

BAYLOR UNIVERSITY,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
vs.	§	
	§	MCLENNAN COUNTY, TEXAS
THE BAYLOR UNIVERSITY ALUMNI ASSOCIATION,	§	
	§	
Defendant.	§	74 TH JUDICIAL DISTRICT

Defendant’s Request for Hearing and Motion to Compel

The Baylor University Alumni Association (“BAA”) requests a hearing pursuant to Tex. R. Civ. P. 193.4(a) and moves for an order (1) overruling Baylor University’s discovery objections regarding confidentiality and trade secrets, and (2) compelling production of documents and responses to certain discovery requests as set forth below.

I. Summary

This lawsuit is the continuation of a long-running and highly-publicized dispute between Baylor University (the “University”) and its alumni association. The University sued the BAA in June 2014, claiming, among other things, that the “perpetual, fully paid up” trademark license it persuaded the BAA to accept in 1993 is no longer effective, and that the University may unilaterally terminate the BAA’s right to use the “Baylor” name. The University claims that trademark license agreements like this one are unilaterally terminable at will at the University’s option, despite an express term in the agreement that the license is to be “perpetual.” The University also seeks to revoke the BAA’s official recognition as Baylor’s general alumni organization and to “reform” the BAA’s charitable purpose in a manner calculated to eliminate its alumni-related functions. The University’s lawsuit seeks declaratory and injunctive relief and attorneys’ fees against the BAA.

The BAA intends to enforce its contractual rights as set forth in the 1993 License Agreement and the 1994 Official Recognition Agreement, and to maintain its legal status as the University's general alumni organization. It contends that the 1993 License Agreement and the 1994 Official Recognition Agreement are valid and enforceable, and that the University's ongoing campaign to destroy the BAA violates the parties' contracts and other aspects of Texas law.

The parties are now engaged in discovery. Thus far the University has refused to produce documents, arguing in part that its internal documents and communications are confidential, proprietary, and constitute trade secrets. Through this motion, the BAA challenges the University's discovery objections, including the University's claim to confidentiality, and seeks to compel the University to produce documents and properly respond to interrogatories pursuant to the Texas Rules of Civil Procedure.

II. BAA's Discovery Requests and the University's Responses

The BAA served requests for production on October 6, 2014, and a set of interrogatories on October 17, 2014. The BAA's requests for production and interrogatories are attached as Exhibits 1 and 2. The University responded to these requests with a series of responses and objections on November 17, 2014, and November 26, 2014, respectively, and amended its responses to requests for production on January 26, 2015. *See* Exhibit 3 (Baylor amended RFP responses dated 1/26/2015) and Exhibit 4 (Baylor interrogatory responses dated 11/26/2014).

The BAA challenged the University's objections and responses in an e-mail dated December 3, 2014. Counsel conferred by telephone on January 5, January 7, January 13, January 22 and January 26, 2015. After this series of conferences the parties agreed that they were at an impasse and that court intervention is necessary to resolve the issues below.

III. Argument and Authorities

A. The University's Objections Should Be Overruled.

The party resisting discovery has the burden to plead and prove the basis for its objections. *State v. Lowry*, 802 S.W.2d 669, 671 (Tex. 1991) (orig. proceeding); *In re CI Host, Inc.*, 92 S.W.3d 514, 516-17 (Tex. 2002) (orig. proceeding). The Texas discovery rules require that a party “must state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request.” Tex. R. Civ. P. 193.2(a). With respect to trade secrets, the party refusing to disclose discoverable information under a claim of trade secret protection must prove that the information qualifies as a trade secret. *In re Bass*, 113 S.W.3d 735, 737 (Tex. 2003).

Rule 193.4(a) provides that any party “may at any reasonable time request a hearing on an objections or claim or privilege” asserted under the discovery rules. Tex. R. Civ. P. 193.4(a). Accordingly, the BAA requests a hearing on the University’s objections set forth in its responses to BAA’s First Set of Interrogatories dated October 17, 2014, and the BAA’s First Set of Requests for Production dated October 6, 2014.

B. Motion to Compel Specific Responses

a. Trademark license agreements. BAA’s Requests for Production Nos. 16-21 seek various trademark license agreements between Baylor and third parties. Interrogatories Nos. 1-4 similarly seek information regarding the University’s trademark licensing practices. The University has lodged a series of objections to these requests, and has indicated that it will not produce any license agreements other than those between the BAA and the University. *See* Ex. 4, at 4-6. The BAA contends that the third-party licenses constitute relevant evidence of the University’s contracting practices and its intent with respect to the 1993 License Agreement. The

court should overrule the University's objections and enter an order compelling complete responses to BAA Requests for Production 16-21 and Interrogatories Nos. 1-4.

b. Basis for allegation of express trust. BAA Interrogatory No. 6 seeks the basis for the University's contention that the BAA is an "express charitable trust" and asks the University to identify the elements of the trust relationship, including the instruments creating the express trust, the trustee, the settlor, and all beneficiaries. Subject to its stock objections, the University states that "the BAA Articles of Incorporation, and as Amended, and its governing documents establish, in effect a trust with Baylor as the ultimate beneficiary." *See* Ex. 4 at pp. 6-7. The BAA contends that the University's response is insufficient and nonresponsive, and the Court should compel a complete answer.

c. Written notices of contract violations. BAA Interrogatory No. 8 seeks to identify the specific communications that the University contends constituted written notices of contractual violations. In addition to its usual objections, the University pointed to "various correspondence" between certain University employees and the BAA. *See* Ex. 4, at 8-9. Because these notices have legal significance in the context of this breach of contract case, it is important to identify the specific documents on which the University's claims are based. Moreover, that specificity is required by Rule 197.2(c) (allowing a party to produce records in lieu of answering an interrogatory but requiring the records to "be specified in sufficient detail to permit the requesting party to locate and identify them as readily as can the responding party"). The BAA seeks an order compelling a complete and specific response.

IV. Conclusion and Prayer

For the reasons described above, the BAA respectfully requests the following relief:

- a) an order overruling each of the University's objections in its responses to the BAA's discovery requests as set forth above;
- b) an order compelling the University to respond to interrogatories and produce documents in response to requests for production as set forth above; and
- c) such further relief as it may be entitled.

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT,
THE BAYLOR UNIVERSITY ALUMNI
ASSOCIATION**

Certificate of Conference

I certify that the parties conferred in good faith and made a reasonable effort to resolve the issues set forth in this motion without the necessity of court intervention, and the effort failed.



Ryan A. Botkin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record on the 26th day of January, 2015, via electronic mail as follows:

Angus E. "Andy" McSwain
Fulbright Winniford
P. O. Box 445
Waco, TX 76703-0445
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Ryan A. Botkin

CAUSE NO. 2014-2287-3

BAYLOR UNIVERSITY,

PLAINTIFF,

V.

THE BAYLOR UNIVERSITY
ALUMNI ASSOCIATION,

DEFENDANT.

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IN THE DISTRICT COURT,

74TH JUDICIAL DISTRICT,

MCLENNAN COUNTY, TEXAS

**DEFENDANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Defendant hereby requests that Plaintiff serve a written response to this request in compliance with Texas Rule of Civil Procedure 196 and produce the documents and tangible things requested below. All documents and tangible things responsive to this discovery request should be produced for inspection and copying at the offices of Jonathan D. Pauerstein, 755 E. Mulberry, Suite 200, San Antonio, Texas 78212, on the date your response hereto is due, or at such other time and place as counsel for the parties may agree upon.

In answering these discovery requests, please follow the instructions and definitions set forth in Exhibit A hereto, which is incorporated herein by reference as if set forth verbatim.

