PX Q, Fair Dep. Ex. 1 at GWU_008425.

159. In practice, however, the EEO office did not perform an EEO analysis of every hiring proposal that came through for review. PX Q, Fair Dep. 146:11-19.

160. If EEO's review did raise concerns, the EEO office had the power to reject the hiring proposal and prevent the hiring process from proceeding unless the EEO concerns were resolved. PX Q, Fair Dep. 127:19-128:22.

161. University policy required that hiring managers interview at least three candidates for a given position. PX K, Kayer Dep. 161:13-16; PX Q, Fair Dep. 137:14-17.

162. According to Fair, fewer than three applicants in the pool "would require a whole audit analysis" of why there were not three applicants, the efforts that were made to post the position, what the job is, where it was posted, and how long it was posted. PX Q, Fair Dep. 137:14-138:13, 165:3-9.

163. If any of the fewer than three candidates did not meet minimum qualifications, the University would “definitely... need to repost.” PX K, Kayer Dep. 162:11-16; PX Q, Fair Dep. 138:14-20.

164. Kayer testified that Fair had pushed back when there were fewer than three applicants for a position, asking for justifications regarding why the position would not be reposted. PX K, Kayer Dep. 162:22-163:9.

165. As part of EEO’s review of a hiring proposal, EEO would review the proposed compensation if someone raised a concern about the compensation. PX Q, Fair Dep. 134-136.

166. The hiring proposal Fair received for the Special Assistant position indicated on its face that Aresco had been the only candidate to apply for the position, and, at the time the hiring proposal was passed to Fair for an EEO review, notes regarding the hiring proposal in PeopleAdmin 7 indicated that Compensation and Kayer agreed that Aresco’s salary was too high given his “credentials.” PX F, Hess Dep. Ex. 4 at GWU_001197; PX Q, Fair Dep. Ex. 9.

167. Nonetheless, Fair did not recall actually reviewing the hiring proposal or anyone approaching her about the proposal; the Special Assistant position was not reposted after Aresco turned out to be the only applicant; and the hiring proposal for Aresco was approved and sent on to the HR Client Partner for the next stage without comment from Fair or anyone else in EEO. PX Q, Fair Dep. 158:8-11, 162:1-8; PX Q, Fair Dep. Ex. 9 at GWU_005890-005892.

168. Aresco did not become the Special Assistant as the result of a bona fide transfer. PX F, Hess Dep., Ex. 2, p. 2.

169. Even where an employee moves as part of a genuine “lateral transfer,” that does not mean the employee can retain their prior pay. PX K, Kayer Dep. 62:15-65:9.

170. Kayer made a lateral move from a special assistant position into a HR client partner position. PX K, Kayer Dep. 62:15-63:3, 64:16-65:9.

171. The special assistant position from which Kayer transferred has the same classification as the HR client partner position to which she transferred. PX K, Kayer Dep. 64-65.

172. However, when Kayer transferred to the human resources client partner position, she was not permitted to retain her special assistant pay and had to take a pay cut of approximately \$10,000. PX K, Kayer Dep. 63:4-64:7.

173. According to Nero, the three “significant components” of Aresco’s job duties as Special Assistant, which Nero claimed were “high-level administrative responsibilities,” were working with the OGC on significant contracts, working with Kayer on Human Resources matters, and “help[ing] ... move forward our strategic planning process.” PX P, Nero Dep. 46-48.

174. “Move forward our strategic planning process” meant sitting in on senior staff and leadership team meetings, reminding the senior staff or leadership team members of timelines they were required to meet and reminding them of what their recommendation had been. PX P, Nero Dep. 58:1-13, 58:23-59:4, 59:9-60:10.

175. Nero identified the significant contracts Aresco worked on as a Nike contract, HR contracts, and the Washington Kastles contract. PX P, Nero Dep. 52:24-53:4.

176. University emails show that the Nike contract was a multi-year contract that predated Aresco’s move into administration, and during Aresco’s tenure in administration, it was a matter of simply reviewing a few changes and obtaining the appropriate signatures for subsequent renewal of the Nike contract. PX T, GWU_032292-032293.

177. Likewise, the Washington Kastles contract was completed when Aresco was in Facilities, not when he was Special Assistant. PX P, Nero Dep. 54:13-56:2, Ex. 6.

178. Compiling bid paperwork consisted of filling out templates, with information such as facility name, address, and seating capacity, and information about ticket sales and hotels in the area. PX P, Nero Dep. 49:12-21, 67:23-25, 68:25-69:12, 70:10-73:3, Ex. 7. In the only bid form produced in this litigation Aresco filled out a 12-page form requesting basic information about facilities, and he did so before he was the Special Assistant. PX P, Nero Dep., Ex. 7.

179. Preparing bid paperwork was simple enough that it could be done on short-notice. PX U, GWU_RandomSample_036619.

180. On December 30, 2015, Vogel emailed Aresco asking who typically submits bids to host championships because she thought a particular bid should be made that year, and it was due January 15, 2016. PX U, GWU_RandomSample_036619.

181. Aresco responded to the above email stating he usually submitted the bids and thanked her for reminding him, indicating he had not worked on the bid at that time. PX U, GWU_RandomSample_036619.

182. On January 4, Vogel emailed Aresco to remind him again, and told him to let her know if he needed another remaindering the following week, suggesting Aresco could pull the bid together in time for the deadline even if he hadn't started until four days before it was due. PX U, GWU_RandomSample_036619.

183. Aresco performed "typical administrative support for a meeting" for the leadership team meetings. PX C, Vogel Dep. 180:19-20.

184. Nero explained in his deposition that Aresco did not "lead" the leadership team meetings but rather "organized" the leadership team, a responsibility Nero further described as Aresco being "the one that kept us on task to make sure that we were making the decisions and we were having the discussions that we said we would." PX P, Nero Dep. 60:8-10.

185. Aresco's Special Assistant duties relating to HR consisted of asking others to complete or sign paperwork, collecting paperwork, and giving it to Kayer. PX D, Aresco Dep. 200:2-6, 200:10-14, 203:22-205:14; 214:11-215:8.

186. The hiring tasks Aresco helped complete were minimal. PX D, Aresco Dep. 200:15-201:1, 202:3-5, 202:10-13, 252:4-16.

187. When Athletics Department personnel presented Aresco with questions relating to HR protocols or guidance, he relayed them to Kayer. PX D, Aresco Dep. 210:7-11, 215:9-216:3.

188. Aresco assisted with "drafting" policies only insofar as he told the leadership team or senior staff about policy recommendations Kayer had made or about information Aresco gathered on what other schools were doing with similar policies. PX P, Nero Dep. 64-66, 67:6-20; PX D, Aresco Dep. 201:2-9.

189. When the leadership team made decisions regarding what they wanted their policies to be, Aresco checked to make sure the decision was documented in a written policy or in the meeting minutes. Id.

190. Any policies or policy changes had to receive final approval from the provost. PX P, Nero Dep. 67:6-20.

191. Aresco sometimes handled expense reports for Nero. PX D, Aresco Dep. 277:4-6.

192. As Special Assistant, Aresco's supervisory responsibilities were also minimal. PX D, Aresco Dep. 100-101, 129-130, 131-134, Ex. 3, p. 17-19.

193. Aresco did not discipline Mark Davis, the rowing coach, did not approve his leave requests, did not direct him in how to coach, and did not have independent authority to raise his salary. PX D, Aresco Dep. 100-101.

III. Defendant cannot prove an EPA defense and the University violated Title VII.

194. After Aresco moved into the administrative office in 2015, Nero directed Williams to train Aresco to handle job duties that Williams had been performing as Executive Assistant. PX I, Williams Decl. ¶¶ 77, 88; PX J, Williams Dep. 213:22-215:2.

195. Then Nero tried to reduce Williams' role. PX G, Chee-Wah Dep. 205:1-4.

196. In Fall 2015, Nero directed Williams to train Aresco to handle game contracts. Id.; PX G, Chee-Wah Dep. 205:7-13.

197. Aresco did not successfully administer game contracts, and Nero reassigned that job back to Williams. PX I, Williams Decl. ¶ 88; PX J, Williams Dep. 213:22-215:2.

198. After Aresco was officially hired as Special Assistant, Nero directed Williams to train Aresco in human resources duties, and he was supposed to handle human resources matters for the Department. PX I, Williams Decl. ¶¶ 77, 79; PX J, Williams Dep. 247:9-248:6, Ex. 19.

199. In 2016, Nero also directed that Aresco handle the performance review process that Williams had been responsible for in 2014 and 2015. PX I, Williams Dec. ¶ 77; PX J, Williams Dep. 243:13-246:25, Ex. 18.

200. Aresco failed to perform his HR duties, leaving Williams to step in and perform the work correctly when HR and individual employees reached out to her for help. PX J, Williams Dep. 247:9-248:6, 249:16-250:3.

201. For example, from May 25, 2016 through at least July 7, 2016, an employee was not paid because Aresco did not submit his paperwork. PX I, Williams Decl. ¶ 80.

202. Because Aresco did not timely submit the employee's hiring packet, the employee was not paid for over a month. PX I, Williams Decl. ¶ 80.

203. The employee approached Williams about the situation and Williams resolved it by obtaining and completing the necessary paperwork. PX I, Williams Decl. ¶ 80.

204. In Summer 2016, Aresco was supposed to assist Chandra Bierwirth with coordinating interviews for a Softball Head Coach but did not do so. PX I, Williams Decl. ¶ 81.

205. Williams coordinated the interviews that Aresco was supposed to coordinate. PX I, Williams Decl. ¶ 81.

206. The Finance Director had to coordinate with Williams to finalize the Department's merit increases because Aresco and Nero went over budget and Nero refused to say how he planned to fund the overage despite a looming deadline. PX G, Chee-Wah Dep. 148:2-150:6, Ex. 9.

207. Department staff continued to view Williams as an HR liaison and continued to go to her with HR Questions. PX I, Williams Decl. ¶¶ 82-83.

208. While Williams conducted five-year forecasting for the HR budget in the Fall of 2015, by the Fall of 2016, Nero later assigned Aresco to manage the Human Resources budget, which made Aresco responsible for the forecasting. PX I, Williams Decl. ¶ 86.

209. Aresco struggled to understand the \$10,000 Human Resources budget, and Williams had to walk him through it. PX I, Williams Decl. ¶ 86.

210. Nero also briefly reassigned management of the Athletics Director, administration, and championship budgets to Aresco, but the reassignment did not last long because Aresco was unable to perform that function successfully. PX I, Williams Decl. ¶ 85.

211. After briefly assigning Aresco the budgets mentioned above, by Fall 2016, Nero assigned them back to Williams, and Williams again managed those budgets, including handling the five-year forecasting. PX I, Williams Decl. ¶¶ 34, 85.

212. Defendant also briefly assigned Williams' duties planning team travel to Aresco, but those duties were also ultimately reassigned back to Williams. PX I, Williams Decl. ¶ 87.

213. University emails show that Aresco completed University paperwork providing basic details relating to the Japan trip; sent some questions on behalf of Nero; scheduled conference calls for Nero; and sent a draft contract for review. PX V, GWU_012141-012147; DX B-41-43.

214. According to that paperwork, the Japan trip was planned by the travel agency. PX V, GWU_012145 and GWU_012147; DX B-42 (filed under seal).

215. University emails show that Anthony Travel negotiated and coordinated on the University's behalf with the JBA regarding travel, transportation, and housing and meals for the student-athletes. PX W, GWU_021012-16.

216. University emails show that Anthony Travel received direction on the above items directly from Nero and from other Department personnel Klassy and Scott. *Id.*; PX DD, GWU_RandomSample_039487-88; PX W, GWU_021012-13; PX Y, GWU_014348-49.

217. University emails show that by early October 2015, Nero and the JBA had negotiated directly regarding the number of games to be played and the portion of revenue from ticket sales and other sources to which the University would be entitled. *Compare* PX X, GWU_RandomSample_088289-92 with DX B-42 (filed under seal).

218. As with the management of budgets, Nero reassigned matters relating to the Japan trip back to Williams. PX I, Williams Decl. ¶ 87.

219. As Nero moved Aresco into the main administrative office Nero began to ask Williams to perform more menial tasks, including personal errands such as picking up his medication from a pharmacy, picking up his tuxedo from the dry-cleaner, getting him coffee and going to his home to wait for Comcast to hook up his cable. PX I, Williams Decl. ¶ 89.

220. Williams expressed concerns to Vogel that Nero was taking away her job responsibilities, but Vogel did not address her concerns. PX C, Vogel Dep. 208:12-23, 211:12-15.

221. In Fall 2015, the Finance Director saw that Nero was marginalizing Williams by reassigning her job duties to Aresco, which caused “high concern.” PX G, Chee-Wah Dep. 198:1-202:18; 205:1-4.

222. Nero directed Kayer and the Finance Director to go to Aresco for tasks that Williams previously performed, such as processing merit pool funds. PX G, Chee-Wah Dep. 201:1-202:9.

223. Although Nero tried to reduce Williams’ role, the Finance Director had to hold Aresco’s hand because he did not know how to do the job, and when Aresco could not complete a task the Director gave it to Williams who resolved it. PX G, Chee-Wah Dep. 205:4-6; 253:4-255:2 (“what [Aresco] could not do [Williams] would knock out of the park, period, end of story.”).

224. Aresco did not understand the job and was “lost” about what he was supposed to be doing, often leaving Chee-Wah to pick up the slack. PX G, Chee-Wah Dep. 253:19-254:18.

225. Less than three weeks after Aresco officially began in the Special Assistant position, the Athletics Department tried to eliminate the Executive Assistant position. PX K, Kayer Dep. Ex. 10, p. 5.

226. In February 2016, Klassy met with Kayer and proposed eliminating Williams’ Executive Assistant position. PX K, Kayer Dep. 233-234, 238:2-19, Ex. 10, p. 5.

227. Kayer understood, based on this conversation, that Klassy had Nero’s approval to eliminate the Executive Assistant position. PX K, Kayer Dep. 235:16-236:15.

228. Williams’ position was the only position the Athletics Department proposed eliminating at that time. PX K, Kayer Dep. 235:1-3.

229. When the Athletics Department tried to eliminate Williams' position, the Finance Director and Kayer became more concerned. PX G, Chee-Wah Dep. 204:10-21; PX K, Kayer Dep. 239:4-241:20, 242:2-10.

