

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

JENNIFER HUANG McBEATH

Plaintiff,

vs.

UNIVERSITY OF ALASKA and  
CAROL LEWIS,

Defendants.

Case No. 3:08-cv-00008 TMB

ORDER

Granting the Defendants' Motions for Partial  
Summary Judgment as to the Defamation and  
Discrimination Claims

**I. MOTION PRESENTED**

Before the Court are Defendants University of Alaska and Carol Lewis's motions for partial summary judgment on Plaintiff Jennifer Huang McBeath's claims of defamation and discrimination.<sup>1</sup> Having considered the parties' memoranda and other submissions, the Court GRANTS both of the Defendants' motions for partial summary judgment.

**II. BACKGROUND**

McBeath is employed by the University of Alaska at Fairbanks ("UAF") as a professor of agriculture specializing in plant disease diagnostics.<sup>2</sup> Within UAF, she holds appointments in the School of Natural Resources and Agricultural Sciences ("SNRAS") and at the University's

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<sup>1</sup> Dkt. Nos. 28 and 30.

<sup>2</sup> Dkt. 1 at §§ 6-7.

Agricultural and Forestry Experiment Station (“AFES”). Lewis is the dean of SNRAS and the director of AFES. As part of her duties, Lewis supervises McBeath. On January 16, 2008, McBeath filed her suit against the Defendants, alleging defamation and discriminatory treatment in violation of her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

McBeath’s defamation claim is based on five instances of allegedly defamatory conduct that fall within the applicable statute of limitations. The allegations center on conversations Lewis had with Fairbanks Mayor Jim Whitaker and a number of Alaska potato farmers, in which she allegedly stated that McBeath’s involvement in marketing Alaska potatoes posed a conflict of interest with regard to her research on virus-free potatoes. McBeath contends that these alleged statements implied she was unethical, dishonest and unprofessional. Lewis denies this. The fifth instance of alleged defamation involves a report McBeath prepared for the U.S. Department of Agriculture (“USDA”), which was edited by Lewis. McBeath accuses Lewis of making her appear “derelict and unprofessional” by deleting references to a lack of funding and resources that McBeath had included to explain why program goals were not met.<sup>3</sup> Lewis denies that she stated or implied McBeath was derelict or unprofessional.

McBeath’s discrimination claim asserts that the University took a number of adverse actions against her based, at least in part, on her gender and Chinese ethnicity.<sup>4</sup> These actions include: diverting funds intended for McBeath’s research, depriving her of a research technician, terminating a research project she was conducting, and significantly underfunding another research project. McBeath’s complaint indicates that the conduct that forms the basis of her disparate-treatment claim is described in paragraphs 21, 24, 25 and 26, which provide

21. Notwithstanding the importance and success of the program, the support of Senator Stevens, and the intent of the Congress of the United States in approving the funding, the defendant University, by and through its agent, defendant Lewis, in 2007, prevented the use of appropriated funds for research, then notified plaintiff, after the fact, of the suspension of funds (upon the ostensible ground of a late financial report, for which plaintiff bore no responsibility). Despite repeated requests

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<sup>3</sup> Dkt. 15, Ex. A at 1-6.

<sup>4</sup> The Court previously dismissed McBeath’s Title VII claim against Lewis for damages and injunctive relief on the ground that, under Ninth Circuit precedent, Title VII “employer” liability does not extend to individual supervisory employees. *See* Dkt. 39.

for the release of funds, funds have not been released. Plaintiff received two years of the funds, but the other five years have been diverted.

24. . . . [I]n 2004, defendants deprived plaintiff of the technician assisting her, and, later, in 2005, defendants terminated the Hatch General research program being conducted by plaintiff without her knowledge or permission.

25. In May, 2006, plaintiff submitted a new Hatch General proposal for “Project W-1147.”

26. After considerable review, plaintiff’s 2006 Hatch General program was approved in May or June, 2007, but was provided with limited funding and with no provision for a research associate and with provision for only three months salary for plaintiff.<sup>5</sup>

The Defendants seek summary judgment on McBeath’s defamation claim on the basis of qualified immunity. Separately, they seek summary judgment on the discrimination claim, arguing that McBeath has failed to make out a prima facie of discrimination or to show that the Defendants’ nondiscriminatory explanations for the adverse conduct are pretextual.