DOCUMENT REQUESTS

1. All documents identified or referred to in your response to any interrogatory served on you by Defendant in this action.
2. All documents concerning:
 - a. any notice of any breach of or default under the License Agreement that Baylor sent or otherwise provided to the BAA;
 - b. any breach of or default under the License Agreement by the BAA;
 - c. any failure by the BAA to cure any breach of the License Agreement; or

- d. the termination of the License Agreement.
3. All documents concerning:
 - a. any breach of or default under the Official Recognition Agreement by the BAA;
 - b. any notice of any breach of or default under the Official Recognition Agreement that Baylor sent or otherwise provided to the BAA;
 - c. any failure by the BAA to cure any breach of the Official Recognition Agreement; or
 - d. the termination of the Official Recognition Agreement.
4. All documents constituting, concerning or setting forth any communication between Baylor and any current or former member of the Board of Directors of the BAA concerning this Action.
5. All documents constituting, concerning or setting forth any communication between Baylor and any current or former member of the Board of Directors of the BAA concerning any breach of the License Agreement or the Official Recognition Agreement.
6. All documents concerning the Agreement to Vacate.
7. All documents concerning whether Baylor ever intended that the BAA would continue to occupy offices in the Robinson Tower if the Transition Agreement was not approved by the BAA's members.
8. All documents concerning the termination of the BAA's occupancy of offices in the Robinson Tower.
9. All documents concerning, estimating, or setting forth the value of the Hughes Dillard Alumni Center.
10. All documents concerning, estimating, discussing, or otherwise addressing the cost of constructing a building of a size, condition, quality of construction, and location approximately the same as the size, condition, quality of construction, and location of the Hughes-Dillard Alumni Center.
11. All documents concerning any breach of the Agreement to Vacate by the BAA.
12. All documents concerning the BAA's pledge of \$1,000,000, as described in paragraph 6 of Baylor's Original Petition in this Action.
13. All documents concerning the express charitable trust referred to in paragraph 7 of Baylor's Original Petition in this Action.
14. The "instruments creating the charitable trust" referred to in paragraph 9 of Baylor's Original Petition in this Action.

15. Each license to “others” referred to in the first sentence of paragraph 16 of Baylor’s Original Petition in this Action.
16. Each agreement pursuant to which Baylor granted a perpetual trademark or patent license to any person or entity.¹
17. Each agreement pursuant to which Baylor granted a trademark or patent license to any person or entity that includes the word “perpetual.”
18. Each agreement pursuant to which Baylor granted a trademark or patent license to any person or entity that includes the phrase “fully paid” or “fully paid up.”
19. Each agreement pursuant to which the following entities are licensed or otherwise authorized or permitted to use the name “Baylor”:
 - a. Baylor Health Care System Foundation;
 - b. Baylor College of Medicine;
 - c. Baylor Scott & White Health;
 - d. Baylor Health Care System;
 - e. Baylor College of Dentistry;
 - f. Texas A&M University Baylor College of Dentistry; and
 - g. Baylor University Medical Center at Dallas.
20. Each agreement pursuant to which Baylor granted a trademark or patent license to any person or entity under which the licensee could terminate the agreement at any time.
21. Each trademark or patent license, or other type of agreement, between Baylor and any person or entity that is indefinite in duration.
22. All documents concerning the “confusion in the marketplace” regarding BAA’s gifts and solicitations referred to in paragraph 62 of Baylor’s Original Petition in this Action.
23. All minutes and other records of meetings of Baylor’s Board of Regents at which the License Agreement was addressed.
24. All minutes and other records of meetings of Baylor’s Board of Regents at which the Official Recognition Agreement was addressed.

¹ To the extent that any agreements with third parties sought by any of the BAA’s requests contain confidential information, the BAA hereby offers to enter into an agreed protective order based on the form of the United States District Court for the Western District of Texas, which can be found at http://www.txwd.uscourts.gov/Forms/Documents/District/protective_order.pdf.

25. All minutes and other records of meetings of Baylor's Board of Regents at which the Transition Agreement was addressed.
26. All minutes and other records of meetings of Baylor's Board of Regents at which the Agreement to Vacate was addressed.
27. All documents concerning the authority or lack of authority of Herbert Reynolds to execute the License Agreement on behalf of Baylor.
28. All documents concerning or setting forth any resolution of Baylor's Board of Regents regarding:
 - a. The License Agreement;
 - b. The Official Recognition Agreement;
 - c. The Agreement to Vacate; or
 - d. The Transition Agreement.
29. All documents concerning the authority or lack of authority of Herbert Reynolds to execute the Official Recognition Agreement on behalf of Baylor.
30. All documents discussing the formation or creation of the Baylor Network, the Baylor Alumni Network, or the Baylor Office of Alumni Services.
31. Documents sufficient to establish the personnel organization (organizational chart) of the Baylor Alumni Network from its inception to the present.
32. Documents sufficient to establish the Baylor Alumni Network's budgets and operating expenditures its inception to the present.
33. All documents concerning, or originated by or for, the BAA that Baylor received from Randy Lofgren.
34. All documents concerning alumni association administration or operation, or alumni association best practices, that Baylor received from Randy Lofgren.
35. All documents concerning Baylor's decision to employ Randy Lofgren, including communications with Mr. Lofgren regarding his potential employment with Baylor.
36. Documents concerning any effort by Baylor or Randy Lofgren to avoid the disclosure of BAA's confidential or proprietary information to Baylor in connection with Baylor's employment of Mr. Lofgren.
37. All documents concerning Baylor's assumption of the operation of the Baylor class ring program.

38. All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in Baylor homecoming activities.
39. All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in Baylor graduation events and activities.
40. All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in or operation of travel programs for Baylor alumni.
41. All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in or operation of educational programs for Baylor alumni.
42. All agreements pursuant to which any insurer is or may be liable to defend or indemnify Baylor with respect to this Action or the BAA's claims against Baylor.
43. The fee agreement between Baylor and each attorney and law firm whose fees Baylor seeks to recover in this Action.
44. All electronic mail messages and other communications concerning any breach of the License Agreement that Baylor sent to or received from:
 - a. Jeff Kilgore;
 - b. Chad Wooten;
 - c. Todd Copeland;
 - d. Collin Cox;
 - e. Elizabeth Coker;
 - f. George Cowden;
 - g. Roland Johnson;
 - h. Emily Tinsley; or
 - i. David Lacy.
45. All electronic mail messages and other communications concerning any breach of the Official Recognition Agreement that Baylor sent to or received from:
 - a. Jeff Kilgore;
 - b. Chad Wooten;

- c. Todd Copeland;
 - d. Collin Cox;
 - e. Elizabeth Coker;
 - f. George Cowden;
 - g. Roland Johnson;
 - h. Emily Tinsley; or
 - i. David Lacy.
46. All electronic mail messages and other communications concerning the Agreement to Vacate (including but not limited to its negotiation, formation, performance, and breach) that Baylor sent to or received from:
- a. Chad Wooten;
 - b. Todd Copeland;
 - c. Collin Cox; or
 - d. Elizabeth Coker.
47. All electronic mail messages and other communications concerning the Transition Agreement (including but not limited to its negotiation, formation, performance, and breach) that Baylor sent to or received from:
- a. Chad Wooten;
 - b. Collin Cox;
 - c. Todd Copeland; or
 - d. Elizabeth Coker.
48. All electronic mail messages and other communications concerning this Action that Baylor sent to or received from any of the following:
- a. John Lilly;
 - b. Karla Leeper;
 - c. Jeff Kilgore;
 - d. Basil Thomson;

e. Randy Lofgren;

f. Todd Copeland;

49. All documents concerning, constituting, or setting forth any communication between Baylor and Jack Dillard regarding the License Agreement, including all negotiations or discussions regarding the terms thereof.
50. All documents concerning, constituting, or setting forth any communication between Basil Thomson and Jack Dillard regarding the License Agreement, including all negotiations or discussions regarding the terms thereof.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2014, a true and correct copy of the foregoing document was served in compliance with the Texas Rules of Civil Procedure upon the following counsel of record:

Andy S. McSwain
Fulbright Winniford
22nd Floor
ALICO Building
425 Austin Avenue
Waco, Texas 76701
Telephone: 254-776-6000
Facsimile: 254-776-8555



Jonathan D. Pauerstein

EXHIBIT A

INSTRUCTIONS AND DEFINITIONS

These Instructions and Definitions are an integral part of this discovery request and must be followed in responding to it.

