IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOLORES LOZANO, Plaintiff, v. BAYLOR UNIVERSITY, ART BRILES, *in his individual capacity*, IAN McCAW, *in his individual capacity*, and the CITY OF WACO, TEXAS, Defendants.	§ § § § § § § § § § § §	6:16-CV-403-RP

ORDER

Before the Court is a motion for summary judgment filed by Defendant Art Briles ("Briles"), (Dkt. 165), and responsive briefing from the parties. Having considered the parties' arguments, the record, and the relevant law, the Court will deny Briles's motion.

I. BACKGROUND

Plaintiff Dolores Lozano ("Lozano") brings claims against Baylor University ("Baylor"), Briles, Ian McCaw ("McCaw"), and the City of Waco. (Second Am. Compl., Dkt. 50). Lozano's second amended complaint alleges violations of Title IX of the Education Amendments Act of 1972 ("Title IX"), 20 U.S.C. § 1681, et seq., the Fourteenth Amendment pursuant to 42 U.S.C. § 1983, as well as various state law claims. (*Id.* at 32–46). Her claims stem from multiple alleged assaults by Devin Chafin ("Chafin"), then a student-athlete and member of Baylor's football team. (*Id.* at 3). Lozano alleges that Baylor, its former football coach Briles, former Athletic Director Ian McCaw ("McCaw"), and the Waco Police Department ("Waco Police") knew about the abuse but did nothing to help her, in large part because Chafin was a member of the football team. (*See id.* at 3–4, 10, 35).

Lozano first met Chafin in 2012, when Chafin was a football recruit visiting Baylor for the weekend. (*Id.* at 20). After Chafin enrolled at Baylor that fall, Lozano and Chafin began dating. (*Id.*). In addition to their personal relationship, Baylor football staff asked Lozano to tutor Chafin. (*Id.*). The sequence of events alleged in the second amended complaint suggests that Baylor running back coach Jeff Lebby ("Lebby") approached Lozano sometime after she and Chafin began dating in late 2012, but before the first assault in March 2014. Chafin's grades had slipped and his eligibility to play was in question. (*Id.*). Lebby "told Lozano that she was a positive influence on Chafin . . . [and] enlisted her to tutor Chafin." (*Id.*). Lozano agreed and "became Chafin's de facto handler." (*Id.*). Lozano first reported concerns about Chafin to Lebby, regarding Chafin's drug use, but Lebby took no action. (*Id.*).

When the first assault occurred on March 6, 2014, Chafin "slapped Lozano so hard she fell over the toilet," "repeatedly kicked her in the stomach," pushed her into his bedroom, causing her to fall onto the floor, and "choke[d] her until she could not breathe." (*Id.* at 22). Lozano suffered physical injuries, including bruising on her neck, arm, side, and back. (*Id.*).

At least six Baylor staff and leadership were aware of the first assault. Lozano worked as a manager for the Baylor Acrobatics and Tumbling team. (*Id.* at 23). Her coach La Prise Williams ("Williams") noticed Lozano's bruises. (*Id.*). Williams reported the assault to Baylor Associate Athletic Director and "Senior Woman Administrator," Nancy Post ("Post"). (*Id.*). Post "discourage[ed] Williams from getting involved, telling her that she had enough to do and that handling incidents like Lozano's was not Williams' responsibility." (*Id.*). Williams then turned to the Baylor team chaplain and Director of Sports Ministry, Wes Yeary ("Yeary"). Yeary met with Lozano, who shared the details of the assault and Chafin's abusive behavior. (*Id.*). Yeary told Lozano that she "deserved better" and offered her a self-help book. (*Id.*). Chafin told Lebby about the assault. (*Id.* at 22–23). Lebby "told [Chafin] that he should not have laid his hands on Lozano" and "punished"

Chafin with additional drills at football practice. (*Id.* at 23). Chafin told Lozano that both Briles and then-President Ken Starr "were made aware of the assault." (*Id.*). Chafin told Lozano that "both Briles and Starr told him to stay away from her but took no further action." (*Id.*).