### **III. LEGAL STANDARD**

Summary judgment is appropriate “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.”<sup>6</sup> “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit.”<sup>7</sup> The moving party bears the initial burden of showing that no genuine issue of material fact exists.<sup>8</sup> If the moving party meets this initial burden, then the party opposing the motion must set forth facts showing that there is a genuine issue for trial.<sup>9</sup> The party opposing the motion must “do more than simply show that there is some metaphysical doubt as to the material facts.”<sup>10</sup> “In response to a summary judgment motion, . . . the [non-moving party] can no longer rest on . . . mere allegations,

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<sup>5</sup> Dkt. 1.

<sup>6</sup> Fed. R. Civ. P. 56(c).

<sup>7</sup> *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

<sup>8</sup> *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

<sup>9</sup> *See T.W. Elec. Serv.*, 809 F.2d at 630.

<sup>10</sup> *Matsushita*, 475 U.S. at 586.

but must set forth by affidavit or other evidence specific facts, . . . which for the purpose of the summary judgment motion will be taken to be true.”<sup>11</sup> If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.”<sup>12</sup>

#### IV. DISCUSSION

##### **A. The Defamation Claim**

McBeath’s response to the Defendants’ first set of discovery requests describes the four alleged instances of defamation at issue here:<sup>13</sup>

f. In August, 2006, Dean Lewis told Mayor Jim Whitaker of Fairbanks and Dr. James V. Drew that I had a conflict of interest on the potato project. She thus implied that I was unethical, dishonest, and unprofessional.

g. In January, 2007, Dean Lewis told a Delta area potato farmer, Mr. Ron Nelson, via telephone, that I had a conflict of interest issue on the potato project. She thus implied that I was unethical, dishonest, and unprofessional.

h. In March-April, 2007, a Palmer potato farmer, Mr. Keith Moore, was urging State Senator Charles Huggins to support the funding of a laboratory testing program for potatoes for export. He sent a funding request to Senator Huggins’s office, and called several times to repeat the request after I told him that the testing program needed state support for the coming year. However, when Mr. Moore called the senator’s office in early April, 2007, an aide advised him that Dean Lewis had telephoned from Fairbanks earlier, telling the senator to withhold funding for the project because I had plenty of money for the coming year. She thus falsely implied that I was not being truthful in describing the funding status of the potato project. In reality, I was telling the truth and Dean Lewis, who knew the true financial status of my projects, was not telling the truth.

I. On October 22, 2007, Dean Lewis falsely told Alaska potato farmers that I had a conflict of interest issue with the potato project. In fact, I had no personal interest in the project and there was no conflict of interest. By her statement, Dean Lewis implied that I was unethical, dishonest and unprofessional.<sup>14</sup>

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<sup>11</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); Fed. R. Civ. P. 56(e).

<sup>12</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

<sup>13</sup> The Court ruled that five other alleged instances of defamation were barred by the applicable statute of limitations. See *See* Dkt. 45 (prohibiting McBeath from relying on statements in paragraphs (a) through (e) of her response to Defendants’ Interrogatory No. 1. Dkt. 15 Ex. ¶¶ (f)-(I)).

<sup>14</sup> Dkt. 15, Ex. A ¶¶ (f)-(I). McBeath claims a fifth instance of defamation occurred when Lewis deleted portions of a report McBeath had prepared for the U.S. Department of Agriculture, in which McBeath referenced a lack of funding, resources, and technical assistance. McBeath argues

Under Alaska law, absolute and qualified immunity protect state officials from common-law tort suits for discretionary acts committed within the scope of their authority.<sup>15</sup> While absolute immunity immunizes officials from suit for all official acts, qualified immunity immunizes only those acts undertaken in good faith.<sup>16</sup> The Alaska Supreme Court has identified a three-step inquiry for determining the existence and scope of official immunity: (1) Does the doctrine of official immunity apply to the official’s conduct? (2) If so, is the immunity absolute or qualified? and (3) If qualified, did the state official act “corruptly, maliciously, or in bad faith?”<sup>17</sup> As to the first step, an official is said to act “within the scope of the official’s authority when he or she has the authority to engage in the underlying conduct out of which the alleged claim arises.”<sup>18</sup> And discretionary acts are “defined as those requiring personal deliberation, decision and judgment.”<sup>19</sup>

The Defendants contends that official immunity applies to the conduct at issue in this case. They further assert that Lewis is entitled to summary judgment on McBeath’s defamation claim based on qualified immunity. McBeath does not challenge the applicability of official immunity. She does, however, suggest, obliquely, that factual disputes exist as to Lewis’s motivations in making the allegedly defamatory statements and, therefore, summary judgment should be denied.

