

William Link

vs.

Manny Diaz

Deposition of:

Eugene Kovacs

August 19, 2022

Vol 01

PHIPPS REPORTING

Raising the Bar!

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO. 4:21cv271-MW/MAF

WILLIAM A. LINK, et al.,

Plaintiffs,

vs.

MANNY DIAZ, JR., in his
official capacity as Florida
Commissioner of Education,
et al.,

Defendants.

VIDEO-RECORDED DEPOSITION OF 30(b)(6) REPRESENTATIVE OF
BOARD OF GOVERNORS
(EUGENE JOSEPH KOVACS, III)

Friday, August 19, 2022

4:20 p.m. - 5:49 p.m.

GRAY|ROBINSON

301 South Bronough Street, #600

Tallahassee, Florida 32301

STENOGRAPHICALLY REPORTED BY:

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20 ALSO PRESENT:

21 Jordan McHugh, Videographer

22

23

24

25

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1 The following proceedings began at 4:20 p.m.

2 THE VIDEOGRAPHER: We are now on the
3 record and the time is now 4:20 p.m. This is
4 the video-recorded deposition -- 5:20 p.m.
5 This is the video-recorded deposition of Gene
6 Kovacs, a corporate representative for the
7 Florida Board of Governors, in the matter of
8 William Link v Manny Diaz.

9 This deposition is being held in
10 Tallahassee, Florida on August 19, 2022.

11 The Videographer is Jordan McHugh and the
12 stenographer is Sandi Nargiz, both in
13 association with Phipps Reporting.

14 Will counsel please announce who they
15 represent, after which the court reporter will
16 swear in the witness.

17 MS. JASRASARIA: Jyoti Jasrasaria for
18 plaintiffs. I'm with Elias Law Group, LLP.

19 And just to clarify for the record,
20 Marshall Criser was the 30(b)(6) representative
21 for the Board of Governors, and we'll now be
22 proceeding to our second representative for the
23 Board of Governors, Eugene Kovacs.

24 MR. HANCOCK: William Hancock also from
25 Elias Law Group, also for plaintiffs.

1 MS. FROST: Elisabeth Frost, also for
2 Elias Law Group, also for plaintiffs.

3 MS. SHIRLEY: Vikki Shirley, Board of
4 Governors, general counsel.

5 MS. LUKIS: Ashley Lukis with GrayRobinson
6 on behalf of the Board of Governors.

7 THE WITNESS: Eugene Kovacs. I'm the CIO
8 for the Board of Governors, for the defendant.

9 THE STENOGRAPHER: Would you raise your
10 right hand, please? Do you swear or affirm
11 that the testimony you are about to give will
12 be the truth, the whole truth, and nothing but
13 the truth?

14 THE WITNESS: I do.

15 THE STENOGRAPHER: Thank you.

16 Thereupon,

17 30(b)(6) REPRESENTATIVE OF FLORIDA BOARD OF GOVERNORS

18 EUGENE JOSEPH KOVACS, III

19 having been first duly sworn or affirmed, as
20 hereinafter certified testified as follows:

21

22 DIRECT EXAMINATION

23 BY MS. JASRASARIA:

24 Q Thank you, Mr. Kovacs. Before we get
25 started, I just wanted to clarify the time that we

1 **went back on record.**

2 THE VIDEOGRAPHER: I looked at it wrong.

3 It is actually 4:22 p.m.

4 BY MS. JASRASARIA: Thank you.

5 BY MS. JASRASARIA:

6 Q **Good afternoon, Mr. Kovacs. Could you,**
7 **please --**

8 A Good afternoon.

9 Q **Could you please state your full name for**
10 **the record?**

11 A Eugene Joseph Kovacs, III.

12 Q **Two of the IIIs today.**

13 A Uh-huh.

14 Q **As I mentioned, I represent plaintiffs in**
15 **this lawsuit, and I'm with Elias Law Group.**

16 Have you ever been deposed before,
17 **Mr. Kovacs?**

18 A Yes.

19 Q **How many times?**

20 A Once.

21 Q **When was that?**

22 A 26 years ago.

23 Q **Was that in your personal capacity?**

24 A Yes.

25 Q **And do you recall the subject matter of**

1 the case?

2 A Yes. I was a witness in a bank robbery.

3 Q Okay. What was the outcome of the case?

4 A I think they lowered his charges and let
5 him -- with lesser charges.

6 Q Did you have to testify in court in that
7 case?

8 A No.

9 Q And have you ever testified in court?

10 A No.

11 Q Okay. I will keep my review of the ground
12 rules for today brief since I know you just sat
13 through a deposition, but let's just spend a few
14 minutes talking about how it works.

15 So I'll be asking questions, you will be
16 answering them. Do you understand that?

17 A Yes.

18 Q And your answers will be under oath,
19 meaning that you're swearing to their truthfulness
20 and accuracy as though you were testifying in a
21 court of law.

22 A Yes.

23 Q Can you agree to provide clear verbal
24 answers for the court reporter's benefit?

25 A Yes.

1 Q And will you do your best not to interrupt
2 me so that we can have a clean record today?

3 A Yes.

4 Q If you answer a question, is it fair to
5 assume that you understood the question?

6 A Yes.

7 Q If you do not understand or hear a
8 question, do you agree to ask me to rephrase or
9 repeat the question?

10 A Yes.

11 Q Do you agree to give complete answers to
12 my questions?

13 A Yes.

14 Q If you need a break at any time, please do
15 say so. If I've asked a question, I'll, of course,
16 just ask that you wait until you've answered that
17 question before taking a break.

18 Does that work?

19 A Yes.

20 Q And if you think of something that might
21 help you remember or give you a more accurate
22 answer, please tell me and we'll see if we can, you
23 know, get the documents or whatever else it is that
24 you need.

25 A Okay.

1 Q Thank you.

2 So as you know, this deposition was
3 noticed pursuant to Rule 30(b)(6) and directed at
4 the Board of Governors.

5 Have you seen the notice for this
6 deposition?

7 A Yes.

8 Q I'd like to have you look at Exhibit 1,
9 which should be at the bottom of that pile.

10 A They're not in order.

11 Q It's the notice.

12 A There it is.

13 Q Have you seen this document?

14 A Yes.

15 Q What is it?

16 A It's a notice of deposition.

17 Q And have you been designated by the Board
18 of Governors to testify on the board's behalf today?

19 A Yes. With the limitation that I'm here as
20 a technical expert for a very specific category of
21 items.

22 Q And if you flip to page -- I believe it's
23 7, I think is what it is.

24 Are you prepared to testify to -- on
25 Topic 3 -- and I know that it's a more limited

1 subset perhaps than even just this topic?

2 A Yes.

3 Q Okay. And you understand that the answers
4 that you give here today are on behalf of the board?

5 A Yes.

6 Q And that your testimony is the testimony
7 of the Board of Governors?

8 A Yes.

9 Q Are you prepared to testify regarding
10 Topic 3 with regard to the technical aspect of
11 survey administration, data collection, and security
12 measures?

13 A Yes.

14 Q In addition to preparing for today's
15 deposition, have you submitted any declarations in
16 this case?

17 A The interrogatory, just that one document
18 that --

19 Q So I believe that you also submitted a
20 declaration.

21 A Oh, I did. Yes, I did. I did submit a
22 declaration.

23 Q Okay.

24 MS. JASRASARIA: I'm going to mark this as
25 Exhibit 33.

1 (Exhibit 33 was marked for
2 identification.)

3 BY MS. JASRASARIA:

4 Q And can you just take a look at this
5 document and confirm for me whether this is a
6 declaration that you submitted in this case?

