EXHIBIT 10

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

RYAN MCFADYEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:07–CV–00953
	)	
DUKE UNIVERSITY, et al.,	)	
	)	
Defendants.	)	

DUKE UNIVERSITY'S RESPONSES and OBJECTIONS TO PLAINTIFFS' SECOND INTERROGATORIES

Defendant Duke University ("Duke"), by and through counsel, hereby responds to Plaintiffs' Second Interrogatories to Duke (the "Interrogatories")[1] as follows:

GENERAL OBJECTIONS AND LIMITATIONS

1. Pursuant to Rule 34(b)(2)(E)(i) of the Federal Rules of Civil Procedure, Duke will produce non-privileged responsive documents as such documents are kept in the usual course of business.

2. Pursuant to Rule 34(b)(2)(E)(ii) of the Federal Rules of Civil Procedure, which allows for the production of electronically stored information in

[1] On August 22, 2012, Plaintiffs propounded eleven Interrogatories, which brought the total issued to Duke to thirty-four (34) Interrogatories. After Duke brought to Plaintiffs' attention that Plaintiffs were limited to thirty (30) Interrogatories by the Local Rule 16(c) Pretrial Order [DE 244], on September 18, 2012 Plaintiffs reissued seven of the original Interrogatories. It is the September 18, 2012 set of Interrogatories numbered 24 through 30 that Duke answers.

a "reasonably usable form," Duke will produce non-confidential, non-redacted emails in both .pdf form and the near-native format of .htm. Confidential and redacted documents will be produced as .pdfs, but not as .htm files, because of the necessity of branding the images. For every document it produces, Duke is producing extracted text files.

3. Duke objects to the Interrogatories to the extent that they seek information or the production of documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or exemption recognized by law. Furthermore, any production of privileged or otherwise protected information pursuant to these Interrogatories is inadvertent and shall not constitute a waiver of any claim, privilege, or other protection. Duke reserves the right to demand both that Plaintiffs return such inadvertently produced information and cease any use of that information in this litigation. These rights are and will be reserved through and including trial. Duke has produced a privilege log. Duke is maintaining a supplemental privilege log, and will provide that supplemental privilege log to Plaintiffs.

4. Pursuant to Judge Beaty's Order on June 9, 2011 [DN 218] (the "June 9, 2011 Order") and Judge Peake's Order on July 24, 2012 [DE 282] (the "July 24, 2012 Order"), discovery may proceed only as to Counts 21 and 24. Accordingly, Duke will respond to the Interrogatories only as they relate to

these two claims, including: (i) information regarding the disciplinary proceedings relating to Plaintiff Breck Archer, the disciplinary proceedings relating to Plaintiff Matthew Wilson, and the interim suspension of Plaintiff Ryan McFadyen; and (ii) information regarding the disclosure of DukeCard Data to the Durham Police Department, the subsequent subpoena that was issued to Matthew Drummond on May 31, 2006, seeking production of DukeCard Data by Duke, and the responses to that subpoena.

5. Pursuant to Rule 26(b)(2)(B) of the Federal Rules of Civil Procedure, Duke objects to the Interrogatories to the extent that they request the discovery of electronically stored information from sources that Duke has identified as not reasonably accessible because of undue burden or cost. Accordingly, Duke has taken into consideration whether the "burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(iii). In order to reasonably mitigate costs while still complying with discovery mandates, Duke has limited its review of ESI data to the email collections of a specified group of seventeen custodians, whose names have previously been supplied to the Plaintiffs.[2] These seventeen custodians are a

[2] These seventeen custodians are: (1) Zoila Airall; (2) Richard Brodhead; (3)

significant number of custodians for the two narrow claims going forward, and Duke believes that these custodians will yield the most substantial and complete data, without being "unreasonably cumulative or duplicative."[3] 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.[4] The email of these seventeen custodians is or

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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) Suzanne Wasiolek; and (17) Gerald Wilson.