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that by doing this, Lewis “made it appear that [she] had been derelict and unprofessional.” Dkt. 15 Ex. A ¶ (j). Under Alaska law, the elements of defamation include: (1) a false and defamatory statement; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) the existence of either “per se actionability or special harm.” *Maddox v. Hardy*, 187 P.3d 486, 496 (Alaska 2008). Lewis’s deletion of a portion of McBeath’s report was not an affirmative “statement,” and therefore is not a valid basis for her defamation claim. Yet even if the editing could be construed as a “statement,” McBeath has not offered admissible evidence showing that it was done in bad faith. Therefore, Lewis would be entitled to qualified immunity against this claim.

<sup>15</sup> *Alpine Indus., Inc. v. Feyk*, 22 P.3d 445, 447 (Alaska 2001).

<sup>16</sup> *Smith v. Stafford*, 189 P.3d 1065, 1072 (Alaska 2008).

<sup>17</sup> *Id.* (citing *Alpine Indus.*, 22 P.3d at 447-48).

<sup>18</sup> *Id.* at 1072.

<sup>19</sup> *Id.* (quotations omitted).

When qualified immunity is raised by the moving party as grounds for summary judgment, the nonmoving party, to avoid summary judgment, must present admissible evidence that creates an issue of fact “as to whether the official acted in bad faith or with an evil motive.”<sup>20</sup> As noted above, McBeath can meet this burden through affidavits, depositions, admissions, answers to interrogatories, and other admissible evidence.<sup>21</sup> “Where no issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is proper.”<sup>22</sup>

As an initial matter, the Court agrees that official immunity applies to the underlying conduct that gave rise to the allegedly defamatory statements. As dean of SNRAS and director of AFES, Lewis’s duties included supervising employees of both institutions, identifying and overseeing potential conflicts of interest involving those employees, and preparing budgets.<sup>23</sup> The Court therefore finds that Lewis was acting within the scope of her official authority when she made the allegedly defamatory statements relating to a conflict of interest stemming from McBeath’s involvement in marketing Alaska potatoes. The Court further finds that Lewis’s actions were discretionary – that overseeing potential conflicts and funding requests inherently requires “personal deliberation, decision and judgment.”<sup>24</sup> Given this, official immunity applies to the conduct at issue.

The next analytical step requires the Court to consider whether the official immunity is absolute or qualified. Lewis does not argue for absolute immunity, and the Court finds that Alaska precedent supports only qualified immunity for the alleged acts of defamation.<sup>25</sup> The final question,

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<sup>20</sup> *Smith*, 189 P.3d at 1074.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *See* Lewis Aff., Dkt. 29, Ex. A ¶ 3.

<sup>24</sup> *Smith*, 189 P.3d at 1072.

<sup>25</sup> *See Smith*, 189 P.3d at 1072 (listing three factors to determine whether a public official is entitled to absolute immunity, and concluding that social workers involved in state child-in-need-of-aid (CINA) cases are entitled only to qualified immunity because it was unlikely they would be subjected to frequent lawsuits asserting wrongful motives and because a blanket rule of absolute immunity would deny injuries parties a remedy for intentional torts).

then, is whether McBeath has met her burden of raising a genuine issue of material fact as to whether Lewis acted “corruptly, maliciously, or in bad faith?”<sup>26</sup>

McBeath makes several arguments in an effort to meet this burden. First, she asserts that it would be “anomalous” for the Court to grant summary judgment on the defamation claim based on qualified immunity while denying summary judgment on the discrimination claim. While evidence of alleged discrimination *could* be relevant to the issue of bad faith on the defamation claim, McBeath has not identified the specific “affidavits and other sworn evidence” that would support an allegation of bad faith. Thus, evidence submitted on the discrimination claim has no relevance to the defamation claim, and McBeath’s argument is without merit.

McBeath’s second argument is that by making statements about McBeath’s real or potential conflicts of interest and the appropriate level of funding for McBeath’s potato research, Lewis defamed or undermined McBeath’s credibility.<sup>27</sup> In support of this, McBeath cites her own deposition testimony, but the portions of the deposition on which she relies merely recount the alleged instances of defamation and note that McBeath publicly disclosed her work for the non-profit Alaska Agricultural Development and Marketing, Inc.<sup>28</sup> Nowhere in McBeath’s brief does she point to specific, admissible evidence that raises a factual issue as to whether Lewis acted in bad faith. She attempts to raise a factual issue by pointing out that Lewis’s denial that she implied McBeath was unethical is at odds with McBeath’s assertion that Lewis accused her of having a conflict of interest. In particular, she argues that, “[o]ne or the other of these parties is probably wrong; it is improbable that a scientist-researcher-teacher could have a conflict of interest and also be ethical, honest, and professional. A question of fact exists.”<sup>29</sup> McBeath misses the point. Even if a dispute existed over what Lewis told Whitaker or the potato farmers, McBeath has failed to meet her burden of raising a genuine issue of material fact as to whether Lewis made the statements in

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<sup>26</sup> *Id.*

<sup>27</sup> Dkt. 44 at 4, 6.