7 A (Examining Document.)

8 Yes. There are other things attached
9 except -- to the exhibit other than just the
10 declaration.

11 Q Yes. And I believe that -- let me just --

12 A Okay.

13 Q So if you look at paragraph 15 of your
14 declaration, which is on page 4, I believe it says
15 that on March 23rd, the chancellor sent a letter and
16 that those letters are attached to this declaration
17 as Exhibit A.

18 A Okay.

19 Q And then if you look at paragraph 19 on
20 the next page, it says that the final surveys are
21 attached as Exhibit E.

22 A Okay.

23 Q Does this look complete?

24 A As far -- there's a lot of documents in
25 there --

1 Q Sure.

2 A -- but to my knowledge looking at them,
3 yes, they look complete.

4 Q Okay. Thank you.

5 You also mentioned some revised
6 interrogatory responses; is that right?

7 A Correct.

8 Q And those are dated from Wednesday of this
9 week, correct?

10 A Correct.

11 Q So --

12 A To my knowledge.

13 Q That should be -- that should Exhibit 18.

14 A 19.

15 Q Getting close.

16 A 16, 15, 14.

17 MS. JASRASARIA: Can we go off the record?

18 THE VIDEOGRAPHER: We are now going off
19 record at 4:30 p.m.

20 (A recess took place from 4:30 p.m. to
21 4:33 p.m.)

22 THE VIDEOGRAPHER: We are now going back
23 on the record at 4:33 p.m.

24 BY MS. JASRASARIA:

25 Q Okay. So we were just taking a look at

1 what's marked as Exhibit 18. Is this the -- if we
2 turn to the second to last page, is that your
3 signature there?

4 A Yes, it is my signature.

5 Q Okay. And it's dated on August 17, 2022,
6 correct?

7 A Yes, correct.

8 Q Thank you.

9 Okay. So we are just going to set
10 these -- this interrogatory document and your
11 declaration -- you will be referring to those
12 repeatedly, so just keep those on hand. So that
13 would be Exhibit 18 and Exhibit 33.

14 Are you aware that plaintiffs are
15 challenging Florida House Bill 233 in this case?

16 A Yes.

17 Q And have you ever read HB 233?

18 A Yes.

19 Q I have premarked the Exhibit 2 which I
20 think you have with you.

21 A Yes.

22 Q Have you seen this before?

23 A Yes, I have seen this before.

24 Q What is it?

25 A It is the statute -- House Bill 3 -- 233

1 that describes the survey.

2 Q Great. How did you prepare for your
3 deposition today, Mr. Kovacs?

4 A I looked at some of the documents that we
5 had sent and collected for you guys for your legal
6 office. We had several one-hour meetings, several
7 prep meetings with the general counsel's office.

8 Q Was there anyone else in those meetings
9 with you and the general counsel?

10 A Marshall Criser and Vikki Shirley.

11 Q And did you meet with anyone other than
12 your attorneys to prepare for today's deposition?

13 A No.

14 Q Did you meet with any attorneys from
15 GrayRobinson to prepare for today's deposition?

16 A Yes.

17 Q And about how many hours total did you
18 spend preparing for this deposition?

19 A For this deposition, I believe we had one
20 prep meeting. I think it was scheduled -- I am not
21 sure how long it was scheduled for, because there
22 were two of us. So I think it was about an hour but
23 I am not positive.

24 Q And you didn't speak with anyone else in
25 the office to prepare?

1 A Correct, I didn't speak with anyone else.

2 Q Did you -- have you reviewed any
3 deposition transcripts from this case?

4 A No, I have not.

5 Q Did you review any documents to prepare
6 for today's deposition?

7 A Yes. I looked at the interrogatory
8 statement one time, and I looked at several of the
9 reports that had been delivered in discovery.

10 Q And are those the Excel spreadsheets?

11 A Correct.

12 Q Have you reviewed any documents that were
13 produced by the Board of Education in this case?

14 A No.

15 Q And have you reviewed any of plaintiffs'
16 production in this case?

17 A No.

18 Q I do have to ask you this. Are you -- is
19 there anything that might impair your ability to
20 testify accurately today?

21 A No.

22 Q Did you attend college, Mr. Kovacs?

23 A Yes.

24 Q Where did you attend college?

25 A University of West Florida.

1 **Q And what year did you graduate?**

2 A My bachelor's degree was 1993, master's
3 degree was 2013, I believe.

4 **Q And was your master's degree also at the**
5 **University of West Florida?**

6 A Yes.

7 **Q What did you study?**

8 A Undergraduate was business education, my
9 master's degree is in instructional technologies
10 educational administration.

11 **Q How long have you worked for the Board of**
12 **Governors?**

13 A Now 11 years.

14 **Q What is your role at the Board of**
15 **Governors?**

16 A I am the chief information officer, so I
17 manage all of the technical infrastructure and --
18 for the office as well as interface with the
19 universities on cyber security and things of that
20 nature.

21 **Q How long have you held that role?**

22 A Eleven years.

23 **Q And how did you get that job?**

24 A The prior CIO, I had worked with him at
25 different capacities and he had -- when he was

1 leaving, he asked me to apply for the position. So
2 I interviewed and got the position.

3 **Q What were you doing before working with**
4 **the Board of Governors?**

5 A I was the bureau chief for the college of
6 management information system which was in the
7 department of education.

8 **Q Have you held any other positions in the**
9 **field of higher education besides the two that you**
10 **just mentioned?**

11 A Yes. I worked at the Pensacola Junior
12 College at that time which is now Pensacola State
13 College. I worked there as an intern on IT,
14 information technology, working on human resources
15 and finance. And I worked there for four years
16 before I was recruited by the division of community
17 colleges at that time.

18 **Q Who do you currently report to?**

19 A I report to Tim Jones, the chief financial
20 officer.

21 **Q And do you have any direct reports?**

22 A Yes. Yes. I have three direct reports.
23 I have cyber security information security officer,
24 application development director, and an
25 infrastructure director.

1 **Q When was the first time that you had a**
2 **conversation with someone at the Board of Governors**
3 **about the surveys required by HB 233?**

4 A The first time? I think after the passage
5 of the bill and it became apparent that we were
6 going to have to, you know, have some involvement
7 with the surveys. I was asked about, you know,
8 actually working with the CIOs at the universities.
9 We have regular meetings and -- about gathering the
10 contact -- possibly gathering the contact
11 information for FSU.

12 I wasn't directly involved at first. The
13 original plan was to hand off that information to
14 FSU's Institute of Politics for them to perform the
15 survey. So that was when I was initially brought
16 in, was just to interface with the university
17 technical folks, get the contact information. And
18 that was probably September of '21, I believe.

19 **Q Who was that conversation with?**

20 A I'm in the chancellor's direct reports
21 meetings. We have a small group and a large group
22 five days a week, so it was in I think that meeting
23 originally when the discussion came up.

24 **Q Did you ever communicate with the FSU**
25 **Institute of Politics about contact information?**

1 A No. No.

2 **Q Did you ever collect contact information**
3 **from the other universities?**

4 A No. I did -- I did a preliminary
5 e-mail -- I did discussion at a CIO council and a
6 preliminary e-mail saying this may be a direction
7 that we're heading, just to prep the technical folks
8 on the other end at the universities. I believe
9 that e-mail was in October, but I'm not totally
10 sure.

11 **Q Let's turn to your declaration which was**
12 **marked as Exhibit 33. Let's just turn to page 3 and**
13 **look at Paragraph 10. So you stated here that**
14 **the -- looking at the third sentence, it says here**
15 **that "The draft surveys originally commissioned from**
16 **the institute were university centric and were not**
17 **well framed for state colleges."**

18 **Did I read that correctly?**

19 A Yes. I believe that was some of the
20 discussion, you know, again dealing with the very
21 specific language that would deal with instructors
22 versus professors, et cetera, things of that nature.
23 But I wasn't directly involved with the crafting or
24 the language itself.

25 **Q And just to clarify, does the institute**

1 referenced here refer to the Florida State
2 University Institute of Politics?