[3] This approach, including the selection of the specific custodians whose data should be reviewed, is consistent with approaches taken by other courts. When dealing with ESI, courts have generally deferred to the producing party to identify the custodians likely to possess responsive documents. See generally Garcia v. Tyson Foods, Inc., No. 06-2198-JWL-DJW, 2010 WL 5392660, at *2-4 (D. Kan. Dec. 21, 2010). Where such a determination is contested, however, it is quite common for courts to limit the number of custodians from which a party must produce documents. 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) (finding plaintiff's request that defendant "run sixty-one numbered queries, most of which include multiple search terms, for thirty-plus custodians, encompassing numerous servers . . . unreasonable and unduly burdensome" and specifically eliminating custodians due to their limited involvement and the unlikelihood that they would possess relevant documents), vacated on other grounds, No. 5:07-CV-174-H(2), 2011 WL 4549101 (E.D.N.C. Sept. 29, 2011). Courts tend to limit the required custodians to those "likely to possess responsive documents." See, e.g., CDW LLC v. NETech Corp., No. 1:10-cv-00530-SEB-DML, 2011 WL 1743749, at *2 (S.D. Ind. May 5, 2011).

[4] Courts have been particularly likely to limit the number of custodians where a party can demonstrate that production of documents without such a restriction would be unjustifiably costly, as it would be in this case. See, e.g.,

has been reviewed for relevance and privilege as set forth below, and Duke will produce or has produced the data from these seventeen custodians that is responsive to the Interrogatories made by the Plaintiffs.

6. Further, Duke is limiting its review in response to these Interrogatories by a key-word-based electronic search of the seventeen custodians' email ESI.[5] This key-word list was developed to be specifically tailored to

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Thermal Design, Inc. v. Guardian Bldg. Prods., Inc., No. 08-C-828, 2011 WL 1527025, at *1 (E.D. Wis. Apr. 20, 2011) (holding that a search of "all archived e-mail accounts and shared network drives, without any restriction as to custodian or individual" that would take "several months" and cost "an additional $1.9 million dollars" not including an additional thirteen weeks and $600,000 to review "is not reasonably accessible"). The court in Thermal Design explained that "[e]ven if the information sought is relevant or reasonably calculated to lead to the discovery of admissible evidence, [the requesting party] doesn't explain why the extensive amount of information it seeks is of such importance that it justifies imposing an extreme burden on the [defendants]. Fed. R. Civ. P. 26(b)(2)(C)(iii) (factors include 'the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues'). Courts should not countenance fishing expeditions simply because the party resisting discovery can afford to comply." Id.

The onus should be on the Plaintiffs to put forward evidence that additional custodians were involved in the relevant events and would likely possess responsive documents and that this benefit would outweigh the additional costs. See, e.g., Harris v. Koenig, 271 F.R.D. 356, 367 (D.D.C. 2010).

[5] Courts approve the use of key-word-based searching where, as here, production requires review of a large volume of data and the key-word search process is reasonable and adequate. See, e.g., Wood v. Town of Warsaw, No. 7:10-cv-219, 2011 WL 6748797, at *2 (E.D.N.C. Dec. 22, 2011) (approving of use of "limited search and production" using "appropriately tailored" key words); Romero v. Allstate Ins. Co., 271 F.R.D. 96, 109-10 (E.D. Pa. 2010) ("[T]he use of key words has been endorsed as a search method for reducing the need for human

Plaintiffs' discovery (requests for production, interrogatories, and requests for admission) issued August 22, 2012. As described herein, the email ESI data of these seventeen custodians has been reviewed for relevance and privilege. Duke is producing the email ESI data from these seventeen custodians in accordance with the above criteria.

7. As a courtesy, Duke also produced to Plaintiffs on September 17, 2012 thousands of emails, regardless of original custodian, sourced from hundreds of ESI custodians which were To, From, Copying, or Blind-Carbon-Copying any Plaintiff as the term is defined at Plaintiffs' Definition Number 10.