<sup>28</sup> Dkt. 44, at 4-5; Ex. A at 72-73, 99-100. McBeath made this disclosure in accord with AS 39.52.170.

<sup>29</sup> Dkt. 44 at 5-6.

bad faith. Because of this, Lewis is entitled to qualified immunity against McBeath's defamation claim. Accordingly, the Court grants Lewis's motion for summary judgment on this claim.

### **B. The Discrimination Claim**

The Defendants also move for summary judgment on McBeath's discrimination claim. In her complaint, McBeath alleges that the Defendants discriminated against her by: withholding and eliminating technical support; processing her research proposals at a slow pace; and suspending funding for "[b]iological control of disease virus-free potato germ plasm research."<sup>30</sup> McBeath claims that these actions adversely impacted her "research capability and scientific progress, and [her] reputation and income."<sup>31</sup> McBeath further alleges that the discriminatory acts were based, at least in part, on her gender and ethnicity or national origin.

The parties agree that the applicable legal framework for considering the Defendants' summary judgment motion is the three-step analysis allocating order and burden of proof in *McDonnell Douglas Corp. v. Green*.<sup>32</sup> Under this framework, a plaintiff alleging disparate treatment under Title VII must first establish a prima facie case of discrimination.<sup>33</sup> To do this, a plaintiff must show that: (1) she belongs to a protected class; (2) she was qualified for the position she held; (3) she was subject to an adverse employment action; and (4) similarly situated individuals outside of her protected class were treated more favorably. Under the *McDonnell Douglas* framework, "[t]he requisite degree of proof necessary to establish a prima facie case for Title VII . . . on summary judgment is minimal and does not even need to rise to the level of a preponderance of the evidence."<sup>34</sup>

If the plaintiff succeeds in presenting a prima facie case, the burden of production, but not persuasion, shifts to the employer to present evidence sufficient to permit the factfinder to conclude

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<sup>30</sup> Pl.'s Compl. ¶ 27.

<sup>31</sup> *Id.*

<sup>32</sup> 411 U.S. 792 (1973).

<sup>33</sup> *Chuang v. Univ. of Calif. Davis, Bd. of Trustees*, 225 F.3d 1115, 1123 (9th Cir. 2000).

<sup>34</sup> *Chuang*, 224 F.3d at 1124 (quoting *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994)).

that the employer had a legitimate, nondiscriminatory reason for the adverse employment action.<sup>35</sup> If this is shown, the burden then shifts to the plaintiff to show that the employer's articulated reason is pretextual.<sup>36</sup> The plaintiff can prove pretext: (1) indirectly, by showing that the employer's explanation is unworthy of credence or by showing the employer is biased; or (2) directly, by "showing that unlawful discrimination more likely motivated the employer."<sup>37</sup> Direct evidence is evidence "which, if believed, proves the fact [of discrimination animus] without interference or presumption."<sup>38</sup> It typically consists of "clearly sexist, racist, or similarly discriminatory statements or actions by the employer."<sup>39</sup> In contrast, circumstantial evidence requires an inference to demonstrate discrimination. The Ninth Circuit has stated that it can take two forms: the plaintiff can show that the employer's proffered explanation for the adverse action is "unworthy of credence" or the plaintiff can make an affirmative case that the employer is biased.<sup>40</sup> The amount of evidence a plaintiff must submit to defeat an employer's motion for summary judgment hinges on whether the evidence is direct or circumstantial.<sup>41</sup> Because direct evidence is considered highly probative, the plaintiff need offer scant direct evidence to raise a genuine issue of material fact. However, when

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<sup>35</sup> *Id.*; *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 507 (1993) ("[T]he defendant must clearly set forth, through the introduction of admissible evidence, reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the case of the employment action.") (quotations omitted).

<sup>36</sup> *Chuang*, 224 F.3d at 1123-24.