3 A Yes.

4 Q And were you involved in determining that
5 the FSU surveys were university centric?

6 A No.

7 Q Who told you that the surveys were
8 university centric?

9 A You know, it was, again, probably in open
10 discussion and probably with a joint meeting with
11 the colleges, and it may -- I am honestly not
12 certain at this point in time where that comment --
13 how -- where that actually came through. It's
14 probably in an open meeting or discussion at the
15 meeting.

16 Q So the next sentence there then says:
17 "The Board of Governors worked with the Board of
18 Education to craft mutually useful surveys for
19 students and institutional employees."

20 Is that correct?

21 A I'm sorry. Where are you at?

22 Q Oh, sorry. I'm just looking at the same
23 Paragraph 10, the last sentence of the paragraph.

24 A Yes. So we had joint -- the last
25 paragraph, "The Board of Governors worked with the

1 Board of Education," that really wasn't the Board of
2 Education; it was division of community colleges.

3 **Q Okay.**

4 A We had joint hearings with Carrie
5 Henderson. Kathy Hebda I think was in some. But
6 Carrie Henderson was my main contact, and as was
7 previously presented, they would bring up a live
8 survey. And we actually went through the questions
9 and discussed those questions in the edit process
10 and, you know, worked on some of the language.

11 Specifically, again, dealing with
12 instructors, I noticed that some of the questions
13 very specifically excluded instructors, and the
14 colleges have a huge number of instructors and the
15 universities don't. So we made live edits while we
16 were going through that process.

17 **Q So you were involved in those meetings?**

18 A Correct.

19 **Q And do you have any background in survey
20 design?**

21 A Not in survey design, no.

22 **Q What about anything else related to
23 surveys?**

24 A I'm -- at one time in my career I was a
25 certified statistical programmer. But, you know, in

1 my current role, I haven't held that certificate in
2 quite a while. So I do have a little bit of
3 background in statistics.

4 **Q Who else from the Board of Governors**
5 **and -- was involved? I know you just listed the**
6 **people from the Board of Education that were on the**
7 **calls.**

8 A Well, Jon Rogers was on -- on the calls,
9 Marshall Criser, Vikki Shirley, Jason Jones. I
10 don't think there was anybody else that I know off
11 the top of my head.

12 **Q When was the first time that you had a**
13 **conversation with someone else at the Board of**
14 **Governors about administering the surveys?**

15 A The very first time was in February in one
16 of our standard set meetings, chancellor's meetings
17 when he mentioned speak about the underage students.
18 He was very concerned about the ability to
19 administer the survey, and he very specifically
20 said, "Gene, can you provide a backup plan?" And
21 the next week, about the middle of February it went
22 from the backup plan to we were going to administer
23 the survey. So, yes. That was the first time.

24 MS. JASRASARIA: I would like to mark
25 Defendants_008652 as Exhibit 34.

1 (Exhibit 34 was marked for
2 identification.)

3 BY MS. JASRASARIA:

4 **Q Do you recognize this e-mail, Mr. Kovacs?**

5 A The format's a little different. Just a
6 minute.

7 **Q Yeah.**

8 A Yes. Yes, this is -- yes, Rick Burnette
9 is the interim COI at FSU and this was -- again,
10 this was probably just before I was assigned the
11 task to actually admin- -- administer the survey,
12 and at this point we had been talking in our CIO
13 councils about collecting the contact information
14 for the institute to do it, because at that time we
15 didn't really know.

16 **Q Did the conversation with Rick go much
17 further than this e-mail?**

18 A No, no. It was just after this that we'd,
19 you know, discovered that we couldn't use the
20 institute, or that we weren't going to use the
21 institute.

22 MS. JASRASARIA: I would like to mark
23 Defendants_008813 as Exhibit 35.

24 (Exhibit 35 was marked for
25 identification.)

1 BY MS. JASRASARIA:

2 Q Do you recognize this e-mail, Mr. Kovacs?

3 A Yes.

4 Q This is from you, correct?

5 A Yes.

6 Q And it's to Andre Smith?

7 A Andre Smith is the CIO at the Department
8 of Education.

9 Q And could you describe the context of this
10 e-mail?

11 A Yes. And again, this was at a point --
12 and I was not involved, again, in the survey
13 creation itself or the actual physical document of
14 the -- the questions or anything. This was a -- a
15 question to Andre.

16 When I found out we were going to
17 administer the survey, not actually create it, I
18 thought we were going to deliver it, I was looking
19 for technical savings, as well as methodologies on
20 how we were actually going to distribute the survey.
21 At this point, you know, I haven't seen a physical
22 document. I didn't see a survey. I didn't -- you
23 know, I was just looking for a technical solution.
24 I was slated with finding a technical solution to
25 deliver the survey and bring the results back.

1 **Q You mentioned in this e-mail, you say:**
2 **"FSU was going to manage it but some restraints came**
3 **up and we may have to distribute the survey**
4 **ourselves."**

5 A Yes.

6 **Q What were the restraints that came up?**

7 A The ones that we mentioned about the minor
8 students and -- and not being able to, you know,
9 distribute it to the minors. What -- the initial
10 question, you know, was -- well, the initial
11 discussion was we had issues with students under 18,
12 and then the next discussion was about getting
13 parental permission. And there was, I think, a
14 little exploration in what we were going to do to
15 try to do that.

16 And then I think it became apparent that
17 that was not tenable. So I was in the process of
18 trying to review our options, you know, a radical,
19 fast backup plan that turned into the full plan.

20 **Q And you state in this last sentence: "If**
21 **you are going to purchase, maybe we could can share**
22 **the cost."**

23 A Yes.

24 **Q "Let me know."**

25 A Yes.

1 **Q Who ended up purchasing the software?**

2 A So I had discovered after this e-mail to
3 Andre Smith that Carrie Henderson and the community
4 college already had a -- an enterprise license for
5 SurveyMonkey. We had a license for SurveyMonkey but
6 it was a lower-level license, a very -- with very
7 narrow capability because we didn't do -- we don't
8 do this type of function on a regular basis. So I
9 was hoping that they were going -- I didn't know
10 what they were going to use or what we were going to
11 use, so I -- this is really exploratory.

12 So after this point, when I discovered the
13 colleges already had it and we had a smaller
14 footprint, I went ahead and did a procurement and
15 increased our SurveyMonkey to an enterprise-level
16 license, which gave us a little bit more capability.
17 It also synced us up with the colleges so we could
18 share information.

19 **Q Going back to your declaration, so back to**
20 **Exhibit 33, I want to take a look at Paragraph 11,**
21 **so right -- right where we left off. It says that:**
22 **"The Board of Governors desired to have the surveys**
23 **distributed to all university students and employees**
24 **at the same time and concurrently with the surveys**
25 **that would be distributed through the various state**

1 colleges."

2 Who from the Board of Governors desired to
3 have the surveys distributed to all university
4 students at the same time?

5 A That was a discussion at our -- our larger
6 meetings with the chancellor that we decided to do
7 the entire population instead of a sampling; again,
8 basically, because they felt like that statutorily,
9 we were required to do that. Also, I think, you
10 know, statistically, if you can actually survey your
11 entire population, you save time and energy too. So
12 it makes sense.

13 Q And who made the decision to do this
14 concurrently with the state colleges as well?

15 A That would be the chancellor and -- and
16 possibly Kathy Hebda, too. I mean, they were --
17 they were in discussion about doing that for
18 consistency. And I believe, too, we had the same
19 window of -- excuse me -- we had time constraints
20 because of final week coming up and spring breaks
21 rotating through all of this -- the institutions.
22 We had a very narrow window to try to hit where none
23 of the institutions were on spring break and we
24 weren't in the middle of finals. And we also had to
25 do it before summertime because students and faculty

1 staff leave in the summertime on -- on both systems,
2 so ...

