IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NUMBER 1:07-CV-00953

RYAN McFADYEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**DUKE UNIVERSITY'S**
	)	**OPPOSITION TO PLAINTIFFS'**
DUKE UNIVERSITY, et al.,	)	**MOTION TO COMPEL**
	)	
Defendants.	)	
_____	)	

Defendant Duke University (herein "Duke"), through counsel, submits its brief in opposition to Plaintiffs' Motion to Compel. [DE 297 (the "Motion")].

INTRODUCTION

Plaintiffs filed their Motion to Compel after discovery closed on Counts 21 and 24. The four issues Plaintiffs present in the Motion reflect the same lack of diligence evident in the filing of the Motion after the close of discovery.

First, Plaintiffs demand that Duke remove redactions of the names of every student in its document production. The Protective Order entered by the Court permits such redactions. [DE 284]. Moreover, as counsel for Plaintiffs is well aware, Duke cannot remove the redactions of any names of its students without potentially violating federal law and bearing an enormous burden of notifying

those students.[1]

Second, after a year of discovery, Plaintiffs now complain about Duke's selection of seventeen custodians from whom to search email files. Plaintiffs' complaint is misleading – Duke produced email data from more than those seventeen custodians, and produced non-electronic data not only from those seventeen key custodians, but from over seventy other custodians as well. But even if Plaintiffs had a legitimate complaint, they do not explain their delay in raising it, do not identify any additional custodians they believe possess relevant electronic documents, and offer no justification for the enormous burden it would place on Duke at this point in the case to do additional electronic discovery.

Third, Plaintiffs urge the Court to enforce thirteen subpoenas on current and former Duke employees served by Plaintiffs six days before the close of discovery. Each of the subpoenas demanded numerous categories of documents, and duplicated in large part requests for production Plaintiffs served on Duke. These subpoenas are per se unreasonable under Rule 45.

Fourth, Plaintiffs ask the Court to require Duke to amend its responses to three requests for admissions. Each of these requests includes seven separate

[1] Duke briefed this issue for the Court in an unrelated case several months ago. *See Rouse v. Duke University*, No. 1:11-cv-00549-CCE-JEP (M.D.N.C. July 23, 2012). [DE 65].

factual contentions. Duke has been unable to ascertain that all seven are true, and is entitled to assert lack of information or knowledge as reason for its inability to admit or deny. Therefore, there is no cause to order Duke to amend its responses.

ARGUMENT

I. Duke Properly Redacted Student Names from Produced Documents.

Paragraph 8 of the Protective Order allows the parties to redact information from produced documents, and Duke properly redacted information in the documents it produced. [DE 284 ¶ 8]. As the Protective Order requires, Duke prepared a log of these redactions.

Duke had not provided the redaction log to Plaintiffs as of the date Plaintiffs filed their Motion, because the Protective Order requires a party to request the log. [DE 284 ¶ 8 ("Upon the request of counsel for any Party to this Litigation, the disclosing person shall produce a log describing the nature of the redacted Confidential Information.")]. In an abundance of caution, Duke treated Plaintiffs' argument in its Motion as such a request, providing to Plaintiffs on 11 October 2012 the log reflecting redactions made for reasons other than attorney-client privilege or pursuant to the work product doctrine. (Email from Ms. Wells to Mr. Ekstrand, dated 11 October 2012, attached as Exhibit 1).

Not only are Duke's redactions consistent with the Protective Order, but most of the redactions are required by federal law. Duke's redaction log reflects primarily redactions pursuant to the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"). FERPA generally prohibits educational institutions from disclosing personally identifiable information in its education records without advance written consent from the student. *See id.* § 1232g(b)(1); 34 C.F.R. § 99.30(a); *United States v. Miami Univ.*, 91 F. Supp. 2d 1132, 1145 (S.D. Ohio 2000) ("FERPA imposes a direct obligation on universities not to disclose 'education records'") (quotation in original), *aff'd*, 294 F.3d 797 (6th Cir. 2002). Thus, FERPA requires that Duke redact from education records the names of students who are not involved in the current litigation.

The documents Duke produced and that are at issue are "education records." FERPA defines education records as "records, files, documents, and other materials which – (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). This language is "broad and nonspecific," leading schools to err on the side of nondisclosure. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 292 (2002) (Breyer, J., concurring).