<sup>37</sup> *Raad v. Fairbanks North Star Borough School Dist.*, 323 F.3d 1185, 1194 (9th Cir. 2003); *Chuang*, 224 F.3d at 1127; *Coghlan v. American Seafoods Co. LLC*, 413 F.3d 1090, 1095 (9th Cir. 2005).

<sup>38</sup> *Coghlan*, 413 F.3d at 1094-95 (quotation marks omitted).

<sup>39</sup> *Id.* at 1095.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

the plaintiff relies on circumstantial evidence, the evidence must be “specific and substantial” to defeat a summary judgment motion.<sup>42</sup>

Here, it is undisputed that McBeath has satisfied the first element of a prima facie case; by virtue of her gender and ethnicity, she is a member of two protected classes. McBeath also asserts that she suffered multiple adverse employment actions. In support of this, she cites her answers to the Defendants’ interrogatories, in which she states that as a consequence of the alleged discriminatory acts, she has “lost salary dollars, research assistant and research associate support, travel support, office space, and contractual service support (e.g., to purchase chemicals and reagents.’ ”<sup>43</sup> These sworn assertions are enough to satisfy the third element of a prima facie case.

McBeath does not explicitly address the second element. But it is undisputed that she holds a Ph.D. in plant pathology from Rutgers University, a master’s degree in plant pathology from the University of California at Davis, and an undergraduate degree in plant pathology and entomology from the National Taiwan University.<sup>44</sup> In addition, she has been a professor at UAF since 1977. Given these credentials, McBeath has satisfied the low evidentiary burden of showing that she was qualified for her position.

McBeath also fails to address the fourth element of a prima facie case, which requires her to show that similarly situated individuals outside of her protected class were treated more favorably. In reviewing her complaint, opposition to the Defendants’ motion, and related exhibits, the Court finds that McBeath has satisfied her evidentiary burden with regard to her first allegation of discriminatory conduct, but not her second or third. McBeath’s first allegation, contained in paragraph 21 of her complaint, is that UAF and Lewis “prevented the use of appropriated funds for research [in 2007], then notified plaintiff, after the fact, of the suspension of funds . . . ” The same paragraph further alleges that “[d]espite repeated requests for the release of funds, funds have not been released” and that “[p]laintiff received two years of the funds, but the other five years have been diverted.” In her sworn answer to Interrogatory No. 5, states that Lewis gave approximately

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<sup>42</sup> *Id.*

<sup>43</sup> Dkt. 43, Ex. 3 at 6-7.

<sup>44</sup> Dkt. 43, Ex. 4 at 4-5.

\$800,000 in earmark funding appropriated for virus-free potato germ plasma – McBeath’s field of expertise – to two other researchers, Dr. Jeff Smeenck, a horticulturist, and Dr. Mingchu Zhang, an agronomist. McBeath further notes that both Smeenck and Zhang are male, and that of the \$800,000, Smeenck, who is Caucasian, received more than \$700,000, while Zhang, who is Asian, received less than \$100,000. While McBeath does not indicate whether the “earmark funding” allotted to Smeenck and Zhang is the same as the “appropriated funds” that she was allegedly prevented from using in 2007, an inference can be drawn that Smeenck and Zhang were similarly situated to McBeath since they received funding for virus-free potato research and that the money could have been directed to McBeath instead. Because Smeenck and Zhang are both male, they were not members of McBeath’s protected class. Although lacking in specificity, this allegation is enough to establish a prima facie case on the claims in paragraph 21 of McBeath’s complaint.

McBeath has not, however, established a prima facie case with regard to the allegedly discriminatory conduct described in paragraphs 24, 25, and 26 of her complaint. In brief, these paragraphs assert that the Defendants deprived McBeath of a research technician, terminated her “Hatch General research program” in 2005, and provided her with only limited funding “and no provision for a research associate” in 2007. McBeath has not pointed to any admissible evidence that similarly situated researchers outside of her protected class were treated more favorably with regard to the specific allegations. McBeath does state in her answer to Defendants’ Interrogatory No. 6 that Lewis permitted Dr. Pat Holloway, a Caucasian female, to use “University facilities and resources (greenhouses, research assistants, land, water, electricity, office space, etc.) to grow and sell flowers and vegetable seedlings in a plant sale on campus.”<sup>45</sup> But McBeath fails to explain how Holloway was similarly situated to her. Similarly, McBeath’s answer to Interrogatory No. 2 states: “Several other faculty had USDA or earmark funding as well, but none of them lost research associate support from the school” and “[u]nlike me, other faculty with Hatch projects in the biological sciences received support for research staff.”<sup>46</sup> Because these assertions do not identify the “other faculty” or explain how they are similarly situated or outside McBeath’s protected class,

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<sup>45</sup> Dkt. 43, Ex. 3 at 12.