3 **Q Who formulated the final distribution**
4 **schedule?**

5 A That was kind of collaborative between us
6 and the colleges. Again, basically looking at, you
7 know -- and Jon Rogers was the project manager. I
8 believe I actually got the dates and -- from him.
9 Again, they had to query all of the institutions to
10 determine when the window of opportunity was.

11 **Q How long was the window to take the**
12 **survey?**

13 A One week.

14 **Q Okay. So it started on --**

15 A Excuse me. Let me -- let me -- let me
16 remember -- I'm trying to remember.

17 **Q Yeah.**

18 A Sorry. We sent out the notice of
19 instructions to the institutions on a Friday. It
20 wasn't a full -- I don't believe it was a full week.
21 They sent a prenotice to the -- to the students and
22 the staff -- did -- I think maybe we did have it
23 open for a full week. I would have to look at the
24 document to determine.

25 **Q If I represented that it was four days,**

1 **does that sound right?**

2 A It does, because we -- we asked them to do
3 a prenotice to let everyone know it was coming, kind
4 of as heads-up. And then we delivered the link to
5 them in a -- in -- you know, in an e-mail. That
6 would be per the instructions.

7 **Q Did you ever consider a longer window?**

8 A I didn't consider a longer window. Again,
9 I think our restraints with all of the -- you know,
10 looking to 40 institutions across the state with all
11 different schedules, and that really wasn't my area
12 of responsibility.

13 **Q Who was responsible for determining the**
14 **window?**

15 A I'm -- I'm -- I'm not sure if it was
16 Marshall or if it was just part of the conversations
17 with the colleges, you know, and the project
18 managers. I am not really sure, to be honest with
19 you.

20 **Q I'd like to turn back to the declaration,**
21 **to paragraph 17, which is on page 5. So this says**
22 **that the letters included a unique URL link. Could**
23 **you just -- actually, could you just read 17 through**
24 **19 and just let me know if the paragraphs are still**
25 **accurate?**

1 A Sure. "The letters also included a unique
2 URL link for each institution to use to distribute
3 the survey to students, faculty, and staff. No
4 distribution list will be collected, housed, or
5 maintained by the Board of Governors, which will
6 further prevent connection to any respondent, in
7 addition to the safeguards discussed above."

8 18: "A single data collection instance
9 will be used to collect all university responses
10 into a single system in order to invoid -- avoid
11 individual identification. The final data set will
12 not contain a direct university indicator that would
13 allow individuals to access raw data to identify the
14 originating institution. Controls to access the
15 needed information to perform the tasks are managed
16 by the Board of Governors, Department of Information
17 Technology and Security. The final surveys are
18 intended to be disseminated by the universities to
19 their respective students, faculty, and staff on
20 April the 4th. Copies of these final surveys are
21 attached to this declaration in Exhibit B."

22 **Q Are all -- is all that still accurate?**

23 A Yeah. There's been discussion about the
24 raw data, and our general counsel and I have had
25 several discussions about public records. And I do

1 believe that there will be a university indicator on
2 the subsets but -- so that may not be completely
3 accurate. At the time that I wrote this, I
4 didn't -- I still don't want to put them on there,
5 but there is a crosswalk.

6 You've got the raw data. We delivered it
7 to you. If you look at the raw data, you'll see --
8 the raw data doesn't include a direct link to the
9 university. You have to crosswalk it with
10 another -- with a table, another table.

11 **Q What does it mean to crosswalk with**
12 **another table?**

13 A Merge. You merge -- so there's a unique
14 code that represents the university link in the raw
15 data, and then there's another table that says this
16 link was for this unique URL for UWF staff.

17 And you crosswalk those over to get UWF
18 into the, say, the employee data. And again, as we
19 had been discussing Sunshine law and public records
20 requests -- and I do believe that the clean records
21 that we delivered to the office of data analytics,
22 you know, for them to do their job, we did put the
23 university indicator in there. And I do believe
24 that that becomes a public record now.

25 So this -- it may not be completely

1 accurate at this point today.

2 Q Okay. Great.

3 Let's go back to the beginning of the
4 declaration. And could you just take -- you don't
5 have to read it out loud. You can just actually
6 read to yourself, and let me know if paragraphs 1
7 through 9 are still accurate.

8 A (Examining Document.)

9 Yes. Sections 1 through 9 are accurate.

10 Q Okay. Section 9 talks about using website
11 links that allow for noncredentialed access,
12 correct?

13 A Yes.

14 Q And so the website links that were used
15 for this survey, they weren't unique for each
16 student; is that right?

17 A Correct.

18 Q Did you all ever consider using individual
19 links?

20 A I have considered many different avenues,
21 but from the end of February to the time we had the
22 survey to do, there was no way to initiate a higher
23 level of, you know, technical controls over the top
24 of this.

25 I've got plans for the next survey that

1 I'm looking into. But to generate a unique per -- a
2 unique link per student would require us to collect
3 that actual information and have some form of
4 authentication.

5 It really -- if you're talking about
6 identity, you know, it's very difficult. If you
7 don't do credentialing, you have to -- it's very
8 difficult to maintain anonymity and at the same time
9 have levels of security and control over the top of
10 it. There are ways to do it, but not in a month or
11 two.

12 Q Okay. Great.

13 So I want to turn to the interrogatory
14 responses that you submitted on Wednesday. So that
15 would be Exhibit 18. And I believe that the piece
16 that you worked on starts on page 6.

17 A Yes. I believe -- are you talking about
18 Section 2?

19 Q Correct.

20 A Yes.

21 Q Could you just read -- you can read to
22 yourself just the -- or actually, you don't need to
23 do that. So it says here that: "The Board of
24 Governors utilized SurveyMonkey to administer the
25 surveys."

1 **That's correct?**

2 A Correct.

3 Q **And it also says: "The survey settings**
4 **were selected so that the survey responses are**
5 **voluntary and anonymous."**

6 **Is that right?**

7 A Yes.

8 Q **What were the various setting options that**
9 **you could have chosen from?**

10 A So I inherited the options from the
11 community colleges when they sent us the surveys. I
12 don't remember, off the top of my head, the screens
13 and all of the options. There was the ability not
14 to collect public IP addresses, but if we did that,
15 it would have opened up some other risks. I did
16 turn that off.

17 The colleges also turned that off. That's
18 how we were able to identify the software-generated
19 responses. Those are public IP addresses. And I
20 know you'll probably ask this later. Yes, you can
21 identify an individual with a warrant to AT&T.

22 If you take the public IP address and the
23 time and date stamp and you go with law enforcement,
24 you could probably determine where it came from.
25 I'm not sure you could determine the individual.

1 But at -- what we did, the public IP addresses we
2 collected are just the external public IP addresses,
3 and they don't identify an individual.

4 **Q Did you consider keeping the option that**
5 **would have wiped all the IP addresses?**

6 A I did initially, but when I determined
7 that they were the public IP addresses, they would
8 show us that, you know, a response came from FSU or
9 UF or AT&T mobile, I realized that to actually --
10 again, impossible to dig down and find an individual
11 without law enforcement.

12 And even then, you know, sometimes
13 companies aren't the best helpful, with privacy. So
14 I did consider it, but I felt like it was important
15 to have that information. And again, it proved
16 accurate because we did -- you know, because of the
17 nature of the survey and some of the things that are
18 surrounding the survey.

19 **Q Would there have been ways to protect**
20 **against some of the risks that you mentioned around**
21 **multiple responses without collecting IP addresses?**

22 A There are other technologies, but they all
23 take time and resources to build and implement which
24 we didn't have a CAPTCHA. Most people know what
25 CAPTCHA is.

