

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EDWARD CARRINGTON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:08-CV-00119
	)	
DUKE UNIVERSITY, et al.,	)	
	)	
Defendants.	)	

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**PLAINTIFFS' NOTICE OF DEPOSITION OF DUKE UNIVERSITY  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(6), Plaintiffs will take the deposition by oral examination of Defendant Duke University before a notary public or other officer authorized to administer oaths on the dates and times specified below. Such deposition will be recorded by stenographic means. Duke University is required to designate one or more persons to testify as to the matters known by, or reasonably available to, Duke University on the topics specified below and described more particularly in Exhibit A.

**Deposition Topic Number****Date and Time**

Topic Nos. 6, 8-17

January 18, 2012 at 9:00 a.m.<sup>1</sup>

Topic Nos. 1-5, 7

January 20, 2012 at 9:00 a.m.

The deposition will take place at the offices of Thomas, Ferguson & Mullins, LLP, 119 East Main Street, Durham, NC 27701, and continue day to day until completed.

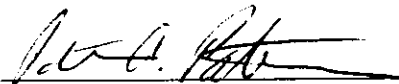
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<sup>1</sup> Duke has indicated that it may designate more than one witness to testify on these topics. If so, the deposition of the second witness may take place on January 19, 2012.

December 5, 2011

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## **EXHIBIT A**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant Duke University is required to designate one or more officers, directors, managing agents, or other persons who consent to testify upon its behalf as to matters known or reasonably available to Defendant Duke University. Defendant Duke University shall set forth, for each person designated, the matters on which the person will testify. Unless otherwise specified, the time period for each topic listed below is March 2006 to the present.

### **DEFINITIONS**

As used herein, the following words and phrases shall have the following meanings:

1. “Communication” means any meeting, conversation (face-to-face, telephonic, or otherwise), discussion, telex message, cable, correspondence, message, electronic mail, voice mail, exchange, provision or relay of a document, or other occurrence whereby thoughts, opinions, data, or other information are transmitted between or among one or more persons, or through any photographic, mechanical, electrical or electronic device or devices for receiving, transmitting, or storing data or other information.
2. “Defendant,” “you,” and “your” refer to Defendant Duke University, including all persons acting or purporting to act on behalf of Defendant Duke University.

3. “Document(s)” should be construed in the broadest sense permissible, and includes all “writings,” “recordings,” and “photographs,” as those terms are defined in Rule 1001 of the Federal Rules of Evidence, as well as all “communications” as defined above. Accordingly, “document(s)” includes, but is not limited to, all written, printed, recorded or graphic matter, photographic matter, sound reproductions, electronic mail, or other retrievable data (whether recorded, taped, or coded electrostatically, electromagnetically, optically or otherwise on hard drive, diskette, compact disk, primary or backup tape, audio tape or video tape) from whatever source derived and however and by whomever prepared, produced, reproduced, disseminated or made. Without limiting the generality of the foregoing, “document(s)” includes the original and any non-identical copy and also every draft and proposed draft of all correspondence, internal memoranda, notes of meetings, telegrams, telexes, facsimiles, electronic mail, reports, transcripts or notes of telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies, testimony, speeches, worksheets, maps, charts, diagrams, computer printouts, and any other writings or materials of any nature whatsoever, whether or not divulged to other parties, together with any attachments thereto and enclosures therewith. In addition, the word “document(s)” encompasses all forms and manifestations of electronically or optically coded, stored, and/or retrievable information, including but not limited to “email,” “voice mail,” digital images and graphics, digital or analog audiotapes and files, and digital or analog videotapes and files.

4. “DukeCard Data” means information associated with the use of Plaintiffs’ DukeCard between March 13, 2006 and March 14, 2006 inclusive, as referenced in Count 8 of the Amended Complaint filed in this action.

5. “Duke University” or “Duke” means Duke University, its officers, employees, board of trustees members, faculty members, agents, representatives, and attorneys, and all other persons affiliated with or acting on behalf of Duke University.

6. “Durham” or “City of Durham” means the City of Durham, North Carolina and all divisions, departments, components, offices, police officers, investigators, prosecutors, supervisors, administrators, officers, and other agents thereof, including Michael Nifong.

7. “FERPA” means the Family Educational Records and Privacy Act. *See* 20 U.S.C. 1232g; 34 C.F.R. Part 99.

8. “Lacrosse Team” means the 2005-2006 Duke University Men’s Lacrosse Team.

9. “Person” means and refers to not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trusts, groups, and organizations; federal, state, or local government or government agencies, offices, bureaus, departments, entities, including any court (or judge or other officer thereof); other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof. “Person” includes the present and former

officers, executives, partners, directors, trustees, employees, attorneys, agents, representatives, and all other persons acting or purporting to act on behalf of the person and also its subsidiaries.

