

# Holland & Knight

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October 31, 2019

*Via E-mail (harbaugh@uoregon.edu)*

Bill Harbaugh  
UO Matters  
c/o University of Oregon, Department of  
Economics  
1285 University of Oregon  
Eugene, OR 97403

Re: UO Matters Article

Dear Professor Harbaugh:

I represent Paula A. Barran and Barran Liebman LLP, and I am writing in response to the article published on UO Matters on October 17, 2019 titled “UO’s lawyer Paula Barran lied to Judge McShane about Freyd comparator’s grant” (the “Article”). The opinions expressed in the Article about the accuracy of Ms. Barran’s statement to the court are both incorrect and inflammatory. In fact, Ms. Barran’s statements were supported by and based upon the sworn declaration previously submitted to the court by Dr. Nicholas Allen. Calling Ms. Barran’s integrity into question in this manner and in light of the sworn witness declaration simply because you do not agree with the court’s ultimate conclusion does not advance the meaningful thought and discussion that the UO Matters site purports to promote.

UO Matters self-identifies as a registered institutionalized news media organization. As such, and based upon that public representation, it should hold itself to the journalistic standards expected from other media organizations. Ethical journalism requires authors to take responsibility for the accuracy of the work and ensure that they are not misrepresenting or oversimplifying the story or permitting their personal values to shape their reporting. Soc’y of Prof’l Journalists, *SPJ Code of Ethics* (rev. Sept. 6, 2014), <https://www.spj.org/ethicscode.asp>. Ethical journalism further requires an author to continue to monitor their story and correct any inaccuracies that may emerge. *Id.* As discussed further below, the opinions expressed in the Article are inaccurate and must be corrected. I therefore respectfully request that the Article be retracted and removed from the UO Matters site.

If, however, you decline to do so, a copy of this letter should be posted to the site so that your readers can form their own opinions based on a fuller recitation of the facts and so that UO Matters can more closely comply with the ethical responsibilities expected of a news media organization.

## **I. The Facts**

Ms. Barran and her firm Barran Liebman LLP were retained to defend the University of Oregon and Dean Hal Sadofsky against a lawsuit brought by Dr. Jennifer Freyd. Dr. Freyd's lawsuit alleged several theories of gender discrimination based upon the fact that she received less total compensation than some of her male colleagues. In order to succeed on her claims, Dr. Freyd was required to show that she and her comparators do the same or substantially equal work and that she is comparing "like to like." Dr. Freyd selected four (4) of her more highly-compensated, male colleagues as comparators, including Dr. Nicholas Allen. Dr. Freyd also called into question whether there were similarities or dissimilarities between her work and the work of her comparators—this legal comparison was not initiated by either the university or her colleagues.

Both the university's and Dr. Freyd's attorneys thoroughly briefed the legal issues and provided information to the court about Dr. Freyd's job duties as compared to the comparators'. The parties provided information to the court about the comparators' additional responsibilities, such as being a department head, director of a center, or director or member of a university-wide committee, employee supervision, and grant revenue and administration, as well as the effect of retention offers.

Dr. Allen submitted a declaration to the court on November 16, 2018, in which he stated:

Dr. Jennifer Freyd is a valued colleague, and I strongly support the University adopting policies and procedures that support and enhance gender equity in all areas of academic life. I am not in a position to have an informed view on my colleague's specific litigation, but I understand that it may be beneficial to the court to have information about the nature, extent and scope of my day to day duties, responsibilities and accountabilities.

