Exhibit C

From: Dixie Wells
Sent: Thursday, December 01, 2011 10:57 AM
To: 'Bob Ekstrand (rce@ninthstreetlaw.com)'; 'Stefanie Sparks'
Cc: Dick Ellis; Paul Sun; Jeremy Falcone
Subject: Re: Discovery
Attachments: Workshare__RAL-#907239-v1-mcfadyen_proposed_stipulated_protective_order_draft_send_by_Ekstrand_on_Nov_30_2011-RAL-#907239-v2-mcfadyen_proposed_stipulated_protective_order_draft_s.pdf

Dear Bob:

You make a number of assertions in your email to which we take issue. I will not address each of them here, but instead will focus on those most relevant to the issue of the stipulated protective order.

On October 3, 2011, Duke served upon the McFadyen plaintiffs its initial disclosures. Those disclosures complied with Rule 26(a)(1)(A)(ii). After you asked us to produce the insurance polices, we provided you with a proposed stipulated protective order on October 7, 2011, as provided under Rule 26(c) because discovery was being sought.

Your email below is the first time that you have responded regarding the substance of that proposed order. As the email communications that you reference below indicate, your proposal that we enter into some sort of bridge agreement was not acceptable to us. First, for the protection of all of our respective clients, we need a protective order in place that will protect confidential information. A bridge agreement, like the one you proposed, does not offer the protections that a stipulated protective order offers. Rule 26(c) provides the mechanism for seeking a protective order, and that rule does not provide for a bridge agreement. Second, if we were to enter into such a bridge agreement and the terms of the final protective order differed from that bridge agreement, multiple problems would arise. Third, a protective order can be enforced by the court. Whether the court would enforce any sort of bridge agreement is uncertain. For these reasons and others, we were simply not able to agree to your proposal to enter into a bridge agreement.

Your email seems to imply that Duke is at fault for unreasonably delaying in seeking entry of a protective order. Yet in discovery responses provided by your client, those response include language that says “disclosure[] of confidential information . . . will be disclosed only pursuant to a protective order governing its use and dissemination.” As you know, the requirements of discovery are mutual, and to suggest that Duke is at fault for delay, when you are withholding documents pending entry of a protective order, is unfair, at best. In fact, within a day of being asked for documents, Duke sent you a proposed protective order.

With respect to the changes that you have proposed, we have the following comments. Please see the attached document for our proposed revisions that reflect the comments below. (We accepted all of your edits and then added back language in accord with the comments below.)

1) In paragraph 3, you have struck "business." As your email below recognizes, that is currently an issue that we are discussing with the Carrington plaintiffs. Duke’s mission is education. However, it is a large educational institution and business concerns are involved in many aspects of its operation. Accordingly, Duke seeks to maintain the confidentiality of business records that it ordinarily keeps confidential. While we aren’t necessarily stuck on the work “business,” we do need some way of including that type of information within the definition of confidential information. We have proposed a definition on the attached document that we hope will be acceptable to you.

2) In paragraph 5, you have struck the reference to McFadyen, which is appropriate, of course. That said, we do need to insert a reference to Carrington to make clear that this litigation refers to the McFadyen litigation and not to the lacrosse-related litigation.

3) Your edits to paragraphs 6 and (the former) 19 seem to suggest that third parties should not be allowed to make confidentiality designations. Why are you taking that position? Our proposed approach seems like a useful way to smooth cooperation in getting responses to subpoenas. It also saves third parties from the burden of a seeking a protective order if they have confidential information.

4) In striking paragraph 8, you apparently take issue with our proposal that the parties be able to redact anything deemed "non-relevant," which, as you point out in your email, is not the Rule 26 standard. What if we change "non-relevant" to "non-responsive"? The classic example of why this is needed is where a document reflects confidential information about non-lacrosse player students that is not relevant to any of the claims or defenses in this litigation. Unless fairly called for by a discovery request, that kind of information should not be produced, regardless of whether there is a protective order in place.

5) In the paragraph 10, we don't understand the second change. What happens if someone refuses to sign the agreement? Is that the end of the deposition? Does that mean no questions about confidential information can be asked? We believe that this language (or similar language) is necessary.

6) In paragraph 13(c), you propose to add language regarding contractors of Ekstrand & Ekstrand. We would propose making that language more general to include contractors of any law firm that is a party to the agreement.

7) You have struck paragraph 17. What solution do you propose for dealing with objections to a confidentiality designation? We are not necessarily committed to this particular procedure, but we do believe that there needs to be a procedure for handling these types of disagreements.

8) We are confused by your edits to paragraph 21. Nothing can be filed under seal with a dispositive motion without a court order. If you want to submit a confidential document that was produced by Duke as an attachment to a dispositive motion that you are filing, are you going to file a motion to seal that document on Duke's behalf? It seems better to us to have the party who produced the document bear the burden of seeking to keep it under seal. Simply striking this language does not seem to us to be a workable solution. Again, we are not necessarily committed to the particular procedure that we proposed, but we do believe that a procedure for handling confidential documents that a party wishes to file with the court is needed. Similarly, under MDNC practice, we are not required to seek an order to file confidential material with discovery motions. Simply striking subsection (b) of that paragraph, which ostensibly then would require us to seek an order, places an unnecessary burden on everyone to file a motion to file under seal where no such motion would otherwise be required.