Plaintiffs have the burden to demonstrate the relevance of the personally identifiable information in the education records that Duke has produced in this case, and they have not met that burden. *See, e.g., Ragusa v. Malverne Union Free Sch. Dist*., 549 F. Supp. 2d 288, 291-92 (E.D.N.Y. 2008). The *Ragusa* court ruled that the party seeking disclosure of education records was required to demonstrate a "genuine need for the information that outweighs the privacy interests of the students." *Id.* at 292 (quoting *Rios v. Read*, 73 F.R.D. 589, 598 (E.D.N.Y. 1977)). In other words, "a party seeking disclosure of education records protected by FERPA bears a 'significantly heavier burden . . . to justify disclosure than exists with respect to discovery of other kinds of information, such as business records.'" *Id.* (quoting *Rios*, 73 F.R.D. at 598).

Plaintiffs have undertaken no such effort. Instead, Plaintiffs point only to Duke's redactions of "all student names" in documents produced in response to more than fifty document requests. (Mot. at 4) [DE 297]. Given the scope of this objection, Duke would bear a significant burden if forced to notify "all student names" from more than 6,000 documents across more than 17,000 pages prior to disclosure. *See* 34 C.F.R. § 99.31(a)(9)(ii) (requiring notice to students in advance of disclosure of education records containing personally identifiable information pursuant to court order). This burden to Duke, and to its former

students to the extent they wish to challenge the disclosure order, also weighs in favor of non-disclosure. *See, e.g., Nastasia v. New Fairfield Sch. Dist.*, No. 3:04CV925 (TPS), 2006 WL 1699599, at *1 (D. Conn. June 19, 2006) (ordering notification to student at issue in advance of production of documents containing personally identifiable information).

II. Plaintiffs' Belated Request to Search the Electronic Data of Unnamed Additional Custodians is Improper.

Duke has been appropriately responsive to Plaintiffs' discovery requests. To date, Duke has produced 6709 documents (17,488 pages) to Plaintiffs. These documents were generated from multiple sources including:

- the email accounts of seventeen individuals[2] identified as likely to have relevant documents; the non-electronic files of a total of 96 custodians (both individuals and offices/departments, inclusive of the seventeen email custodians), which resulted in the production of 2336 documents (6390 pages); and

- consistent with Duke's courtesy provision of messages from email accounts assigned to Plaintiffs Archer, McFadyen, and/or Wilson, Duke

[2] These seventeen custodians are: (1) Zoila Airall; (2) Richard Brodhead; (3) Stephen Bryan; (4) Robert Dean; (5) Matthew Drummond; (6) Roland Gettliffe; (7) Aaron Graves; (8) Kate Hendricks; (9) Larry Moneta; (10) Sara-Jane Raines; (11) Michele Rasmussen; (12) Judith Ruderman; (13) Gary Smith; (14) Robert Steel; (15) Greg Stotsenberg; (16) Sue Wasiolek; and (17) Gerald Wilson.

> provided Plaintiffs with thousands of emails for which one of the three Plaintiffs was the sender or recipient.[3]

In sum, Duke has done much more than merely produce electronic documents connected to seventeen custodians. Nonetheless, Plaintiffs now seek an order of the Court compelling Duke to search additional custodians' electronic data, without telling the Court or Duke who these additional custodians should be. Plaintiffs have neither specified what additional discovery they seek, nor showed why they could not have filed this motion before discovery closed. Plaintiffs' request is improper given this lack of specificity and their nearly year-long failure to raise this issue. Requiring Duke to expend additional time and resources at this point would be inefficient and impractical.

[3] "Recipient" includes where a Plaintiff's identity appeared in the header in the "To," "From," "CC," or "BCC" field. These documents were identified from an automated search, without custodial limitation. False positive hits were removed from this data, but the documents were not otherwise reviewed for relevance or responsiveness (because Plaintiffs were being provided with their own emails). A comprehensive review of these same sources would have rendered this particular production prohibitively burdensome, because each document would have had to have been reviewed for relevance, responsiveness, privilege, and confidentiality.

A. Plaintiffs' Year-long Delay in Raising the Issue Waives Their Entitlement to Relief.

Courts recognize that a party has an obligation to pursue discovery diligently, and will deny a motion to compel where the filing party has unduly delayed in bringing such a motion. *See, e.g.*, 8B Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, & Richard L. Marcus, *Federal Practice & Procedure* § 2285 (3d ed.) (2012) (collecting cases). In this case, Duke informed Plaintiffs of its intent to limit its electronic data discovery to seventeen custodians over a year ago, and repeated that to Plaintiffs in writing on at least eight separate occasions during discovery. The procedure Duke followed is consistent with the law, and Plaintiffs' delay in bringing the matter to the Court forecloses any argument that Duke should be compelled to conduct additional electronic discovery.