10. “Plaintiffs” are Edward Carrington, Casey J. Carroll, Michael P. Catalino, Thomas Clute, Kevin Coleman, Joshua R. Covaleski, Edward J. Crotty, Edward S. Douglas, Kyle Dowd, Daniel Flannery, Richard Gibbs Fogarty, Zachary Greer, Erik S. Henkelman, John E. Jennison, Ben Koesterer, Fred Krom, Peter J. Lamade, Adam Langley, Christopher Loftus, Daniel Loftus, Anthony McDevitt, Glenn Nick, Nicholas O’Hara, Daniel Oppedisano, Sam Payton, John Bradley Ross, Kenneth J. Sauer, III, Steve Schoeffel, Robert Schroeder, Devon Sherwood, Daniel Theodoridis, Brett Thompson, Christopher Tkac, John Walsh, Jr., Michael Ward, Robert Wellington, William Wolcott, and Michael Young.

11. “Rape Allegations” means information relating to the allegations made by Crystal Mangum relating to the events that occurred at 610 North Buchanan Blvd. in Durham, NC on March 13-14, 2006, including but not limited to, the medical examination of Crystal Mangum, any investigation of the allegations, any reaction to the allegations, and any disposition of the allegations, including the ultimate exoneration of the three members of the 2005-2006 Duke University Men’s Lacrosse team who had been indicted in connection with Ms. Mangum’s allegations.

12. The word “including” shall have its ordinary meaning and shall mean “including but not limited to” and shall not indicate limitation to the examples or items mentioned.

13. The words or phrases “reflect,” “refer,” or “relate to”—or any tense or combination of those words or phrases—mean reflecting, referring to, relating to, regarding, discussing, concerning, constituting, mentioning, pertaining to, alluding to, or associated with.

14. The singular of each word shall be construed to include its plural and vice versa, and the root word and all derivations (*i.e.*, “ing,” “ed,” etc.) shall be construed to include each other.

15. The words “and” as well as “or” shall be construed both conjunctively as well as disjunctively.

16. The word “each” shall be construed to include “every” and vice versa.

17. The word “any” shall be construed to include “all” and vice versa.

18. The present tense shall be construed to include the past tense and vice versa.

19. The masculine shall be construed to include the feminine and vice versa.

20. The words “knowledge,” “information,” “possession,” “custody,” and “control” of a person shall be construed to include such person’s agents, representatives, and attorneys.

21. The words “the present” mean the date on which Defendant responds to these requests.

**MATTERS AS TO WHICH TESTIMONY IS REQUIRED**

1. Defendant’s systems used to create, transmit, store, retrieve, and delete electronic data, including emails, computer files, voice mails, data posted to the internet, and text messages.

2. The manner in which Defendant manages, indexes, locates, maintains, and archives documents, including paper and electronic document retention policies, policies and practices for maintaining paper and electronic documents created by persons no longer affiliated with Duke University, and the use of any data deletion programs.

3. Defendant’s policies and practices for backing up electronic data, including software used, retention of backup data, and how and where such data is stored.

4. The ability of end users to delete data from their accounts on Defendant’s technology systems, and Defendant’s ability to access such deleted data, if any.

5. Defendant’s policies and practices for preserving data – both electronic and hard-copy – that may relate to the Rape Allegations, including:

- a. When Defendant first anticipated that litigation may arise from the Rape Allegations;
- b. Defendant’s establishment of a litigation hold for data that may relate to the Rape Allegations, including when such a hold was instituted, communications related to the hold, and efforts to monitor compliance.



- c. Defendant's efforts to locate and preserve data that may relate to the Rape Allegations from:
- i. personal email accounts;
  - ii. other non-Duke email accounts, such as employer email accounts;
  - iii. Duke email accounts;
  - iv. postings to social media websites and blogs;
  - v. text messages;
  - vi. voice mails;
  - vii. alumni correspondence;
  - viii. board meetings and other meetings of Duke officials;
  - ix. individual notes or files;
  - x. presentations;
  - xi. press releases;
  - xii. communications with Durham; and
  - xiii. any other sources of data;
- d. the manner in which Defendant maintains data that may relate to the Rape Allegations, including the location of such data and any software used for that purpose;
- e. any indexing, processing, or reviewing Duke has done of data that may relate to the Rape Allegations;

- f. the identity and activities of any outside vendors or other third parties Duke has used to assist in its preservation efforts;
  - g. the manner in which Defendant identifies custodians whose data is being preserved and the identity of such custodians, including the 252 custodians of electronically stored information identified in Defendant's letter of June 30, 2008.
6. Communications with insurance carriers regarding the Rape Allegations, including the dates of such communications.
7. Data being preserved from Plaintiffs' Duke email accounts, including:
- a. Defendant's policies and practices for preserving data from Plaintiffs' Duke email accounts, including policies and practices for managing, indexing, locating, maintaining, and archiving such data.
  - b. Data from Plaintiffs' Duke email accounts that Defendant provided to Plaintiffs, including the format of such data;
8. Duke's public relations strategy with respect to the Rape Allegations, including the process for developing that strategy, its implementation, and any consideration of its impact on Plaintiffs' reputations.
9. The subpoena for Plaintiffs' DukeCard Data, including communications with Plaintiffs and Plaintiffs' attorneys regarding the subpoena, communications with Durham regarding the subpoena, the discovery by Duke's attorneys that the data had

already been provided to Durham, and the identity of every person who knew before August 1, 2006 that the data had been provided to Durham.