I. INSTRUCTIONS.

1. **Electronically Stored Information; Deleted Information.** In accordance with Texas Rule of Civil Procedure 196.4, electronically stored information (“ESI”), whether in magnetic, electronic, or other form, is to be produced in response to this discovery request. **This discovery request specifically seeks production of deleted ESI (including but not limited to deleted electronic mail messages, computer files, data, and documents) that is reasonably available to you.** All ESI should be produced in its native format as kept in the ordinary course of your business, and you must provide sufficient information to allow identification of the programs necessary to open and read the ESI. All such data and information should be produced in reasonably usable form, such as on computer-readable disks or flash drives.
2. **Duty to Make Complete Response.** Pursuant to Texas Rule of Civil Procedure 193.1, you must make a complete response to this discovery request based on all information reasonably available to you or your attorney at the time your response is made.
3. **Supplementation.** Pursuant to Texas Rule of Civil Procedure 193.5(a), you must supplement your response to this discovery request if you learn that your response was incorrect or incomplete when made or that your response, though correct and complete when made, no longer is correct and complete. This request for production is continuing in nature and supplemental production is required if Plaintiff creates or obtains additional documents, or if additional documents otherwise come into Plaintiff’s possession, custody, or control, after the time of initial production in response hereto.
4. **Form of Production.** Documents are to be produced as they are kept in the ordinary course of business or organized and labeled to correspond with the categories in this request to which they are responsive. When documents requested are maintained in a file

folder, the request shall be deemed to include the file cover or label and any other identifying marks on the file.

5. **“Possession, Custody, and Control.”** In producing documents pursuant to this request, you must produce all documents in your possession, custody or control. Pursuant to Texas Rule of Civil Procedure 192.7(b), documents within your “possession, custody, control” include all documents in your physical possession and all documents in the possession of any other person or entity if you have a right to possession of the documents that is equal or superior to that of the person or entity that has physical possession of the documents.
6. **Production of Copies.** Pursuant to Texas Rule of Civil Procedure 196.3, you may produce a true and correct copy of the original of a document requested herein. In the event that a question is raised as to the authenticity of any original document or it is unfair under the circumstances to produce a copy of a document in lieu of the original, production of the original is required pursuant to Texas Rule of Civil Procedure 196.3.
7. **Non-Identical Copies.** Each copy of a document that is not identical to the original (whether due to the presence of handwritten notations or otherwise) is considered a separate document and each such non-identical copy should be produced in response hereto.
8. **Objections.** Pursuant to Texas Rule of Civil Procedure 193.2(b), if you object to a portion of any of Defendant’s discovery requests, you must comply with so much of the request in question as to which you have made no objection. Further, pursuant to that rule, if you object to the time or place of production set forth herein, you must state in your written response a reasonable time and place for compliance with this request and must comply herewith at that time and place without further request or order.
9. **Notice Regarding Use of Documents.** Pursuant to Texas Rule of Civil Procedure 193.7, you hereby are notified that Defendant will use the documents produced by Plaintiff in response hereto at hearings and the trial of this cause.

II. DEFINITIONS

1. **“License Agreement”** means the “License Agreement Between Baylor University and the Baylor University Alumni Association” effective as of September 8, 1993.
2. **“Official Recognition Agreement”** means the “Official Recognition And License Agreement Between Baylor University And The Baylor Alumni Association For An On-Campus Alumni Center” effective as of May 27, 1994.
3. **“Agreement To Vacate”** means the “Agreement Between Baylor University And Baylor Alumni Association To Vacate Hughes Dillard Alumni Center” executed by Baylor and the BAA in 2013.
4. **“Transition Agreement”** means the “Transition Agreement Between Baylor University And Baylor Alumni Association” dated May 31, 2013.
5. **“Communication”** means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
6. **“Concerning.”** The term “Concerning” means relating to, referring to, describing, evidencing, or constituting.
7. **“Document”** means any printed, typewritten, or handwritten matter, any other form of graphical depiction of any communication, information, or data, any writing or other tangible thing of any kind or description, however produced or reproduced, and any type of digitally, electronically or magnetically stored information, including without limitation, data compilations and stored data from which information can be obtained and translated, data (both in tangible form and stored in memory components), data print-outs, databases, “e mail” messages, phonographic records, audio recordings (whether stored in analog form, stored digitally, stored magnetically (including on audiotapes), or otherwise), video recordings (whether stored digitally, on videotape, or otherwise), photographs (whether stored digitally, on photographic film, or otherwise), telecopies and facsimiles, telegrams, teletype or telefax messages, telexes, work sheets, working papers, or materials similar to any of the foregoing, however denominated by you. The term **“document”** also includes

drafts of any documents and every copy of a document that is not an identical reproduction of the original, whether because it bears any handwritten words, markings, interlineations, alterations, revisions, changes, deletions, marginal comments, notations, or other thing that does not appear in or on the original, or because it otherwise differs in any way from the original document. The foregoing definition is not intended to be one of limitation, and the term “document” is to be given the broadest construction possible under the Texas Rules of Civil Procedure and decisions construing those rules.

8. **“Person.”** The term “Person” means any natural person or any business, legal, or governmental entity or association.
9. **“You” and “Your.”** The terms “You” and “Your” mean the Person on whom these Document Requests are propounded, together with that Person’s agents, servants, representatives, officers, directors, employees, predecessors, successors, and affiliates.
10. **“Baylor.”** The term “Baylor” means Baylor University and includes its current and former officers, directors, employees, agents, predecessors, successors, assigns, subsidiaries, and affiliates. “Baylor” also includes current and former members of Baylor’s Board of Regents.
11. **“Action.”** The term “Action” means the above-captioned action, including any and all claims, counterclaims, cross-claims and third-party claims asserted therein.

CAUSE NO. 2014-2287-3

BAYLOR UNIVERSITY, Plaintiff, vs. THE BAYLOR UNIVERSITY ALUMNI ASSOCIATION, Defendant.	§ § § § § § § § § §	IN THE DISTRICT COURT OF MCLENNAN COUNTY, TEXAS 74TH JUDICIAL DISTRICT
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DEFENDANT’S FIRST INTERROGATORIES TO PLAINTIFF

To: Plaintiff Baylor University, through its attorneys of record, Angus E. “Andy” McSwain, Fulbright Winniford, P.O. Box 445, Waco, Texas 76703-0445, and Tony L. Visage and J. Erick Sandlin, Bracewell & Guiliani LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002-2770.

Defendant, The Baylor University Alumni Association (“BAA”), serves the following First Interrogatories to Plaintiff pursuant to Rule 197 of the Texas Rules of Civil Procedure. Please serve your responses within thirty (30) days after service of this request. Please refer to the “Instructions and Definitions” set forth in Exhibit A following the discovery requests for a list of defined terms and specific instructions.

Interrogatories

1. Please identify each of your trademarks and service marks, including the date of registration, if any, of each such mark.
2. Please identify all entities with which you have entered into a license agreement pertaining in whole or in part to the use of the word “Baylor” or the words “Baylor University.”
3. Please identify each of the licensing relationships identified in response to Interrogatory No. 2 that you consider to be terminable “at will.”
4. Please identify all written agreements between Baylor and any third party that include the word “perpetual,” the word “irrevocable,” or the phrase “fully paid up.”
5. Please identify all documents and data brought to Baylor by Randy Lofgren when he left BAA to become employed by Baylor.

6. Please explain the legal and factual basis for your contention that the BAA is an “express charitable trust that names Baylor University as the only specific beneficiary.” In your answer please identify the elements of the trust relationship, namely: (1) the instrument(s) creating the trust; (2) the trustee(s); (3) the settlor(s); and (4) all beneficiaries.
7. If you contend that the BAA has violated or failed to satisfy a contractual requirement, please identify the contract provision that you contend was violated and the manner in which you contend it was violated. For example, if you contend that BAA failed to satisfy any of the provisions of Section 5.1 of the License Agreement or Part I of the Official Recognition Agreement, please identify the specific contractual provision and the facts giving rise to your allegation.
8. For each alleged contractual violation listed in response to the above interrogatory, please identify all communications which you contend represent written notice to the BAA of the alleged violation.
9. Please identify the acts or omissions which you contend violated an alleged fiduciary duty owed to Baylor, and the manner in which these acts or omissions violated the alleged fiduciary duty.
10. If you contend that the BAA’s use of the Marks has caused actual confusion among consumers with respect to Baylor’s other marks, please identify and describe all such instances of actual confusion.
11. Paragraph 67 of Baylor’s Original Petition states that “Baylor’s signatory [to the BAA Agreements] was not authorized to bind Baylor beyond a reasonable time.” Please state this “reasonable time” and identify all documents which serve to define or limit the authority of Baylor’s signatory.
12. Please explain, in your own words, how Baylor will be harmed or damaged if the BAA is allowed to continue using the Marks pursuant to the terms of the License Agreement.
13. Please state the date on which you reasonably anticipated litigation in this matter.
14. Describe the steps you took to retrieve or collect electronic data in response to Defendant’s requests for production of documents. If you conducted a word search in an e-mail system or other electronic database, or used Boolean search terms, please include the specific search terms in your response.