First, Duke suggested this approach before discovery even began in both this case and the *Carrington* matter. On 1 August 2011, over thirteen months before discovery closed, Duke proposed in its Rule 26(f) report to limit its initial review of data to a specified group of seventeen custodians. [DE 231 ¶ 3(h)(1), pp. 14-16].

Contrary to Plaintiffs' assertion, (Mot. at 5) [DE 297], the Court did not reject Duke's position during the Rule 26(f) conference in late August 2011. Instead, recognizing the potential burden from a large universe of custodians, the

Court suggested a procedure whereby plaintiffs in the *Carrington* matter would provide Duke with a list of potential custodians. This procedure allowed Duke to evaluate the potential burden created by the inclusion of each custodian and, if necessary, present evidence to the Court of the burden in seeking to limit the custodians further:

> MS. WELLS: . . . [T]he estimates that we have gotten from our vendors for -- and that we have made ourselves for preserving and processing the data for the 18 that we have identified, which is almost a terabyte of data, the costs just for processing and storing that information for one year -- and this litigation has already been going on for many more years than that. The cost ranges between $762,000 and $1.5 million just for processing and storing that. And the costs of reviewing that go into more millions. Your Honor, that is incredibly burdensome and—
>
> THE COURT: And I would agree and don't -- don't the cases say, however, that you demonstrate that burden, you're relieved of some of this responsibility, or you can pass it off or give him, the other side, the opportunity to do their own work in storing and processing?
>
> MS. WELLS: Yes, Your Honor. And if Mr. Thompson would give us those 60 names within a reasonable time, we would be prepared to do that and come to the Court with those specific costs that would be incurred by Duke if we are obliged to do for the 60 that he mentioned.
>
> THE COURT: All right.

(Transcript 37:21-38.21, attached as Exhibit 2).

The parties in *Carrington* followed this process and have completed discovery without dispute on this issue. On the other hand, in this case, Plaintiffs' counsel never provided any list or otherwise engaged Duke on the issue of

custodians. Accordingly, in responding to Plaintiffs' requests, Duke limited the custodians it searched.

On 22 September 2011, almost exactly a year before discovery closed, Duke sent Plaintiffs the specific list of seventeen custodians, explaining that these custodians represented approximately 800 GB of information. (Email from Mr. Ellis to Mr. Ekstrand, dated 22 September 2011, attached as Exhibit 3). In that message, Duke also offered to meet and confer regarding the list. *Id.*

Duke reiterated its position to Plaintiffs. On 9 November 2011, nearly eleven months before the close of discovery, Duke served its responses to Plaintiffs' first requests for production. In these responses, Duke notified Plaintiffs that it was limiting its initial review to seventeen custodians:

> In order to reasonably mitigate costs while still complying with discovery mandates, the Duke Defendants have limited their initial review of data to a specified group of seventeen custodians, whose names have been previously supplied to the Plaintiffs. These seventeen custodians are a significant number of custodians for the two narrow claims going forward as to the Duke Defendants, and the Duke Defendants believe that these custodians will yield the most substantial and complete data, without being 'unreasonably cumulative or duplicative.'" Further, going beyond this list of seventeen custodians imposes both a "burden" and "expense" that "outweighs" the "likely benefit" to be gained from searching the electronic records of additional custodians.

(Duke's Responses to Plaintiffs' First Request for Production, at 2-3, attached as Exhibit 4). Duke also provided Plaintiffs with extensive support in the case law for its position. (*Id*. at 2-3, nn. 1, 2; *see also infra* § II.B (reciting cases Duke cited in response to Plaintiffs' document requests)).