A few weeks later, in early April 2014, Chafin assaulted Lozano again. (*Id.* at 24). While several of Lozano's friends and Chafin's teammates were present, Chafin approached her in a restaurant parking lot. "Upset and angry, Chafin slammed Lozano's hand and arm against an open car window." (*Id.*). One of Chafin's teammates pulled him away so that Lozano could leave. (*Id.*). Lozano sought treatment for her arm at Baylor's on-campus health clinic. (*Id.*). She reported both assaults to the clinic and identified Chafin as her assailant. (*Id.*). Clinic staff referred Lozano to the Baylor counseling center. (*Id.*). Lozano "attended several counseling sessions during which she shared the details of the verbal and physical abuse and the assaults." (*Id.*). But after exhausting her allotment of free sessions, Lozano stopped going to counseling. (*Id.*). "No one in the Baylor counseling center ever referred her to outside counseling or offered her any other resources." (*Id.*).

On April 9, 2014, Lozano's mother placed a series of telephone calls to various Baylor offices, seeking "to talk to someone about Chafin's assaults on her daughter." (*Id.*). She called the main Baylor number, the Director of Operations for Football, and the Office of the Dean for the College of Arts and Sciences. (*Id.*). During one of the calls, an unnamed woman that she spoke with advised her that the football coaches would handle the situation. (*Id.*). Lozano's mother eventually made contact with a coach, whom she believed to be Lebby, who asked her to provide photos of Lozano's injuries. (*Id.*). She provided photos. (*Id.*). She also exchanged text messages with assistant athletic director Colin Shillinglaw. (*Id.*). According to Lozano's complaint, no further disciplinary action was taken by anyone at Baylor at that time. (*See id.* at 26).

On April 11, 2014, Lozano reported the first and second assault to the Waco Police Department ("the Waco Police"). (*Id.* at 25). Officers interviewed Lozano and took photos of her

arm. (*Id.*). She also sent them photos from the first assault. (*Id.*). One of her friends, who had witnessed the second assault, provided a statement. (*Id.*). Lozano was told that an investigator would follow up with her, but she never heard from anyone. (*Id.*). The police did not interview Chafin and no further investigation was conducted. (*Id.*). Lozano called the Waco Police repeatedly, but her calls were not returned. (*Id.*).

A few weeks later, Chafin assaulted Lozano a third time. After an argument in Chafin's apartment, Chafin "grabbed Lozano and forcibly slammed her to the ground." (*Id.*). Lozano reported the assault to Williams. (*Id.*). Around this time, as a result of the repeated assaults, Lozano began to feel "hopeless and overwhelmed." (*Id.*). She suffered stress and anxiety. (*Id.*). Afraid and unable to concentrate, she sought extensions to complete her assignments and her grades declined. (*Id.*). She graduated the following month and moved home to Houston. (*Id.*).

The following year, Lozano was assaulted a final time by Chafin's new girlfriend, while Chafin was present. (*Id.* at 26). In January 2015, Chafin asked her to return some of his belongings. (*Id.*). When Lozano met with him to return them, his new girlfriend was present. (*Id.*). Chafin became "agitated" and Lozano attempted to leave. (*Id.*). Chafin's new girlfriend then assaulted Lozano, pulling her hair down to the concrete, ripping her shirt, and beating Lozano, "telling [Lozano] she wished she would have killed her." (*Id.*). Finally, Chafin pulled his girlfriend off. (*Id.*). Lozano reported the girlfriend's assault to the Waco Police. (*Id.*). She gave a statement and informed the officers about the prior assaults by Chafin. (*Id.*). One officer spoke with Lozano's mother by phone. (*Id.*). The police took no further action. (*Id.*). Several months later, when Lozano went to the police station to collect documentation for her medical records, she was told there was "nothing in the police report." (*Id.*). Later, when Lozano agreed to share her story with reporters, Lozano alleges that Waco Police spokesperson Sgt. Patrick Swanton "made false statements to the

media in May 2016 in an effort to continue concealing its discriminatory actions against Lozano." (*Id.* at 42).

Chafin continued to play football until March 2016, two years after Lozano's last semester, when he was suspended from the team following an unrelated criminal arrest. (*Id.* at 27). He was later dismissed from the team on June 1, 2016. (*Id.* at 28).