230. When Nero tried to transfer Williams' responsibilities to Aresco and then tried to eliminate Williams once Aresco was in position, Kayer and Chee-Wah became further concerned that Nero was intentionally trying to replace Williams with Aresco. PX G, Chee-Wah Dep. 204:10-21; PX K, Kayer Dep. 239:4-241:20, 242:2-10.

231. The Finance Director testified that Nero "transitioning all of Sara's duties to Mike ... [and] then putting Sara's position up for the RIF ... looks intentional." PX G, Chee-Wah Dep. 204.

232. The Athletics Department tried to eliminate Williams' position without following university protocol, meaning. PX G, Chee-Wah Dep. 208:1-212:10; PX K, Kayer Dep. 246:2-248:10. The proposal was not included in the Department's five-year plan, nor was it reviewed and vetted by other University departments, such as human resources, OGC, and the Provost's office, nor was there any business rationale provided that would justify the elimination. *Id.*

233. When the Athletics Department proposed eliminating Williams, the Finance Director asked that Williams come work for her when the opportunity presented itself because "[Williams] was fabulous;" she demonstrated trustworthiness, follow-up, follow-through, leadership and financial skills; and she could "manage and maintain internal controls." PX G, Chee-Wah Dep. 238:19-239:10.

234. On 3/7/16, GW assistant men's basketball coach Hajj Turner asked Williams to make a phone call to someone in athletics administration at Fordham University because he

received an email from its head men's basketball coach that he believed could indicate a hacked email account. PX J, Williams Dep. 251-255; PX I, Williams Decl. ¶¶ 100-101.

235. At that time, Williams did not know the content of the email nor its subject matter. PX J, Williams Dep. 253:11-18, 254:1-5, 255:5-12, 258:4-8; PX I, Williams Decl. ¶ 103.

236. As Williams ended the call, Nero walked in, heard the very end of the call, and told Williams to get in his office along with Vogel. PX J, Williams Dep. 256-257; PX I, Williams Decl. ¶ 104.

237. Nero was visibly angry and yelled at Williams, "what are you doing? I've had it up to here," while raising his hand over his head. PX J, Williams Dep. 257; PX I, Williams Decl. ¶ 105.

238. Continuing to yell, Nero told Williams she shouldn't get involved in scandals and told her the email had contained scandalous accusations that Fordham's coach was engaged in some form of misconduct. PX J, Williams Dep. 255:5-12, 257:6-15; PX I, Williams Decl. ¶ 106.

239. After Williams and Vogel left Nero's office, Vogel invited Williams into her own office. PX I, Williams Decl. ¶ 107.

240. At that time, Vogel noted that things were very challenging with Nero and that Williams' position didn't seem to be working for Williams or Nero. PX I, Williams Decl. ¶ 108.

241. Vogel told Williams she should start applying for other jobs and thinking about her future in another position. PX E, EEOC000260.

242. Vogel told Williams stated that a man could go into the Athletics Director's office at the University and have one conversation and then a job is made for him, but that didn't happen for women. *Id.*

243. Describing Vogel's statements to her on the matter, Williams testified that Vogel communicated to her an understanding that women in the industry were subjected to disparate treatment and unfair treatment compared to men. PX J, Williams Dep. 289:23-290:6.

IV. Defendant did not fix the pay disparity or remedy the disparate treatment.

244. When Nero yelled at Williams on 3/7/16 and Vogel suggested Williams find another job because of the discriminatory treatment women receive in athletics, it was the final incident that prompted Williams to file a request to initiate the University's Informal Grievance Process for EEO complaints. PX J, Williams Dep. 220:25-221:3; PX E, EEOC000254-000261.

245. Williams filed her internal grievance with University Equal Employment Opportunity & Employee Relations Executive Director Vickie Fair on 3/10/16. PX E, EEOC000254-000261.

246. Williams described the 3/7/16 incident, including Nero's yelling and Vogel's comments that "a man can go into the director's office and have one conversation and then a job is made for him," but that doesn't happen for women and is "just the way this industry is." PX E, EEOC000254-000261.

247. Williams further stated, "I believe I am being discriminated against due to my gender and fear that my job is in jeopardy." *Id.*

248. Williams elaborated that on 8/31/15, Nero announced that, "Mike Aresco will begin to transition responsibilities to more administration with facilities reporting to one of the Sr. Associate ADs once they begin," and since that time, Nero had been delegating Williams' responsibilities to Aresco even though he had less experience than Williams in managing a senior executive. *Id.*

249. Williams also described the September 2015 conversation she had with Aresco wherein Aresco told Williams that Nero had promised him that he could have the then-developing Assistant Athletics Director of Administration position and that Williams should not apply for it because it would create “controversy” and “reflect poorly” on her. *Id.*

250. Further, Williams described the October 2015 conversation she had with Mike Kohn wherein Kohn told Williams that because the move to the Assistant Athletics Director of Administration would be a “lateral” move for Aresco, Nero technically did not have to post the position but planned to post it “so it *seems* fair and transparent.” *Id.* (emphasis added).

251. Williams further stated the Nero was transitioning her work to Aresco, that she believed she was going terminated, and that Nero was trying to replace her with a male who had an inflated salary. *Id.*

252. In October 2016, while Williams’ grievance and EEOC charge were pending, Danya Ellman, Assistant Athletics Director for Educational Support Services, also filed a grievance “regarding pay inequity between [Ellman] and Mike Aresco.” PX Z, GWU_007567_Reproduced-GWU_007573_Reproduced.

253. Unlike Ellman’s grievance, Williams’ grievance languished until January 6, 2017, when she received a one-page notice from “Equal Employment Opportunity & Employee Relations” informing her, “it has been concluded” that none of her claims of discrimination “could be substantiated.” PX R, EEOC000289.

254. Williams and Ellman were not the only women who experienced discrimination by Nero in the Athletics Department. PX K, Kayer Dep. 43:20-44:7.

255. For example, Kayer testified that during her tenure working with the Athletics Department, Nero refused to meet with her or provide responses to her. PX K, Kayer Dep. 36:21-44:20.

256. Kayer's supervisor, Mike Kohn, had to step in on multiple occasions to get Nero to provide responses to Kayer. *Id.*

257. Kayer testified that Nero's refusal to work with her was "because of gender." PX K, Kayer Dep. 43:20-44:7.

258. In Spring 2016, Kayer was transferred out of Athletics because she had "broken confidentiality with the client in athletics." PX K, Kayer Dep. 34:19-36:5.

259. Alrutz told Kayer that she had "broken confidentiality" by informing Williams that "[Williams] was not being considered for a position within HR because of her open concerns about equal employment ... with our EEO office." PX K, Kayer Dep. 47:5-16.

260. The University reassigned Kayer's work with the Athletics Department in large part to Mafona Shay, a male human resources worker, amidst "discussion about [Nero's] reception to [Kayer] as a female and that Mafona may [sic] better results." PX K, Kayer Dep. 37:6-38:9.

261. Similarly, Chee-Wah experienced Nero's discrimination during her time supporting the Athletics Department. PX G, Chee-Wah Dep. 26-31.

262. From the beginning of her time working with the Athletics Department, Nero was "dismissive" with the Finance Director, avoided meeting with her, and tore up and threw away the financial reports she provided to him. PX G, Chee-Wah Dep. 26:9-27:17, 31:7, 32:10-19.

263. When the Finance Director told her superiors at the University about Nero's behavior, she discovered that Nero had been "telling them that [she] wasn't meeting with him, and

he didn't know what his numbers were, and he didn't have insider information, but in actuality, he was avoiding meeting with [her]." PX G, Chee-Wah Dep. 32:10-19.

264. The Finance Director testified that Nero engaged in these behaviors to "avoid accountability." PX G, Chee-Wah Dep. 29:3-9.

265. The University assigned the Finance Director to oversee the Athletics Department to "attempt to engage with [Nero] to help get them on appropriate track and keep [her] eyes and ears open for any inappropriate activity" because "[Nero] is very slick. He's avoided a number of situations where he should have been held accountable." PX G, Chee-Wah Dep. 29:10-31:3.

266. University personnel told the Finance Director to "document everything" and "do not trust anything that [Nero] does or says." PX G, Chee-Wah Dep. 29:18-31:3.

267. The University knew about Nero's discriminatory conduct from the beginning of his tenure as Athletics Director. PX AA, Warner Dep. 40:4-6, 44:4-45:5, 45:22-46:20, 67:4-19, 94:3-95:10.

268. Mary Jo Warner worked in the Athletics Department for more than thirty years and served as a Senior Associate Director of Athletics for more than 20 years of her tenure. PX AA, Warner Dep. 11:9-12:18.

269. Warner "loved" her job until she began working with Nero, who began to slowly strip away her duties. PX AA, Warner Dep. 31:21-34:2.

270. Nero reduced the number of sports she oversaw by more than half and changed the reporting structure, reducing Warner's number of direct reports. PX AA, Warner Dep. 31:21-34:2.

271. In June 2013, Nero asked Warner when she planned to retire and told her that he would "take [her] title and [her] compensation." PX AA, Warner Dep. 29:8-30:5.

272. Warner lodged multiple complaints with the University regarding Nero's treatment of her, including a grievance with the University's EEO office. PX AA, Warner Dep. 40:4-6, 44:4-45:5, 45:22-46:20, 67:4-19, 94:3-95:10.

273. In one of her complaints, she sent her email directly to Steven Lerman, the University's Vice President/Provost at the time. PX AA, Warner Dep. 67:4-13.

274. Lerman never responded to Warner's email or otherwise addressed Warner's complaint with her. PX AA, Warner Dep. 67:4-19.

275. Despite Defendant's knowledge of Nero's treatment of women who worked in the Athletics Department, Defendant permitted Nero to remain in his position until it received an anonymous tip that Nero's conduct would be made public. PX P, Nero Dep. Ex. 32.

276. In October 2017, someone sent an anonymous tip to the University alleging that Nero had, according to a Deadspin article about the incident, "become the talk of the recruiting world for being a sexually aggressive creep." PX P, Nero Dep. Ex. 32 at p. 25.

277. The University asked for proof of Nero's misconduct, and the person responded with a description of Nero making "several vulgar signs" and "walk[ing] over to a male student ... who is sitting alone in a chair. P. Nero mounts/straddles the student and simulates sexual act. The original video has a label that says 'Call the police.'" PX P, Nero Dep. Ex. 32 at p. 26.

278. On 10/25/17, the University asked to see the photographs and videos. PX P, Nero Dep. Ex. 32 at p. 26.

279. The person agreed to produce the materials only upon a guarantee of "anonymity, protection from reprisal from Nero, and a commitment from the school to follow up on the accusations," according to the article about the incident. PX P, Nero Dep. Ex. 32 at p. 27.

280. The University provided such assurances, and the person provided the materials. PX P, Nero Dep. Ex. 32 at p. 27.

281. On 11/17/17, the University's general counsel's office told the person that they "were able to access" what the person had sent and then told the person that there would be no additional updates provided about the investigation. PX P, Nero Dep. Ex. 32 at p. 27.

282. The materials provided by the person, according to Deadspin, showed a video of Nero "straddl[ing a] ... much younger guy" and while on top of him "look[ing] back at the camera and wag[g]ing his tongue between his index and middle fingers, the international gesture among cads for cunnilingus," as well as "another photo ... show[ed] Nero sitting at a table making the same tongue-between-the-fingers gesture." PX P, Nero Dep. Ex. 32 at p. 27.

283. On 11/27/17, and again on 12/10/17, the person messaged the University with concern that Nero was still "on the job" and informing the University that the material would "not stay off widespread internet/media for much longer." PX P, Nero Dep. Ex. 32 at p. 28.

284. Nero announced his resignation eight days after the 12/10/17 message. PX P, Nero Dep. Ex. 32 at p. 2, 28-29.

285. Williams asked for promotional opportunities in the Athletics Department, but while she was in that Department Defendant did not promote her or reclassify her to a stream with higher earning potential. PX S, Alrutz Dep. 160:10-163:25, Ex. 13; PX J, Williams Dep. 291-96, Ex. 21.

286. The Special Assistant position was reclassified without any change in duties on May 31, 2016. PX S, Alrutz Dep. 160:10-163:25, Ex. 13; PX Q, Fair Dep, Ex. 12.

287. Because Aresco was reclassified as Special Assistant, he had the opportunity to earn a higher salary. *Id.*

288. The Special Assistant position was reclassified on May 31, 2016. PX S, Alrutz Dep. 160:10-163:25, Ex. 13.

289. When the Special Assistant position was reclassified Aresco gained higher earning potential without having to compete or apply for it. PX J, Williams Dep. 283:18-285:22; PX S, Alrutz Dep. Ex. 13.

290. Because Aresco was reclassified, he had the opportunity to advance to higher level positions. PX K, Kayer Dep. Ex. 9 at GWU_001019.

291. Aresco would not have had the opportunity to earn a higher salary as Special Assistant if the University had not reclassified his position in May 2016. PX K, Kayer Dep. 231-233, Ex. 9.

292. The reclassification required supervising a minimum of 2 other full-time staff, which Aresco admitted he did not do as Special Assistant. PX F, Hess Ex. 1, p. 3; PX D, Aresco Dep. 269:13-270:4, Ex. 19, p. 2.

293. When Senior Associate Athletic Director Ed Scott left the University in Fall 2016, his responsibilities had to be reassigned, including his responsibility, as sport administrator for men's basketball, in overseeing the men's basketball budget, which Nero asked Williams to assist with. PX J, Williams Dep. 291-292, Ex. 21 at GWU_001423.

294. As Senior Associate Athletics Director, Scott had been responsible for staff and student-athlete development, including life skills. PX J, Williams Dep. 291:2-292:9, Ex. 21.

295. Williams emailed Nero and proposed a reclassification of Scott's former position as Senior Associate Athletics Director to create a new Assistant Athletics Director for Staff and Student-Development role encompassing gaps left by Scott's departure. PX J, Williams Dep. 292:10-296:5, Ex. 21 at GWU_001423.

296. Williams knew that Aresco had been given an Assistant Athletics Director for Administration position that had not previously existed and seemed to be a reclassification of the Associate Athletics Director for Administration job that had been vacated by Hamluk. PX J, Williams Dep. 292:10-296:5, Ex. 21 at GWU_001423.