Six more times, in various subsequent responses to Plaintiffs' document requests, and within its interrogatory responses, Duke made clear that it limited its email data searches to the seventeen custodians:

- 10 May 2012, Duke's Responses to Plaintiffs' Third Requests for Production, relevant excerpt attached as Exhibit 5, served four months before the close of discovery;
- 10 May 2012, Duke's Responses to Plaintiffs' First Set of Interrogatories, relevant excerpt attached as Exhibit 6, served four months before the close of discovery;
- 6 June 2012, Duke's Amended Responses to Plaintiffs' First Set of Interrogatories, relevant excerpt attached as Exhibit 7, served over three months before the close of discovery;
- 7 August 2012, Duke's First Supplemental Response to Plaintiffs' Third Requests for Production, relevant excerpt attached as Exhibit 8, served over a month before the close of discovery;
- 21 September 2012, Duke's Responses to Plaintiffs' Fourth Requests for Production, relevant excerpt attached as Exhibit 9; and
- 21 September 2012, Duke's Responses to Plaintiffs' Second Set of Interrogatories, relevant excerpt attached as Exhibit 10.

Plaintiffs' delay in raising this issue forecloses the relief they now seek.

See, e.g., RDLG, LLC v. RPM Group, LLC, No. 1:10cv204, 2012 WL 3202851, at *1 (W.D.N.C. Aug. 6, 2012) (holding that absent specific order from the court in scheduling order, party must generally move to compel compliance with discovery request prior to close of discovery or motion is untimely); *Surrett v. Consol. Metco, Inc.*, Civil No. 1:11cv106, 2012 WL 1340548, at *2 (W.D.N.C. Apr. 18, 2012) (same) (finding that because plaintiff filed her motion to compel after close of discovery, it was untimely and therefore denied).

Had Plaintiffs raised the issue in November 2011, Duke might have been able to reach an agreement with Plaintiffs (as Duke did in *Carrington*). Now though, Duke has completed its year-long review and produced responsive documents. Duke would incur a tremendous expense of time and resources if ordered now to conduct an entirely separate review of documents. *See, e.g., U.S. ex rel. McBride v. Halliburton Co.*, 272 F.R.D. 235, 240-241 (D.D.C. 2011) (motion denied to add thirty-five custodians whose data would have to be searched where defendant had already spent "king's ransom" responding to discovery requests, additional searches would be expensive and time-consuming, and plaintiff did not demonstrate that e-mails that had not yet been produced were crucial to her proof; holding "[w]ithout any showing of the significance of the non-produced e-mails, let alone the likelihood of finding the 'smoking gun,' the [party's] demands [for

additional custodians] cannot possibly be justified when one balances its cost against its utility").

In *Garcia v. Tyson Foods, Inc*., No. 06-2198-JWL-DJW, 2010 WL 5392660, (D. Kan. Dec. 21, 2010), the defendants asserted that the plaintiffs unreasonably delayed in bringing their motion to compel. The defendants argued that, similar to this case, the plaintiffs had known the names of the particular custodians for whom the defendants intended to search e-mails, and the plaintiffs never once objected to that list of custodians, nor did the plaintiffs request that any specific custodians be added to the list. *Id.* at *2.

The *Garcia* court found that the plaintiffs failed to demonstrate that in the time since the list was first provided, they had gained any new information about the custodian list that would provide good cause for extending their deadline to file their motion to compel discovery of additional custodians. *Id.* at *12. Likewise, Plaintiffs' untimely demand that Duke effectively start over in discovery that is now closed lacks merit where Plaintiffs have known for more than a year that Duke was limiting its email accounts review to seventeen key custodians.

B. Duke's Limitation to Seventeen Custodians Likely to Have Relevant Information Was Proper.

Even had Plaintiffs timely objected to Duke's position, its initial limitation to seventeen custodians was proper. Courts generally defer to the producing

party's identification of the custodians likely to possess responsive documents. *See Garcia*, 2010 WL 5392660, at *14 ("Plaintiffs present no evidence that a search of e-mail repositories of the 11 [additional] employees at issue is likely to reveal any additional responsive e-mails. . . . Plaintiffs must present something more than mere speculation that responsive e-mails might exist in order for this Court to compel the searches and productions requested."). When the matter is contested, courts limit the number of custodians. *See, e.g.*, *Martinez-Hernandez v. Butterball, LLC*, No. 5:07-cv-174-H, 2010 WL 2089251, at *4-5 (E.D.N.C. May 21, 2010) (request for "thirty-plus custodians" found unreasonable and unduly burdensome). Courts will consider the financial burden created by a large number of custodians. *See, e.g.*, *Thermal Design, Inc. v. Guardian Bldg. Prods. Inc.*, No. 08-C-828, 2011 WL 1527025, at *1 (E.D. Wis. Apr. 20, 2011) (considering cost in denying request to expand custodians).