1 SurveyMonkey, unfortunately, which is
2 surprising because they are one of the largest cloud
3 providers, they don't have a built-in CAPTCHA. To
4 do that separate, you'd have to set up servers, and
5 you'd have to do a lot of extra work.

6 There are things that we will be doing in
7 the future to make some improvements, but again, the
8 time frame that we had, we had to use basically the
9 default and come up with a process that would be as
10 secure as we could.

11 And then, again, turning on the public IP
12 address really doesn't provide you information that
13 you could identify an individual with. It would be
14 very difficult to do that.

15 **Q Would a system that used unique links, if**
16 **you have the time to go through that, have allowed**
17 **you not to collect IP addresses?**

18 **A** I think the issue with -- if you create a
19 system that creates a unique link per person, you
20 still -- and this is a discussion that I've been
21 having with some engineers and some of my staff --
22 you would still need some type of authentication
23 component -- for example, university identity
24 system -- to know that this is a student, this is a
25 staff member.

1 So there's -- I'm not sure the IP address
2 is really the critical issue. It's more if you
3 really want to put more controls around it, which we
4 do, there has to be some form of authentication.
5 And when you add authentication, you do add a much
6 higher level of opportunity that -- you know, even
7 perception.

8 The perception, if a faculty member has to
9 sign in with their credentials, they may
10 automatically perceive that this isn't anonymous, so
11 there's some issues there that we're going to
12 discuss and work on going forward.

13 But I don't -- there's a possibility we
14 could turn on -- we could create something that
15 would not collect an IP address in the final result
16 set, but you would probably have to have the IP
17 address somewhere in the system and other
18 information. That's kind of the balancing act.

19 **Q Turning to something else you talked about**
20 **in your declaration which was the University of**
21 **West Florida kind of second survey that was sent**
22 **out. You mentioned that the reason was that the**
23 **employee data excluded certain individuals who**
24 **should have been counted; is that right?**

25 **A Yes. To my knowledge, the chief data**

1 officer had discovered a discrepancy, talked to the
2 data administrator, who was a presidentially
3 appointed contact, point of contact, at the
4 university; and they discovered the distribution
5 group that they used to send the survey out to staff
6 didn't include any adjuncts or OPS employees, which
7 was a large group of employees.

8 **Q And some of the surveys -- some of the**
9 **adjunct faculty and student employees had been**
10 **included on the student survey, correct?**

11 A Correct. Anybody who had a dual function
12 at any university, if they were a student, they got
13 a student survey. And if they happen to be an
14 employee, too, they still got a student survey, and
15 vice versa. If a student was working in a position,
16 they would have gotten both -- actually, both
17 surveys.

18 **Q And was there any way that you all could**
19 **identify someone who received both surveys?**

20 A No. No.

21 **Q And there was no way to isolate those**
22 **responses?**

23 A No. They're two different total surveys
24 or two different sets, and they're anonymized. So
25 you can't really -- yeah. You couldn't connect the

1 two across.

2 MS. JASRASARIA: I wanted to mark another
3 document. I'd like to mark Defendants_142016
4 as Exhibit 36.

5 (Exhibit 36 was marked for
6 identification.)

7 BY MS. JASRASARIA:

8 **Q Do you recognize this document?**

9 A Yes. Yes, I do.

10 **Q And can you tell me what -- who it's with**
11 **and what it's about?**

12 A So Mary Banks is currently the chair of
13 the University CIO Council, and we have regular
14 meetings with the CIOs. There is another group that
15 are the university data administrators that deal with
16 chief data officer, and they do SUDS -- she
17 mentioned very specifically SUDS is actually our
18 data warehouse system, which a whole separate system
19 which doesn't have anything to do with the survey.

20 Looks to me, and there's an internal
21 e-mail here from them -- so it looks like there was
22 some communication going back and forth internally,
23 and it looks like there was some confusion between
24 the data collection for the data warehouse and the
25 survey.

1 So yeah. Yes. You see, Mary, the CIO of
2 Florida Gulf Coast, she is not aware of SUDS, the
3 data warehouses, the processes around that, or even
4 the data request system. Those go to the data
5 administrator.

6 So she was asking about SUDS, and I had to
7 explain to her that's our data warehouse. That's a
8 totally different collection. We're not -- we don't
9 collect student contact information or staff contact
10 information in our data warehouse, so can't -- we
11 don't have any way to use our data to send something
12 out to students.

13 So that's why we went to the universities
14 to do that.

15 MS. JASRASARIA: I would like to mark
16 Defendants_009075 as Exhibit 37.

17 (Exhibit 37 was marked for
18 identification.)

19 BY MS. JASRASARIA:

20 **Q Do you recognize this document?**

21 A Yes. It's a technical document to --
22 SurveyMonkey changed their names. They are now
23 Momentive. They changed their corporate name. I
24 think SurveyMonkey is when they started in their
25 garage when they were young and in college. So I

1 think they're going to change their branding
2 eventually.

3 Let me see what I actually -- okay. So
4 the subdomain, we didn't want the survey to go out
5 to say "surveymonkey.com." We wanted to be a little
6 more professional.

7 I purchased the subdomain option in the
8 license. I had the impression that we would
9 actually have it be able to say fldog.edu, which is
10 our domain, mostly because what you don't want to
11 happen is the security systems will filter out
12 e-mails and links and things like that if the domain
13 is something that their security -- and ours are
14 generally white list -- white-listed.

15 So I purchased the subdomain, and it
16 didn't quite give me -- it wasn't -- the
17 functionality for what I purchased from them was not
18 what you would say is a standard domain ability that
19 you would get with a lot of cloud services. We
20 ended up -- I think it said research.com/flbog.edu
21 or something.

22 You know, and I was inquiring to her --
23 you know, I purchased this. I thought it had more
24 capability, and she was saying, "No, it didn't."
25 High tech stuff, I know.

1 **Q** Yes. And I'm learning. That's the
2 trouble with this type of deposition. It's like,
3 what are the questions?

4 Okay. So turning to the process for the
5 computer-generated responses, something that, again,
6 you mentioned in your declaration, I just wanted to
7 mark Defendants_138578 as Exhibit 38.

8 (Exhibit 38 was marked for
9 identification.)

10 BY MS. JASRASARIA:

11 **Q** Do you recognize this document?

12 A Yes, sort of.

13 **Q** You're mentioned in it.

14 A Yes. I'm not sure -- you know, we had --
15 I provided portions of comments that Jon Rogers
16 merged together for different things. I'm not quite
17 sure --

18 MS. LUKIS: Hold on one second. Pending
19 question? What was the pending question?

20 MS. JASRASARIA: Oh, I asked if he
21 recognized this document.

22 MS. LUKIS: Okay.

23 A I recognize portions of it.

24 BY MS. JASRASARIA:

25 **Q** What is this document about?

1 A It identifies the IP addresses. I had
2 talked to Carrie Henderson when I discovered the
3 software-generated IPs, and I had a Teams meeting
4 with her to say, "Hey, here are the IP addresses,
5 I'm having issues. Maybe you guys need to look into
6 your collection and see if the same thing happened."

7 Yeah. This doesn't look -- this is a DOE
8 thing, isn't it? Oh, yeah, it is. Yeah. So yeah.
9 These IP addresses are what I provided to her as
10 suspect.

11 **Q How did you determine which IP addresses**
12 **were suspect?**

13 A So I used a software analytic tool, a
14 statistical analytical tool called SaaS, and we did
15 provide you guys with a code. You could actually go
16 get a license and open it up if you want, and you
17 could run everything that I ran.

18 But basically what I did is I subsetted
19 the data and I started -- began analyzing the public
20 IP addresses, so -- and I can't do this without
21 getting too technical.

22 So when you sign on a computer, you come
23 in here to the Wi-Fi and you sign on, AT&T is going
24 to give you a public IP address that is their IP --
25 within their range of IP addresses, and the last

1 three numbers generally are dynamic unless -- you
2 know, sometimes you can pay for static ones. A
3 company sometimes or business will pay for static IP
4 address.