297. As Aresco had done when Nero had offered him a promotion to Assistant Athletics Director in Fall 2014, Williams pointed out to Nero that she had been taking on more and more additional duties in recent months, at Nero's request, and that she would like to be recognized for that with additional compensation. PX J, Williams Dep. Ex. 21.

298. Williams noted that Nero had asked her, that day, to assist the men's basketball Director of Basketball Operations with managing the men's basketball budget, and further noted her increased responsibilities, her management of 3 other budgets accounting for over 1.5 million dollars in operating expenses, her coordination of staff development activities, and her contract management work. PX J, Williams Dep. Ex. 21.

299. Williams also noted that in previous roles, when she had been responsible for budgets as large as the ones she was managing at the University, there was "a significant salary difference." PX J, Williams Dep. Ex. 21.

300. Nero did not respond by offering Williams a promotion, as he had done for Aresco; instead, he ignored her and never responded. PX J, Williams Dep. 298:14-19.

301. In the fall of 2016, while Williams' grievance was pending, the Athletics Department was audited by Baker Tilley. DX C-23, ECF No. 115-4, at GWU_002384.

302. The "primary goal of the Desk Audit was to understand the current fiscal responsibilities and over functions of the position in relation to desired/clarified fiscal duties, and how it impacts the position." DX C-23, ECF No. 115-4, at GWU_002384.

303. “The desired outcome [was] to: ensure all impacted fully understand their financial stewardship responsibilities; identify any training necessary to make them successful with their roles; ensure that positions are properly classified and compensated for these roles; and identify any additional headcount that is necessary to support financial stewardship within the department.” DX C-23, ECF No. 115-4, at GWU_002384.

304. Audit findings in October 2016 described the sports administrators’ responsibilities, which include:

- Works with [the respective] Head Coach and Finance Director to develop budgets, financial projects, as well as business cases for recurrent and new activity
- Responsible for the Department’s financial performance and oversee department financial controls:
 - Manages department activities within budget limits
 - Reviews and approves expenditures
 - Assures expenses incurred are allowable, reasonable, and allocable to the department
- Understands the Departments income and expenditure
- Upholds the University’s policies and procedures
- Engages in long-term financial planning for the future direction of the department

DX C-23, ECF No. 115-4, at GWU_002386.

305. Those identified as sports administrators concurred with those responsibilities. DX C-23, ECF No. 115-4, at GWU_002387.

306. As a result of the Baker Tilley Audit, it was recommended, and ultimately agreed upon, that a “Finance Associate” position be created. DX C-23, ECF No. 115-4, at GWU_002390.

307. The Baker Tilley Audit also found that Williams was “currently perform[ing] many aspects of the Finance Associate role.” DX C-23, ECF No. 115-4, at GWU_002391.

308. It was recommended that Williams, along with two other positions, be reclassified to Finance Associates. DX C-23, ECF No. 115-4, at GWU_002392.

309. The “typical hiring range” for the Finance Associate position was set at \$49,000 - \$67,000, the same as the typical hiring range that was set for the Special Assistant position in January 2016. DX C-23, ECF No. 115-4, at GWU_002390; PX S, Alrutz Dep., Ex. 13.

310. Considering the “financial impact” of the Baker Tilley Audit, it was recommended that Williams’ position be paid \$49,000—the lowest end of the “typical hiring range”—but a 19% increase, or \$9,098 more than she was then being paid by Defendant. DX C-23, ECF No. 115-4.

311. It was further recommended that Williams, along with the two other identified employees, receive “bonuses with merit” because they were “performing many of the Finance Associate responsibilities.” DX C-23, ECF No. 115-4, at GWU_002392.

312. Ultimately, both Jamie Mera and Brenda Devaughn received these bonuses “for July 1 – November 30, 2016”, as confirmed by the Vice Provost for Budget and Finance Rene O’Neal. PX BB, GWU_033231.

313. Williams, however, did not receive any bonus. *Id.*

314. On December 12, 2016, Williams left the Athletics Department and began working in Defendant’s Business Management and Analysis Group. PX J, Williams Dep. 298:20-299:9.

V. After Aresco resigned, Defendant lowered the Special Assistant pay and then hired a female to do the job for less pay.

315. Effective March 31, 2017, Aresco resigned his employment with the University. PX S, Alrutz Dep. 191:21-192:10, Ex. 13, p. 2.

316. In August 2017, the Special Assistant position was “repurposed” so that the budget for the vacant position was used to fill an “Administrative Assistant III” position instead of a “Special Assistant” position. PX S, Alrutz Dep. 193:13-196:7, Ex. 13, p. 1-2.

317. While a new job description was created for the Administrative Assistant III position that removed, from the old Special Assistant job description, references to “high-level”

administrative support and “lead[ing]” the administrative function of the Office of the Athletics Director, the Administrative Assistant III job description continued to described duties that were performed by Aresco and Williams. PX S, Alritz Dep. 193:13-194:23, Ex. 13, p. 2.

318. When the position was repurposed from a Special Assistant to an Administrative Associate III, it also was reclassified to a step down within the University’s classification structure, with a lower typical hiring range. PX S, Alritz Dep. 194:12-23, 196:8-198:25, Ex. 13, p. 2.

319. The new typical hiring range for the Administrative Associate III position was an hourly rate of \$19.88 to \$25.87 (annualized to roughly \$41,350 to \$53,809 per year). PX S, Alritz Dep., Ex. 13.

320. Ultimately, Shatara Stokes, a woman, was hired for the Administrative Associate III position, and Nero described her as his Executive Assistant. PX S, Alritz Dep. 203:6-11; PX P, Nero Dep. 166:19-25.

Respectfully submitted,

/s/ Dylan Cowart

Dylan T. Cowart

Trial Attorney

U.S. Equal Employment Opportunity Commission

Baltimore Field Office

31 Hopkins Plaza, 14th Floor

Baltimore, MD 21201

dylan.cowart@eeoc.gov

Telephone: 443-220-1852/Facsimile: 410-209-2221

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Dylan T. Cowart

Dylan T. Cowart

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|-----------------------------------|---|--------------------------------|
| UNITED STATES EQUAL EMPLOYMENT |) | |
| OPPORTUNITY COMMISSION, |) | |
| |) | |
| Plaintiff, |) | Civil Action 1:17-cv-01978-CKK |
| |) | |
| v. |) | |
| |) | |
| THE GEORGE WASHINGTON UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

EEOC'S OPPOSITION TO DEFENDANT'S STATEMENT OF FACTS

Pursuant to Local Rule 7(h) and the Federal Rules of Civil Procedure, EEOC opposes Defendant's Motion for Summary Judgment and Defendant's Statement of Facts filed in support of that motion.

1. **DISPUTE.** Not material. EEOC disputes the date identified.
2. **DO NOT DISPUTE.** Not material.
3. **DISPUTE IN PART.** EEOC denies that Briggs performed the same work as Williams. Defendant did not identify Briggs as someone with relevant knowledge (PX CC, Def. Answers to Interrogatories, pp. 5-7), and there is no record evidence that Briggs did the same work as Williams.
4. **DO NOT DISPUTE.**
5. **DISPUTE.** Defendant's assertion does not accurately or completely describe Williams' work, and that EEOC disputes that her work was clerical. Defendant's assertion is inconsistent with the job description Defendant filed and said was Williams' official position description. PX A; ECF 10-5, p. 2; ECF 10-1, p. 12, n. 2.

6. **DO NOT DISPUTE.** Not material.
7. **DISPUTE IN PART.** Defendant's assertion does not accurately or completely describe Williams' work, and the assertion is not supported by the material cited.
8. **DO NOT DISPUTE.**
9. **DISPUTE IN PART.** Defendant's assertion does not accurately or completely describe Williams' skills, responsibilities, and experience, and the assertion is not supported by the material cited.
10. **DO NOT DISPUTE.** EEOC does not dispute Williams had a bachelor's degree; she obtained a graduate degree from Defendant in August 2017. PX J, Williams Dep. 19-22.
11. **DISPUTE.** EEOC disputes that there was a material omission in the document cited, that the grades referenced are relevant, that a transcript was required (PX J, Williams Dep., Ex. 1), and disputes that Defendant's assertion is relevant to Williams' pay, her work as an Executive Assistant, or the adverse treatment she suffered in the Athletics Department.
12. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 11.
13. **DISPUTE IN PART.** EEOC disputes that this assertion accurately or completely reflects Williams' experience, and disputes that it is relevant to Williams' pay, her work as Executive Assistant, or the adverse treatment she suffered in the Athletics Department. EEOC disputes that Williams lacked experience or qualification relevant to the Executive Assistant or Special Assistant position. PX K, Kayer Dep. 20:17-21:15, 27:9-17, 219:13-220:13.
14. **DISPUTE.** Williams did have background and experience working in finance. PX J, Williams Dep., Ex. 1.
15. **DISPUTE.** EEOC does not dispute that Williams had relevant experience working as an Executive Program Assistant, Protocol Coordinator, and Corporate Trainer, but disputes

Defendant's assertion that other experience is relevant to her pay, her work as Executive Assistant, or the adverse treatment she suffered in the Athletics Department. PX J, Williams Dep., Ex. 1 (describing senior executive support experience). EEOC disputes that Williams lacked experience or qualification relevant to the Executive Assistant or Special Assistant position. PX K, Kayer Dep. 20:17-21:15, 27:9-17, 219:13-220:13.

16. **DO NOT DISPUTE.**

17. **DISPUTE IN PART.** EEOC does not dispute the rate cited but asserts that the rate amounted to more than \$39,000/year. PX B, EEOC000252.

18. **DISPUTE.** EEOC disputes that Defendant's Compensation Department reviewed Williams' pay. The Compensation Department reviews hiring proposals when a proposed salary is outside of the applicable range (PX F, Hess Dep. 64-65), and there is no evidence they conducted a review for Williams. Compensation does not have authority to set or approve pay. PX CC, Def. Interrog. Response 4. Even where Compensation and HR disagree with proposed pay, they will advocate for pay that a Department Director wants; Compensation and HR advocated for what Patrick Nero wanted to pay Aresco, even though they thought Aresco's pay was too high. PX K, Kayer Dep. 220-221, Ex. 3. Nero approved Williams' pay. PX CC, Def. Interrog. Response 4.

19. **DISPUTE.** EEOC reasserts its response to Paragraph 18.

20. **DISPUTE.** EEOC does not dispute the rate cited but asserts that the rate amounted to less than \$39,900/year. PX B, EEOC000252.

21. **DISPUTE.** Williams was paid less than Nero's previous Executive Assistant. PX B, EEOC000252; Sappington Decl., Ex. 7 (GWU_059482) (ECF 115-1).

22. **DISPUTE.** EEOC disputes Defendant's assertion and reasserts its response to Paragraphs 5, 7, and 9. Defendant's assertion oversimplifies, diminishes, and mischaracterizes the work

Williams performed. EEOC disputes that Ex. 8 to Sappington Decl., the “Athletics 2016 Desk Audit Questions,” correctly or accurately reflects all work Williams performed. The evidence cited says nothing of “clerical duties.” Instead, it states that Williams “acts as a liaison for the Director and Senior Associates for other departments and staff,” handled “contract administration,” “supervis[ed] two student workers,” “manag[ed] 4 budgets” that required “finding 3-8% costs savings,” engaging with the “Head Coach & Senior Staff meetings,” “facilitat[ed] special projects,” and “compliance.” Id. Williams’ duties were not mostly clerical. EEOC SOF ¶¶ 15-104.

23. **DISPUTE IN PART.** Williams included other job duties in the self-assessment section of the form. PX J, Williams Dep., Ex. 12 and 13.

24. **DISPUTE IN PART.** Others assigned work to Williams. PX J, Williams Dep. 187-188.

25. **DISPUTE.** EEOC disputes Defendant’s assertion and reasserts its response to Paragraphs 5, 7, 9, and 22. Defendant mischaracterizes the evidence cited, and Williams performed work beyond that described. Williams testified that “the four senior athletics directors” would ask her “to do things” and “the tasks that [she] was going to be assigned [were] signed off by Mr. Nero to make sure he was aware of the priorities that [she] was taking on for the other senior associate ADs. [Her] reporting structure was to Mr. Nero.” PX J, Williams Dep. 154-156. Exhibit 20 to PX J, Williams Deposition is an email Williams sent to herself about issues she had with Nero as her supervisor, which she considered to be discrimination; it does not purport to be a list of her duties or work she performed. PX J, Williams Dep. 275-278, Ex. 20. She stated that Nero “asked [her] not to work with anyone without [his] permission” and that, as a result, “everyone [was] afraid to ask [her] for help[.]” Id. The email also says that Nero assigned Williams’ “job functions to Mike Aresco.” Id.

26. **DISPUTE.** EEOC reasserts its response to Paragraph 25.

27. **DISPUTE IN PART.** EEOC disputes Defendant's assertion and reasserts its response to Paragraphs 5, 7, 9, and 22. This function required significant organizational skills, a good understanding of the priorities of Nero and the Athletics Department, skill in maximizing Nero's time properly, and a good understanding of whether pre-meeting preparation or materials would be needed and who else typically should or may attend the type of meeting requested. Id. Williams also performed many other duties. EEOC SOF ¶¶ 15-104.

28. **DISPUTE.** EEOC reasserts its response to Paragraphs 25 and 27.

29. **DO NOT DISPUTE.**

30. **DO NOT DISPUTE.**

31. **DISPUTE IN PART.** EEOC disputes that Williams served as a receptionist. EEOC reasserts its response to Paragraphs 25 and 27.