EXHIBIT A – DEFINITIONS

1. **“License Agreement”** means the “License Agreement Between Baylor University and the Baylor University Alumni Association” effective as of September 8, 1993.
2. **“Official Recognition Agreement”** means the “Official Recognition And License Agreement Between Baylor University And The Baylor Alumni Association For An On-Campus Alumni Center” effective as of May 27, 1994.
3. **“Agreement To Vacate”** means the “Agreement Between Baylor University And Baylor Alumni Association To Vacate Hughes Dillard Alumni Center” executed by Baylor and the BAA in 2013.
4. **“Transition Agreement”** means the “Transition Agreement Between Baylor University And Baylor Alumni Association” dated May 31, 2013.
5. **“Communication”** means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
6. **“Concerning.”** The term “Concerning” means relating to, referring to, describing, evidencing, or constituting.
7. **“Document”** means any printed, typewritten, or handwritten matter, any other form of graphical depiction of any communication, information, or data, any writing or other tangible thing of any kind or description, however produced or reproduced, and any type of digitally, electronically or magnetically stored information, including without limitation, data compilations and stored data from which information can be obtained and translated, data (both in tangible form and stored in memory components), data print-outs, databases, “e mail” messages, phonographic records, audio recordings (whether stored in analog form, stored digitally, stored magnetically (including on audiotapes), or otherwise), video recordings (whether stored digitally, on videotape, or

otherwise), photographs (whether stored digitally, on photographic film, or otherwise), telecopies and facsimiles, telegrams, teletype or telefax messages, telexes, work sheets, working papers, or materials similar to any of the foregoing, however denominated by you. The term “**document**” also includes drafts of any documents and every copy of a document that is not an identical reproduction of the original, whether because it bears any handwritten words, markings, interlineations, alterations, revisions, changes, deletions, marginal comments, notations, or other thing that does not appear in or on the original, or because it otherwise differs in any way from the original document. The foregoing definition is not intended to be one of limitation, and the term “document” is to be given the broadest construction possible under the Texas Rules of Civil Procedure and decisions construing those rules.

8. “**Identify**” means the following:

a. As to an individual person (as defined), this includes the name, employer, business and residence addresses, telephone numbers and any other information that would identify that person and establish his/her relationship to you. If not an individual, this includes the name, type of entity, business address, telephone numbers and any other information that would identify that person and establish his/her relationship to you.

b. As to a document, means the type of document (letter, memorandum, etc.), the identity of the author or originator, the date authored or originated, the identity of each person to whom the original or copy was addressed or delivered, the identity of such person known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter thereof, all with sufficient particularity as a request for production under the Texas Rules of Civil Procedure.

c. As to a communication, means the date of the communication, the type of communication (telephone conversation, meeting, etc.), the place where the communication occurred, the identity of the person who made the communication, the identity of the person who received the communication and each person present when it was made, and the subject matter discussed.

9. “**Person.**” The term “Person” means any natural person or any business, legal, or governmental entity or association.

10. “**You/Your.**” The terms “You” and “Your” mean the Person on whom these

Document Requests are propounded, together with that Person's agents, servants, representatives, officers, directors, employees, predecessors, successors, and affiliates.

11. **“Baylor.”** The term “Baylor” means Baylor University and includes its current and former officers, directors, employees, agents, predecessors, successors, assigns, subsidiaries, and affiliates. “Baylor” also includes current and former members of Baylor’s Board of Regents.

12. **“Action.”** The term “Action” means the above-captioned action, including any and all claims, counterclaims, cross-claims and third-party claims asserted therein.

13. **“Marks.”** The term “Marks” means the trademarks and names licensed under the License Agreement.

Respectfully submitted,

RATLIFF LAW FIRM, PLLC



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**ATTORNEYS FOR DEFENDANT,
THE BAYLOR UNIVERSITY ALUMNI
ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served in compliance with the Texas Rules of Civil Procedure on October 17, 2014, on all counsel of record listed below by electronic e-service, or otherwise as indicated below:

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ATTORNEYS FOR PLAINTIFF,
BAYLOR UNIVERSITY



Ryan A. Botkin

CAUSE NO. 2014-2287-3

BAYLOR UNIVERSITY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	74TH JUDICIAL DISTRICT
	§	
THE BAYLOR UNIVERSITY	§	
ALUMNI ASSOCIATION,	§	
	§	
Defendant.	§	MCLENNAN COUNTY, TEXAS
	§	

**PLAINTIFF BAYLOR UNIVERSITY’S AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT THE BAYLOR UNIVERSITY ALUMNI ASSOCIATION’S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: Defendant, The Baylor University Alumni Association, by and through its attorneys of record, Mr. Shannon D. Ratliff, Ratliff Law Firm, 600 Congress Avenue, Suite 3100, Austin, Texas 78701 and Mr. Jonathan D. Pauerstein, Rosenthal Pauerstein Sandoloski Agather LLP, 755 East Mulberry, Suite 200, San Antonio, Texas 78212.

Baylor University (“Baylor” or “Plaintiff”) amends its responses and objections to The Baylor University Alumni Association’s (“the BAA” or “Defendant”) First Request for Production of Documents as follows:

Respectfully submitted,

FULBRIGHT WINNIFORD

By: /s/ Angus E. “Andy” McSwain
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**ATTORNEYS FOR PLAINTIFF,
BAYLOR UNIVERSITY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record on the 26th day of January 2015, as follows:

Shannon H. Ratliff
Ratliff Law Firm
600 Congress Ave., Ste. 3100
Austin, TX 78701

Jonathan D. Pauerstein
Rosenthal Pauerstein Sandoloski Agather LLP
755 East Mulberry, Ste. 200
San Antonio, TX 78212

/s/ Tony L. Visage

Tony L. Visage

GENERAL OBJECTIONS

Plaintiff Baylor University makes the following general objections. All responses are subject to these general objections, and the general objections are incorporated by reference into each individual response to each individual request as if fully set forth therein.

1. Plaintiff has made reasonable efforts to respond to this discovery based on all information reasonably available to Plaintiff. However, Plaintiff may not have all responsive information available because discovery is just beginning, investigation is ongoing, or because the information is not readily obtainable. Plaintiff objects to any instruction, including Instruction No. 2, suggesting or implying that Plaintiff's answers must be complete and final. Plaintiff expressly reserves the right to amend or supplement its answers to these requests for production as permitted by the Texas Rules of Civil Procedure.
2. Although Plaintiff may respond fully or partially to objectionable requests, Plaintiff is not waiving its objections by responding.
3. Plaintiff does not waive any objection by the inadvertent production of requested information or documents.
4. To the extent any instruction or definition attempts to impose obligations beyond those required under the Texas Rules of Civil Procedure (the "Rules"), Plaintiff objects and will respond as required under the Rules. Plaintiff further objects to the statement that Defendant's Instructions and Definitions are an "integral" part of the requests and must be followed. Plaintiff will comply with the Rules.
5. Plaintiff objects to the definition regarding the terms "communicate" or "communications" because that definition is vague, ambiguous, overly broad, unduly burdensome, and harassing. Plaintiff objects that the definition is inconsistent with the Rules, particularly to the extent the definition purports to require Respondents to reduce information to tangible form.
6. Plaintiff is withholding privileged documents, including, without limitation, any documents that may be protected by the attorney-client communication privilege, the work-product privilege, or any other applicable privileges. Because the definition of "You" and "Your" includes Plaintiff's attorneys, each request that includes these defined terms is objectionable and creates the need for withholding. In addition, several of the requests seek "all documents concerning," which encompasses privileged documents. Plaintiff will produce non-privileged documents. All documents are produced on the condition that all copies of any documents subject to any privilege and inadvertently produced will be returned.