5 But all of your home and all your public
6 IP addresses, even at the university, is staff and
7 students are signing on internally. They get a
8 different IP address, but the external IP address is
9 generated dynamically.

10 So what I did is I -- first thing I did is
11 I did frequency analysis over the IP addresses
12 themselves. And in -- in our statement you will see
13 a little chart that highlights the suspect IP
14 addresses where you can see instead of separate
15 computers signing on to the network, it was a single
16 computer sitting there running thousands of
17 responses.

18 So when I ran the frequency analysis over
19 the data, they were pretty glaring and it -- you
20 know. And then I started looking at ranges and
21 values and trying to determine if -- I couldn't --
22 some things I couldn't do automatically because some
23 of the university IP addresses were pretty high, so
24 I had to do some things manually by actually -- what
25 I had to do is take the IP addresses, go put them in

1 a search engine, determine if it was a viable
2 company like AT&T.

3 I found these IP addresses all came from
4 one of these VPN cloud service companies that you
5 can go on and you can purchase an account. So
6 someone purchased an account, and they used a single
7 server to connect and just to continue to run a
8 script that rotated through hundreds and hundreds of
9 responses.

10 And again, if you saw the partial chart
11 that I put in there, that's -- if you run it over --
12 and again, you have the code if you guys want to
13 spend the money on the SaaS license, you could run
14 it and you could see they are there and they are
15 glaring.

16 **Q How confident are you that the -- that the**
17 **responses that were eliminated were auto generated**
18 **or illegitimate?**

19 A The ones I eliminated, 100 percent, I am
20 100 percent confident. And per my declaration or
21 the interrogatory, I think -- I can't remember where
22 I put everything -- I did -- after I identified
23 those, I isolated them, and then I went further and
24 actually did a pattern analysis.

25 I mentioned a pattern analysis, and

1 someone asked me, "What is that?" I really did it
2 like a distribution over the answers to verify that
3 they were very sequential in nature for time stamp
4 as well as the answers were sequential.

5 It was -- it was a written script, so the
6 first -- you know, the first time stamp was "agree,"
7 the next one was, you know, "disagree," the next one
8 was "strongly agree." And you could see a
9 distribution.

10 So for example, a question that had five
11 answers, if you ran a distribution over a thousand
12 responses from one of these suspect IP addresses,
13 you 200 agree, 200 disagree, 200 strongly agree,
14 et cetera.

15 So -- and again, the time stamps were
16 very, you know, glaring too. The survey response
17 results, depending on where you were located and
18 speed of your network, averaged 3 minutes for a
19 normal person to go through all the pages one after
20 another. And these -- the software-generated ones
21 literally went 3 minutes, one after another
22 continually.

23 Some -- there were actually several
24 different scripts running, but the -- the one that
25 ran the longest I think ran from -- from Wednesday

1 all the way until we closed on Friday night, never
2 stopped. So it was -- I'm confident.

3 **Q Are you confident that the data that was**
4 **not eliminated is legitimate?**

5 A So to a certain level I can't say that
6 because of the anonymity. And there -- there were
7 some issues just with SurveyMonkey in general. If
8 you -- you know, we set the option to not allow
9 someone to take the survey multiple times, but that
10 uses cookies on your browser.

11 So if you went to your computer and filled
12 out the survey and then you went to your telephone,
13 you could do two surveys. But the data -- there is
14 no way for me to connect that and say, "Well, these
15 two people did two surveys." There is no connection
16 between the two, you know, other than maybe the link
17 to know they both came from UWF. There would no way
18 to identify which ones were duplicated.

19 **Q And similarly, there would be no way to**
20 **identify if someone sent a link to a friend or**
21 **family who -- member who wasn't actually a student**
22 **or an employee?**

23 A Correct. Correct. And that gets back to
24 the authentication issue, that without
25 authentication, you can't really -- you know, it's

1 hard to have anonymity and security, but -- but we
2 will be working on some things.

3 **Q Are there any ways that you could have**
4 **blocked repeated IP addresses on the front end?**

5 A Not -- not with the time and resources
6 that we had for the project. And again, not just
7 using out-of-the-box SurveyMonkey cloud services.
8 Even at the enterprise level, they don't have those
9 types of functionalities built in.

10 Those are generally custom things you have
11 to program for them, you have build extra servers as
12 an intermediate. And -- and again, those are
13 options that we are looking at for different things,
14 but we -- we -- yeah, there is no way to do it
15 during this first survey.

16 **Q Did you -- how did you treat surveys that**
17 **were filled out with no responses to questions?**

18 A I left them in. When they come through
19 the analysis, if they are empty, they don't affect
20 any of the results. So I didn't want to go through
21 and -- and you may have had a survey with two
22 questions filled and they didn't want to do the
23 rest, and you still want to gather those -- that
24 information. So I didn't do anything -- null
25 documents don't affect the results.

1 **Q So -- but they were still included in the**
2 **overall response rate?**

3 A Yeah, as far as I know. Now, I -- I will
4 say Jason is very good -- he might have -- he might
5 have removed the nulls in the response rate, I'm not
6 sure; because I handed him the clean data off. Once
7 I took the software-generated ones out, handed it
8 off to him, and then he, you know, produced those
9 other documents, he may have taken it out. I
10 honestly am not aware if he did or he didn't.

11 **Q And did you talk to Jason at all in**
12 **preparation for today's deposition?**

13 A No.

14 **Q And you know that you are testifying on**
15 **behalf of the board and not just yourself?**

16 A Yes, yes.

17 **Q And so you're not -- you're not prepared**
18 **today to say whether or not Jason might have removed**
19 **something?**

20 A Right. That level of detail is so minute,
21 and I -- I don't know everything that he did in
22 his -- his preparation. So yeah, I mean, if that
23 would have been in one of the questions about the
24 preparation of the report, I might would have
25 followed up before we got here, but it wasn't

1 specified, so...

2 **Q Are you familiar with nonresponse error?**

3 A Vaguely just through history, but I'm
4 not -- again, I haven't worked with statistics in a
5 long time.

6 **Q Did the board discuss at all whether the**
7 **low response rate was indicative of any kind of**
8 **error or bias in the data?**

9 MS. LUKIS: Object to form.

10 You can answer. You can answer.

11 A To my knowledge, there was no discussion
12 about that.

13 BY MS. JASRASARIA:

14 **Q Do you have any concerns about that?**

15 A Considering it was the first survey and it
16 was -- you know, even though -- you know, even by
17 regular standards with the statute coming out, even
18 if we would have started in July, it would have been
19 a very tight time frame to do a systemwide survey
20 like that well. So I don't -- I'm not that
21 concerned considering it was a first survey.

22 Generally, too, in any experience dealing
23 with educational data collections and -- a survey
24 really is a data collection. Your first ones are
25 always less -- the quality generally for the first

1 process is generally less than -- than as you go
2 forward, so I'm not that concerned with it
3 personally.

4 **Q Have you been involved in drafting the**
5 **report that's marked as Exhibit 32?**

6 A No, not directly. Excuse me. I'm sorry.
7 I did the methodology component -- I'm sorry -- not
8 the report itself, but in the intro, the methodology
9 component, I did, you know -- again, we are trying
10 to be consistent with what the colleges was putting
11 forward, and they had drafted their methodology
12 which we worked on together.

13 Our methodologies were exact except with
14 the differences between, you know, college,
15 university and few -- few things like that. Also
16 used a more unique link than they did trying to get
17 a little higher level of security. But on the
18 intro, the methodology portion, I took the college
19 one and modified it to make sure it was university
20 centric. And then we had the UWF issues, so I
21 drafted the note about the UWF resubmission for
22 adjunct. So I did do that on the report, but
23 nothing to do with the tables or the actual data
24 itself, just the intro.