32. **DISPUTE IN PART.** EEOC disputes that Williams was a receptionist or had a largely clerical role, such as answering calls and greeting people. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

33. **DISPUTE IN PART.** EEOC disputes that Williams worked at a "receptionist desk." Further, when Williams worked as Executive Assistant, calls placed to Nero's phone also rang directly to Assistant Athletics Director Brian Hamluk and he answered the calls. PX J, Williams Dep. 56-57. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

34. **DISPUTE IN PART.** EEOC disputes that Williams only printed documents because "[Nero] wanted to review a document in hard copy." Documents were also printed for analysis, briefing compilation, and senior staff and executive support. PX J, Williams Dep. 68-69. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

35. **DISPUTE.** Williams testified that coordinating communication and workflow between

Nero and his colleagues meant being the person who coordinated with them on special events, providing updates for board meetings, working with the University president and the provost, and working with Legal. PX J, Williams Dep. 23-24; EEOC SOF ¶¶ 16-23, 71-77, 94-100. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

36. **DISPUTE.** Williams' contract work was not limited to inserting information in a template. Williams designed and created the template used to administer game contracts, met with head coaches, researched other institutions, drafted the contract for the head coach to review, forwarded the game contract to the opposing team and ensured that Defendant received executed copies from them, and processed financial claims related to the contracts. Williams also handled contracts for team business like chartering flights, which required Williams to obtain three quotes and ensure that any addendums or amendments to the contract were accurate and contained everything required by the risk management department and Legal. EEOC SOF ¶¶ 15-25, 82-93, 97-98.

37. **DISPUTE IN PART.** Williams' role at meetings was not limited to scheduling, notetaking, and set-up. Williams created and provided agendas in preparation for head coach and senior staff meetings and prepared meeting minutes that were high-level overviews requiring Williams to exercise judgment and discretion in drafting, which were later distributed to the meeting participants. EEOC SOF ¶¶ 26-39. Defendant's citation to Exhibit 13 to Sappington's Decl. is misleading and mischaracterizes the scope of Williams' responsibility. Exhibit 13 is email correspondence addressing a "Baseball Clubhouse Discussion," in which Williams' replies she is only assisting in setting up the meeting, unlike her more extensive involvement in head coach and senior staff meetings. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

38. **DISPUTE IN PART.** EEOC disputes that Williams merely addressed envelopes or had a largely clerical role. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

39. **DISPUTE IN PART.** Williams testified at length regarding her job duties and the approximate percentages of her time spent on her various job duties, which included more than handling a calendar, scheduling meetings, managing task lists, and other clerical duties. PX J, Williams Dep. 21-53 ; EEOC SOF ¶¶ 15-104. Williams also testified that, while she could provide estimates as to the percentage of time spent on specific job duties, “one thing to ... [is] that ... it depended on what was going on” as to the specific amounts of time spent on each duty. PX J, Williams Dep. 44:1-5. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

40. **DISPUTE IN PART.** EEOC disputes Defendant’s assertion that Williams’ job was largely clerical. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

41. **DISPUTE.** Williams testified that Defendant’s characterization of these responsibilities as simply booking flights and transportation was not accurate. PX J, Williams Dep. 33:21-37:16.

42. **DISPUTE IN PART.** EEOC disputes Defendant’s assertion that Williams’ job was largely clerical. Williams provided substantial support for the Department including coordinating team-wide travel that required her to be familiar and comply with A10 conference regulations, chartering flights, handling contracts, reconciling budgets, and coordinating entire trips, including scheduling events, tracking RSVPs, and fielding questions from various offices. EEOC SOF ¶¶ 15-104. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25 and 27.

43. **DO NOT DISPUTE.** Not material.

44. **DISPUTE.** Williams spent approximately 30-40% of her time working in the following category: “Plans and manages director of athletics and recreation travel and donor meetings, scheduling appointments and preparing travel itineraries. Coordinates with appropriate staff on briefings, documenting of donor contact and processing out of follow up. Assist in management of athletic director budget by processing and filing financial receipts and tracking expenses in

coordination with department director of athletics and recreation business office.” That category also includes “preparing briefings [and] doing background on donors” and finance duties such as managing the athletic director, championships, and administration budgets. PX J, Williams Dep. 31-32; 38-39; Nero Decl. ¶ 2, Ex. 2 (ECF 113-1).

45. **DISPUTE.** Defendant mischaracterizes Williams’ testimony. The functions listed IN Paragraph 45, which took 20-25% of Williams’ time, included “[a]ssist[ing] in management of athletic director budget *by processing and filing financial receipts and tracking expenses*,” PX J, Williams Dep. 31:20-25 (emphasis added), whereas the actual “management of the athletic director budget,” took 30-40% of her time. PX J, Williams Dep. 46-47.

46. **DO NOT DISPUTE.**

47. **DISPUTE IN PART.** Williams’ responsibilities for managing the three budgets were not limited to five-year forecasting. EEOC SOF ¶¶ 55-70.

48. **DISPUTE.** EEOC disputes Defendant’s assertion and the truth of Nero’s statements. Nero also testified that Finance Director Rosemarie Chee-Wah, as the senior financial officer, “would have knowledge about who[m] was she was working with . . . in the athletics department relating to budget work.” PX P, Nero Dep. 124:21-125:4. Chee-Wah confirmed that Williams managed the Athletics Director budget, the championships budget, and the administration budget, which required Williams to conduct quarterly budget reviews, monthly and weekly reconciliations, as well as five-year forecasting; process and file receipts to track expenses in day-to-day operations; complete budget planning templates to ensure that the appropriate parties timely executed their duties; review spending plans with Chee-Wah; approve funds already budgeted for and sign-off on expenses after they were incurred. EEOC SOF ¶¶ 55-70.

49. **DISPUTE IN PART.** This mischaracterizes and diminishes Williams’ role working on

budgets. EEOC reasserts its response to Paragraphs 5, 7, 9, 22, 25, 27, 44, 45, 47, and 48.

50. **DISPUTE.** EEOC disputes Defendant's assertions, and the testimony cited does not support them. Williams testified, "on a quarterly basis, I went through the budgets with Mr. Nero, making sure that I pulled down reports that the athletics business office would provide and understand where we were in relation[] to where we expected to be. Making sure we were tracking actuals versus forecast budget." PX J, Williams Dep. 168:16-22.

51. **DISPUTE IN PART.** EEOC disputes Defendant's assertion. Nero further testified that Finance Director Rosemarie Chee-Wah, as the senior financial officer, "would have knowledge about who was she was working with . . . in the athletics department relating to budget work." PX P, Nero Dep. 124:21-125:4. Williams' role managing budgets was not limited to obtaining budget information for Nero from someone else. EEOC reasserts in response to Paragraphs 48 and 49.

52. **DISPUTE.** Vogel had no personal knowledge of Williams' work managing budgets and said it was her "guess" that Williams only helped Nero review budgets when they came out. PX C, Vogel Dep. 218:1-222:20. EEOC reasserts in response to Paragraphs 48-51.

53. **DO NOT DISPUTE.**

54. **DO NOT DISPUTE.**

55. **DO NOT DISPUTE.**

56. **DISPUTE.** The testimony cited inaccurately describes Williams' use of the email account, which she used regularly to send correspondence under Nero's name. EEOC SOF ¶¶ 77.

57. **DISPUTE.** Williams had authority to send correspondence under Nero's name without approval, and she did so in handling senior staff and head coaches meeting minutes and events. EEOC SOF ¶¶ 26-28, 34, 77.

58. **DISPUTE IN PART.** Regarding specific amounts of time spent on each "essential" job

duty, Williams testified that “one thing to note about each of the times that you’ve asked about, [is] that ... it depended on what was going on” PX J, Williams Dep. 44:1-5. Williams spent approximately 10-15% of her time on tasks in the following category: “Drafts and sends correspondence on behalf of the director of athletics and recreation to both internal and external constituents, serve as administrative interface between the director of athletics and university and conference colleagues, among others.” PX J, Williams Dep. 39-44, Ex. 2. That category is listed in her position description and included drafting department-wide messages, drafting messages to other University departments, and drafting correspondence with donors and alumni. Id.

59. **DO NOT DISPUTE.**

60. **DO NOT DISPUTE.** Defendant mischaracterizes Williams’ testimony that she spent 5% of her time filing. Actually, Williams testified that she spent approximately 5% of her time on tasks *that fell within the category*, “*Maintain* comprehensive files, electronic and paper data for the office.” PX J, Williams Dep. 44:8-45:1 (emphasis added).

61. **DISPUTE.** Defendant inaccurately uses the term “student intern” in referring to Williams’ duties and incorrectly cites her testimony. Williams testified that she was *in charge of* hiring and supervising student *employees* of Defendant. PX J, Williams Dep. 45-46, 166-167; Sappington Decl. ¶ 10; Sappington Decl., Ex. 8 (ECF 115-1); EEOC SOF ¶¶ 78-81.

62. **DISPUTE.** EEOC reasserts its response to Paragraph 61. Further, Nero testified that he was “not sure” if Williams hired student employees. PX P, Nero Dep. 118:3–10.

63. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 61. Williams also disciplined student workers and had authority to fire them. PX I, Williams Decl. ¶ 45.

64. **DO NOT DISPUTE.** Williams also testified that she was “responsible completely” for hiring and managing student employees. PX J, Williams Dep. 45:2-13 (Defendant

mischaracterizes the students as interns instead of employees).

65. **DISPUTE.** Defendant’s assertion identifies no record evidence defining “permanent employees,” and EEOC disputes that Williams did not supervise employees. Williams managed and supervised student employees, interviewed and hired student workers, coordinated with senior staff about what the student workers could help with, assigned projects to student workers, managed workloads, and signed time sheets. EEOC SOF ¶¶ 78-81. Williams disciplined student workers and had authority to fire them without approval. PX I, Williams Decl. ¶ 45.

66. **DISPUTE.** Williams denied that only 5% of her time was spent performing “miscellaneous duties.” PX J, Williams Dep. 46:14–21.

67. **DISPUTE.** Williams classified “special projects” as including tasks such as planning department events and correspondence; creating an electronic process for the student athlete book request process; coordinating team travel; ordering team equipment and merchandise for donors, alumni, and new employees; and managing the Department’s account with Nike. PX J, Williams Dep. 47:11–13, 47:22–48:4; EEOC SOF ¶¶ 82-100.

68. **DISPUTE.** EEOC disputes Defendant’s characterization of the work and inference that these are the only special projects for which Williams was responsible. EEOC SOF ¶¶ 94-100.

69. **DISPUTE.** Not material.

70. **DISPUTE.** Not material.

71. **DO NOT DISPUTE.**

72. **DISPUTE.** Williams testified that she did not volunteer to run the various errands listed in this paragraph for Nero. PX J, Williams Dep. 111:7–116:22.

73. **DISPUTE.** EEOC disputes Defendant’s assertion, and the evidence cited does not support it. Williams testified, “I had a lot of independent freedom to make sure things were accomplished

within a particular timeline ... I had independent responsibility, that I was given the authority and autonomy to act and make sure tasks were accomplished and that event went off successfully while working with others.” PX J, Williams Dep. 195:13-20, 197:12-17.

74. **DISPUTE.** EEOC disputes Defendant’s assertion, and the evidence cited does not support it. Williams hired and supervised student employees. EEOC SOF ¶¶ 78-81. EEOC disputes the assertion that Aresco had supervisory or policymaking authority. Aresco’s involvement with developing written policies was limited to informing senior staff about HR’s recommendations or similar policies at other schools; leadership would then decide whether to adopt the policy. EEOC SOF ¶¶ 187-190. Aresco’s supervisory responsibilities were minimal. EEOC SOF ¶¶ 192-193.

75. **DISPUTE.** Williams was responsible for HR functions within the Athletics Department. Williams worked in conjunction with department staff on hiring and HR matters and eventually took over those responsibilities. EEOC SOF ¶¶ 40-54. EEOC disputes the assertion that Aresco made decisions regarding hiring coaches. Aresco’s HR-related job duties consisted primarily of sharing information and completing paperwork. EEOC SOF ¶¶ 185-190. Further, the cited exhibits show only that Aresco sent documents, posted positions, and assisted with on-boarding. Exhibits 17-24 to Aresco Decl (ECF 114-1).

76. **DISPUTE IN PART.** EEOC disputes the assertion that Williams did not have disciplinary responsibility. EEOC reasserts its response to Paragraphs 61, and 63-65.

77. **DISPUTE IN PART.** EEOC disputes the assertion that Aresco was responsible for developing or drafting Athletics Department policies. Aresco’s involvement with developing written policies was limited to informing senior staff about HR’s policy recommendations or similar policies at other schools; leadership would then make a decision and Aresco documented their decision. EEOC SOF ¶¶ 187-190.

78. **DISPUTE.** According to Nero, participation in strategic planning meant sitting in on senior staff and leadership team meetings, reminding the senior staff or leadership team members of time lines they were required to meet by the University or had set for themselves to make a decision, and reminding them of what their recommendation had been. EEOC SOF ¶¶ 173-174. Further, Williams’ responsibilities included these tasks. EEOC SOF ¶¶ 26-39; Ex. 8 to Sappington Decl. (ECF 115-1).

79. **DISPUTE IN PART.** EEOC disputes the characterization of the materials that had to be prepared for the championship bid process as “significant.” Aresco’s involvement in the championship bid process consisted of serving as the contact person for the bid and compiling paperwork. The paperwork consisted of templates, forms, and questionnaires that required basic information, such as facility name, address, and seating capacity, how many events the facility hosts for the sport each year; how many parking spaces are available; how many locker rooms the facility has; whether the scoreboard has video capabilities; and information about ticket sales and hotels in the area, none of which constitutes “significant materials.” EEOC SOF ¶¶ 178-182.

80. **DISPUTE IN PART.** EEOC disputes that Aresco’s work on the championship bid process was more “significant” than Williams’ work on other contract administration matters. EEOC SOF ¶¶ 15-25, 178-182. Further, Williams drafted game contracts and others. EEOC SOF ¶¶ 15-25. When drafting game contracts, Williams was the point of contact for the contract with head coaches, OGC, University facilities staff, the University business office, and opposing teams. Id. To draft game contracts, Williams gathered head coaches’ schedules, researched the other institution to ensure she had all necessary information, and put the information into a template Williams had created. Id. EEOC reasserts its response to Paragraphs 36 and 79.