7. Plaintiff objects to these requests to the extent that they request documents already in the possession of Defendant. The request for such documents is unreasonably cumulative and duplicative, and unduly burdensome.
8. Plaintiff does not concede that any of the documents responsive to these Requests for Production are or will be admissible evidence at a trial of this action and do not waive any objections, on any ground, whether or not asserted herein, to the use of any such documents at trial.
9. Plaintiff further objects to the definition of “You” and “Your” because it is overbroad and burdensome in that it includes all current and former members of Baylor’s Board of Regents.
10. Plaintiff objects to these Requests for Production to the extent they seek to impose an obligation to identify, search for, or gather documents or information beyond their individual possession, custody or control, and Plaintiff will produce solely those documents that are within its possession, custody or control.
11. Plaintiff incorporates by reference the general objections set forth above into the specific objections set forth below. Plaintiff may repeat a general objection for emphasis or some other reason but the failure to repeat any general objection does not waive any general objection to the request.
12. Plaintiff objects to the production of any confidential or proprietary document prior to the parties entering into a mutually acceptable Protective Order. Plaintiff is willing to execute a Protective Order as contemplated by Defendant in footnote 1 of its requests.

AMENDED RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents identified or referred to in your response to any interrogatory served on you by Defendant in this action.

RESPONSE:

Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court.

REQUEST FOR PRODUCTION NO. 2:

All documents concerning:

- a. any notice of any breach of or default under the License Agreement that Baylor sent or otherwise provided to the BAA;
- b. any breach of or default under the License Agreement by the BAA;
- c. any failure by the BAA to cure any breach of the License Agreement; or
- d. the termination of the License Agreement.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 3:

All documents concerning:

- a. any breach of or default under the Official Recognition Agreement by the BAA;
- b. any notice of any breach of or default under the Official Recognition Agreement that Baylor sent or otherwise provided to the BAA;
- c. any failure by the BAA to cure any breach of the Official Recognition Agreement; or
- d. the termination of the Official Recognition Agreement.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 4:

All documents constituting, concerning or setting forth any communication between Baylor and any current or former member of the Board of Directors of the BAA concerning this Action.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents... concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by

the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 5:

All documents constituting, concerning or setting forth any communication between Baylor and any current or former member of the Board of Directors of the BAA concerning any breach of the License Agreement or the Official Recognition Agreement.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents ... concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 6:

All documents concerning the Agreement to Vacate.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all

documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 7:

All documents concerning whether Baylor ever intended that the BAA would continue to occupy offices in the Robinson Tower if the Transition Agreement was not approved by the BAA's members.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents concerning..." Plaintiff further objects to this request because it is confusing. Subject to these objections and without waiving the General Objections, Plaintiff will produce all documents responsive to this request (as interpreted by Baylor to mean whether Baylor ever intended to allow the BAA to continue to occupy the offices in Robinson Tower if the Transition Agreement was not approved by the BAA's members) after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 8:

All documents concerning the termination of the BAA's occupancy of offices in the Robinson Tower.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 9:

All documents concerning, estimating, or setting forth the value of the Hughes Dillard Alumni Center.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 10:

All documents concerning, estimating, discussing, or otherwise addressing the cost of constructing a building of a size, condition, quality of construction, and location approximately

the same as the size, condition, quality of construction, and location of the Hughes-Dillard Alumni Center.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning....” Subject to this objection and without waiving the General Objections, Plaintiff has not discovered any documents responsive to this request. To the extent Plaintiff does discover any such documents, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will withhold privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges.

REQUEST FOR PRODUCTION NO. 11:

All documents concerning any breach of the Agreement to Vacate by the BAA.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 12:

All documents concerning the BAA's pledge of \$1,000,000, as described in paragraph 6 of Baylor's Original Petition in this Action.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents concerning..." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 13:

All documents concerning the express charitable trust referred to in paragraph 7 of Baylor's Original Petition in this Action.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents concerning..." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 14:

The “instruments creating the charitable trust” referred to in paragraph 9 of Baylor’s Original Petition in this action.

RESPONSE:

Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court.

REQUEST FOR PRODUCTION NO. 15:

Each license to “others” referred to in the first sentence of paragraph 16 of Baylor’s Original Petition in this Action.

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 16:

Each agreement pursuant to which Baylor granted a perpetual trademark or patent license to any person or entity.

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this

information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 17:

Each agreement pursuant to which Baylor granted a trademark or patent license to any person or entity that includes the word “perpetual.”

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 18:

Each agreement pursuant to which Baylor granted a trademark or patent license to any person or entity that includes the phrase “fully paid” or “fully paid up.”

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 19:

Each agreement pursuant to which the following entities are licensed or otherwise authorized or permitted to use the name “Baylor”:

- a. Baylor Health Care System Foundation;
- b. Baylor College of Medicine;
- c. Baylor Scott & White Health;
- d. Baylor Health Care System;
- e. Baylor College of Dentistry;
- f. Texas A&M University Baylor College of Dentistry; and
- g. Baylor University Medical Center at Dallas.

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 20:

Each agreement pursuant to which Baylor granted a trademark or patent license to any person or entity under which the licensee could terminate the agreement at any time.

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 21:

Each trademark or patent license, or other type of agreement, between Baylor and any person or entity that is indefinite in duration.

RESPONSE:

Plaintiff objects that this Request is overly broad, unduly burdensome and outside the scope of relevant information to the subject matter of the present suit. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff and such licenses are confidential, proprietary and trade secrets of third parties.

REQUEST FOR PRODUCTION NO. 22:

All documents concerning the “confusion in the marketplace” regarding BAA’s gifts and solicitations referred to in paragraph 62 of Baylor’s Original Petition in this Action.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents ... concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 23:

All minutes and other records of meetings of Baylor’s Board of Regents at which the License Agreement was addressed.

RESPONSE:

Plaintiff objects that this Request because it is overly broad. Plaintiff further objects that this information is confidential and/or proprietary in nature. Subject to and without waiving these

objections and the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will redact those portions of any document which are not responsive to this request. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses information that is subject to the attorney-client communication and attorney work product privileges and information that is not relevant. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 24:

All minutes and other records of meetings of Baylor's Board of Regents at which the Official Recognition Agreement was addressed.

RESPONSE:

Plaintiff objects that this Request because it is overly broad. Plaintiff further objects that this information is confidential and/or proprietary in nature. Subject to and without waiving these objections and the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will redact those portions of any document which are not responsive to this request. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses information that is subject to the attorney-client communication and attorney work product privileges and information that is not relevant. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 25:

All minutes and other recordings of meetings of Baylor's Board of Regents at which the Transition Agreement was addressed.

RESPONSE:

Plaintiff objects that this Request because it is overly broad. Plaintiff further objects that this information is confidential and/or proprietary in nature. Subject to and without waiving these objections and the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will redact those portions of any document which are not responsive to this request. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses information that is subject to the attorney-client communication and attorney work product privileges and information that is not relevant. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 26:

All minutes and other records of meetings of Baylor's Board of Regents at which the Agreement to Vacate was addressed.

RESPONSE:

Plaintiff objects that this Request because it is overly broad. Plaintiff further objects that this information is confidential and/or proprietary in nature. Subject to and without waiving these objections and the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will redact those portions of any document which are not responsive to this

request. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses information that is subject to the attorney-client communication and attorney work product privileges and information that is not relevant. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 27:

All documents concerning the authority or lack of authority of Herbert Reynolds to execute the License Agreement on behalf of Baylor.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents ... concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 28:

All documents concerning or setting forth any resolution of Baylor’s Board of Regents regarding:

- a. The License Agreement;
- b. The Official Recognition Agreement;
- c. The Agreement to Vacate; or
- d. The Transition Agreement.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents concerning....” Plaintiff further objects that this information is confidential and/or proprietary in nature. Subject to and without waiving these objections and the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will redact those portions of any document which are not responsive to this request. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses information that is subject to the attorney-client communication and attorney work product privileges and information that is not relevant. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 29:

All documents concerning the authority or lack of authority of Herbert Reynolds to execute the Official Recognition Agreement on behalf of Baylor.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents ... concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 30:

All documents discussing the formation or creation of the Baylor Network, the Baylor Alumni Network, or the Baylor Office of Alumni Services.

RESPONSE:

Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 31:

Documents sufficient to establish the personnel organization (organizational chart) of the Baylor Alumni Network from its inception to the present.