Lozano initially brought claims against Baylor and the Baylor University Board of Regents in October 2016. (Compl., Dkt. 1). A year later, Lozano filed an amended complaint, (Dkt. 16), and then a first amended complaint, (Dkt. 24). In response, Baylor filed a motion to dismiss. (Dkt. 29). In January 2018, Lozano sought to amend her complaint to, among other modifications, add Briles, McCaw, and the Waco Police as defendants, (Dkt. 46), which the Court granted in July 2018, (Order, Dkt. 49). Lozano's second amended complaint, which is the live pleading, was filed on July 24, 2018. (Dkt. 50). Against Briles, she asserts negligence and negligent training and supervision claims. (*Id.* at 34–36, 38–39). In his motion for summary judgment, which was filed before the close of discovery, Briles argues that Lozano's claims against him are time-barred under the applicable two-year statute of limitations period. (Mot. Summ. J., Dkt. 165, at 5–6).

II. LEGAL STANDARD

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only "if the movant shows there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). "A fact issue is 'material' if its resolution could affect the outcome of the action." *Poole v. City of Shreveport*, 691 F.3d 624, 627 (5th Cir. 2012).

The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes

demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[T]he moving party may [also] meet its burden by simply pointing to an absence of evidence to support the nonmoving party's case." *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 544 (5th Cir. 2005). The burden then shifts to the nonmoving party to establish the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986); *Wise v. E.I. Dupont de Nemours & Co.*, 58 F.3d 193, 195 (5th Cir. 1995). After the nonmovant has been given the opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted. *Miss. River Basin Alliance v. Westphal,* 230 F.3d 170, 175 (5th Cir. 2000). Courts must view the summary judgment evidence in the light most favorable to the nonmovant. *Rosado v. Deters*, 5 F.3d 119, 123 (5th Cir. 1993).

III. DISCUSSION

Briles moves the Court to grant summary judgment in his favor as Lozano's claims against him are time-barred under the applicable two-year statute of limitations period. (Mot. Summ. J., Dkt. 165, at 5–6); *see* Tex. Civ. Prac. & Rem. Code § 16.003. According to Briles, Lozano's claims accrued in April 2014, and she did not timely seek to add Briles to the case until January 2018 and therefore her claims against Briles were brought outside the limitations period. (Mot. Summ. J., Dkt. 165, at 5). Lozano counters that the limitations period was tolled because she did not discover, and could not have discovered, Briles's wrongdoing until 2016—when Baylor began to release new information and the media began reporting about assaults being covered up—because he fraudulently concealed his wrongdoing. (Resp., Dkt. 170, at 9–19).

A. Statute of Limitations Claim Accrual

"Absent tolling, the limitations period runs from the moment a plaintiff's claim 'accrues,'" and while the limitations period is borrowed from state law, "the particular accrual date of a federal cause of action is a matter of federal law." *King-White*, 803 F.3d at 762 (quoting *Frame v. City of*

Arlington, 657 F.3d 215, 238 (5th Cir. 2011)). "[U]nder federal law, a claim accrues and the limitations period begins to run the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." *Id.* (quoting *Spotts v. United States*, 613 F.3d 559, 574 (5th Cir. 2010)). "[A] plaintiff's awareness encompasses two elements: (1) The existence of the injury; and (2) causation, that is, the connection between the injury and the defendant's actions." *Id.* (quoting *Piotrowski*, 237 F.3d at 576). "'[A]wareness' [of the existence of the injury and causation] . . . does not mean actual knowledge; rather, all that must be shown is the existence of 'circumstances [that] would lead a reasonable person to investigate further.'" *Id.* (quoting *Piotrowski*, 237 F.3d at 576). Thus, for awareness of causation, a plaintiff "must have knowledge of facts that would lead a reasonable person (a) to conclude that there was a causal connection . . . or (b) to seek professional advice, and then, with that advice, to conclude that there was a causal connection between the [defendant's acts] and injury." *Harrison v. United States*, 708 F.2d 1023, 1027 (5th Cir. 1983).