9) With respect to your proposed edit to Paragraph 26, we cannot agree that the order can be modified or terminated by written agreement by the parties. It is unlikely that the court would be willing to enforce an order that was changed by mutual agreement of the parties but not otherwise approved by the court itself. Because we seek the protections of a court order as provided under Rule 26(c), we simply cannot agree to modifications or terminations without court approval.

We look forward to your response so that we can either work together to reach an agreement on a proposed order or can file an appropriate motion with the court seeking such an order.

From: Robert Ekstrand [mailto:rce@ninthstreetlaw.com]
Sent: Wednesday, November 30, 2011 4:24 AM
To: Dick Ellis
Cc: SAS; Jeremy Falcone
Subject: Discovery

Dick:

Attached, you will find the McFadyen Plaintiffs' response to Duke's proposed protective order. Related to that, I also need to reply to your correspondence of November 16. To refresh your recollection, it is reproduced here:

> On Wed, Nov 16, 2011 at 4:34 PM, Dick Ellis <Dick.Ellis@elliswinters.com> wrote:

> I'm responding to your earlier email in which you wrote: "Ok. I'm out of ideas. Jeremy's response is not acceptable. We need the documents to we requested (i.e., identified in your initial disclosures) and will proceed accordingly."
>
> -Bob
>
> My response:
>
> Bob, you already have the documents we identified in our initial production. We mailed you a disc on November 9. If, by chance, you didn't get it, please let me know ASAP.
>
> As for the confidentiality agreement, we sent you a draft proposal weeks ago, but have received nothing from you. I assume you will want some of your clients' materials protected, so the agreement should be of interest to both of us. Stefanie did call a few days ago and asked if we had sent something similar to the Carrington people (I told her we had). I told her that we were negotiating and approaching an understanding with them, and once we accomplished that, I would send her whatever was arranged with them. That is still our plan, as Jeremy noted.
>
> I know, of course, that you will proceed as you see fit. But frankly, I'm not sure there is anything to proceed about. Shouldn't we see if we can reach agreement first? Right now, all I see is your "not acceptable" and that you will "proceed accordingly"- which sounds like "my way or else." Is that how we are to handle things?
>
> Best regards - Dick

I have read this and other discovery-related correspondence carefully. I have conferred with Stefanie to confirm my recollection of her exchanges with Dixie prior to Dixie's unexpected need to take leave and, since then, with Jeremy. Here is the gist of what I believe are the salient points relating to discovery in this matter:

Duke did not produce any documents at all when it was required to make its initial disclosures, not even insurance agreements that may cover the claims plaintiffs have asserted as specifically required by Rule 26. Instead, Duke disclosed only a list of categories of documents that it contends support its defenses in this action and suggested that there are insurance agreements that are subject to the mandatory initial disclosures, and, for the first time in this nearly four-year litigation, a proposed protective order.

We then propounded a document request requiring production of the documents identified in Duke's initial disclosures. Because the documents sought in our initial request for production (by definition)

support your client's defenses, I was and remain flummoxed as to why Duke requires a protective order before producing all but twenty-one (21) documents (twenty-seven including duplicates).

Because discovery in this case must move forward and because I accepted your representation that there is a sound reason for Duke's insistence upon a protective order, we offered to stipulate to the protective order you proposed as a bridge agreement to govern the use of documents until a final agreement is reached or an order is entered. Inexplicably, Jeremy promptly refused. I did not think it was possible to have our acceptance of your proposed order on an interim basis, but there it was.

Your client had nearly four years to propose and negotiate a protective order, but your client did nothing. Your client did not propose a protective order until after the time for making its initial disclosures had passed without producing even a page from the insurance agreements the Rule compels. While Dixie's correspondence asserts that Duke believes that these, too, are -- in toto -- privileged or confidential, it is not at all clear why.

While Duke's protective order is epic in length, and would entitle Duke to redact material that it deems "not relevant." I trust we will disagree with Duke on that issue once or twice before this is over, and, it is for that reason that the Rules did not adopt that as a standard for disclosure in discovery. Notwithstanding our opposition to much of the protective order, we offered to stipulate to its terms for 90 days while a workable agreement is negotiated or an order is entered. I thought that was generous concession. Given that it was your client's proposed order, I had absolutely no doubt that your client would readily agree. So I was surprised to read Jeremy's note rejecting our offer, which, as you say, "sounds like 'my way or else.'" Here is Jeremy's response:

> As soon as that agreement is entered, we will produce documents that have been withheld on confidentiality grounds. If we're unable to come to an agreement, we can discuss a bridge agreement at that time.