81. **DISPUTE IN PART.** Williams worked on matters relating to the University’s men’s

basketball team's August 2016 Japan trip that Nero assigned to her, such as managing the budget and approving funds for the trip. EEOC SOF ¶¶ 212-218. Further, EEOC disputes the assertion that Aresco was responsible for planning the Japan trip. Although Aresco provided some assistance with the Japan trip, his involvement was minimal. EEOC SOF ¶¶ 213-217. University paperwork shows the trip was planned by Anthony Travel and that the Japanese Basketball Association (JBA) was handling all domestic travel. Id. University emails show that Nero required Aresco to defer to the JBA and that Nero, not Aresco, negotiated with the University's counterparts in Japan for a contract that had to cover "international and domestic travel, housing and meals for the student-athletes, transportation, the number of games to be played and the University's opponents, and the portion of revenue from ticket sales, television, radio, and advertising to which the University was entitled." Id. Following the trip, Nero assigned matters relating to the trip back to Williams. Id. EEOC reasserts its response to Paragraphs 48-51.

82. **DO NOT DISPUTE.** The inference Defendant asserts is proof of disparate treatment and sex bias. Unlike Williams, Aresco was rewarded for his ambition and his desire to advance professionally within the Athletics Department. In June of 2014, Aresco began "asserting" himself to fill it by taking on additional responsibilities outside of his job duties. EEOC SOF ¶¶ 110-116. In Fall 2014, Nero rewarded Aresco for "asserting" himself and taking on more responsibility; Nero offered to promote him and increase his pay to \$75,000. Id. Emails show that Nero increased Aresco's salary to \$75,000 simply because Aresco asked for that amount. Id. Nero not only promoted Aresco; he also gave Aresco a \$13,000 bonus. Id.

83. **DISPUTE IN PART.** EEOC disputes any assertion that Williams' job duties were only clerical and that she was mainly responsible for simple tasks, like scheduling meetings and appointments for Nero. Williams explained the context of her statements, testifying, "[I]f Mike

Aresco is going to continue to assign me things to put onto the calendar and he has access to do it, let's have Mike Aresco also doing these things, when they're for the senior leadership meeting, which is the thing he was supposed to be coordinating." PX J, Williams Dep. 267:5-11. Williams testified, "... In addition, the next bullet down, as I previously stated, I don't want to just do the schedule anymore is reference to the fact that Mike Aresco was having me schedule the senior leadership meetings, and that is something that he was supposed to be coordinating, and I didn't want to do it anymore by myself if these were things that he was taking on and taking credit for." PX J, Williams Dep. 269-270. 5, 7, 9, 22, 25, 27, 44, 45, 47, and 48.

84. **DISPUTE.** Vogel's opinion of Williams is not a fact, nor is it material. Further, the inference Defendant asserts in this paragraph is proof of disparate treatment and sex bias, as explained in EEOC's response to Paragraph 82.

85. **DO NOT DISPUTE.** EEOC reasserts its response to Paragraph 82.

86. **DISPUTE.** The facts supporting this paragraph are hearsay. See, e.g., PX D, Aresco Dep. 177-182; PX C, Vogel Dep. 211:1-10. Further, the inference Defendant asserts in this paragraph is proof of disparate treatment and sex bias, as explained in EEOC's response to Paragraph 82. Williams trained Aresco on her duties, but Aresco did not perform Williams' duties at the level Williams had, failed to understand the tasks assigned to him, and was "lost" as to the work he was supposed to be doing, which created more work for other staff within the Department. EEOC SOF ¶¶ 194-233. When Aresco failed to Williams did it for him and then it was quickly assigned back to her. Id. Aresco could not successfully administer game contracts, so Nero had to quickly reassigning them back to Williams. Id.

87. **DISPUTE.** Defendant's assertion is proof of disparate treatment and sex bias, as explained in EEOC's response to Paragraphs 82 and 86.

88. **DISPUTE.** EEOC reasserts its response to Paragraphs 82-84 and 86.

89. **DISPUTE.** EEOC disputes that Williams ignored or failed to perform her job duties. EEOC reasserts its response to Paragraphs 82-84 and 86.

90. **DISPUTE.** EEOC disputes that Williams ignored or failed to perform her job duties. EEOC reasserts its response to Paragraphs 82-84, 86 and 89.

91. **DO NOT DISPUTE.** EEOC reasserts its response to Paragraphs 82-84, 86, and 89-90.

92. **DO NOT DISPUTE.** EEOC disputes the assertion that Williams neglected her job duties because she took on additional tasks. Further, Nero never gave this performance evaluation to Williams. PX J, Williams Dep. 220:15-16. EEOC reasserts its response to Paragraphs 82-84, 86, and 89-90.

93. **DISPUTE.** Defendant's assertion is based on hearsay. Alrutz did not testify that she agreed with Nero's statements about Williams or that she had personal knowledge of Williams going outside the scope of her responsibilities without consultation or guidance. Further, the inference in this paragraph is proof of disparate treatment and sex bias, as explained in response to Paragraph 82. EEOC reasserts its response to Paragraphs 82-84, 86, and 89-90.

94. **DISPUTE IN PART.** EEOC disputes that Williams failed to fulfill her job duties. PX J, Williams Dep. 220:5-20. EEOC reasserts its response to Paragraphs 82-84, 86, and 89-90.

95. **DO NOT DISPUTE.** Not material. Williams applied for the position after Aresco told her the new position in administration was created for him and that Williams should not apply. EEOC SOF ¶¶ 120-129.

96. **DISPUTE.** EEOC disputes Defendant's assertion and the evidence cited does not support it. Kayer's testimony discusses the process for reviewing and approving Aresco's proposed salary as Special Assistant. PX K, Kayer Dep. 194-198, 209-220. Kayer and the Compensation

Department concluded that his Special Assistant salary was too high, and they recommended against it. EEOC SOF ¶¶ 148-153. EEOC reasserts its response to Paragraph 18.

97. **DO NOT DISPUTE.** EEOC reasserts its response to Paragraph 95.

98. **DISPUTE.** Williams did not include in the application the quoted language referred in this paragraph. Sappington Decl. ¶ 19; Ex. 17 to Sappington Decl. (ECF 115-1). Further, the paragraph misstates how Williams described her Executive Assistant duties. Sappington Decl. ¶ 19; Ex. 17 to Sappington Decl., p. 11 (ECF 115-1).

99. **DISPUTE.** Not material. Further, Williams' resume states that she managed the Athletic Director's budget. Sappington Decl. ¶ 19; Ex. 17 to Sappington Decl. (ECF 115-1).

100. **DO NOT DISPUTE.** Not material.

101. **DO NOT DISPUTE.** Not material.

102. **DISPUTE.** Not material. Further, this paragraph does not fully quote the description of duties provided in the applications. Ex. 19 and to Sappington Decl. (ECF 115-1).

103. **DISPUTE.** Although Williams referred to an opportunity to take on a "new role" for her, the position was not a "new role" for the Department. The position was a "reclassification" of job functions, "in the same way that [Aresco] was reclassified from special assistant to [the] assistant director of administration -- assistant athletic director for administration." PX J, Williams Dep. 295:17-296:5. Williams sent the email after Nero asked her take on additional responsibilities managing the MBB budget. Nero Decl. ¶ 148; Ex. 30 to Nero Decl. (ECF 113-1).

104. **DISPUTE.** EEOC reasserts its response to Paragraph 103.

105. **DISPUTE.** Williams sent the email after Nero asked her to take on more responsibilities managing the MBB budget. Nero Decl. ¶ 148; Ex. 30 to Nero Decl. (ECF 113-1). Williams stated the additional responsibilities Nero had been asking her to take on "should be accompanied with

additional compensation.” PX J, Williams Dep. Ex. 21 at GWU_001423; EEOC SOF ¶¶ 293-300.

106. **DO NOT DISPUTE.**

107. **DO NOT DISPUTE.**

108. **DISPUTE.** EEOC disputes Defendant’s assertion. Nero’s continuing confidence in Williams’ ability to maintain confidentiality was demonstrated by the fact that he continued to entrust management of the budgets to her. EEOC SOF ¶¶ 55-70, 208-211. Other job duties which required access to and handling of sensitive and confidential information included her work on HR matters that required her to access and use information about candidates for employment and terms of offers made; her work on compliance issues required her to handle sensitive information about student athletes; and her responsibility of reviewing end of year student-athlete surveys to flag questions or concerns for Nero to address. PX I, Williams Decl. ¶¶ 90-100. For example, Williams managed the championship budget, which was confidential because “all of the coaches are vying for funding allocations” and “until [Nero] is ready, he [did not] want certain coaches to know that he gave money to this team and not this team.” PX G, Chee-Wah Dep. at 108-109. It was Nero, not Williams, that concerned the University. Chee-Wah was told to stay aware of “any inappropriate activity” and to “not trust anything that [Nero] does or says.” PX G, Chee-Wah Dep. at 29-31. Chee-Wah testified that Williams did not share information inappropriately, but that “[Nero] wasn’t happy with what [Williams] was sharing with” because “[Nero] was being exposed for certain things that were against University policies and procedures.” PX G, Chee-Wah Dep. at 173-174.

109. **DISPUTE.** Williams denied disclosing confidential information to coaches. PX J, Williams Dep. 221-225. Further, Vogel’s testimony cited in support of this paragraph is hearsay.

110. **DISPUTE.** The testimony cited contains no information about protocols on confidential

meetings with student athletes, and there are no University documents in the record reflecting such protocols. Nero Decl. ¶ 37 (ECF 113-1); PX C, Vogel Dep. 254:13–257:15.

111. **DISPUTE.** EEOC disputes Defendant’s assertion and there is no record evidence cited to support it. Exhibit 15 to Nero Decl. does not mention Williams’ ability to maintain confidential information. EEOC reasserts in response to Paragraphs 108-110.

112. **DISPUTE IN PART.** EEOC disputes the assertion that the exit interviews were for Nero’s eyes only. Williams had been assigned to help Chandra Bierwirth review the exit interviews, and Williams brought to Nero’s attention that a student-athlete had experienced emotional abuse. PX J, Williams Dep. 225:22-226:19. That duty was removed from her purview only after she flagged that comment from the student-athlete, which also implicated Nero’s prior knowledge of the issue and indifference to that student’s concerns. PX I, Williams Decl. ¶ 97. EEOC reasserts in response to Paragraphs 108-111.

113. **DISPUTE.** EEOC disputes that Williams breached confidentiality by reading student-athlete exit interviews. EEOC reasserts its response to Paragraphs 108-112.

114. **DISPUTE.** Exhibit 16 to Nero Decl. does not suggest Defendant was concerned that Williams breached confidentiality. EEOC reasserts its response to Paragraphs 108-113.

115. **DISPUTE.** Vogel testified she did not recall how she came to learn the facts in this paragraph. PX C, Vogel Dep. 256:14-16.

116. **DISPUTE.** Not material. EEOC reasserts its response to Paragraphs 108-113.

117. **DISPUTE.** EEOC disputes Aresco’s assertion that Williams had “listen[ed] in on a conversation that was private in nature and then . . . lied about what she heard[.]” PX D, Aresco Dep. 167:1–17. As Williams testified, Aresco told her “that he had a conversation with [Nero] wherein he told [Nero] he wanted to move out of facilities, events and operations because he and

his wife were trying to settle down and he wanted a role in administration, and that this is a role he was going to get. . . that Nero told [Aresco] he was going to get this job.” PX J, Williams Dep. 143:1-15. EEOC reasserts in response to Paragraphs 108-113.

118. **DISPUTE IN PART.** Not material. Aresco was preselected for the position before it was posted. EEOC disputes the assertion that Aresco’s education factored into the decision to select Aresco for the position. EEOC SOF ¶¶ 105-172. Further, Aresco’s salary as Special Assistant was based on his prior salary that he simply requested and received. EEOC SOF ¶¶ 112-116.

119. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 118.

120. **DISPUTE IN PART.** EEOC disputes the assertion that Aresco’s experience in Wagner College’s athletics department is relevant or that his experience factored into the decision to select Aresco for the Special Assistant position and reasserts its response to Paragraph 118. As human resources personnel testified, prior work experience with “[providing] high level executive support to an administrator,” “office management, leading committees, special projects, things along those lines” was more aligned with the Special Assistant position than a background in athletics. PX K, Kayer Dep. 20-21, 27, 219-220. Kayer and the Compensation Department concluded Aresco’s pay was too high. PX F, Hess Dep. 74:16-79:16.

121. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 118-120.

122. **DO NOT DISPUTE.**

123. **DO NOT DISPUTE.**

124. **DO NOT DISPUTE.**

125. **DO NOT DISPUTE.**

126. **DO NOT DISPUTE.**

127. **DO NOT DISPUTE.** Aresco was promoted without having to apply. EEOC SOF ¶¶ 110-

116. Aresco's salary also increased to \$75,000 simply because he asked for that amount. Id. Two weeks later, Nero authorized the noncompetitive promotion and increase in salary for Aresco. Id. This was never submitted to HR or the Compensation Department for approval. PX P, Nero Dep., Ex. 1. A different back-dated authorization for Aresco's promotion, signed only by Gruppo on 1/23/15 with a start date of 1/1/15, was submitted to HR and the Compensation Department. Sappington Decl. ¶ 23; Ex. 21 to Sappington Decl. (ECF 115-1). Although HR and Compensation concluded Aresco's pay was too high, Kayer advocated for it because that was what Nero wanted. EEOC SOF ¶¶ 143-172.

128. **DO NOT DISPUTE.** EEOC reasserts its response to Paragraph 127.

129. **DO NOT DISPUTE.** EEOC reasserts its response to Paragraph 127.

130. **DISPUTE IN PART.** Aresco testified that staff began to formally report to him, but the work did not otherwise change. PX D, Aresco Dep. 76:8-16, 77:3-79:15.

131. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 118-120.

132. **DISPUTE.** Not material. Further, Aresco did not testify to this at his deposition. When asked about his budget responsibilities, Aresco testified about increasing revenue through concession and rental fees, assisting the rowing coach with fundraising and maintaining its budget, and completing certain capital projects within budget. PX D, Aresco Dep. 52-59, 83-90, 118-120. EEOC reasserts its response to Paragraphs 118-120.

133. **DISPUTE IN PART.** Not material. EEOC reasserts its response to Paragraphs 118-120.

134. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 118-120 and 216.

135. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 118-120 and 216.

136. **DO NOT DISPUTE.**

137. **DISPUTE IN PART.** This paragraph mischaracterizes Defendant's interrogatory

response, which states that Nero approved Aresco's salary increase and that Natasha Dornbush and another employee *likely* approved it. Ex. 2 to Sappington Decl. (ECF 115-1).