Plaintiffs have never indicated which custodians were lacking, the rationale justifying a proposed custodian's connection to the litigation, or any information Plaintiffs assert was not provided in the more than 6,000 documents (over 17,000 pages) produced. (Mot. at 5-6) [DE 297]. In their Motion, Plaintiffs completely failed to address the likelihood of receiving information relevant to Counts 21 and 24, which by Court order are the only Counts proceeding. [DE 218; 282].

Duke "need not provide discovery of electronically stored information that the party identifies as not reasonably accessible because of undue burden or cost." *See* Fed. R. Civ. P. 26(b)(2)(B). Without any guidance from Plaintiffs, Duke cannot provide the Court with specific information regarding the potential burden posed by adding particular additional custodians. Given the timing and the unfocused, over broad nature of Plaintiffs' request, however, little question exists that requiring Duke to re-start its review process would constitute a significant and unreasonable burden and expense.

III. Plaintiffs' Third-Party Subpoenas Are Unreasonable.

Rule 45 of the Federal Rules of Civil Procedure makes clear that a subpoena must allow a reasonable time for compliance. *See* Fed. R. Civ. P. 45(c)(3)(A)(i) (mandating that, upon a timely motion, a court "must quash or modify a subpoena that . . . fails to allow a reasonable time to comply"). Plaintiffs served the thirteen subpoenas at issue on Saturday, 15 September 2012, six days before the close of discovery. The subpoenas set the compliance date for the final day of discovery, 21 September 2012, six days after service. Because the document subpoenas were untimely and improper, all thirteen witnesses served objections to the subpoenas on 21 September 2012, as permitted by Rule 45(c)(2)(B).

Subpoenas that require documents to be produced in six days are unreasonable as a matter of law. *See Brown v. Hendler*, No. 09 Civ. 4486(RLE), 2011 WL 321139, at *2 (S.D.N.Y. Jan. 31, 2011) (finding nine days not reasonable and noting that "[f]ederal courts have also found compliance times of eight and seven days not to be reasonable" pursuant to Rule 45); *Tri Invs., Inc. v. Aiken Cost Consultants, Inc.*, No. 2:11cv4, 2011 WL 5330295, at *2 (W.D.N.C. Nov. 7, 2011) (quashing deposition subpoena because "[s]ix total days and four business days is not a reasonable time to comply with a subpoena and notice of deposition"). The unreasonable demand for compliance within six days is magnified here, where all but one of the subpoenas contained twenty-seven or more categories.[4]

In addition, Plaintiffs' document subpoenas were an impermissible attempt to circumvent the requirements of Rule 34. *See Joiner v. Choicepoint Servs.,*

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[4] The subpoenas to Richard Brodhead, Stephen Bryan, John Burness, Gerald Wilson, Prasad Kasibhatla, Larry Moneta, Robert Steel, Robert Thompson, and Sue Wasiolek contained thirty-three topics each. The subpoenas to Zoila Airall, Jack Bookman, and Judith Ruderman contained twenty-seven topics each. The subpoena to Chris Cramer contained seventeen topics. (*See generally* DE 297-4 through 297-16). Subpoena recipients Brodhead, Bryan, Wilson, Moneta, Steel, Wasiolek, Airall, and Ruderman are among the seventeen custodians for whom Duke has already reviewed and produced extensively from searches of both email and hard-copy data.

Inc., Case No. 1:05CV321, 2006 WL 2669370, at *6 (W.D.N.C. Sept. 15, 2006) ("Plaintiff's proper remedy to seek documentation belonging to Defendant is through a Rule 34 request"). The subpoenas at issue were directed to current or former Duke employees. Virtually every document requested by the subpoenas was also sought through document requests to Duke. (*Compare* Subpoena to Richard Brodhead, attached as Exhibit 11, topics 1, 7, and 15 *with* Exhibit 9, Nos. 39-41). These third-parties would have been subjected to an undue burden to search for documents that Duke, a named defendant in this case, was also asked to produce.

For each of these reasons, the witnesses timely objected to the subpoenas. *See* Fed. R. Civ. P. 45(c)(2)(B). Duke respectfully requests that the Court deny Plaintiffs' request to compel the third-party witnesses' compliance with these untimely and unreasonable subpoenas.

IV. Plaintiffs Cannot Compel Different Responses to Requests for Admission.

Duke timely served its responses to Plaintiffs' First Requests for Admission on 10 January 2012. (Duke University's Response to Plaintiffs' First Requests for Admissions, attached as Exhibit 12). Eight months later, and after the close of discovery, Plaintiffs seek to compel under Rule 37 different responses to three of Plaintiffs' requests for admission. (Mot. at 10) [DE 297].