Because this made no sense to me, particularly in light of our discussions in which we shared a common interest in avoiding unnecessary disputes relating to discovery, I assumed you had not been involved in the decisions reflected in Jeremy's response. So I wrote you to ask that you review it and reconsider our proposal to accept your clients' terms as a bridge agreement. Here's what I wrote to you:

> I was certain this proposed bridge agreement would address your concerns and resolve the short term problems this is creating for us as we design our discovery plan and prepare to take depositions. Would you take a look at what we've proposed, and let me know what else can we do to get the discovery we have requested?

You responded promptly to my request, and indicated that you were aware of the decision to reject our proposal. As I have mentioned already, I was (and remain) flummoxed by the response.

In light of our willingness to stipulate to your clients' terms on an interim basis, our position cannot be fairly characterized as "my way or else." My reply to you was a statement of the obvious: if we cannot

resolve this by agreeing to your clients' terms on an interim basis, I don't know what else to offer. As I said, short of asking the court for help, I am truly out of ideas.

To be clear, our immediate concerns relate to time limitations. If you have any ideas to resolve that problem, please let me know. I sincerely have no viable ideas beyond what we offered. For example, I would have suggested that we extend our discovery period to compensate for the delay, but the parties cannot unilaterally agree to that under the Rules, we are already on the exceptional case management track, and a second phase of discovery will begin upon completion of this one (if not sooner).

That said, we have carefully reviewed Duke's proposed protective order. Specifically, we reviewed the draft of what Duke has negotiated thus far with the *Carrington* Plaintiffs. My understanding is that Duke has reached an impasse over the word "business." You will see in our response to Duke's proposed protective order that the McFadyen Plaintiffs have a number of additional disagreements (our response is attached as a redlined version of the current *Carrington* draft).

To the extent that we seek the aid of the court, we will do so in order to avoid further loss of time in the discovery period. However, we will continue to welcome any alternatives you might propose. So the answer to your question, is, yes, this is how we will handle things: Specifically, we will continue produce discovery upon request without unnecessary delay and we will continue to expect the same in return. In that vein, the only complaints we have received from your office relate to difficulties in handling the volume of material we have produced pursuant to your discovery requests.

I hope your client finds the attached protective order sufficient to protect its legitimate interests, and look forward speaking with you soon.

-Bob

EKSTRAND & EKSTRAND LLP

811 Ninth Street, Durham, North Carolina 27705

(919) 416.4590 (Office) | (919) 416.4591 (Fax) | (919) 432-5007 (Direct)

On Wed, Nov 16, 2011 at 4:34 PM, Dick Ellis <Dick.Ellis@elliswinters.com> wrote:

Bob, there is a typo in the number I sent to you. It should be 919-267-9890. But I'll call you on your cell.

Also, I'm responding to your earlier email in which you wrote: "Ok. I'm out of ideas. Jeremy's response is not acceptable. We need the documents to we requested (i.e., identified in your initial disclosures) and will proceed accordingly."

-Bob

My response:

Bob, you already have the documents we identified in our initial production. We mailed you a disc on November 9. If, by chance, you didn't get it, please let me know ASAP.

As for the confidentiality agreement, we sent you a draft proposal weeks ago, but have received nothing from you. I assume you will want some of your clients' materials protected, so the agreement should be of interest to both of us. Stefanie did call a few days ago and asked if we had sent something similar to the Carrington people (I told her we had). I told her that we were negotiating and approaching an understanding with them, and once we accomplished that, I would send her whatever was arranged with them. That is still our plan, as Jeremy noted.

I know, of course, that you will proceed as you see fit. But frankly, I'm not sure there is anything to proceed about. Shouldn't we see if we can reach agreement first? Right now, all I see is your "not acceptable" and that you will "proceed accordingly"- which sounds like "my way or else." Is that how we are to handle things?

Best regards - Dick

From: Robert Ekstrand [mailto:rce@ninthstreetlaw.com]
Sent: Wednesday, November 16, 2011 3:58 PM
To: Dick Ellis

Subject: Re: Depositions, Dates, & Other Discovery Issues

I will. First chance.

-Bob

On Nov 16, 2011, at 3:28 PM, Dick Ellis <Dick.Ellis@elliswinters.com> wrote:

OK. Please call me at 267-9090 when you free up.

From: Robert Ekstrand [mailto:rce@ninthstreetlaw.com]
Sent: Wednesday, November 16, 2011 2:39 PM
To: Dick Ellis
Cc: SAS
Subject: Re: Depositions, Dates, & Other Discovery Issues

Ok. I'm out of ideas. Jeremy's response is not acceptable. We need the documents to we requested (i.e., identified in your initial disclosures) and will proceed accordingly.

-Bob

On Nov 16, 2011, at 7:06 AM, Dick Ellis <Dick.Ellis@elliswinters.com> wrote:

Bob, I have considered it and I appreciate yr and Stefanie's thoughts. I asked Jeremy to respond (with our thoughts). I believe he did.

I owe you a call; I have not forgotten. Dick

From: Robert Ekstrand [mailto:rce@ninthstreetlaw.com]
Sent: Tuesday, November 15, 2011 10:17 PM
To: Dick Ellis
Subject: Fwd: Depositions, Dates, & Other Discovery Issues

Dick:

Can you weigh in on this? We have proposed to agree to your protective order (with the exception ourself action of information you believe is 'not relevant') for up to 90 days while an agreement / court order is put in place.