138. **DO NOT DISPUTE.**

139. **DISPUTE IN PART.** EEOC disputes the assertion that senior staff consisted of only the persons listed. Rosemary Chee-Wah and Natasha Dornbush from the finance office were also senior staff, as was Williams. PX C, Vogel Dep. 173:19-25; PX J, Williams Dep. 53:8-14.

140. **DISPUTE IN PART.** EEOC disputes the assertion that Williams was not senior staff and disputes that her job was not similar to the Special Assistant job. EEOC SOF ¶¶ 15-104, 117-119, 132, 153, 173-233.

141. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 139-140.

142. **DISPUTE.** Rosemary Chee-Wah and Natasha Dornbush were senior staff even though they were not sports administrators. PX C, Vogel Dep. 173:19-25.

143. **DISPUTE IN PART.** Although Williams was never given a sport administrator title, she performed sport administrator functions for an extended period. EEOC SOF ¶¶ 59, 69, 82-88, 101-104. Williams also assisted with compliance and planning team travel. Id.

144. **DISPUTE IN PART.** EEOC disputes that Williams testified she performed financial sports administrator duties for only "a few months." PX J, Williams Dep. 50:15-51:12, 52:1-53:7.

145. **DISPUTE IN PART.** Williams performed sport administrator functions for an extended period, including managing the men's basketball budget. Williams also approved spending from the three budgets she managed. EEOC SOF ¶¶ 55- 70, 82-93, 101-104.

146. **DISPUTE IN PART.** The paragraph mischaracterizes Williams' testimony. Williams testified about many functions of sports administrators. PX J, Williams Dep. 147:21-148:9. Further, one of the most significant functions of a sports administrator was financial. EEOC SOF

¶¶ 301-305.

147. **DISPUTE.** EEOC reasserts its response to Paragraphs 140-146.

148. **DO NOT DISPUTE.** Not material.

149. **DISPUTE IN PART.** Not material. Further, EEOC disputes the assertion that Williams was not involved in the exit interview process. Williams assisted Chandra Bierwirth with exit interviews. PX J, Williams Dep. 226:6-227:11.

150. **DISPUTE.** Not material. EEOC disputes Defendant's assertion and the testimony cited does not support it. Williams testified that John Gruppo, who was senior staff, did not have a private office. PX J, Williams Dep. 55:14-56:2.

151. **DO NOT DISPUTE.** Not material.

152. **DO NOT DISPUTE.**

153. **DO NOT DISPUTE.** Not material.

154. **DO NOT DISPUTE.**

155. **DO NOT DISPUTE.**

156. **DISPUTE.** EEOC reasserts its response to Paragraph 37. Williams had to exercise judgment and discretion in drafting documents, which were later distributed to meeting participants. EEOC SOF ¶ 34.

157. **DISPUTE.** EEOC reasserts its response to Paragraphs 37 and 155.

158. **DISPUTE.** EEOC reasserts its response to Paragraphs 37 and 155.

159. **DO NOT DISPUTE.**

160. **DISPUTE IN PART.** EEOC disputes that Williams' agenda preparation consisted only of putting the agenda items Nero sent her "in the proper order." EEOC reasserts its response to Paragraphs 37 and 155.

161. **DO NOT DISPUTE.**

162. **DO NOT DISPUTE.**

163. **DISPUTE.** EEOC disputes Defendant's assertion – the only support for the fact asserted is Nero's Declaration, and to say that Williams was not permitted to speak unless spoken to is discriminatory and constitutes disparate treatment and evidence of sex bias.

164. **DISPUTE.** EEOC disputes the assertion that Williams submitted the senior staff meeting minutes to Aresco for his approval. PX J, Williams Dep. 86:3-87:22. Williams sent Aresco the meeting minutes to see if he wanted to make any adjustments as a professional courtesy. Id.

165. **DO NOT DISPUTE.**

166. **DO NOT DISPUTE.**

167. **DISPUTE IN PART.** EEOC disputes that this paragraph accurately describes the position justification memorandum. PX P, Nero Dep., Ex. 2.

168. **DO NOT DISPUTE.**

169. **DISPUTE.** Not material. This assertion is not supported by record evidence.

170. **DISPUTE.** When testifying during his deposition, Nero could not "recall specifics" of any conversations he had with Knapp and Porter about the position. PX P, Nero Dep. 32:18-34:15.

171. **DISPUTE.** Nero did not seek to "have both an executive assistant to perform clerical functions and a chief of staff to help manage high-level priorities." Nero tried to transfer Williams' responsibilities to Aresco and then promptly sought to eliminate Williams' job once Aresco was formally in position. PX G, Chee-Wah Dep. 204:10-21; PX K, Kayer Dep. 239-241, 242.

172. **DO NOT DISPUTE.**

173. **DO NOT DISPUTE.**

174. **DISPUTE.** EEOC disputes that Aresco initially performed Hamluk's duties. Williams

took over Hamluk's duties until Aresco was placed in the Special Assistant position. PX J, Williams Dep. 248-249. After Williams trained Aresco on the duties she was performing, those duties were partially shifted to Aresco, but he never successfully took them over in their entirety. EEOC SOF ¶¶ 194-233. Because Aresco could not perform those duties successfully, Williams continued to step in and perform the work correctly, especially HR-related duties. Id.

175. **DISPUTE.** EEOC reasserts its response to Paragraph 174.

176. **DO NOT DISPUTE.**

177. **DISPUTE.** EEOC disputes Defendant's assertion, which is based on a mischaracterization of the Williams' testimony cited. PX J, Williams Dep. 247:9-250:3. EEOC reasserts its response to Paragraph 174.

178. **DISPUTE.** Aresco failed to successfully "accomplish these tasks," did not perform the duties at the level Williams had, failed to understand the tasks assigned to him, and was "lost" as to the work he was supposed to be doing, which created more work for other staff within the Department. PX J, Williams Dep. 247-250; EEOC SOF ¶¶ 194-233.

179. **DISPUTE.** Aresco's Declaration shows that Williams was performing those duties before Aresco became the Special Assistant and that she was the known contact for communications regarding the Board of Trustees. Ex. 9 to Aresco Decl (ECF 114-1).

180. **DISPUTE IN PART.** Although EEOC does not dispute that Aresco was preselected for the Special Assistant position, EEOC disputes the assertion that a "long-term role that was more focused on HR, Department-wide policies, and special projects" is different from the duties performed by Williams. EEOC SOF ¶¶ 15-104, 173-233. EEOC disputes that Nero initiated the conversation with Aresco about working in administration. PX J, Williams Dep. 143:1-15.

181. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 179. Further, the exhibit

referred to in Nero's Declaration ¶ 97 confirms that Nero preselected Aresco for the position.

182. **DISPUTE IN PART.** EEOC disputes the assertion that this position had different job duties than Williams and that the Special Assistant actually engaged in revisions to the Strategic Plan. EEOC SOF ¶¶ 15-104, 173-233.

183. **DISPUTE.** EEOC disputes the assertion that the Special Assistant would perform duties different than those performed by Williams. EEOC SOF ¶¶ 15-104, 117-119, 132, 153, 173-233.

184. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 179-182. EEOC disputes the assertion that the Special Assistant was to perform duties different from Williams.

185. **DISPUTE.** EEOC disputes that there was a "hiring search" for the Special Assistant position. As described in Defendant's Statement of Facts ¶¶ 180-184, Aresco was preselected for the Special Assistant position. EEOC reasserts its response to Paragraphs 179-182.

186. **DISPUTE.** Whether Aresco had authority to decide who to hire as Special Assistant is immaterial because Aresco was extensively involved in the creation and posting of the job and knew he had been preselected for it. EEOC reasserts its response to Paragraphs 179-184.

187. **DISPUTE.** This paragraph mischaracterizes GWU_006371-74. Vogel and Kayer did not "ma[k]e plans" to interview "at least 3" applicants in the email chain reflected in GWU_006371-74. Rather, Kayer provided her recommendations for the hiring process, which Vogel did not follow. PX C, Vogel Dep. at 118:5-17.

188. **DISPUTE IN PART.** EEOC disputes that the University solicited applications. EEOC reasserts its response to Paragraphs 179-186.

189. **DISPUTE.** Correspondence between Kayer and Aresco indicates that Aresco drafted the position description for the Special Assistant position. PX D, Aresco Dep. Ex. 5.

190. **DISPUTE IN PART.** EEOC does not dispute that Defendant set the maximum salary for

the position at \$80,880 at the “expert level” for compensation purposes but denies that the maximum salary was “based on its description.” EEOC SOF ¶¶ 113, 135, 138-172. Further, the position justification form for the position lists the “maximum salary” for the position as \$70,000. Ex. 24 to Nero Decl. (ECF 113-1).

191. **DISPUTE.** The University approved the Special Assistant in the “Individual Contributor” (IC) stream, which was different from an Assistant Athletics Director position that is in the “Management” stream. EEOC SOF ¶ 289.

192. **DISPUTE IN PART.** EEOC disputes that Williams was not qualified for the job. EEOC SOF ¶ 153.

193. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 191-192. Further, Aresco was not qualified for the job. EEOC SOF ¶¶ 143-167.

194. **DISPUTE.** This paragraph mischaracterizes Nero’s deposition testimony. At the point cited, Nero is responding to the question “With respect to Mr. Aresco’s human resources responsibilities in working with Kaithlyn, what skills did those job duties require?” PX P, Nero Dep. 74:12-14. As such, Nero’s response did not refer to the planned skills needed to perform the Special Assistant position, but instead relates to how he viewed Aresco’s position after he had been performing the role. Id.

195. **DISPUTE.** This paragraph mischaracterizes Williams’ deposition testimony. Williams testified that she saw the posting, but her testimony does not specify if she saw the posting while it was still active. PX J, Williams Dep. 219.

196. **DISPUTE.** This paragraph mischaracterizes Williams’ deposition testimony. Williams testified that she “spoke with” Kayer about the job opening for Special Assistant and that Kayer told her she should apply. PX J, Williams Dep. 218.

197. **DISPUTE IN PART.** EEOC does not dispute that Williams did not apply for the Special Assistant position. However, Williams did not apply after Aresco told her that he had already been promised that role; after Mike Kohn, then Senior HR Client Partner for Athletics confirmed that Aresco would be selected for the position; and after Vogel made clear to Williams that the position was not for her. EEOC SOF ¶¶ 117-129.

198. **DISPUTE.** This paragraph mischaracterizes testimony. Vogel did not testify that Williams would have been considered for the position if she had applied. PX C, Vogel Dep. 57:25-59:6. Further, because Aresco was preselected, Williams would not have been seriously considered for the role, even if she had applied. EEOC reasserts its response to Paragraphs 179-186.

199. **DISPUTE.** Not material. EEOC disputes that Williams was not qualified. Further, Aresco was not qualified for the job. EEOC reasserts its response to Paragraphs 179-186 and 192-193.

200. **DISPUTE.** Not material. EEOC reasserts its response to Paragraphs 179-186. Further, human resources personnel testified that the experience relevant to the Special Assistant job is experience in providing “high level executive support to an administrator,” which is “more office management, leading committees, special projects, things along those lines,” than a background in facilities and operations. PX K, Kayer Dep. 20-21, 27, 219-220.

201. **DISPUTE.** Williams demonstrated her ability to maintain confidential information throughout her employment and was frequently entrusted by the University with access to and management of confidential information through the end of her tenure in the Athletics Department. EEOC reasserts its response to Paragraphs 108-114.

202. **DO NOT DISPUTE.**

203. **DISPUTE IN PART.** Aresco’s cited testimony does not reflect what he conveyed to Williams. PX J, Williams Dep. 142:19–147:7. EEOC further disputes Aresco’s assertion that

Williams did not have athletic administration experience and the inference that Aresco himself had relevant experience. EEOC reasserts its response to Paragraphs 179-186 & 199.

204. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 179-186, 199, and 202.

205. **DISPUTE.** Whether or not Nero formally “promised” Aresco the position is immaterial. It was widely known that Aresco was preselected for Special Assistant and that he would be hired for that job. Def. SOF ¶¶ 180-84; EEOC SOF ¶¶ 105-138.

206. **DISPUTE.** EEOC reasserts its response to Paragraph 204.

207. **DO NOT DISPUTE.**

208. **DISPUTE.** EEOC disputes that Aresco’s application materials “highlighted” his experience as an Assistant Athletics Director. EEOC reasserts its response to Paragraph 199.

209. **DISPUTE IN PART.** Although Aresco was the only “applicant” for the position, other applicants, such as Williams, were discouraged from applying. EEOC reasserts its response to Paragraph 196-197 & 204.

210. **DISPUTE IN PART.** This paragraph mischaracterizes testimony. Vogel initially testified that Kayer recommended she conduct an interview with one additional interviewer, but that she did not follow Kayer’s advice. PX C, Vogel Dep. 118:5-17. Vogel later modified her testimony. PX C, Vogel Dep. 131:21-132:23.

211. **DISPUTE IN PART.** EEOC disputes the assertion that Vogel’s brief “interview” of Aresco played a role in him receiving the position as Aresco had been preselected for the position. EEOC reasserts its response to Paragraphs 179-186, 196-197 & 204.

212. **DISPUTE IN PART.** EEOC disputes that Vogel’s evaluation of Aresco’s application was part of a bona fide selection process; Aresco was preselected. EEOC reasserts its response to Paragraphs 179-186, 196-197, 199 & 204.

213. **DISPUTE IN PART.** EEOC reasserts its response to Paragraphs 199 and 211.
214. **DISPUTE IN PART.** EEOC disputes the assertion that this was when the decision to hire Aresco for the position was made; Aresco was preselected before the position was posted. EEOC reasserts its response to Paragraphs 179-186, 196-197, 199 & 204.
215. **DISPUTE.** EEOC disputes that Aresco was selected for such reasons. EEOC disputes the assertion that Aresco was performing Hamluk's duties sufficiently. Williams took over those duties and then was directed to train Aresco on how to perform in the position, but Aresco did not perform many of those duties successfully, leaving Williams to step in and perform the work correctly. EEOC SOF ¶¶ 194-233.
216. **DISPUTE IN PART.** EEOC disputes the assertion that the Washington Kastles contract factored into the decision to hire Aresco. Aresco did not send the final proposal for the Washington Kastles contract until after the University selected him as Special Assistant. Nero Decl. ¶ 72 (ECF 113-1); Def. SOF ¶¶ 180-84; EEOC SOF ¶ 177.
217. **DISPUTE IN PART.** EEOC disputes that Davis' opinion factored into the decision, as explained in Paragraph 211. Further, this paragraph is based on hearsay.
218. **DISPUTE IN PART.** EEOC disputes that Aresco's relationship with coaches factored into the decision to hire Aresco for the position, as explained in Paragraph 211.
219. **DISPUTE IN PART.** EEOC disputes that Aresco possessed the qualities listed and disputes the inference that this factored into the decision to hire Aresco for the position. EEOC reasserts its response to Paragraphs 179-186, 196-197, 199 & 204.
220. **DO NOT DISPUTE.**
221. **DISPUTE IN PART.** The Compensation Department and Kayer thought Aresco's salary was too high. Nevertheless, Kayer advocated for the pay because that was what Nero wanted.

