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March 3, 2012

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*Re: Proposed Protective Order*

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Dear Tom, Paul, and Dixie:

This letter is to follow-up on our conference on February 24, 2012, regarding your proposed protective order. We promised that we would address several matters, and do that below.

First, let us correct the history of our discussions regarding your protective order. As we stated in last week's conference and have since confirmed, Dixie did not respond to our third proposal to resolve this matter. Specifically, on December 1, 2011, we requested another conference to come to an agreement on your protective order and resolve the issues relating to our subpoenas to Duke's PR consultants. We conferred by telephone that evening and we proposed to simply agree to the entry of your proposed protective order – without any modifications. We noted that, after a period of 90 days, at which time, the parties

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would assess whether anything in your proposed order proved unworkable, and, if so, the parties would meet and confer to resolve those issues by agreement or move for a court order modifying the agreement. Dixie did not accept our proposal, but promised that she would convey our offer to all of you and report your decision to us. She never did.

Three months later, during last week's meeting to address your proposed protective order, we noted that no one had responded to our December 1, 2011 proposal to simply accept your proposed protective order. Dixie claimed that she had, in fact, responded to our December 1 proposal in an email dated December 1, 2011. But Dixie's email was sent before we made our December 1 proposal, not after. Specifically, Dixie's email was sent the morning of December 1 at 10:57 AM. The telephone conference during which we proposed to accept your protective order began that evening at 5:57 PM. In other words, Dixie's email did not respond to our December 1 proposal; to the contrary, we made our December 1 proposal in response to Dixie's email. We think we made that clear enough during the call last week, and Paul made it clear that the Duke Defendants rejected our proposal to adopt your proposed protective order.

Next we repeated our request that the Duke Defendants identify in a log all of the documents that they are withholding based upon a claim that the documents are protected. We have asked for this so that we may not only assess your clients' claim as to each document, but also to understand what, specifically, your clients believe fall within the scope of your proposed protective order. We repeat that request here.

At your request, we have carefully reviewed the protective order you proposed and we discussed on February 24, 2012. Based on our review of the proposed order and our discussion during the February 24 conference, we proposed that the parties offer to the Court a modified version of your proposed order. Our modifications are identified in the attached redline.

You will recall that we discussed on February 24 that we should include a provision in the order allowing the order to be modified by agreement of all

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parties in writing, and requiring notice to the Court of any agreed-upon modification. We have included the modification provision – modeled on the modification provision in the Court’s LR 16(c) Initial Pretrial Order – in the attached markup. After reconsideration, we believe that the modification provision should apply to all parts of the protective order rather than limited to certain provisions.

Finally, as we promised, below you will find an itemized list of “confidential” topics in your proposed protective order that we request further detail, including specific examples, to understand the basis for your claim of confidentiality. As we discussed, specific examples of documents and things that you believe are within the scope of each category would be most helpful, and, for each of these categories, please state the legal and factual basis for your claim of confidentiality under Rule 26. The topics of concern to us are:

1. Personal financial information (e.g., salary information, account statements and tax returns and related schedules and supporting documents)
2. Disciplinary information (e.g., information related to discipline by a school, college, athletic team, or public authority)
3. Personnel records (e.g., performance reviews and evaluations)
4. Decisions involving faculty hiring, retention, and compensation issues
5. Research by faculty that would otherwise remain in confidence
6. Information related to police investigations that is ordinarily maintained in confidence
7. Business, financial, or economic information that would ordinarily be maintained in confidence

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We look forward to your elaboration on the scope of those topics and your response to our proposed protective order.

Cordially,

A handwritten signature in blue ink, appearing to read "R. Ekstrand", is positioned above the typed name.

Robert C. Ekstrand, Esq.