RESPONSE:

Plaintiff objects to this request to the extent it requests Plaintiff to create a document not already in existence. Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 32:

Documents sufficient to establish the Baylor Alumni Network's budgets and operating expenditures [from] its inception to the present.

RESPONSE:

Plaintiff objects to this request to the extent it requests Plaintiff to create a document not already in existence. Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 33:

All documents concerning, or originated by or for, the BAA that Baylor received from Randy Lofgren.

RESPONSE:

Plaintiff objects to this request because it is confusing and overbroad. Subject to this objection and the General Objections, Baylor has not yet discovered any such documents (except to the extent Mr. Lofgren sent such documents to Baylor as part of his duties while he was employed by the BAA – in which case such documents will be produced). To the extent Baylor discovers any documents responsive to this request, it will withhold any privileged documents. The broadness of this request as written encompasses documents subject to the attorney-client communication and attorney work product privileges.

REQUEST FOR PRODUCTION NO. 34:

All documents concerning alumni association administration or operating, or alumni association best practices, that Baylor received from Randy Lofgren.

RESPONSE:

Plaintiff objects to this request because it is confusing and overbroad. Subject to this objection and the General Objections, Baylor has not yet discovered any such documents (except to the extent Mr. Lofgren sent such documents to Baylor as part of his duties while he was employed by the BAA – in which case such documents will be produced). To the extent Baylor discovers any documents responsive to this request, it will withhold any privileged documents. The broadness of this request as written encompasses documents subject to the attorney-client communication and attorney work product privileges.

REQUEST FOR PRODUCTION NO. 35:

All documents concerning Baylor's decision to employ Randy Lofgren, including communications with Mr. Lofgren regarding his potential employment with Baylor.

RESPONSE:

Plaintiff objects that this Request because it is overly broad. Plaintiff further objects that this information is confidential and/or proprietary in nature. Subject to and without waiving these objections and the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff will redact those portions of any document which are not responsive to this request and portions which contain personal, confidential information about Mr. Lofgren. Plaintiff is withholding privileged documents. The broadness of the request as written

encompasses information that is subject to the attorney-client communication and attorney work product privileges and information that is not relevant. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 36:

Documents concerning any effort by Baylor or Randy Lofgren to avoid the disclosure of BAA's confidential or proprietary information to Baylor in connection with Baylor's employment of Mr. Lofgren.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents ... concerning...." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 37:

All documents concerning Baylor's assumption of the operation of the Baylor class ring program.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents ... concerning...." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by

the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 38:

All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in Baylor homecoming activities.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents ... concerning...." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 39:

All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in Baylor graduation events and activities.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents ... concerning...." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by

the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 40:

All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in or operation of travel programs for Baylor alumni.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents ... concerning..." Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 41:

All documents concerning Baylor's decisions or actions during the period from 2005 to the present with respect to the BAA's participation in or operation of educational programs for Baylor alumni.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks "All documents ... concerning..."

Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 42:

All agreements pursuant to which any insurer is or may be liable to defend or indemnify Baylor with respect to this Action or the BAA's claims against Baylor.

RESPONSE:

None.

REQUEST FOR PRODUCTION NO. 43:

The fee agreement between Baylor and each attorney and law firm whose fees Baylor seeks to recover in this Action.

RESPONSE:

None.

REQUEST FOR PRODUCTION NO. 44:

All electronic mail messages and other communications concerning any breach of the License Agreement that Baylor sent to or received from:

- a. Jeff Kilgore;
- b. Chad Wooten;

- c. Todd Copeland;
- d. Collin Cox;
- e. Elizabeth Coker;
- f. George Cowden;
- g. Roland Johnson;
- h. Emily Tinsley; or
- i. David Lacy.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “other communications concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 45:

All electronic mail messages and other communications concerning any breach of the Official Recognition Agreement that Baylor sent to or received from:

- a. Jeff Kilgore;
- b. Chad Wooten;
- c. Todd Copeland;
- d. Collin Cox;
- e. Elizabeth Coker;

- f. George Cowden;
- g. Roland Johnson;
- h. Emily Tinsley; or
- i. David Lacy.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “other communications concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 46:

All electronic mail messages and other communications concerning the Agreement to Vacate (including but not limited to its negotiation, formation, performance, and breach) that Baylor sent to or received from:

- a. Chad Wooten;
- b. Todd Copeland;
- c. Collin Cox; or
- d. Elizabeth Coker.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “other communications concerning....” Subject to this objection and without waiving the General Objections, Plaintiff

will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 47:

All electronic mail messages and other communications concerning the Transition Agreement (including but not limited to its negotiation, formation, performance, and breach) that Baylor sent to or received from:

- a. Chad Wooten;
- b. Collin Cox;
- c. Todd Copeland; or
- d. Elizabeth Coker.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “other communications concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 48:

All electronic mail messages and other communications concerning this Action that Baylor sent to or received from any of the following:

- a. John Lilly;
- b. Karla Leeper;
- c. Jeff Kilgore;
- d. Basil Thomson;
- e. Randy Lofgren;
- f. Todd Copeland.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “other communications concerning....” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 49:

All documents concerning, constituting, or setting forth any communication between Baylor and Jack Dillard regarding the License Agreement, including all negotiations or discussions regarding the terms thereof.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents ... concerning....”

Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

REQUEST FOR PRODUCTION NO. 50:

All documents concerning, constituting, or setting forth any communication between Basil Thomson and Jack Dillard regarding the License Agreement, including all negotiations or discussions regarding the terms thereof.

RESPONSE:

Plaintiff objects to this request as overly broad in that it seeks “All documents ... concerning...” Subject to this objection and without waiving the General Objections, Plaintiff will produce all documents responsive to this request after a mutually agreeable Protective Order is executed by the parties or entered by the Court. Plaintiff is withholding privileged documents. The broadness of the request as written encompasses documents subject to the attorney-client communication and attorney work product privileges. Plaintiff is not withholding any other responsive documents.

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■ HILLSBORO

FACSIMILE TRANSMITTAL SHEET

DATE: November 26, 2014

TO: Mr. Shannon H. Ratliff FAX NO: 512-493-9625

TO: Mr. J. D. Pauerstein FAX NO: 210-244-8930

TO: _____ FAX NO: _____

FROM: Andy McSwain/le

NUMBER OF PAGES: 16 (Including this Transmittal Page)

COMMENT: Will also email to each of you.

IF YOU HAVE ANY PROBLEMS RECEIVING THIS FAX
PLEASE CONTACT SENDER AT 254-776-6000 - Lianne Eakin
direct No.
254-424-0416

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November 26, 2014

Via Facsimile - 512-493-9625
and Email

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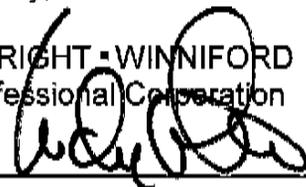
RE: *Baylor University v. The Baylor University Alumni Association; Cause No. 2014-2287-3; 74th Judicial District Court, McLennan County, Texas*

Gentlemen:

Enclosed is Baylor University's Objections and Answers to the Baylor University Alumni Association's First Interrogatories to Plaintiff in the above matter.

Sincerely,

FULBRIGHT ■ WINNIFORD
A Professional Corporation

BY: 
Andy McSwain

le
Enclosure
cc (w/enc.):

Via Email - Client
Via Email - Tony Visage

CAUSE NO. 2014-2287-3

BAYLOR UNIVERSITY,

Plaintiff,

v.

THE BAYLOR UNIVERSITY
ALUMNI ASSOCIATION,

Defendant.

§
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IN THE DISTRICT COURT OF

MCLENNAN COUNTY, TEXAS

74TH JUDICIAL DISTRICT

**PLAINTIFF BAYLOR UNIVERSITY'S OBJECTIONS AND ANSWERS TO THE
BAYLOR UNIVERSITY ALUMNI ASSOCIATION'S FIRST INTERROGATORIES TO
PLAINTIFF**

TO: Defendant, The Baylor University Alumni Association, by and through its attorneys of record, Mr. Shannon D. Ratliff, Ratliff Law Firm, 600 Congress Avenue, Suite 3100, Austin, Texas 78701 and Mr. Jonathan D. Pauerstein, Rosenthal Pauerstein Sandoloski Agather LLP, 755 East Mulberry, Suite 200, San Antonio, Texas 78212.