I was certain this proposed bridge agreement would address your concerns and resolve the short term problems this is creating for us as we design our discovery plan and prepare to take depositions.

Would you take a look at what we've proposed, and let me know what else can we do to get the discovery we have requested?

-Bob

Begin forwarded message:

From: "Jeremy Falcone" <Jeremy.Falcone@elliswinters.com>
Date: November 15, 2011 9:27:31 PM EST
To: "Stefanie Sparks" <sas@ninthstreetlaw.com>, "Dick Ellis" <Dick.Ellis@elliswinters.com>
Cc: "Robert Ekstrand" <rce@ninthstreetlaw.com>, "Dixie Wells" <Dixie.Wells@elliswinters.com>
Subject: RE: Depositions, Dates, & Other Discovery Issues

Stefanie,

Thank you for reaching out to us regarding dates for Alleva and Kennedy. We will determine when they can be available around your dates, our schedules and the existing depositions in the Carrington case.

We'd like to reach an agreement on the protective order. We are nearing an agreement with the Carrington plaintiffs. I'm confident we can do the same. As soon as that agreement is entered, we will produce documents that have been withheld on confidentiality grounds. If we're unable to come to an agreement, we can discuss a bridge agreement at that time.

Jeremy

From: Stefanie Sparks [mailto:sas@ninthstreetlaw.com]
Sent: Tuesday, November 15, 2011 3:34 PM
To: Dick Ellis; Jeremy Falcone
Cc: Robert Ekstrand
Subject: Depositions, Dates, & Other Discovery Issues

Dick and Jeremy,

As I relayed to Dixie early last week and just now to Jeremy over the phone, the first two people we would like to depose in the beginning/middle of December are Joe Alleva and Chris Kennedy. We wanted to follow-up this week and confer further with you about dates for these two individuals. The two depositions that we would like to do in January are Gary Smith and Greg Stotsenberg. Dates that we are available are the following:

12/1 - 12/3

12/12 - 12/16

12/29 - 12/30

1/9 - 1/13

1/23 - 1/26

Protective Order

Additionally, because documents are being withheld pending the implementation of a protective order and in light of the number of documents we have already produced and will be producing over the next week, we think the following bridge agreement is sufficient to protect identified documents during the time period between now and the implementation of a protective order.

Bridge Agreement

Produce all of the documents that are being withheld pending the implementation of a protective order. We will consider, and as such, treat all of the documents produced under this bridge agreement as protected documents for 45 days. If there end up being any disagreements as to the scope and procedural elements of the protective order that are unable to be resolved between Plaintiffs and Duke Defendants in *McFadye*n, those disagreements will go before the Court. If the Court is unable to hear the issues relating to any existing disagreements as to the protective order within the initial 45 days from the date of production, we will extend the initial protection period for an additional 45 days. We think 90 days is sufficient to implement a protective order. We would propose the same with documents that we identify to you in our production as documents we believe should be protected. For example, some of the documents we have identified as protected include medical and educational records. Additionally, at some point during the time period of the bridge agreement, each side will also produce their respective privilege logs.

FERPA Release

I will also forward the email I sent to Dixie last week regarding Plaintiffs' FERPA Releases. As you are aware, parts of Plaintiffs' academic file were requested in Defendant's First request for Production of Documents.

I look forward to hearing from you at your earliest convenience regarding these issues.

Best,

Stefanie

--

Stefanie A. Sparks

Associate

EKSTRAND & EKSTRAND LLP
811 Ninth Street, Suite 260
Durham, NC 27705
Phone: 919.416.4590
Fax: 919.416.4591

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received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:07-CV-953

RYAN MCFADYEN, *et al.,*

Plaintiffs,

v.

DUKE UNIVERSITY, *et al.,*

Defendants.

CONSENT PROTECTIVE ORDER ON CONFIDENTIALITY AND PROSPECTIVE SEALING ORDER
Fed. R. Civ. P. 26(c)

IT IS HEREBY STIPULATED BY THE PARTIES AND ORDERED BY THE COURT as follows:

The Court finds that certain information sought to be produced during discovery in this action likely will represent or contain confidential medical, educational, or personnel records, and/or technical or commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure. Accordingly, the Court finds good cause for entry of this Protective Order ("Protective Order").

IT IS THEREFORE ORDERED as follows:

1. Parties To The Protective Order. The parties to this Protective Order are Plaintiffs and the Duke University Defendants (collectively, the "Parties"). The Parties consent to this Protective Order through their counsel of record: Plaintiffs, throughRobert C. Ekstrand and Stefanie A. Sparks of Ekstrand & Ekstrand, LLP;and the Duke University Defendants, through Richard W. Ellis, Dixie T. Wells, Jeremy Falcone, and Paul K. Sun, Jr. of Ellis & Winters LLP. To the extent that any other person seeks

access to information designated as confidential pursuant to this Protective Order, such person or its counsel must first execute the Agreement Concerning Protected Information attached as Exhibit A hereto ("Confidentiality Agreement"). Specifically, and without limiting the foregoing, if any party to the above-captioned litigation ("Litigation") who is not a Party to this Protective Order (*e.g.*, a party that is involved in a claim for which discovery has been stayed) seeks access to information designated as confidential, seeks to attend a portion of any deposition at which confidential information is discussed or seeks to review any deposition exhibit containing confidential information, such party or its counsel must first execute the Confidentiality Agreement. As used herein, the term "Signatory" shall refer to any person who has executed the Confidentiality Agreement.