Decl. of Nicholas B. Allen in Support of Def.'s Univ. of Oregon and Sadofsky's Mot. for Summ. J., *Freyd v. Univ. of Oregon*, No. 6:17-cv-00448-MC, Dkt. No. 59, at ¶ 2 (D. Or. Nov. 16, 2018). The declaration then described Dr. Allen's grant work in the following way:

In terms of the specific research grants I hold, I have obtained or participated in obtaining funding for a 2018-22 research project on Mobile Assessment for the Prediction of Suicide, a grant in excess of \$3 million from the National Institute of Child Health and Development for a study of Depressed Mothers' Parenting (which began in 2015 and will run to 2020), a \$2.7 million grant from the National Institute of Mental Health, on which I spoke as Co-Investigator with my University colleague, Jennifer Pfeifer, doing work on a longitudinal neuroimaging study related to early adolescent mental health. **The grant from the Bill and Melinda**

**Gates Foundation, on which I am Co-Investigator, is an award of \$3.5 million to develop and test a learning investigation with a goal of promoting positive gender norm transformative social emotional learning in early adolescents. I have successfully completed a number of grant-funded projects and have developed the skills and experience to work successfully on large funded research projects.**

*Id.* at ¶ 6 (emphasis added). In a subsequent filing made on behalf of Dr. Freyd, Dr. Allen confirmed to the court that “all the information in that declaration was factual.” Decl. of Nicholas B. Allen in Support of Pl.’s Mot. for Relief from J., *Freyd v. Univ. of Oregon*, No. 6:17-cv-00448-MC, Dkt. No. 59, at ¶ 2 (D. Or. Sept. 10, 2019).

The court heard oral argument on the Defendants’ Motion for Summary Judgment on April 12, 2019. During oral argument, Ms. Barran reiterated the importance of grants in funding both faculty compensation and research space and equipment. She also recognized that Dr. Freyd “is a good researcher, but her work is different” than some of the work being done by the comparators, including their meeting the requirements imposed by government funding sources. Ms. Barran then highlighted that Dr. Allen had received significant funding for his work, including “a \$3 million grant from the Gates Foundation.” This statement was supported by and based on the information that had been provided to her by Dr. Allen and that Dr. Allen had sworn to in his declaration to the court.

The court ruled in favor of the university because the various laws under which Dr. Freyd based her claims require her to show that her day-to-day responsibilities are the same or substantially equal to those of the comparators that she identified. *Freyd v. Univ. of Oregon*, No. 6:17-cv-00448-MC, Dkt. No. 93, at pp. 10–11 (D. Or. May 2, 2019). The additional responsibilities associated with grant applications, receipt, and management were among several factors considered by the court, and the court’s comparisons between Dr. Freyd on one hand and the comparators (including Dr. Allen) on the other, relied upon the information in the sworn declarations that had been submitted into the court’s record. *Id.*

Dr. Allen later sent a letter in support of Dr. Freyd’s appeal stating that he personally believes that a different methodology should be used to determine faculty compensation. Decl. of Nicholas Allen, Ex. 1, *Freyd v. Univ. of Oregon*, No. 6:17-cv-00448-MC, Dkt. No. 109-1 (D. Or. Oct. 25, 2019). The letter was also submitted to the district court in support of a motion filed by Dr. Freyd’s attorneys for relief from judgment. *Id.* The district court considered Dr. Allen’s letter, noted that Dr. Allen reaffirmed the factual accuracy of his original declaration, determined that receiving the letter earlier would not have changed the disposition of the case, and affirmed its grant of summary judgment in favor of the defendants. Opinion and Order, *Freyd v. Univ. of Oregon*, No. 6:17-cv-00448-MC, Dkt. No. 114 (D. Or. Oct. 25, 2019).

## **II. Copyright Infringement**

The Article includes a screenshot of Ms. Barran’s profile on the Barran Liebman LLP website. Barran Liebman LLP has copyrighted the material on its site and does not grant UO Matters the

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right to use its copyrighted material. If Barran Liebman LLP's copyrighted material has not been removed from the UO Matters site within five (5) days, my clients will file a DMCA Takedown Notice.

If you have any questions, concerns, or would like to discuss my demands and requests further, please contact me at [Peter.Jarvis@hklaw.com](mailto:Peter.Jarvis@hklaw.com) or (503) 243-5877.

Sincerely yours,

HOLLAND & KNIGHT LLP



Peter R. Jarvis

PRJ:kfk

cc: Clients (via email)