10. Duke's policies and practices for responding to requests for data related to students' use of DukeCards, including Duke's understanding of FERPA's affect on such requests, from 2001 to the present.

11. The relationship between Duke and J. Wesley Covington, including the nature of the relationship, its origin, matters on which Mr. Covington provided Duke with representation, advice, or other services, and the relationship between Mr. Covington and Suzanne Wasiolek.

12. Duke's communications with Durham regarding the Rape Allegations, including communications relating to meeting with members of the Lacrosse Team and information disclosed by members of the Lacrosse Team.

13. Duke's policies, practices, and understanding relating to the "student-administrator" privilege.

14. Duke's decision-making process for responding to the Rape Allegations, including:

- a. communicating with and/or advising members of the Lacrosse Team, their coaching staff, their parents, and their attorneys on matters relating to the Rape Allegations;
- b. responding to and participating in Durham's investigation of the Rape Allegations;

- c. determining the truth of the Rape Allegations;
- d. cancelling the 2005-2006 men's lacrosse season;
- e. forcing Mike Pressler to resign as lacrosse coach;
- f. formulating public statements relating to the Rape Allegations;
- g. considering how Duke's response would affect members of the Lacrosse Team.

15. Duke's knowledge of any results of DNA testing related to the Rape Allegations, including the date when Duke first learned of those results.

16. Duke's supervision of the actions of Richard Brodhead, Tallman Trask, and Suzanne Wasiolek relating to the Rape Allegations, including the identity of the persons involved in such supervision, the selection of those persons, the supervisory actions taken by those persons, and the manner and substance of those persons' communications with each other and with President Brodhead, Dr. Trask, and Dean Wasiolek.

17. Duke's supervision of the persons involved in providing Plaintiffs' DukeCard Data to Durham and in responding to the subpoena for that data.

## CERTIFICATE OF SERVICE

It is hereby certified that the foregoing has been served this day by electronic transmission as provided in Rule 5(b)(2)(E) to those parties listed whose counsel have agreed in writing to such electronic service at the email address listed in lieu of service by mail:

<p>Richard W. Ellis <a href="mailto:dick.ellis@elliswinters.com">dick.ellis@elliswinters.com</a> Dixie T. Wells <a href="mailto:dixie.wells@elliswinters.com">dixie.wells@elliswinters.com</a> Jeremy M. Falcone <a href="mailto:jeremy.falcone@elliswinters.com">jeremy.falcone@elliswinters.com</a></p> <p><i>Counsel for Duke University Defendants in Carrington &amp; McFadyen</i></p>	<p>James B. Maxwell <a href="mailto:jmaxwell@mfbp.com">jmaxwell@mfbp.com</a></p> <p><i>Counsel for David Addison in Carrington &amp; McFadyen</i></p> <p><i>Counsel for James T. Soukop, Kammie Michael, and Richard D. Clayton in McFadyen</i></p>
<p>Linwood Wilson <a href="mailto:LinwoodW@aol.com">LinwoodW@aol.com</a></p> <p><i>Linwood Wilson, pro se</i></p>	<p>Robert C. Ekstrand <a href="mailto:rce@ninthstreetlaw.com">rce@ninthstreetlaw.com</a> Stefanie A. Sparks <a href="mailto:sas@ninthstreetlaw.com">sas@ninthstreetlaw.com</a></p> <p><i>Counsel for McFadyen Plaintiffs</i></p>
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<p><i>Counsel for Duke University Health System, Inc., Tara Levicy, and Theresa Arico in Carrington &amp; McFadyen</i></p> <p><i>Counsel for Private Diagnostic Clinic, PLLC and Julie Manly in McFadyen</i></p>	<p><i>Counsel for Brian Meehan in McFadyen</i></p>
<p>Robert James King, III  <u><a href="mailto:rking@brookspierce.com">rking@brookspierce.com</a></u></p> <p><i>Counsel for DNA Security, Inc. and Richard Clark in McFadyen</i></p>	<p>Edwin M. Speas, Jr.  <u><a href="mailto:espeas@poynerspruill.com">espeas@poynerspruill.com</a></u>  David William Long  <u><a href="mailto:dwlong@poynerspruill.com">dwlong@poynerspruill.com</a></u></p> <p><i>Counsel for Mark Gottlieb in Carrington &amp; McFadyen</i></p>
<p>Joel Miller Craig  <u><a href="mailto:jcraig@kennoncraver.com">jcraig@kennoncraver.com</a></u></p> <p><i>Counsel for Benjamin Himan in Carrington &amp; McFadyen</i></p>	

This the 5th day of December, 2011.

  
Peter A. Patterson