25 **Q Was there any consideration of adding some**

1 **kind of disclaimer to the report about response**
2 **rates?**

3 MS. LUKIS: Object to form.

4 You can answer.

5 A I hadn't -- I'm not aware of any in any of
6 the discussions that I was in or the other -- I
7 hadn't heard anything of that nature.

8 BY MS. JASRASARIA:

9 Q **Was there ever any consideration to add**
10 **like an open-ended answer, a question with an**
11 **open-ended answer to the survey?**

12 A I haven't heard of any discussion like
13 that. And I do believe -- I haven't heard of
14 anything. It's hard to qualify open-ended answers
15 when you do a survey, so I am not sure that would be
16 good. But I'm not a survey expert. We already
17 determined that, didn't we?

18 Q **Great. If you could take a look at**
19 **Exhibit 31, which should be in your pile. The**
20 **green -- I think the green -- yeah.**

21 A Yes, I have Exhibit 31.

22 Q **Okay. You may have heard me asking the**
23 **chancellor about the 26,000 number for UF staff?**

24 A Yes.

25 Q **I'm also curious about the -- where it**

1 **says "FPU," I'm assuming that's Florida Polytechnic?**

2 A Yes.

3 Q **And I see that there are multiple delivery**
4 **methods there?**

5 A Yes.

6 Q **Do you know what LMS is?**

7 A Yeah. That's learning management system.

8 Q **Okay. What does that mean?**

9 A Every university has an electronic LMS or
10 learning management system that they use to deliver
11 educational content. Every student has an account.
12 They -- I don't know if they publish the link in
13 their LMS to try to get a higher response rate. I'm
14 not sure.

15 But in the -- what we call the data
16 request system where Mr. Jones put the data request
17 out to the data administrators to say, "Hey, we need
18 to know the number you distributed to and the
19 method," evidently they used -- they put the link or
20 did some type of distribution in their learning
21 management system for the students, too.

22 It looks like -- from here, it looks like
23 they only used the learning management system for
24 students instead e-mail and then used e-mail for the
25 staff. We had asked everybody to try to use the

1 same method but, you know, I guess one out of 12 is
2 not as bad.

3 MS. JASRASARIA: I am going to mark
4 Defendants_008858 as Exhibit 39.
5 (Exhibit 39 was marked for
6 identification.)

7 BY MS. JASRASARIA:

8 Q Do you recognize this e-mail?

9 A Yes.

10 Q Who is Mark McCallister?

11 A Mark works for the Office of Institutional
12 Research, I believe. Or he -- oh, wait. No, he
13 might know. I'm sorry. I don't know Mark
14 personally. He works -- he works in IT, and he is
15 the contact. When I started to work with them
16 talking about contact information that we might be
17 collecting contact information, he was provided to
18 me as a point person for technical issues.

19 Elias Esri, he -- Eldayrie, he is the CIO
20 at UF. So yeah, it -- he simply had some questions
21 for the distribution -- for their e-mail
22 distribution. And again, very specifically should
23 they include the Shands employees.

24 Q Do you know what the Shands employees are?

25 A Yeah. So UF has Shands medical and they

1 have an entire medical component. I am not as
2 familiar as some people are, but Shands is -- you
3 know, they're the medical research hospital, and a
4 lot of their -- there are a lot of actual UF
5 employees that work at Shands.

6 And that's another reason I believe their
7 numbers are much higher, because they have a very
8 large footprint over there and, you know, their
9 question, "Do we include Shands employees?" And to
10 our knowledge and our understanding, the statute was
11 specific to all employees, so that was my response
12 to him.

13 Q Okay. But just looking at the last
14 sentence here it says: "Shands employees should not
15 receive a survey."

16 A Right. Shands employees should not
17 receive the survey. But UF employees who work at
18 Shands -- the differentiation -- there are -- Shands
19 is a joint situation. So Shands employees shouldn't
20 but, UF employees who are at Shands or at the
21 med- -- they should. I am sorry I -- I didn't make
22 that clear.

23 Q Thank you for clarifying that. Are there
24 other schools that reached out with similar
25 distribution questions from what you can recall?

1 A You know, we had -- I think even in our
2 FAQ we answered some things, but I'm trying to
3 think. There were probably a few discussions -- I
4 am certain there were. I couldn't tell you very
5 specifically who they were. Again, we were reaching
6 out to the CIO and the data administrator
7 communities at the same time.

8 **Q Are you confident that all of the**
9 **12 institutions used analogous universes for their**
10 **staff surveys --**

11 MS. LUKIS: Object to form.

12 BY MS. JASRASARIA:

13 **Q -- or employee surveys?**

14 A Yeah. I -- can you rephrase that? I'm
15 not --

16 **Q Sure. Is your understanding that the**
17 **12 universities interpreted the distribution**
18 **universe for employees equal, like equivalently?**

19 MS. LUKIS: Object to form.

20 You can answer if you know.

21 A I -- I don't know, and obviously the
22 employee instructions weren't followed by FPU.
23 But -- so I can't really say for sure. That process
24 was left to them with some very specific
25 instructions. The -- and you have a copy of the

1 instructions. The instructions very specifically
2 said "active payrolled employees," so we can only
3 trust that they -- and we did discover UWF had an
4 issue technically with their distribution.

5 So I can't say a hundred percent -- with
6 100 percent certainty that all universities did it
7 well, did it right.

8 BY MS. JASRASARIA:

9 Q Turning back to -- to Exhibit 31, which is
10 the dataset with the green clip. Yeah. Flipping to
11 the second page, is this what you were referring to
12 when you mentioned that each school had a collector
13 ID that could be cross tabbed?

14 A Yes, yes. And this was provided
15 specifically for you guys.

16 Q And I assume that the third page is the
17 same thing before, the student survey?

18 A Yes. Correct.

19 MS. JASRASARIA: Okay. I would like to
20 mark Defendants_160247 as Exhibit 40.

21 (Exhibit 40 was marked for
22 identification.)

23 BY MS. JASRASARIA:

24 Q And for the record, this is -- the second
25 page of this is Defendants_160250, and the third

1 page is Defendants_160221.

2 Mr. Kovacs, do you know what the -- all of
3 these e-mails were sent to FCS -- FCS research. Are
4 you familiar with that e-mail address?

5 A So I believe that was the custom e-mail
6 that was set up for their responses to their survey.
7 We created one mailbox that we delivered to you
8 guys, too, the contents of.

9 Specifically in the instructions we said
10 if you had any questions, send an e-mail to this,
11 and that's the e-mail box that Jon Rogers was
12 monitoring. So I believe this is the college's
13 counterpart e-mail box.

14 Q And were the surveys administered in the
15 same way in the colleges and the universities?

16 MS. LUKIS: Object to form.

17 You can answer if you know.

18 A To my knowledge, yes. However, they may
19 have had different distribution processes, you know,
20 among the 28 institutions too.

21 BY MS. JASRASARIA:

22 Q Just looking at the first page here, this
23 individual who I recognize as a college student, not
24 a university student or perhaps even an employee, I
25 don't know; says that their computer virus

1 protection software was blocking the website as a
2 fishing attempt.

3 Have you seen any similar complaints from
4 university students?

5 MS. LUKIS: Object to form.

6 You can answer.

7 A I didn't -- I didn't see anything in our
8 mailbox about virus production, and in all of our
9 tests, we -- we never had our virus software or
10 anyone that I know of ever had an issue with their
11 virus software. I am unfamiliar with Bitdefender
12 anyway.

13 MS. JASRASARIA: If we could just go off
14 the record for like 3 minutes, then I can just
15 confirm I covered everything I want to cover.

16 THE VIDEOGRAPHER: We are now going off
17 record at 5:37 p.m.

18 (A recess took place from 5:37 p.m. to
19 5:44 p.m.)