<sup>46</sup> *Id.* at 6-7.

these assertions do not support the fourth element of a prima facie case for the alleged discriminatory conduct in paragraphs 24, 25, and 26 of McBeath's complaint.

Because McBeath has established a prima facie case in connection with the allegations in paragraph 21 of her complaint, the burden shifts to the Defendants to present evidence of a legitimate, nondiscriminatory reason for the adverse employment action. The Defendants have met this burden. Lewis's sworn declaration states that earmark funds provided to McBeath for the virus-free seed potato export project were suspended on February 12, 2007 due to McBeath's submission of late reports and failure to address concerns about her research raised by the federal USDA / Agricultural Research Service ("ARS"). The declaration also explains that it was the ARS, and not UAF, that suspended McBeath's funding because of her failure to provide required research reports. According to the declaration, once the ARS suspended McBeath's grant, the unused earmark funds reverted to the ARS's Pacific West regional office, which returned them to the national office. Eventually, the declaration asserts, the ARS and UAF entered into a cooperative agreement "whereby ARS and University researchers worked together to investigate viruses in Alaska potatoes." Lewis's declaration adds that: "In 2007, ARS's national office terminated the program and implemented a new cooperative agreement utilizing the earmark funds involving different areas, such as climate change." Lewis's declaration is admissible evidence, which provides a legitimate, nondiscriminatory reason for the suspension of McBeath's research grant in 2007 – i.e., that she failed to provide research reports and address ARS's concerns. In addition, Lewis's declaration emphasizes that McBeath's funding was suspended by ARS, and not the Defendants.

Given this, the burden shifts back to McBeath to show that the Defendants' explanation is pretextual. She has offered no evidence of discriminatory intent that can be considered "direct,"<sup>47</sup> but she appears to argue pretext based on a circumstantial case of bias. She asserts, for example, that Dean Lewis "operates her school through a male Leadership Team," and that although women are

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<sup>47</sup> The Court notes that McBeath testified during her deposition that she never heard Lewis make any statements indicating that her actions were motivated or influenced by McBeath's gender or national origin. *See* Dkt. 43, Ex. 5 at 12-13.

qualified to serve on this team, none have been invited to do so.<sup>48</sup> McBeath also notes, as already described, that Dean Lewis “gave” two males researchers, who had not previously worked on virus-free potato research, roughly \$800,000 in earmarked funding. McBeath further states that she is the only Asian female researcher at AFES, and that Dean Lewis prevented another Asian scientist, Mingyuan Cheng, from assisting her. Finally, McBeath asserts that since Lewis became dean, one female faculty member was “non-retained” while another failed to win promotion to full professorship.<sup>49</sup> McBeath’s opposition brief concludes with cautionary advice for the Court:

The world of academia is clearly a complex place for outsiders to understand. If, on the one hand, a court should be conservative about substituting a judge’s judgment for the judgment of academic leaders, it should also be cautious, on the other hand, about giving too short-shrift to claims of discriminatory treatment before a trial can illuminate and elucidate the corners and corridors of the academic world.<sup>50</sup>

Regardless of the truth of McBeath’s assertions, none amount to “specific and substantial” evidence of bias on the part of Lewis and UAF. Her statements about the all-male “Leadership Team” and anecdote about female faculty members who failed to win promotion fail to demonstrate systematic bias against female researchers. Likewise, McBeath has not shown that the Defendants’ explanations for the adverse employment actions lack internal consistency or simply are not believable. In sum, McBeath has failed to offer sufficient direct or indirect evidence that the Defendants’ explanations for the conduct described in paragraph 21 of her complaint are pretextual. Given this, the Defendants are entitled to summary judgment on Plaintiffs’ discrimination claim.

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<sup>48</sup> Dkt. 43 at 11.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.* at 12-13.

**V. CONCLUSION**

For the reasons stated above, the Court GRANTS the Defendants' motions for partial summary judgment at Docket Nos. 28 and 30, and dismisses the Plaintiffs' claims of defamation and discrimination.

Dated at Anchorage, Alaska, this 5th day of August 2009.

/s/ Timothy Burgess  
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TIMOTHY M. BURGESS  
UNITED STATES DISTRICT JUDGE