2. Material Governed. This Protective Order shall govern all discovery material produced or disclosed in this Litigation, including the following: documents (which shall have the broadest possible meaning and include information memorialized in any way, including in paper or electronic format), data and information, answers to interrogatories, deposition transcripts, answers to deposition questions, responses to requests for admission, affidavits, and such other materials and information as may be provided by the Parties or other persons during the course of discovery in this Litigation, including pages of documents or divisible parts of other materials.

3. "Confidential Information." For purposes of this Protective Order, "Confidential Information" means information in any form, including those described in paragraph 2, that is disclosed and designated in accordance with the procedures set forth

in this Protective Order and that reflects or contains: personal financial information, *e.g.* salary information, account statements and tax returns and related schedules and supporting documents; personal health information, *e.g.* medical records; education records as that term is defined in the Family Educational Rights and Privacy Act ("FERPA"); disciplinary information, *e.g.* information related to discipline by a school~~,~~; personnel records, *e.g.* performance reviews and evaluations; ~~and financial or economic data~~minutes of meetings of the Duke University board of trustees; decisions involving faculty hiring, retention, and compensation issues; information regarding insurance policies; research by faculty that would otherwise remain in confidence; information related to police investigations that is ordinarily maintained in confidence; and strategic, financial or economic information that would ordinarily be maintained in confidence, where the disclosing person has taken appropriate efforts to maintain the confidentiality of such information or the party is otherwise required to keep such information confidential by agreement or law. The designation of material as Confidential Information shall be deemed effective, subject to the provisions of paragraph 17.

4. Public Information. No document or other material that is or becomes available to the public, other than through a violation of this Protective Order, shall be considered Confidential Information.

5. Uses. Confidential Information appearing in any form, including those described in paragraph 2, may not be disclosed to any person except as permitted in paragraph 13 or as otherwise ordered by the Court. Confidential Information produced in

this Litigation is to be used solely for purposes of this Litigation (*i.e.*, preparing for trial, for use at trial, and preparing for any appeal of this Litigation). and shall not be used in any other litigation, including but not limited to the litigation captioned *Carrington v. Duke University*, Case No. 1:08-cv-119, or for any business or other purpose whatsoever. By their signatures below, undersigned counsel specifically agree and represent that they and their clients will not provide such information or documents to anyone who is not a Party or a Signatory, including but not limited to posting (either directly or indirectly) any Confidential Information on any website that is accessible to anyone who is not a Party or a Signatory.

6. Designation of Information as "CONFIDENTIAL." A Party or other person may, in the exercise of good faith, designate any material as Confidential Information pursuant to this Protective Order. Documents, responses to interrogatories, responses to requests for admission, exhibits and other material may be designated as containing Confidential Information by stamping the word "CONFIDENTIAL" on each page or medium containing the material or data sought to be protected, such that the material or data appearing on the page is not obscured. Upon request of counsel for any Party to this Litigation, the designating person shall promptly and precisely identify the Confidential Information on a page stamped "CONFIDENTIAL." Material produced or used in a non-hard copy format (*i.e.*, a native format, such as an Excel spreadsheet file or Word document file) may be designated as containing Confidential Information by stamping the word "CONFIDENTIAL" on any compact disc containing such material

and/or by otherwise conspicuously indicating, as appropriate for the type of electronic material at issue, that such material is "CONFIDENTIAL" (*e.g.*, by including the word "CONFIDENTIAL" in the name of the electronic file).

7. Documents Produced for Inspections. For purposes of disclosing documents for inspection, the disclosing person may refrain from designating specific documents as Confidential Information until after the inspecting person has selected specific documents and/or materials for copying. In this event, the disclosing person shall announce in writing prior to producing the documents or material for inspection that all such documents and material should be considered Confidential Information for the purposes of the inspection. After the inspecting person selects specified documents and material for copying the disclosing person shall designate any Confidential Information contained in such material.

8. Non-Relevant Confidential Information. Before producing discovery material, a disclosing person may redact Confidential Information that is not relevant to the subject matter of this Litigation. Any discovery material that is redacted shall have "REDACTED" stamped on each page from which Confidential Information has been redacted. The disclosing person shall produce a log describing the nature of the redacted Confidential Information.

9. ~~8.~~ Deposition Designations In General. All oral deposition testimony, regardless of whether the testimony was designated as Confidential Information on the record, shall be treated as Confidential Information and subject to this Protective Order

for thirty (30) days after counsel for each of the Parties has received the transcript of the deposition.