8. In responding to these Interrogatories, Duke has used an end-date of August 31, 2007, except where Plaintiffs have indicated a shorter time period. The burden and expense of examining data created or received after August 31, 2007, in general, outweighs any benefit in that there is little likelihood that any relevant information regarding Counts 21 and 24 was created or received after August 31, 2007.[6]

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review of large volumes of ESI . . . .") (internal quotations and citations omitted).

[6] Count 21 deals with claims that suspensions – all of which occurred during the summer of 2006 or before – were breaches of contract. Count 24 focuses on specific events, namely the writing of letters, that occurred in May of 2006 and what was known before those letters were written. Accordingly, August 31, 2007 is a reasonable end-date for the review of data of any of the custodians identified by Duke.

9. Duke objects to the Interrogatories to the extent that they seek information relating to the following: medical records, education records, including but not limited to disciplinary information; business, financial or economic data that would ordinarily be maintained in confidence; and other information the disclosure of which would subject a party or person to annoyance, embarrassment or oppression, 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.

10. No incidental or implied admissions are intended by the responses set forth below. The fact that Duke has responded to or objected to the Interrogatories shall not be deemed an admission that Duke accepts or admits the existence of any fact set forth or assumed by the Interrogatories, or that such response or objection constitutes admissible evidence. The fact that Duke has responded to the Interrogatories is not intended to be and shall not be construed as a waiver by Duke of any part of any objection to the Interrogatories.

11. Duke's investigation and trial preparation is ongoing. Therefore, Duke reserves the right to amend, modify, or supplement these responses and objections as additional facts are ascertained, as additional documents and information is obtained, and as additional analysis and contentions are formulated.

Moreover, Duke reserves the right to assert additional objections should it discover additional grounds for objection.

12. Duke objects to these Interrogatories to the extent that Plaintiffs have had ample opportunity to obtain the information by previous discovery in the action.

13. "Confidential" documents will be so designated and are being produced subject to your agreement to treat such documents as "Confidential" under the Protective Order on Confidentiality and Prospective Sealing Order entered by the Court [DE 284].

PLAINTIFFS' SECOND INTERROGATORIES TO DUKE

INTERROGATORY NO. 24: Describe every public statement You made to any representative of a media organization on April 5, 2006.

ANSWER: Duke objects to Interrogatory No. 24 to the extent that it is coextensive with Interrogatories Nos. 1, 2, 3, and 13 with respect to media statements, and Duke directs Plaintiffs to its responses and objections to those previous Interrogatories. Duke also objects to the use of the phrases "*every* public statement" and "*any* representative" as rendering this Interrogatory overbroad and unduly burdensome. Duke also objects to the extent that not all public statements Duke made to any representative of a media organization on April 5, 2006 would have necessarily had anything whatsoever to do with (i) information regarding the disciplinary proceedings relating to Plaintiff Breck Archer, the disciplinary

Plaintiff	Defendant	File Number	State	County Where Filed
Duke University	William Rodriguez	04-CVD-1134	NC	Durham
Duke University	Cherie Nicole Keeter	04-CVD-4381	NC	Durham

This the 21st day of September, 2012.

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Counsel for Duke University

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **Duke University's Responses and Objections to Plaintiffs' Second Interrogatories to Duke University** has been served this day by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage prepaid envelope properly addressed as below, or by electronic transmission as provided in Rule 5(b)(2)(E) to those parties whose counsel agreed in writing to such electronic service in lieu of service by mail:

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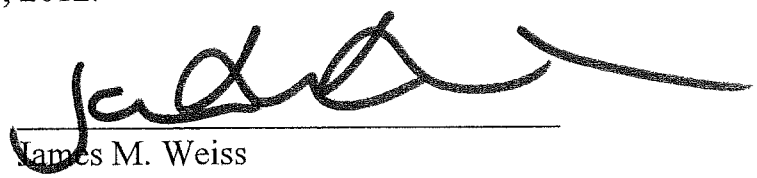
This the 21st day of September, 2012.



James M. Weiss