The Plaintiff, Baylor University ("Baylor" or "Plaintiff"), responds to Defendant, The Baylor University Alumni Association's ("The BAA" or "Defendant") First Interrogatories to Plaintiff as follows:

Respectfully submitted,

FULBRIGHT WINNIFORD

By: /s/ Angus E. "Andy" McSwain
Angus E. "Andy" McSwain
Texas Bar No. 13861100
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Waco, TX 76703-0445
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BRACEWELL & GIULIANI LLP

By: /s/ Tony L. Visage

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711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770
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Telecopy: (713) 221-1212

**ATTORNEYS FOR PLAINTIFF,
BAYLOR UNIVERSITY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record on the 26th day of November 2014, as follows:

Shannon H. Ratliff
Ratliff Law Firm
600 Congress Ave., Ste. 3100
Austin, TX 78701

Jonathan D. Pauerstein
Rosenthal Pauerstein Sandoloski Agather LLP
755 East Mulberry, Ste. 200
San Antonio, TX 78212

/s/ Tony L. Visage
Tony L. Visage

GENERAL OBJECTIONS

Plaintiff Baylor University makes the following general objections. All responses are subject to these general objections, and the general objections are incorporated by reference into each individual response to each individual request as if fully set forth therein.

1. Plaintiff has made reasonable efforts to respond to this discovery based on information reasonably available to Plaintiff. However, Plaintiff may not have all responsive information available because discovery is just beginning, investigation is ongoing, or because the information is not readily obtainable. Plaintiff objects to any instruction or request suggesting or implying that Plaintiff's answers must be complete and final. Plaintiff expressly reserves the right to amend or supplement its answers to these requests for production as permitted by the Texas Rules of Civil Procedure.
2. Although Plaintiff may respond fully or partially to objectionable requests, Plaintiff is not waiving its objections by responding.
3. To the extent any instruction or definition attempts to impose obligations beyond those required under the Texas Rules of Civil Procedure, Plaintiff objects and will respond as required under the rules.
4. Plaintiff objects to the definition regarding the terms "communicate" or "communications" as that definition is vague, ambiguous, overly broad, unduly burdensome, and harassing. Plaintiff objects that the definition is inconsistent with the Texas Rules of Civil Procedure, particularly to the extent the definition purports to require Respondents to reduce information to tangible form.
5. Plaintiff objects to these requests to the extent that they call for any privileged information, including, without limitation, any information that may be protected by the attorney-client communication privilege, the work-product privilege, or any other applicable privileges.
6. Plaintiff objects to these requests to the extent that they request information already in the possession of Defendant. The request for such information is unreasonably cumulative and duplicative, and unduly burdensome.
7. Plaintiff objects to the entire First Set of Interrogatories to the extent that it calls for confidential and proprietary information. A party seeking the production of trade secret, confidential, and proprietary information must show "exactly how the lack of the information will impair presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible threat." *In re Bridgestone/Firestone, Inc.*, 106 S.W.3d 730, 733 (Tex. 2003). The Defendant has not satisfied this burden.

INTERROGATORIES

INTERROGATORY NO. 1:

Please identify each of your trademarks and service marks, including the date of registration, if any, of each such mark.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory for the reason it is overly broad and burdensome, and seeks discovery of matters which are not relevant and which are not reasonably calculated to lead to the discovery of admissible evidence. As such, the matters sought are outside of the scope of discovery. Further, Plaintiff objects to this Interrogatory for the reason that to the extent registered, it calls for information that is contained in public records and equally accessible to Defendant. Defendant is referred thereto.

INTERROGATORY NO. 2:

Please identify all entities with which you have entered into a license agreement pertaining in whole or in part to the use of the word "Baylor" or the words "Baylor University."

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory for the reason it is overly broad and burdensome, and seeks discovery of matters which are not relevant and which are not reasonably calculated to lead to the discovery of admissible evidence. As such, the matters sought are outside of the scope of discovery. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff. Accordingly, it will not be produced until the entry of an appropriate court order regarding confidentiality of such documents and information, if determined discoverable or relevant.

INTERROGATORY NO. 3:

Please identify each of the licensing relationships identified in response to Interrogatory No. 2 that you consider to be terminable "at will."

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory for the reason it is vague, overly broad and burdensome, and seeks discovery of matters which are not relevant and which are not reasonably calculated to lead to the discovery of admissible evidence. As such, the matters sought are outside of the scope of discovery. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff. Accordingly, it will not be produced until the entry of an appropriate court order regarding confidentiality of such documents and information, if determined discoverable or relevant. Plaintiff further objects to this Interrogatory to the extent it could be construed to call for information that violates attorney-client communication privilege; Plaintiff objects to this Interrogatory to the extent that it could be construed to call for information that violates attorney and/or party work product privilege.

INTERROGATORY NO. 4:

Please identify all written agreements between Baylor and any third party that include the word "perpetual," the word "irrevocable," or the phrase "fully paid up."

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory for the reason it is overly broad, vague and burdensome, and seeks discovery of matters which are not relevant and which are not reasonably calculated to lead to the discovery of admissible evidence. As such, the matters sought are outside of the scope of discovery. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff. Accordingly, it will

not be produced until the entry of an appropriate court order regarding confidentiality of such documents and information, if determined discoverable or relevant.

Subject thereto and without waiving the same, Baylor, to its knowledge has no licensing agreements which are "irrevocable" and/or "fully paid up." In connection with the spinoff of Baylor College of Medicine and Baylor College of Dentistry, the "Baylor" Mark was licensed to them for "perpetual" use subject to certain conditions.

INTERROGATORY NO. 5:

Please identify all documents and data brought to Baylor by Randy Lofgren when he left BAA to become employed by Baylor.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory for the reason it is overly broad and burdensome, vague and seeks discovery of matters which are not relevant and which are not reasonably calculated to lead to the discovery of admissible evidence. As such, the matters sought are outside of the scope of discovery.

Subject thereto and without waiving same, Plaintiff does not believe there were any such documents and/or data relevant to this controversy which were not already in Baylor's possession, or readily available to it, and otherwise refers Defendant to Plaintiff's Responses to Request for Production.

INTERROGATORY NO. 6:

Please explain the legal and factual basis for your contention that the BAA is an "express charitable trust that names Baylor University as the only specific beneficiary." In your answer please identify the elements of the trust relationship, namely, (1) the instrument(s) creating the trust; (2) the trustee(s); (3) the settlor(s); and (4) all beneficiaries.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory to the extent that it could be construed to call for information that violates attorney and/or party work product privilege. Plaintiff objects to this Interrogatory, as the same is overly broad and burdensome, is vague, and is incapable of an accurate response by requesting a statement in full and in detail of all factual bases for allegations. Further, discovery into this area is continuing, and further information which may be responsive to this Interrogatory is expected to be discovered through this process. Defendant's information at this time is therefore incomplete.

Subject thereto and without waiving the same: It is Baylor's contention that the BAA Articles of Incorporation, and as Amended, and its governing documents establish, in effect, a trust with Baylor as the ultimate beneficiary.

INTERROGATORY NO. 7:

If you contend that the BAA has violated or failed to satisfy a contractual requirement, please identify the contract provision that you contend was violated and the manner in which you contend it was violated. For example, if you contend that BAA failed to satisfy any of the provisions of Section 5.1 of the License Agreement or Part I of the Official Recognition Agreement, please identify the specific contractual provision and the facts giving rise to your allegation.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory, as the same is overly broad and burdensome, is vague, improperly attempts to require Plaintiff to marshal all of its evidence in response thereto, and is incapable of a fully accurate response by requesting a statement in full and in detail of all factual bases for allegations. Further, Plaintiff objects to this Interrogatory

due to the fact it necessarily infringes upon the attorney-client communication privilege and work product privilege, and consulting expert privilege to which Plaintiff objects. Discovery into this area is continuing, and further information which may be responsive to this Interrogatory is expected to be discovered through this process.