B. Equitable Doctrines that Affect the Limitations Period

Equitable doctrines may toll or delay the start of the statute of limitations. When a federal cause of action borrows a state statute of limitations, coordinate tolling rules apply. *See King-White*, 803 F.3d at 764; *Rotella v. Pederson,* 144 F.3d 892, 897 (5th Cir. 1998). The discovery rule defers accrual of the cause of action "until the injury was or could have reasonably been discovered." *Shell Oil Co. v. Ross*, 356 S.W.3d 924, 929–30 (Tex. 2011). The discovery rule only applies if "the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable." *Id.* (quoting *Childs v. Haussecker*, 974 S.W.2d 31, 36–37 (Tex. 1998)). "An injury is inherently undiscoverable if it is by nature unlikely to be discovered within the prescribed limitations period despite due diligence." *S.V. v. R.V.*, 933 S.W.2d 1, 7 (Tex. 1996). "'Discovery' does not mean 'actual knowledge of the particulars of a cause of action,' but whether the plaintiff has 'knowledge of facts

which would cause a reasonable person to diligently make inquiry to determine his or her legal rights.'" *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 402–03 (5th Cir. 1998) (quoting *Vaught v. Showa Denko K.K.*, 107 F.3d 1137, 1140, 1141–42 (5th Cir. 1997)). "To be 'inherently undiscoverable', an injury need not be absolutely impossible to discover, else suit would never be filed and the question whether to apply the discovery rule would never arise . . . An injury is inherently undiscoverable if it is by nature unlikely to be discovered within the prescribed limitations period despite due diligence." *S.V. v. R.V.*, 933 S.W.2d 1, 7 (Tex. 1996). "[T]he discovery rule exception should be permitted only in circumstances where 'it is difficult for the injured party to learn of the negligent act or omission.'" *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 456 (Tex. 1996) (quoting *Willis v. Maverick*, 760 S.W.2d 642, 645 (Tex. 1988)).

Similarly, the doctrine of fraudulent concealment tolls the statute of limitations so that a defendant may not avoid liability "by deceitfully concealing wrongdoing until limitations has run." *Shell Oil*, 356 S.W.3d at 927. The doctrine requires a plaintiff to show that the defendant "actually knew a wrong occurred, had a fixed purpose to conceal the wrong, and did conceal the wrong." *Id.* "When a defendant has fraudulently concealed the facts forming the basis of the plaintiff's claim, limitations does not begin to run until the claimant, using reasonable diligence, discovered or should have discovered the injury." *KPMG Peat Marwick v. Harrison Cty. Hous. Fin. Corp.*, 988 S.W.2d 746, 750 (Tex. 1999).

C. Briles Fails to Show that Lozano Has No Evidence To Support the Discovery Rule and Fraudulent Concealment

In his motion for summary judgment, Briles argues that Lozano "has not adduced any evidence to establish that Briles fraudulently concealed any alleged wrongdoing, and in fact, the evidence developed establishes Briles concealed nothing and did not violate any University policies." (Mot. Summ. J., Dkt. 165, at 6). In support of his argument, Briles points to three pieces of evidence: (1) Lozano's answers to interrogatories, (2) Baylor's answers to interrogatories, and (3)

Baylor Board of Regent Ronald Dean Murff's ("Murff") deposition. (Dkts. 165-1, 165-2, 165-3). For Lozano's answers to interrogatories, Briles refers the Court to nine pages of answers. (*See* Dkt. 165-1, at 1–9). The second piece of evidence, Baylor's response to an interrogatory, spans six pages of single-spaced paragraphs. (Dkt. 165-2, at 14–20). Finally, Briles directs the Court to pages of a deposition. (Dkt. 165, at 6). Perhaps Briles believes the Court will comb through the proffered evidence and conclude that Lozano lacks evidence as to her claims against Briles, but Briles provides no context or additional information other than the bare cites to the record. After citing to the evidence, without explanation, Briles states: "The record before the Court warrants summary judgment [because Lozano] has had ample opportunity to develop her case, such as it is, and she has done nothing because her claims against Briles are time-barred and have no merit." (*Id.*). With that, Briles cannot carry his burden on summary judgment. Briles has not established "beyond peradventure that [each] cause of action in question accrued' outside the applicable statute of limitations period." *Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 576 (W.D. Tex. 2019) (quoting *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986)).