Ultimately, it was approved by the Athletics Department calling Aresco's hire a "lateral transfer." But it was not a lateral transfer according to University policy. Others, like Kayer, who did transfer laterally did not retain their higher pay. EEOC SOF ¶¶ 168-172. EEOC reasserts its response to Paragraphs 18 and 96.

222. **DISPUTE IN PART.** EEOC disputes the assertion that, because Aresco's salary was below the maximum at any level, it was an appropriate salary for him. EEOC reasserts its response to Paragraphs 18 and 96.

223. **DO NOT DISPUTE.**

224. **DISPUTE IN PART.** EEOC does not dispute that education and experience are purportedly valued, but Aresco's education and experience did not justify his pay. EEOC SOF ¶¶ 147-153. EEOC reasserts its response to Paragraphs 18, 96, and 220.

225. **DISPUTE.** EEOC reasserts its response to Paragraph 220.

226. **DISPUTE.** EEOC reasserts its response to Paragraphs 18, 96, and 220.

227. **DISPUTE.** EEOC reasserts its response to Paragraphs 18, 96, and 220.

228. **DO NOT DISPUTE.**

229. **DISPUTE.** Aresco did manage Nero's calendar. PX J, Williams Dep. 81-82, 234-235.

230. **DISPUTE.** Aresco did schedule meetings for Nero in which he was not a participant. PX D, Aresco Dep. 227:10-230:20, 232:2-22; PX P, Nero Dep. 91:10-92:18, Ex. 2, Ex. 10.

231. **DISPUTE.** Aresco printed, scanned, and copied material for Nero. PX D, Aresco Dep. 237:1-241:10; PX P, Nero Dep. 90:19-22.

232. **DISPUTE.** EEOC reasserts its response to Paragraph 231.

233. **DISPUTE.** Aresco arranged Nero's travel. Aresco Dep. 227:10-230:20, 232:2-22.

234. **DISPUTE.** Aresco processed Nero's receipts for reimbursement. EEOC SOF ¶ 191.

235. **DISPUTE.** Aresco managed Nero’s phone communications, including voicemails. PX D, Aresco Dep. 233:5-236:20; PX P, Nero Dep. 90:1-17, Ex. 9.

236. **DISPUTE.** Not material. This paragraph mischaracterizes Williams’ deposition testimony. Williams testified that she did not recall whether Nero’s phone rang at anyone else’s desk. PX J, Williams Dep. 56:21-57:4.

237. **DISPUTE.** EEOC reasserts its response to Paragraph 235.

238. **DISPUTE.** The testimony cited does not support the assertion that Aresco was Nero’s chief of staff. When asked whether Aresco was responsible for “handling day-to-day operational decisions while escalating as appropriate,” as stated in a Special Assistant job description, Nero qualified his response by stating, “[o]thers did as well.” PX P, Nero Dep. 84:10-15.

239. **DISPUTE.** EEOC disputes Defendant’s characterization of the duties described. EEOC SOF ¶¶ 173-193. EEOC disputes the assertion that the duties described were different from Williams’ duties. EEOC SOF ¶¶ 15-104, 194-233.

240. **DISPUTE.** EEOC disputes the characterization that Aresco “over[saw] HR.” Aresco’s job duties relating to human resources consisted primarily of assisting with on-boarding and off-boarding Athletics Department staff, relaying Department staff questions to HR, relaying HR requests to Department staff, and assisting with obtaining completed paperwork. EEOC’s SOF ¶¶ 185-190. EEOC disputes the inference that Williams did not perform job duties related to HR; Williams participated in the hiring process for a head coach as well as for two Senior Associate Athletics Directors. EEOC SOF ¶¶ 40-54; PX I, Williams Decl. ¶ 81. When Nero reassigned Williams’ HR duties to Aresco, Williams continued to perform HR duties because Aresco’s performance was deficient and because, in some cases, Aresco, did not perform those HR duties assigned to him. PX I, Williams Decl. ¶¶ 79-84.

241. **DISPUTE.** EEOC disputes the characterization that Aresco made decisions relating to human resources. EEOC SOF ¶¶ 185-190.

242. **DISPUTE.** EEOC disputes the characterization that Aresco made hiring decisions. EEOC SOF ¶¶ 185-190, 192-193.

243. **DISPUTE.** The email referenced was sent by Williams after Athletics Department personnel had been marginalizing her role and reassigning her tasks to Aresco. EEOC SOF ¶¶ 194-233. Further, EEOC disputes the assertion that Williams did not perform duties related to HR. Id.

244. **DISPUTE.** This paragraph mischaracterizes deposition testimony. The testimony to which this paragraph refers does not refer to hiring plans. PX D, Aresco Dep. 200:5–9. Further, EEOC disputes the assertion that Williams did not perform job duties related to HR, including responsibilities related to hiring plans, consisting of collecting and reviewing start dates, working with coaches to determine hiring intentions, facilitating the timing of onboarding new hires, and collecting data and documents to assure synergy between HR and finance. EEOC SOF ¶¶ 40-54.

245. **DISPUTE.** EEOC disputes the assertion that Aresco made salary or budgetary decisions. EEOC SOF ¶¶ 185-186, 192-193.

246. **DISPUTE.** This paragraph mischaracterizes testimony and the cited exhibit. The testimony and exhibit reference relay that on one occasion, Aresco compiled the salaries of other coaches at Nero's request so that Nero could determine the appropriate pay for a men's basketball coach. PX D, Aresco Dep. 200:2–14, 206:20–208:2; Ex. 15 to Aresco Decl (ECF 114-1).

247. **DISPUTE.** This paragraph mischaracterizes deposition testimony. Nero's testimony indicates that Aresco would "talk to Kaithlyn and say: How much longer until they can start interviewing candidates and job postings? Where is it being posted?" PX P, Nero Dep. 50:22-25.

248. **DISPUTE.** EEOC disputes the assertion that Aresco directly participated in hiring

searches. EEOC disputes the inference that Williams did not perform job duties related to HR; Williams participated in the hiring process for a head coach as well as for two Senior Associate Athletics Directors. EEOC SOF ¶¶ 40-54; PX I, Williams Decl. ¶ 81.

249. **DISPUTE.** This paragraph mischaracterizes deposition testimony. Vogel's testimony indicates that on one occasion, Aresco assisted her in the hiring process for a women's basketball coach. PX C, Vogel Dep. 194-195. Aresco's deposition testimony indicates only that he would "work with the hiring manager on review of candidates." PX D, Aresco Dep. 200:7-8.

250. **DISPUTE.** EEOC disputes the assertion that Aresco made decisions regarding the hiring of coaches. EEOC SOF ¶¶ 185-186, 192-193. Further, the cited exhibits do not establish that Aresco "helped hire," various coaches. Instead, they show Aresco passing documents along to various involved parties, posting positions on job boards, and assisting with on-boarding. Ex. 17-24 to Aresco Decl (ECF 114-1).

251. **DISPUTE.** EEOC does not dispute that Aresco characterized his own work as "instrumental" during his deposition; however, Vogel's testimony states only that Aresco "helped" her with the search and provided "support." PX C, Vogel Dep. 186:4-19.

252. **DISPUTE.** This paragraph mischaracterizes Vogel's deposition testimony. Vogel testified that Aresco helped from "A to Z" regarding the contract for Rizzotti. PX C, Vogel Dep. 187:17-21. Vogel testified that Aresco's role in Rizzotti's contract involved going back and forth with OGC and Vogel on contract language that he did not draft and conducting "research." PX C, Vogel Dep. 187-188. EEOC disputes the assertion that Williams did not perform job duties related to HR; Williams participated in the hiring process for a head coach as well as for two Senior Associate Athletics Directors. EEOC SOF ¶¶ 40-54; PX I, Williams Decl. ¶ 81.

253. **DISPUTE.** This paragraph mischaracterizes Vogel's deposition testimony. Vogel stated

that Aresco “helped me with everything from the HR communication, you know, I was working with, you know, human resources, Suzanne Alrutz and Mufona [phonetic] during that time, and Mike was helping me liaise with them in terms of getting jobs posted.” PX C, Vogel Dep. 194:15–20. EEOC disputes the assertion that Williams did not perform job duties related to HR; Williams participated in the hiring process for a head coach as well as for two Senior Associate Athletics Directors. EEOC SOF ¶¶ 40-54; PX I, Williams Decl. ¶ 81.

254. **DISPUTE.** EEOC disputes the characterization of Aresco’s involvement as “co-conduct[ing]” the interview. Vogel testified that Aresco “joined” her for the interview and assisted in asking questions. PX C, Vogel Dep. 194:21-195:8.

255. **DISPUTE.** This paragraph mischaracterizes Vogel’s deposition testimony. Though Vogel initially stated that Aresco conducted “research” regarding other contracts, she later stated that she could not remember whether she or Aresco actually used the online service to conduct research regarding other contracts. PX C, Vogel Dep. 187:17–189:23.

256. **DISPUTE.** EEOC does not dispute that Aresco assisted Vogel and OGC regarding Rizzotti’s contract; however, Vogel testified that Aresco did not engage in any actual drafting of the contract. PX C, Vogel Dep. 188:3-7.

257. **DO NOT DISPUTE.**

258. **DO NOT DISPUTE.**

259. **DISPUTE.** EEOC disputes that Aresco filled the positions independently. EEOC SOF ¶¶ 185-186.

260. **DO NOT DISPUTE.**

261. **DISPUTE IN PART.** EEOC disputes that Aresco made decisions about discipline. PX D, Aresco Dep. 202:17–203:14.

262. **DO NOT DISPUTE.**

263. **DISPUTE.** Aresco’s involvement with developing written policies was limited to telling the leadership team or senior staff about policy recommendations Kayer had made or about what other schools were doing with similar policies, and then, when the leadership team made decisions about policies, Aresco checked to make sure the decision was documented either in a written policy in the policy manual or in the meeting minutes. EEOC SOF ¶¶ 187-190; PX P, Nero Dep. 60:8-10 (“[Aresco] ... kept us on task to make sure that we were making the decisions and we were having the discussions that we said we would.”).

264. **DISPUTE.** EEOC disputes this characterization of Aresco’s involvement with developing written policies. EEOC SOF ¶¶ 187-190.

265. **DISPUTE.** EEOC reasserts its response to Paragraph 263.

266. **DISPUTE.** EEOC reasserts its response to Paragraph 263.

267. **DISPUTE.** EEOC reasserts its response to Paragraph 263. Further, EEOC disputes that Aresco “created” a “guide to the responsibilities of sports administrators.” The “responsibilities” of sports administrators were outlined pursuant to the Baker Tilley audit. EEOC SOF ¶¶ 301-305.

268. **DISPUTE.** Defendant mischaracterizes the bid process. EEOC SOF ¶¶ 178-182.

269. **DISPUTE.** EEOC reasserts its response to Paragraph 267. University records show the process did not necessarily include a committee. PX U, (GWU_RandomSample_036619-036620).

270. **DISPUTE.** EEOC reasserts its response to Paragraphs 267 and 268.

271. **DISPUTE.** EEOC reasserts its response to Paragraphs 267 and 268.

272. **DISPUTE IN PART.** Nero testified that the typical bid package is a 12-page form. PX D, Nero Dep. 67:21-70:17, Ex. 8. There is no record evidence of a bid proposal that is hundreds of pages long, as Defendant did not produce one.

273. **DISPUTE.** The fact in this paragraph is immaterial because it does not relate to the skill, effort, or responsibility required, and Aresco's involvement in the championship bid process consisted of serving as the contact person and compiling paperwork. EEOC SOF ¶¶ 178-182. EEOC disputes the inference that Aresco's involvement in the bid process caused the bids to be successful.

274. **DISPUTE IN PART.** EEOC disputes the assertion that the contracts Aresco served as "liaison" for were "significant" contracts. EEOC SOF ¶¶ 175-177, 185-186.

275. **DISPUTE IN PART.** EEOC disputes the assertion that the way Aresco conducted "substance" review of contracts or "facilitated the contract approval process" was any different from Williams' work. EEOC SOF ¶¶ 15-25. Aresco routed contracts for approval, something Williams also did. Ex. 29 to Aresco Decl. (ECF 114-1); EEOC SOF ¶¶ 15-25.

276. **DISPUTE.** The record evidence is that the Nike contract was already in place, that the extension did not require any significant drafting—much less that Aresco completed that drafting—and that Aresco simply forwarded the contract to Nero. EEOC SOF ¶ 176.

277. **DISPUTE.** EEOC reasserts its response to Paragraph 276.

278. **DISPUTE.** Aresco did not "spearhead[]" the negotiations. EEOC SOF ¶¶ 212-218.

279. **DISPUTE.** Aresco did not do substantive contract drafting. EEOC SOF ¶¶ 212-218.

280. **DISPUTE IN PART.** Aresco's involvement in the Japan trip was limited, and eventually, Nero reassigned matters relating to the Japan trip back to Williams. EEOC SOF ¶¶ 212-218.

281. **DISPUTE.** EEOC disputes that Aresco's sports administrator duties factored into his pay as Special Assistant. Further, Aresco performed those duties while in Facilities. PX D, Aresco Dep. 81:4-15.

282. **DISPUTE.** EEOC reasserts its response to Paragraph 280.

283. **DISPUTE IN PART.** EEOC disputes that Davis was Aresco's direct report. Aresco did not discipline Davis, did not approve his leave requests, did not direct him how to coach, and he did not have authority to increase his salary. EEOC SOF ¶¶ 192-193.