10. ~~9.~~ Designations During The Deposition. Any person may, on the record at the deposition, designate portions of oral testimony, or the testimony in its entirety, as Confidential Information. In the event that any question is asked at a deposition with respect to which it is asserted, on the record, that the answer requires the disclosure of Confidential Information, the question shall nonetheless be answered by the witness fully and completely. Before the deposition begins, however, all persons present who are not otherwise bound by this Protective Order shall be required to sign or otherwise indicate on the record their agreement to the Confidentiality Agreement. If any such person, other than the witness, declines to do so, that person shall leave the room during the time in which Confidential Information is disclosed or discussed. When any document or other material designated as Confidential Information is introduced as an exhibit, counsel introducing such exhibit shall advise the court reporter that the exhibit is Confidential Information pursuant to this Protective Order. All persons present at the deposition during the discussion of such exhibit shall either be a Party or a Signatory or shall otherwise evidence their agreement to the Confidentiality Agreement. No deposition exhibit marked as Confidential Information shall be provided to any person who is not a Party or Signatory or who did not otherwise evidence his or her agreement to the Confidentiality Agreement. The fact that a Party has not objected to designation of all or any portion of the deposition transcript as Confidential Information during the deposition

itself does not waive such Party's right to seek release of that transcript from the terms and provisions of this Protective Order pursuant to paragraph 17.

11. ~~10.~~ Designations After The Deposition. Alternatively, counsel for the designating party may designate an entire transcript or designate specific pages and lines of the transcript or video recording of the deposition as Confidential Information by notifying counsel for the Parties and other attendees of the deposition in writing within thirty (30) calendar days of receipt of the transcript or video recording of such deposition. If within thirty (30) calendar days of receipt of the transcript or video recording of such deposition no person timely designates the transcript or recording, or any portion thereof, as Confidential Information, then the transcript and any recording shall not thereafter be subject to this Protective Order. Deposition exhibits that are marked as "CONFIDENTIAL" will continue to be protected without further designation, and the continued protection of such exhibits will not be dependent upon the transcript, or any portion thereof, being designated as Confidential Information.

A separately-bound transcript of those portions of the deposition testimony and exhibits that are designated as Confidential Information shall be made and the cover shall be marked with the "CONFIDENTIAL" designation. If any portion of any transcript so marked is required to be filed with the Court, it shall be filed using the procedures set forth in paragraph 21.

12. ~~11.~~ Restrictions on Disclosure. No Confidential Information shall be disclosed

to any persons other than those Authorized Persons identified in paragraph 13, who may use such information only for the purposes described in paragraph 5. Nothing in this Protective Order, however, shall prevent disclosure beyond the terms of this Protective Order if the person designating the information consents in writing prior to such disclosure, or if the Court orders such disclosure. Nothing in this Protective Order shall be construed as a restriction on the use or disclosure of information by the person who supplied the information, or otherwise limit the ability of a person to publicly disclose its own Confidential Information.

13. ~~12.~~ Authorized Persons. Except as agreed to in writing by the designating person (or its counsel) or as otherwise provided by this Protective Order, and only after compliance with the procedures set forth herein, access to Confidential Information shall be restricted to the following persons:

a. The Court and Court personnel;

b. The Parties to this Litigation, provided that Duke University personnel with access to material designated as Confidential Information by the Plaintiffs shall be limited to officers, administrators, employees, and contractors of Duke University who require such access in order to assist in or evaluate this Litigation, provided that such persons orally agree to abide by the terms and provisions of this Protective Order;

c. Counsel of record described in paragraph 1 of this Protective Order, along with associated attorneys in their law firms and law clerks, paralegals, clerical staff, and other staff employed by such law firms, and contractors of ~~Ekstrand & Ekstrand, LLP~~such law firms who require such access in order to assist in or evaluate this Litigation, provided that such persons orally agree to abide by the terms and provisions of this Protective Order;

d. Independent consulting or testifying expert witnesses or trial consultants, including their staff, retained by the parties in connection with this case, provided that such persons sign the Confidentiality Agreement;

e. Outside contractors hired to copy, index, sort, or otherwise manage the storage and retrieval of discovery material, provided that such persons sign the Confidentiality Agreement;

f. The officer or court reporter taking, reporting, recording, transcribing, or videotaping deposition or other testimony in this action, and employees of such officers or court reporters to the extent necessary to prepare the transcript of the deposition; and

g. Any other person who is subsequently designated either by written agreement by the Parties or by Order of the Court and who has signed the Confidentiality Agreement.

Each person described above to whom Confidential Information is delivered shall maintain the confidentiality of the document and/or information. In the event that any person subject to this Protective Order shall cease to be involved in this Litigation, such person's access to the Confidential Information shall be terminated and such person shall either promptly return such Confidential Information to the person who designated it or destroy such information, providing a written confirmation of such destruction to the person who designated it. Any person who has agreed to be bound by this Protective Order will continue to be bound even if no longer involved in this Litigation.