20 THE VIDEOGRAPHER: We are now going back
21 on record at 5:44 p.m.

22 BY MS. JASRASARIA:

23 Q Good afternoon -- good evening,
24 Mr. Kovacs.

25 A Good evening.

1 **Q Did you speak to your counsel during the**
2 **break?**

3 A No.

4 **Q I just have a couple questions for you**
5 **before we conclude. Have you already started**
6 **planning for next year's survey?**

7 A Yes. As far as the technical level and
8 some of the challenges that we discussed before,
9 yes. I have staff members researching different
10 architectures. I talked to -- reached out to a few
11 vendors to see what kind of products they have,
12 talked to several universities, trying to -- again,
13 to find a mechanism at the state level, you know.
14 It's much difficult -- more difficult when you are
15 dealing with 12 universities than a single entity.

16 And we've also had some technology
17 improvements ourselves that I have an idea. I won't
18 discuss that because that's cyber security.

19 **Q What are the -- what are the things that**
20 **you learned from this survey administration that you**
21 **would like to change going forward?**

22 A I mean, obviously to be able to prevent
23 any type of easy scripting, try to figure out some
24 way to do authentication and maintain that and still
25 maintain the anonymity; technically, I am not sure

1 that's completely possible, but we're -- we're
2 looking at some options there.

3 So those -- those are -- as far as my area
4 of expertise and the technical side and the
5 delivery, that was probably my -- my key indicators,
6 to make sure that we can make sure who is taking the
7 surveys is the person and to prevent any type of
8 software bots from being able to populate the
9 survey.

10 **Q Is there anything else that you are**
11 **considering for the next one?**

12 A Not -- not in my area of expertise. I
13 think, again, the delivery and the -- the collection
14 of the information, those are kind of my key
15 indicators. And honestly, we still have a tight
16 time frame. I can't really pull the trigger on
17 anything while this lawsuit is going on as far as
18 procurement.

19 And Florida procurement may take me
20 three months, you know, to get a vendor and to do
21 some other things. So I've kind of got to wait for
22 the lawsuit to clear up before I can pull the
23 trigger on the procurement. So I have challenges.

24 MS. JASRASARIA: Great. Well, I think
25 those are all my questions for you today.

1 MS. LUKIS: Nothing from me.

2 MS. JASRASARIA: Thank you.

3 THE VIDEOGRAPHER: Before we go off
4 record, I do need to refer to counsel.

5 Will you be ordering a video today?

6 MS. FROST: We will be.

7 THE VIDEOGRAPHER: Do you want that
8 synced?

9 MS. FROST: Yes.

10 THE VIDEOGRAPHER: And defense?

11 MS. LUKIS: No video. Thank you.

12 THE VIDEOGRAPHER: All right. And
13 transcript orders?

14 MS. FROST: Yeah, we're going to order a
15 rough again tonight. The same deal as last
16 time.

17 THE VIDEOGRAPHER: Okay. And defense?

18 MS. LUKIS: Just standard delivery.

19 THE VIDEOGRAPHER: All right. If there's
20 no further questions, I can go ahead and
21 conclude. Sounds good. This concludes today's
22 deposition --

23 MS. LUKIS: Oh, wait. Hold on one second.
24 Actually, we'll read. Thank you.

25 THE VIDEOGRAPHER: All right. This

1 concludes today deposition of Eugene Kovacs, a
2 corporate representative of the Florida Board
3 of Governors. We are now going off record at
4 5:48 p.m.

5 (Proceedings concluded at 5:48 p.m.)

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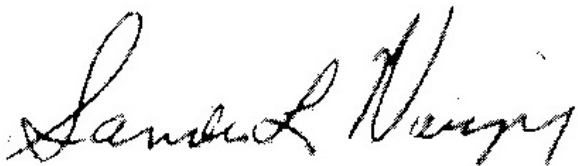
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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF LEON)

I, the undersigned authority, certify that
EUGENE JOSEPH KOVACS, III personally appeared before
me on August 19, 2022, and was duly sworn.

SIGNED AND SEALED on August 22nd, 2022.



SANDRA L. NARGIZ
RPR, RMR, CRR, CRC, CCR-GA
snargiz@comcast.net
Commission #HH239213
EXPIRES: APRIL 18TH, 2026

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, SANDRA L. NARGIZ, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of EUGENE JOSEPH KOVACS, III; that a review of the transcript was requested, and that the foregoing transcript, pages 1 through 63, is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED on August 22nd, 2022.



SANDRA L. NARGIZ
RPR, RMR, CRR, CRC, CCR-GA
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snargiz@comcast.net

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August 22, 2022

EUGENE JOSEPH KOVACS, III
c/o ASHLEY H. LUKIS, ESQUIRE
ashley.lukis@gray-robinson.com

RE: Link vs. Diaz
Case No. 4:21cv271-MW/MAF

Dear Mr. Kovacs:

Please take notice that on August 19, 2022, you gave your deposition in the above cause. At that time you did not waive your signature.

The above-addressed attorney has ordered a copy of the transcript and will make arrangements with you to read their copy. Please execute the Errata Sheet, which can be found at the back of the transcript, and have it returned to us at production@phipp reporting.com for distribution to all parties.

If you do not read and sign the transcript within thirty (30) days, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court.

If you wish to waive your signature now, please sign your name to the blank at the bottom of this letter and return to the address listed below.

Very truly yours,

Sandra L. Nargiz, RPR, RMR, CRR, CRC, CCR-GA
Phipps Reporting, Inc.
1551 Forum Place, Suite 200-E
West Palm Beach, Florida 33401

I do hereby waive my signature.

EUGENE JOSEPH KOVACS, III
30(b)(6) Representative of Board of Governors
Job No. 263784

<hr/> Exhibits <hr/> Exhibit 033 BOG 3:13 10:25 11:1 13:13 19:12 26:20 Exhibit 034 BOG 3:14 22:25 23:1 Exhibit 035 BOG 3:14 23:23,24 Exhibit 036 BOG 3:15 39:4,5 Exhibit 037 BOG 3:15 40:16,17 Exhibit 038 BOG 3:16 42:7,8 Exhibit 039 BOG 3:17 54:4,5 Exhibit 040 BOG 3:17 57:20,21 <hr/> 1 <hr/> 1 9:8 32:6,9 10 19:13 20:23 100 45:19,20 57:6 11 16:13 26:20 12 54:1 56:9,17 60:15 14 12:16 15	11:13 12:16 16 12:16 17 13:5 29:21,23 18 12:13 13:1,13 25:11 30:8 33:15 19 4:10 11:19 12:14 29:24 1993 16:2 <hr/> 2 <hr/> 2 13:19 33:18 200 46:13 2013 16:3 2022 4:10 13:5 21 18:18 233 13:15,17,25 18:3 23rd 11:15 26 6:22 26,000 52:23 28 58:20	<hr/> 3 <hr/> 3 9:25 10:10 13:25 19:12 46:18,21 59:14 30(b)(6) 4:20 5:17 9:3 31 52:19,21 57:9 32 51:5 33 10:25 11:1 13:13 19:12 26:20 34 22:25 23:1 35 23:23,24 36 39:4,5 37 40:16,17 38 42:7,8 39 54:4,5 <hr/> 4 <hr/> 4 11:14 40 29:10 57:20, 21 4:20	4:1,3 4:22 6:3 4:30 12:19,20 4:33 12:21,23 4th 30:20 <hr/> 5 <hr/> 5 29:21 5:20 4:4 5:37 59:17,18 5:44 59:19,21 <hr/> 6 <hr/> 6 33:16 <hr/> 7 <hr/> 7 9:23 <hr/> 9 <hr/> 9 32:7,9,10 <hr/> A <hr/> ability 15:19 22:18 34:13 41:18
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