284. **DISPUTE IN PART.** The Baker Tilley audit of the Athletics Department found that the duties of the Department's sports administrators were largely financial. EEOC SOF ¶¶ 301-305. EEOC disputes the inference that Aresco's sports administrator duties differed from the work Williams performed. EEOC SOF ¶¶ 69, 101-104.

285. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 283.

286. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 283.

287. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 283.

288. **DISPUTE IN PART.** EEOC disputes that Aresco conducted Davis's annual performance review. Aresco Dep. 101-107, Ex. 1. EEOC reasserts its response to Paragraph 283.

289. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 283.

290. **DISPUTE.** This paragraph mischaracterizes deposition testimony. Aresco testified that disciplinary decisions were "made as an athletic department, not as a sport administrator," and that he would, on occasion, make recommendations in meetings with Nero and Davis about discipline of rowers. He did not testify that he disciplined students himself or had final decision-making authority. PX D, Aresco Dep. 94:20-97:21.

291. **DISPUTE.** Defendant mischaracterizes the cited record material. The cited material does not support the assertion that Aresco conducted exit interviews for "a variety of the University's teams." PX P, Nero Dep. 144:12-15; PX S, Alrutz Dep. 123:12- 20, Ex. 9.

292. **DISPUTE.** Defendant mischaracterizes the record. Nero testified about the sports administrator role generally and what sports administrators needed to do in hypothetical situations.

He did not testify that Aresco did so successfully. PX P, Nero Dep. 76:20–77:10, 86:2–24.

293. **DISPUTE.** This assertion is not supported by the cited deposition testimony. Nero’s deposition testimony states, “So manage issues that might have come from people below the rowing coach, but then also manage up on items that he felt the rowing coach – that Mike felt needed to bring – be brought to the rest of the administration.” PX P, Nero Dep. 86:10–13.

294. **DISPUTE.** This paragraph mischaracterizes deposition testimony. EEOC reasserts its response to Paragraph 292.

295. **DISPUTE.** Aresco characterized his sport administrator duties as the “other duties as assigned” that were identified as a “Marginal” function of the Special Assistant job. PX D, Aresco Dep. 273:10-274:15, Ex. 19, p. 2.

296. **DISPUTE.** This paragraph mischaracterizes deposition testimony. Nero testified that the budget cuts portion of the strategic planning process was a “group project,” and that he could not say whether specific ideas came from Aresco or someone else. Nero explained that when he said Aresco “was driving the process” for the budget cuts portion of the strategic planning process, he was “really working with us on time lines,” “[keeping them] on task,” and soliciting feedback from others within the Department. PX P, Nero Dep. 59:18, 56:16–61:8; EEOC SOF ¶¶ 173-174.

297. **DO NOT DISPUTE.**

298. **DISPUTE.** This allegation is not supported by the cited deposition testimony. Nero’s deposition testimony states, “So Mike was driving the process for us, making recommendations, but it would be hard for me to say, oh, this was Tanya’s budget cut or this was Mike’s budget cut. We all – we met frequently to discuss and go over it. And Mike was a part of those meetings and contributed extensively in the conversation.” PX P, Nero Dep. 59:18–23. This testimony does not state that Aresco “contributed extensively” on funding scholarships or eliminating certain sports.

299. **DISPUTE IN PART.** EEOC disputes the assertion that Aresco's duties as described in this paragraph differ from the duties Williams performed. EEOC SOF ¶¶ 71-75.

300. **DISPUTE.** EEOC disputes that Aresco's declaration is sufficient to support this assertion. Further, EEOC disputes the assertion that Aresco's duties as described in this paragraph differ from the duties Williams performed. EEOC SOF ¶¶ 71-75.

301. **DISPUTE.** EEOC reasserts its response to Paragraph 81.

302. **DISPUTE.** EEOC reasserts its response to Paragraph 81.

303. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 81.

304. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 81. Further, EEOC disputes the characterization of the exhibit, which states, "Gave him a job outside of facilities so he didn't have to work crazy hours anymore - allowing him to go to Japan with the mbb team? Why? I asked to go. I can actually help." Ex. 10 to Sappington Decl. (ECF 115-1).

305. **DISPUTE.** Aresco's involvement in the leadership team meetings consisted of "typical administrative support." EEOC SOF ¶ 183.

306. **DISPUTE.** EEOC reasserts its response to Paragraph 304.

307. **DO NOT DISPUTE.**

308. **DISPUTE IN PART.** EEOC disputes any assertion that Williams did not perform work requiring equal skill, effort, and responsibility. EEOC SOF ¶¶ 26-39.

309. **DO NOT DISPUTE.** Not material. Williams never saw the alleged email described in this paragraph. EEOC SOF ¶¶ 234-235.

310. **DO NOT DISPUTE.** Not material.

311. **DISPUTE.** EEOC disputes the assertion that Williams had seen the email or mentioned the email or its contents while on the phone. At that time, Williams did not know the content of

the email nor its subject matter and, therefore, could not and did not discuss it in the phone call she made. In fact, Williams never saw the email at issue. EEOC SOF ¶¶ 234-235.

312. **DISPUTE IN PART.** EEOC does not dispute that Nero yelled at Williams in front of Vogel. EEOC disputes the assertion that Nero's actions were justified. EEOC SOF ¶¶ 234-238.

313. **DO NOT DISPUTE.**

314. **DISPUTE IN PART.** EEOC reasserts its response to Paragraph 311.

315. **DISPUTE IN PART.** Williams filed a grievance on 3/10/16. PX E.

316. **DISPUTE IN PART.** The March 7 incident that prompted Williams to file the grievance also included Vogel suggesting that Williams start looking for another job because of the discriminatory treatment women receive in athletics. EEOC SOF ¶¶ 234-243.

317. **DISPUTE.** This paragraph misrepresents Williams' grievance. Williams' grievance also states that Nero began "delegating her responsibilities to a white male with less experience than [her] in 'managing a senior executive'" in August 2015. Ex. 32 to Sappington Decl. (ECF 115-1).

318. **DO NOT DISPUTE.**

319. **DISPUTE.** EEOC disputes that the University "thoroughly reviewed" and investigated Williams' grievance. EEOC SOF ¶ 253.

320. **DISPUTE.** This paragraph misrepresents the statement it quotes from the referenced exhibit. The language quoted in the paragraph above refers to material in Williams' grievance, not anything raised "during the University's investigation." Ex. 33 to Sappington Decl. (ECF 115-1).

321. **DISPUTE IN PART.** EEOC disputes any inference that the University's statement to Williams was truthful, that the University properly investigated Williams' allegations, or that Williams' allegations in fact could not be substantiated. EEOC SOF ¶¶ 244-275.

322. **DISPUTE IN PART.** EEOC disputes that the University's investigation was occurring at

the time Williams filed her charge. EEOC SOF ¶ 253.

323. **DISPUTE IN PART.** The Charge states, “On or about January 15, 2016, I became aware of the Department of Athletics Special Assistant job posting. The job description and functions were identical to mine and the position was intended for a male coworker who was being promoted to the position. The starting salary for the position was \$37,000 more than my salary. To my knowledge, I am as qualified, if not more qualified than my male counterpart and have since performed the same Job functions.” Ex. 34 to Sappington Decl. (ECF 115-1).

324. **DISPUTE IN PART.** EEOC disputes that the evidence cited (which is an incomplete quote) supports the assertions made.

325. **DISPUTE IN PART.** The date listed on Williams’ charge as the “earliest” date of discrimination is immaterial. Williams’ charge does not include any narrative reference to March 7, 2016 or Nero yelling at Williams in front of Vogel. The particulars of her charge make clear that discrimination occurred before March 2016, as she references the Special Assistant posting in January 2016, says the starting salary for the position was \$37,000 more than her salary, and says the job description and functions in the Special Assistant posting were identical to hers.

326. **DISPUTE IN PART.** EEOC disputes the assertion that the audit was conducted solely to “assess employees’ financial responsibilities and ensure they were being properly classified and paid.” EEOC SOF ¶¶ 301-303.

327. **DISPUTE.** Aresco’s involvement in the desk audit, besides his own interview, was limited to sending emails to interviewees by inserting the person’s name into an email prepared by HR from a list HR provided. Ex. 30 to Aresco Decl (ECF 114-1).

328. **DISPUTE IN PART.** EEOC disputes that the audit lists all sports administrators or people who performed sports administrator duties.

329. **DISPUTE.** EEOC disputes the assertion that Aresco’s sports administrator duties, which the audit found to be financial in nature, differed from the financial duties Williams performed. EEOC SOF ¶¶ 55-70. Further, this assertion contains hearsay.

330. **DISPUTE IN PART.** EEOC disputes that the audit was the first time the University knew of Williams’ job duties and her financial role. EEOC SOF ¶¶ 244-253. Further, the audit recommended that, in addition to a pay raise, those performing finance associate duties receive a bonus to show “appreciation for the additional duties.” Ex. 23 to Sappington Decl. (ECF 115-1).

331. **DISPUTE.** Chee-Wah discussed the finance associate role a “worker bee” and said Williams had skills “far greater” than a finance associate; Chee-Wah confirmed that Williams could do “far more than a finance associate level role.” PX G, Chee-Wah Dep. 224:4 -227:14.

332. **DISPUTE.** The exhibit appears to be notes of an interview of Williams. It includes a section titled, “FINANCE – What is your approval authority for finance related activity (e.g., PCards, travel, purchase orders, etc.)? Do you need approval in advance or are you the final approval for your unit?” with a recorded response of “all activity is approved by Finance Department or Senior Leadership.” Ex. 8 to Sappington Decl. (ECF 115-1).

333. **DISPUTE.** On a page labeled “Finance Associates: Recommendations,” there is a section titled “Consideration of Impact.” Within that section, it reads, “Executive Assistant: this position would be eliminated; any residual scheduling duties could be filled by a grad- or undergraduate student.” The inference is that the other duties of the Executive Assistant have already been otherwise reassigned. Ex. 23 to Sappington Decl. (ECF 115-1).

334. **DO NOT DISPUTE.**

335. **DO NOT DISPUTE.**

336. **DO NOT DISPUTE.**

337. **DISPUTE IN PART.** EEOC does not dispute that the cited document identifies Williams' initial salary in the BMAG role as \$80,000; however, the document does not support the assertion that Williams requested this pay rate. Ex. 36 to Sappington Decl. (ECF 115-1).

338. **DISPUTE IN PART.** EEOC disputes that Williams' position was eliminated because of the COVID-19 pandemic. Defendant's cited evidence does not support that proposition.

339. **DO NOT DISPUTE.**

340. **DISPUTE.** This paragraph mischaracterizes Williams' deposition testimony and is not supported by the cited deposition testimony. PX J, Williams Dep. 299:7–301:16.

341. **DISPUTE.** EEOC disputes the reasoning asserted for why Williams' position was not backfilled. EEOC SOF ¶¶ 194-233, 317.

342. **DISPUTE.** EEOC reasserts its response to Paragraph 230.

343. **DISPUTE.** EEOC reasserts its response to Paragraph 341.

344. **DO NOT DISPUTE.**

345. **DISPUTE IN PART.** EEOC disputes the assertion that the position was "temporary" in nature. EEOC SOF ¶¶ 316-320. EEOC further disputes the assertion that Aresco was not performing these duties after they were taken away from Williams. Id.

346. **DISPUTE.** EEOC disputes that this assertion describes all of the discrimination. Throughout EEOC's Statement of Facts, Opposition to Defendant's Statement of Facts, and in EEOC's Memorandum of Law, the Commission identifies EPA and Title VII violations and alleged discrimination beyond what Defendant asserts in this paragraph (hereinafter, See EEOC SOF, OPP SOF, and EEOC Memorandum of Law).

347. **DISPUTE IN PART.** EEOC disputes that this assertion describes all of the discrimination. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

348. **DISPUTE IN PART.** EEOC disputes that this assertion describes all of the discrimination. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

349. **DISPUTE IN PART.** EEOC disputes that this assertion describes all of the discrimination. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

350. **DISPUTE.** EEOC disputes that this assertion describes all of the discrimination. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

351. **DISPUTE.** The opinion asserted is immaterial. EEOC disputes the assertion that Nero never took adverse action against Williams because of sex. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

352. **DISPUTE IN PART.** The facts asserted in this paragraph are immaterial. EEOC disputes that Aresco did not discriminate or otherwise participate in discrimination against Williams. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

353. **DISPUTE IN PART.** The opinion asserted is immaterial. EEOC disputes the assertion that Williams was not subject to discrimination and the assertion that Vogel did not discriminate against her or ratify discrimination against her. See EEOC SOF, OPP SOF, and EEOC Memorandum of Law.

Respectfully submitted,

/s/ Dylan Cowart

Dylan T. Cowart

Trial Attorney

U.S. Equal Employment Opportunity Commission

Baltimore Field Office

31 Hopkins Plaza, 14th Floor

Baltimore, MD 21201

dylan.cowart@eeoc.gov

Telephone: 443-220-1852

Facsimile: 410-209-2221

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Dylan T. Cowart
Dylan T. Cowart

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|-----------------------------------|---|-------------------------------------|
| UNITED STATES EQUAL EMPLOYMENT |) | |
| OPPORTUNITY COMMISSION, |) | |
| |) | |
| Plaintiff, |) | Civil Action No.: 1:17-cv-01978-CKK |
| |) | |
| v. |) | |
| |) | |
| THE GEORGE WASHINGTON UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**[PROPOSED] ORDER GRANTING EEOC'S MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Before the Court is United States Equal Employment Opportunity Commission's Motion for Summary Judgment regarding Defendant George Washington University's violations of the Equal Pay Act and Title VII of the Civil Rights Act of 1964, and Defendant's Motion for Summary Judgment regarding the same.

Having reviewed the Motions and other supporting materials, the Court finds that there are no disputes of material fact and EEOC is entitled to judgment as a matter of law.

Accordingly, it is hereby **ORDERED** that EEOC's Motion for Summary Judgment is **GRANTED**. It is further **ORDERED** that Defendant's Motion for Summary Judgment is **DENIED**.

SO ORDERED.

Dated: _____

Hon. Colleen Kollar-Kotelly
United States District Judge