14. ~~13.~~ Safe-Keeping of Confidential Information. The recipient of any Confidential Information disclosed pursuant to this Protective Order shall maintain it in a secure area and shall exercise due and proper care to protect its confidentiality.

15. ~~14.~~ Inadvertent Disclosure of Confidential Information By Designating Person.

Failure to designate or stamp information as "CONFIDENTIAL" at the time of its production shall not constitute a waiver of protection of such Confidential Information, provided that the disclosing person or its counsel promptly notifies all receiving persons upon realizing the failure, but in no event more than thirty (30) calendar days from the date of production. Any person who is notified that Confidential Information has been inadvertently produced shall treat the information as subject to this Protective Order unless and until the Court determines that such designation does not apply. Such receiving person shall make reasonable efforts to notify all other persons to whom it has provided the Confidential Information that such material shall be treated and handled in accordance with this Protective Order. However, the receiving person shall not be in violation of this Protective Order for any disclosure of information made prior to receiving such notice.

16. ~~15.~~ Disclosure of "CONFIDENTIAL" Information By Receiving Party. If a

Party or other person receiving "CONFIDENTIAL" Information learns that, by inadvertence or otherwise, it has disclosed such information under circumstances not authorized under this Protective Order, such receiving Party or person shall immediately (i) notify in writing the person who designated the information as "CONFIDENTIAL" of the unauthorized disclosures; (ii) use its best efforts to retrieve all copies of the "CONFIDENTIAL" information; and (iii) inform the person or persons to whom unauthorized disclosure was made of all the terms of this Protective Order.

17. Objections to Designations. Counsel for any Party may at any time object to the designation of any material as Confidential Information and seek the release of such material from the terms and provisions of this Protective Order by making such request in writing to the person who designated such material as Confidential Information. Upon making such a request, the Party requesting the release shall initiate a "meet and confer" among all Parties to this Protective Order and the person who designated the material as Confidential Information. If the Parties and the designating person are unable to agree as to whether the material at issue is properly designated Confidential Information, counsel for the designating person may, within 30 days of the "meet and confer" session, file a motion defending such designation with the Court. If counsel for the designating person does not file such a motion within 30 days, the challenged information originally designated as Confidential Information shall be released from the terms and provisions of this Protective Order. If counsel for the designating person does file such a motion within 30 days, pending a ruling from the Court, information originally designated as Confidential Information shall be subject to this Protective Order until the Court rules otherwise.

18. ~~16.~~ Notification of Subpoenas. In the event that any person who receives or is

in possession of Confidential Information subsequently receives from anyone who is not bound by this Protective Order any subpoena or other compulsory request seeking the production or other disclosure of such Confidential Information, that person shall

immediately notify in writing the person who designated the material as Confidential Information, specifying the material sought and enclosing a copy of the subpoena or other form of compulsory process in order to permit the designating person the opportunity to intervene and seek to prohibit the disclosure of the material. Where possible, at least ten (10) calendar days' notice shall be given prior to the production or disclosure sought to be compelled. Unless otherwise ordered by a court or other tribunal with appropriate jurisdiction, in no event shall any person produce or disclose Confidential Information before notice is given to the person who designated such material as Confidential Information.

19. Third Parties. Any person, even if not a Party to this Litigation, who produces information pursuant to subpoena, other legal process or otherwise may designate such material as Confidential Information pursuant to this Protective Order.

20. ~~17.~~ Newly-Added Parties. In the event that additional parties are named in this Litigation, neither they nor their counsel shall have access to Confidential Information until this Protective Order has been amended, with the Court's approval, to govern such additional parties and counsel, and until such additional parties and their counsel have signed the Confidentiality Agreement.

21. ~~18.~~ Filing with the Court. No Party or other person shall file any materials that

contain Confidential Information with the Court unless filing those materials is relevant to an issue before the Court. If a party desires to file materials containing Confidential Information with the Court or to reference or quote Confidential Information in any filing, its counsel shall comply with the following provisions:

a. For Dispositive and Other Substantive Filings. Counsel will perform a document-specific, good faith examination of the Confidential Information to be filed under seal to ensure that it meets the legal and factual criteria for such treatment. If the Confidential Information meets the legal and factual criteria for filing under seal, counsel for the Party or person seeking to file, reference or quote Confidential Information shall file a motion with this Court showing the particularized need for filing, referencing or quoting such material. No Confidential Information shall be filed under seal, or be referenced or quoted in a filing made under seal, without the filing person having first obtained an order granting leave to file under seal. Upon appropriate order of the Court, Confidential Information may be filed under seal, or referenced or quoted in a filing made under seal, according to the local rules and other authority governing the filing of material under seal in this District. For any filing or portion thereof submitted under seal pursuant to this Protective Order, the filing person shall file a redacted version that does not reflect Confidential Information such that the redacted filing is publicly-available on the Court's CM/ECF docket.