D. Lozano's Evidence Precludes Summary Judgment

Moreover, even if Briles met his burden, Lozano has carried her responsive burden to "show a material factual dispute regarding the timeliness of [her] claims, which may include a showing that the claims are timely through the discovery rule or the fraudulent concealment doctrine."[1] *Id.* Pursuant to the discovery rule, Lozano alleges that at the time of her assaults, "Lozano was unaware of Baylor's pervasive failings . . . [in] response to a known issue of sexual misconduct and domestic violence within its football program dating back several years prior to Lozano's assault." (*Id.* at 33–34). She alleges that she "could not with reasonable diligence, have learned this information

[1] The Court notes that because there are conflicting opinions on which party carries the burden, it may not be necessary for Lozano to carry her burden. For completeness, the Court imposes the burden on both Briles and Lozano.

independently" until the Pepper Hamilton Findings of Fact were published on May 26, 2016. (*Id.*). She further alleges that the football department had a policy of not reporting allegations of sexual assault and domestic violence against football players. (*Id.* at 16–17). Coaches and staff "actively divert[ed] cases from student conduct or criminal processes." (*Id.* at 17). She alleges she had no way to know that Briles was concealing players' misconduct until May 26, 2016, when Baylor released the Pepper Hamilton Findings of Fact and recommendations. (*Id.* at 39). Reasonable minds could disagree whether Briles's allegedly negligent actions were discoverable by Lozano. *See Espinoza v. C.R. Bard, Inc.*, No. SA19CA1104FBHJB, 2020 WL 6266013, at *4 (W.D. Tex. Sept. 9, 2020), *report and recommendation adopted*, No. CV SA-19-CA-1104-FB, 2020 WL 6265346 (W.D. Tex. Oct. 6, 2020). Until the discovery window has closed in this case, the Court will not require more of Lozano to show that the injury caused by Briles was inherently undiscoverable.

In any event, Lozano provides ample evidence to support her reliance on the fraudulent concealment doctrine to toll the limitations period. First, Lozano relies on the Baylor University Board of Regents Finding of Fact, which was released on May 26, 2021. (Resp., Dkt. 170, at 13–14). "An entire section of the Baylor Findings of Fact is devoted to the football program and demonstrates that Briles . . . took affirmative actions that precluded Lozano from discovering her injury," (*id.* at 14):

> • "Leadership challenges and communications issues hindered enforcement of rules and policies, and created a cultural perception that football was above the rules."
>
> • "In addition to the issues related to student misconduct, the University and Athletics Department failed to take effective action in response to allegations involving misconduct by football staff."
>
> • "Baylor failed to take appropriate action to respond to reports of sexual assault and dating violence reportedly committed by football players."
>
> • "The choices made by football staff and athletics leadership, in some instances, posed a risk to campus safety and the integrity of the University."
>
> • "In certain instances, including reports of a sexual assault by multiple football

players, athletics and football personnel affirmatively chose not to report sexual violence and dating violence to an appropriate administrator outside of athletics."

• "In those instances, football coaches or staff met directly with a complainant and/or a parent of a complainant and did not report the misconduct. As a result, no action was taken to support complainants, fairly and impartially evaluate the conduct under Title IX, address identified cultural concerns within the football program, or protect campus safety once aware of a potential pattern of sexual violence by multiple football players."

• "Some football coaches and staff took improper steps in response to disclosures of sexual assault or dating violence that precluded the University from fulfilling its legal obligations."

• "Football staff conducted their own untrained internal inquiries, which improperly discredited complainants and denied them the right to a fair, impartial and informed investigation, interim measures or processes promised under University policy. In some cases, internal steps gave the illusion of responsiveness to complainants but failed to provide a meaningful institutional response under Title IX."

• "Because reports were not shared outside of athletics, the University missed critical opportunities to impose appropriate disciplinary action that would have removed offenders from campus and possibly precluded further acts of sexual violence against Baylor students."

• "Some football coaches and staff abdicated responsibilities under Title IX and Clery, to student welfare; to the health and safety of complainants, and to Baylor's institutional values."

• "In addition to the failures related to sexual assault and dating violence, individuals within the football program actively sought to maintain internal control over discipline for other forms of misconduct."