Pursuant to Rule 36(a)(4), Duke was obligated to admit the matter requested, or state in detail why it could not truthfully admit or deny it. *See* Fed. R. Civ. P. 36(a)(4). That Rule permits a party to not admit or deny a request when it lacks knowledge or information to do so, but only if the answering party "states that it has made a reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny." *Id.*

Duke fully complied with Rule 36. [DE 297-2]. Thus, Duke's original responses are neither evasive nor incomplete such that they should be treated as a failure to respond. *See* Fed. R. Civ. P. 37(a)(4). Duke is not otherwise required now to provide a more complex response to these requests. *See, e.g.*, *Ohio Cas. Ins. Co. v. Firemen's Ins. Co. of Washington, D.C.*, No. 5:07-CV-149-D, 2008 WL 413849, at *3 (E.D.N.C. Feb. 13, 2008) ("The purpose of a request for admission is not to require a party to detail the entire factual background of the case or to provide all facts that weigh in a decision to admit or deny a request for admission.").

Furthermore, Duke was under a duty to amend its prior responses to Plaintiffs' requests for admission only if it learned that the responses were in some material respect incomplete or incorrect, and if the additional or corrective information had not otherwise been made known to Plaintiffs during the discovery

process or in writing. *See* Fed. R. Civ. P. 26(e)(1)(A).

The three requests for admission at issue sought Duke's admission that (1) Sgt. Smith and (2) Sgt. Stotsenberg provided a (3) key card report for (4) 3/13/06 to (5) 3/14/06 of (6) Plaintiffs Archer, McFadyen, or Wilson to (7) Defendant M.D. Gottlieb. For Duke to admit these three requests, it would need to establish that each of these seven elements was accurate. Duke has not obtained any new knowledge that would allow it to do so. For example, none of the testimony cited by Plaintiffs states whether or not the DukeCard data Duke Sgt. Smith provided to Durham Sgt. Gottlieb included data for Plaintiffs Archer, McFadyen, or Wilson. Regardless, any additional information gleaned from the depositions cited by Plaintiffs has already been made known to Plaintiffs.

The Southern District of New York encountered a similar issue when a pro se litigant moved "to compel different answers to requests for admission." *Shuster v. Olem*, No. 96 Civ. 1993(LMM)(HBP), 1997 WL 27041, at *1 (S.D.N.Y. Jan. 23, 1997). The court explained that while "plaintiff, understandably, disagrees with the responses, [the] responses are full and complete and plaintiff has offered no competent evidence suggesting they are false, misleading or made in bad faith." *Id.* Here, Plaintiffs cannot compel Duke to revise its timely answers to requests for admission simply because it disagrees with Duke's answers.

CONCLUSION

For the reasons stated herein, Duke respectfully requests that the Court deny Plaintiffs' Motion to Compel.

This the 16th day of October, 2012.

/s/ Paul K. Sun, Jr.
Paul K. Sun Jr.
N.C. State Bar No. 16847
Email: paul.sun@elliswinters.com
Jeremy M. Falcone
N.C. State Bar No. 36182
Email: jeremy.falcone@elliswinters.com
Thomas H. Segars
N.C. State Bar No. 29433
Email: tom.segars@elliswinters.com
James M. Weiss
N.C. State Bar No. 42386
Email: jamie.weiss@elliswinters.com
Ellis & Winters LLP
1100 Crescent Green, Suite 200
Cary, North Carolina 27518
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

Dixie T. Wells
N.C. State Bar No. 26816
Email: dixie.wells@elliswinters.com
Ellis & Winters LLP
333 N. Greene St., Suite 200
Greensboro, NC 27401
Telephone: (336) 217-4197
Facsimile: (336) 217-4198

Counsel for Duke University

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and to Mr. Linwood Wilson, who is also registered to use the CM/ECF system.

This the 16th day of October, 2012.

/s/ Paul K. Sun, Jr.
Paul K. Sun, Jr.
N.C. State Bar No. 16847
Email: paul.sun@elliswinters.com
Ellis & Winters LLP
1100 Crescent Green, Suite 200
Cary, North Carolina 27518
Telephone: (919) 865-7000
Facsimile: (919) 865-7010
Counsel for Duke University