In the event that the person seeking to file, reference or quote Confidential Information is not the person who designated the material as Confidential Information,

the person seeking to file, reference or quote such material shall give the designating person ten (10) days advance notice that it intends to do so. The designating person then may file a motion with the Court seeking an order that such material must be filed under seal as provided in this sub-paragraph. In that event, no Confidential Information shall be filed, referenced or quoted in a publicly-available filing until the Court rules on such motion. In the event that the designating person files such motion and the Court does not rule on such motion by the time the Confidential Information is filed, the Confidential Information shall be filed provisionally under seal pending that ruling. If, upon the ten (10) days advance notice described above, the designating person has not filed such a motion within those ten days, then the material at issue may be deemed non-confidential and not protected by the terms of this Protective Order.

b. For Discovery-Related Motions. Any Confidential Information filed in connection with a discovery-related motion and any portion of any discovery-related motion that references or quotes Confidential Information must be filed under seal, and this Protective Order shall be cited as authority for such filing under seal. The filing of Confidential Information under seal shall be done according to the local rules and other authority governing the filing of material under seal in this District. For any filing or portion thereof submitted under seal pursuant to this Protective Order, the filing person shall file a redacted version that does not reflect Confidential Information such that the redacted filing is publicly-available on the Court's CM/ECF docket.

22. ~~19.~~ No Waiver. By consenting to this Protective Order, no Party waives any right it may have to dispute any person's designation of Confidential Information. Further, by declining to challenge the designation of any material as Confidential Information, no Party waives any right it may have to challenge the use, admissibility or authenticity of such material for any other reason.

23. ~~20.~~ Use at Trial. Either Party may move this Court for an order that the evidence at trial be received in such a way as to prevent unnecessary disclosure consistent with applicable law. Absent such additional order of this Court, all parties are entitled to use Confidential Information as evidence during trial without restriction. The Parties shall have the right to request that any hearing or portions of any hearing involving the use or presentation of Confidential Information be conducted in camera.

24. ~~21.~~ Conclusion of Litigation. At the conclusion of this Litigation, all copies of any document, file or other material that contains or reflects Confidential Information shall be destroyed within sixty (60) calendar days of the disposition or final termination of this case (or if a post-hearing motion or appeal is filed, sixty (60) calendar days after the disposition of those matters). Counsel for each person who has received Confidential Information shall certify in writing to the disclosing person that all such information has been destroyed. Notwithstanding the foregoing, counsel may retain two archival copies of court filings (one in electronic form; one in hard copy form) and two copies of

deposition and trial transcripts (including two copies of exhibits thereto) (one in electronic form; one in hard copy form), as well as any materials constituting attorney work product, containing Confidential Information, which materials will remain subject to this Protective Order.

25. ~~22.~~ Survival. The terms and conditions of this Protective Order shall remain in full force and effect, shall survive the final resolution of this Litigation and shall be binding on all Parties and Signatories unless the Protective Order is terminated or modified in writing by the Court. Each person subject to this Protective Order shall continue to be subject to the jurisdiction of this Court, for the purposes of this Protective Order, in perpetuity, and the Court will retain jurisdiction to enforce the terms of this Protective Order following termination of this Litigation, the filing of a notice of appeal or any other pleading which would have the effect of divesting this Court of jurisdiction of this matter generally.

26. ~~23.~~ Modification or Termination. The entry of this Protective Order shall be without prejudice to the rights of any person to apply for additional or different protection where it is deemed appropriate. This order is subject to modification or termination by ~~written agreement by the Parties or~~ the Court upon showing of good cause.

27. ~~24.~~ Notices. All notices required or permitted to be provided by this Protective

Order shall be made by email. In the event that notification by email is impracticable, a notice shall be made by either (i) hand-delivery of the notice to counsel of record in person; or (ii) sending the notice by a courier for overnight delivery to counsel of record.

SO ORDERED, this the _____ day of _____, 2011.

_____
United States Magistrate Judge

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Counsel for Duke University Defendants

EXHIBIT A: Agreement Concerning Protected Information

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:07-CV-953

RYAN MCFADYEN, *et al.,*

Plaintiffs,

v.

DUKE UNIVERSITY, *et al.,*

Defendants.

CONSENT PROTECTIVE ORDER ON CONFIDENTIALITY AND PROSPECTIVE SEALING ORDER
Fed. R. Civ. P. 26(c)

The undersigned acknowledges that s/he has been given access to certain documents or testimony covered by the Consent Protective Order on Confidentiality and Prospective Sealing Order ("Protective Order") in this case, that s/he has read, understands, and agrees to be bound by the terms and conditions of the Protective Order, that s/he consents to the jurisdiction of the United States District Court for the Middle District of North Carolina for purposes of enforcing this Protective Order, and that s/he has been designated as an Authorized Person under the terms of this Protective Order. The undersigned further understands that the Protective Order prohibits him/her from disclosing or discussing the contents of any document or other material designated in accordance with the Protective Order to or with any person other than those individuals identified in the Protective Order. The undersigned further understands that his/her use of such documents or material is limited to those uses authorized by the Protective Order.

_____
SIGNATURE

_____
PRINTED NAME

_____
DATE

Document comparison by Workshare Professional on Thursday, December 01, 2011 8:55:37 AM

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Split/Merged cell	
Padding cell	

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