Subject thereto and without waiving the same, Baylor responds generally as follows:

1. BAA was obligated to cease use of the Marks licensed under the License Agreement.
2. Those various matters discussed and raised in correspondence between Noley Bice, Karla Leeper, Charlie Beckenhauer, and the BAA (or its counsel) to which BAA is referred, including lack of quality control issues.
3. Failure to coordinate Alumni activities, either in general or as to all academic units, college and schools.
4. Interference with/failure to coordinate regarding donors, gifts and/or activities.
5. Failure to fulfill its own purposes, as denoted in its Articles and Bylaws – for instance by failing to extend financial or other services to BU or its students on any material basis, and its insistence that its claimed function as “independent voice” operated as the paramount duty of the BAA to the exclusion and damage of its other duties.

INTERROGATORY NO. 8:

For each alleged contractual violation listed in response to the above interrogatory, please identify all communications which you contend represent written notice to the BAA of the alleged violation.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory, as the same is overly broad and burdensome, is vague, improperly attempts to require Plaintiff to marshal all of its evidence in

response thereto, and is incapable of a fully accurate response by requesting a statement in full and in detail of all communications relative to allegations. Discovery into this area is continuing, and further information which may be responsive to this Interrogatory is expected to be discovered through this process. Subject thereto and without waiving the same, Baylor responds generally as follows: See Various correspondence of and between Noley Bice, Karla Leeper, Charlie Beckenhauer and BAA (or its Counsel) produced in connection with Request for Production, and in possession of Plaintiff, Defendant and its counsel.

INTERROGATORY NO. 9:

Please identify the acts or omissions which you contend violated an alleged fiduciary duty owed to Baylor, and the manner in which these acts or omissions violated the alleged fiduciary duty.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory, as the same is overly broad and burdensome, is vague, improperly attempts to require Plaintiff to marshal all of its evidence in response thereto, and is incapable of a fully accurate response by requesting a statement in full and in detail of all factual bases for allegations. Further, Plaintiff objects to this Interrogatory due to the fact it necessarily infringes upon the attorney-client communication privilege and work product privilege, and consulting expert privilege to which Plaintiff objects. Discovery into this area is continuing, and further information which may be responsive to this Interrogatory is expected to be discovered through this process.

Subject thereto and without waiving the same, Baylor responds generally as follows: See Answer to Interrogatory No. 8. Further, Baylor believes the failure of BAA to act in the best interest of Baylor University and its students by supporting the mission and initiatives of Baylor on an ongoing and substantial basis, including the failure to contribute substantial funds to the

University and its students, instances of the BAA working at cross purposes with the University and/or its Donors, stressing its perceived role as “independent voice” as paramount, to the exclusion of its other duties to the University, (including that of “promoting union of and good fellowship among former students of Baylor University, . . .”) are examples of breaches of fiduciary duty.

INTERROGATORY NO. 10:

If you contend that the BAA’s use of the Marks has caused actual confusion among consumers with respect to Baylor’s other marks, please identify and describe all such instances of actual confusion.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory, as the same constitutes an impermissible fishing expedition, is overly broad and burdensome, is vague, and is incapable of an accurate response by requesting a statement in full and in detail of all factual bases for allegations. Further, Plaintiff objects to this Interrogatory, due to the overly broad, burdensome and vague nature thereof, as it necessarily infringes upon the attorney-client communication privilege and work product privilege and consulting expert privilege to which Plaintiff objects. Discovery into this area is continuing, and further information which may be responsive to this Interrogatory is expected to be discovered through this process. Plaintiff’s information at this time is therefore incomplete.

Subject thereto and without waiving same: Baylor believes that many perceive and believe BAA to be a part of Baylor University, when it, in fact insists it is and will remain completely independent. On a fairly consistent basis complaints and/or comments are (and have been) made to Baylor and its administrators over the years as a result of BAA activities, mail-

outs, Baylor Line articles, etc. Some examples include travel and other solicitations, including monetary, Move In T-Shirts for Welcome Week, opinion “surveys” designed to advocate positions, etc. Some specific instances are detailed in correspondence of Noley Bice, Karla Leeper and/or Charlie Beckenhauer with BAA.

INTERROGATORY NO. 11:

Paragraph 67 of Baylor’s Original Petition states that “Baylor’s signatory [to the BAA Agreements] was not authorized to bind Baylor beyond a reasonable time.” Please state this “reasonable time” and identify all documents which serve to define or limit the authority of Baylor’s signatory.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects that this Interrogatory is overly broad, vague, and further objects to the extent it could be construed to call for information that violates attorney-client communication privilege, and to the extent it could be construed to call for information that violates attorney and/or party work product privilege.

Subject thereto and without waiving same: Baylor believes that if (and to the extent) the License and/or other Agreements purport to “last forever,” then as a legal and policy matter the term is actually limited to a reasonable time under the circumstances. Here, the changing demands, trends and the needs of higher education, and to Baylor in order to maintain and improve its position both academically and athletically would be changing circumstances which would affect a “reasonable time”. These needs led to initiatives such as Vision 2012, and more recently Pro Futuris, as well as making crucial a robust, coordinated and material effort to engage all alumni of the University, and not just that small percentage that choose to be members

of the BAA. Because of the admitted inability of the BAA to fully participate in a material way in those efforts, BU believes that reasonable time has long since passed.

INTERROGATORY NO. 12:

Please explain, in your own words, how Baylor will be harmed or damaged if the BAA is allowed to continue using the Marks pursuant to the terms of the License Agreement.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Plaintiff objects to this Interrogatory for the reason it is overly broad and burdensome, and seeks discovery of matters which are not relevant and which are not reasonably calculated to lead to the discovery of admissible evidence. As such, the matters sought are outside of the scope of discovery. Plaintiff further objects that this information is confidential and/or proprietary in nature, and is a trade secret of Plaintiff. Accordingly, it will not be produced until the entry of an appropriate court order regarding confidentiality of such documents and information, if determined discoverable or relevant. The primary harm will be continued confusion and as to the true affiliation, intent and goals of BAA

INTERROGATORY NO. 13:

Please state the date on which you reasonably anticipated litigation in this matter.

ANSWER: Plaintiff objects that this Interrogatory is vague, and Plaintiff further objects to this Interrogatory to the extent it could be construed to call for information that violates attorney-client communication privilege, and to the extent that it could be construed to call for information that violates attorney and/or party work product privilege.

Subject thereto and without waiving same: Baylor University believes it reasonably anticipated litigation in the Spring of 2013

INTERROGATORY NO. 14:

Describe the steps you took to retrieve or collect electronic data in response to Defendant's requests for production of documents. If you conducted a word search in an e-mail system or other electronic database, or used Boolean search terms, please include the specific search terms in your response.

ANSWER: Subject to the General Objections, incorporated herein as if fully set out, Plaintiff responds as follows: Discovery into this area is continuing, and further information which may be responsive to this Interrogatory is expected to be discovered through this process. Plaintiff's information at this time is therefore incomplete. To date, Plaintiff has collected all of the following persons electronic mail in the Baylor University system: Juan Alejandro, Wesley Bailey, John Barry, Robert Beauchamp, Charles Beckenhauer, Noley Bice, Linda Brian, Duane Brooks, Judy Carpenter, Elizabeth Davis, Tommye Lou Davis, Jerry Haag, Ken Hall, David Harper, Christopher Holmes, Taylor Hoogendoorn, Kevin Jackson, Karla Leeper, Ian McCaw, Winfred Moore, Ron Muff, Pattie Orr, Ramiro Pena, Dennis Prescott, Reagan Ramsower, Jeff Reeter, Kit Riehl, William Robbins, Ken Starr, Todd Still, Richard Willis, and Ronald Wilson. Plaintiff has also collected all electronic documents from the hard drives of the following persons' Baylor University issued computers: Tommye Lou Davis, Randy Lofgren, John Barry, Judy Carpenter, Elizabeth Davis, Billie Gilbert, Brian Nicholson, Jeannette Rudd, Karla Leeper, Stan Madden, Pat Williamson, Ken Hall, Ken Starr, and Reagan Ramsower. From these electronic files, Plaintiff conducted a search using the following terms: BAA, "Alumni Association," "Alumni Services," "Alumni Network," AA, "Baylor Line," "The Line," "Official Recognition Agreement," "Agreement to Vacate," "Hughes Dillard," HDAC, "License Agreement," "Transition Agreement," Herbert, Herb, Reynolds, "Baylor Network," BAN,

Lofgren, Ring, Kilgore, Wooten, Copeland, Cox, Coker, Cowden, Roland, Tinsley, Lacy, and Dillard.