• "Athletics personnel failed to recognize the conflict of interest in roles and risk to campus safety by insulating athletes from student conduct processes."

• "In some instances, the football program dismissed players for unspecified team violations and assisted them in transferring to other schools."

• "Football coaches and staff took affirmative steps to maintain internal control over discipline of players and to actively divert cases from the student conduct or criminal processes."

• "In some cases, football coaches and staff had inappropriate involvement in disciplinary and criminal matters or engaged in improper conduct that reinforced an overall perception that football was above the rules, and that there was no culture of accountability for misconduct."

> • "The football program also operates an internal system of discipline, separate from University processes, which is fundamentally inconsistent with the mindset required for effective Title IX implementation, and has resulted in a lack of parity vis-à-vis the broader student population."
>
> • "This informal system of discipline involves multiple coaches and administrators, Relies heavily upon individual judgment in lieu of clear standards for discipline, and has resulted in conduct being ignored or players being dismissed from the team based on an informal and subjective process."
>
> • "The football program's separate system of internal discipline reinforces the perception that rules applicable to other students are not applicable to football players, improperly insulates football players from appropriate disciplinary consequences, and puts students, the program, and the institution at risk of future misconduct."
>
> • "The football program failed to identify and maintain controls over known risks, and unreasonably accepted known risks."
>
> • "Leadership in football and the athletics department did not set the tone, establish a policy or practice for reporting and documenting significant misconduct."
>
> • "The lack of reporting expectations resulted in a lack of accountability for player misconduct and employee misconduct."

(*Id.* at 14–16) (quoting Baylor University Board of Regents Findings of Fact, Dkt. 170-1, at 11–13).

Lozano also relies on pleadings and deposition testimony from another lawsuit that specifically address Briles's acts of concealment and failures to report violence and sexual violence at Baylor. The deposition testimony is from Baylor Regents Cary Gray ("Gray") and Ron Murff ("Murff") in a defamation case brought by a former Baylor football employee Collin Shillinglaw. (Resp., Dkt. 170, at 13–16). In their answer in the defamation case, Gray and Murff pleaded that Briles and others created a culture that shielded players from discipline for offenses, routinely did not report incidents to officials outside of the football program, tried to insulate Briles from learning of misconduct, developed a culture that insulated the football players from Baylor's disciplinary process, and concealed disciplinary problems—and included specific communications between Briles and his staff about various incidents like when Briles texted McCaw about how the Waco Police would "keep [the alleged assault] quiet." (Resp., Dkt. 170, at 16–18) (citing and quoting Gray

& Murff Answer, Dkt. 170-2, at 2–40; Text Messages, Dkt. 172-2 (sealed)). Similarly, in deposition testimony, Gray and Murff chronicled a "laundry list" of instances when Briles failed to report, concealed information, and insulated football players. (*See* Resp., Dkt. 170, at 18–19) (citing Gray Depo., Dkt. 172, Murff Depo., Dkt. 172-1) (both sealed). Because Lozano likely did not know—and could not have reasonably known—that Briles fraudulently and routinely concealed critical information, Lozano has identified fact issues as to when her claim against Briles accrued. *See* Fed. R. Civ. P. 56(a).[2]

IV. CONCLUSION

For these reasons, Briles's Motion for Summary Judgment, (Dkt. 165), is **DENIED**.

SIGNED on March 30, 2022.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

[2] In his reply brief, Briles attacks the admissibility and properness of Lozano's evidence. (Reply, Dkt. 173). For example, Briles objects to Lozano's reliance on Gray and Murff's answer in another case, arguing that a pleading is not summary judgment evidence. (*Id.* at 4). Briles cites to *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996). Briles misunderstands the *Wallace* Court. There, the Fifth Circuit stated that pleadings are not summary evidence to explain that a nonmovant must satisfy its burden in responding to a summary judgment motion by going beyond the pleading in the case. Lozano's evidence goes beyond her pleading. First, Lozano is citing to pleadings and evidence in a different case, not this case. Second, Lozano relies on much more than the answer from the other case. In any event, the Court again reminds Briles that he brought his motion for summary judgment *before* the close of evidence, and thus the evidentiary record has not been fully developed.