

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS for and on behalf of
WEST VIRGINIA UNIVERSITY,

Plaintiff,

v.

Civil Action No. 07-C-851
(Hon. Robert B. Stone, Judge)

RICHARD RODRIGUEZ,

Defendant and Third Party Plaintiff,

v.

WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., a West Virginia corporation,

Third Party Defendant.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
COMBINED FIRST REQUEST FOR ADMISSIONS, INTERROGATORIES, AND
REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**

Now comes Defendant Richard Rodriguez, by and through undersigned counsel, and responds to Plaintiff's Requests for Admission, Interrogatories, and Request for Production of Documents as follows:

Request for Admission No. 1: *Admit that the Employment Agreement, First Amendment to the Employment Agreement for Richard Rodriguez and Second Amendment to the Employment Agreement for Richard Rodriguez, attached as Exhibits A, B and C to the Complaint for Declaratory Judgment and Other Relief are authentic, true and complete and that there is no other written contract between the University and Richard Rodriguez.*

Defendant ADMITS that the Employment Agreement, First Amendment to the Employment Agreement, and Second Amendment to the Employment Agreement attached as Exhibits A, B and C respectively to Plaintiff's Complaint are authentic, true, and accurate copies.

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Further answering, Defendant states that none of the aforementioned documents encompass the various verbal promises made to Defendant by multiple representatives of Plaintiff contemporaneously with the execution of the Second Amendment to the Employment Agreement.

Interrogatory No. 1: *If the response to Request for Admission No. 1 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

See response to Request for Admission No. 1. See also, Defendant's Answer, Counterclaim, and Third Party Complaint.

Request for Production No. 1: *If the response to Request for Admission No. 1 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission, including, but not limited to, any and all documents which the defendant contends constitute a contract between the defendant and the University.*

Response:

Will supplement, if any.

Request for Admission No. 2: *Admit that the University did not materially and substantially breach the Agreement between the University and the defendant prior to defendant's resignation from the position as head coach of the West Virginia University Football team.*

DENY.

Interrogatory No. 2: *If the response to Request for Admission No. 2 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the*

basis for defendant's failure to make an unqualified admission.

Response:

The facts and reasons supporting Defendant's denial of Request for Admission No. 2 are succinctly set forth in Defendant's Answer, Counterclaim, and Third Party Complaint.

Request for Production No. 2: *If the response to Request for Admission No. 2 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission, including, but not limited to, any and all documents other than tangible items which demonstrate or support any contention that the University materially and substantially breached the Agreement between the University and the defendant.*

Response:

Will supplement, if any.

Request for Admission No. 3: *Admit that the defendant did not give written notice to the University of any alleged material and substantial breach of the Agreement by the University within ninety (90) days of such breach.*

Defendant ADMITS that he did not give written notice to the University of its material and substantial breaches prior to his resignation. Further answering, Defendant states that various breaches by the University were discussed with representatives of the Plaintiff, including President Garrison, at a meeting on or about December 15, 2007, wherein Plaintiff's representative stated that nothing would be done by West Virginia University to cure said breaches.

Interrogatory No. 3: *If the response to Request for Admission No. 3 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

See response to Request for Admission No. 3. See also, Defendant's Answer, Counterclaim, and Third Party Complaint.

Request for Production No. 3: *If the response to Request for Admission No. 3 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission, including, but not limited to, any and all documents or other tangible items which reflect or support any contention that the defendant provided written notice to the University or any material and substantial breach of the Agreement by the University.*

Response:

Will supplement, if any.

Request for Admission No. 4: *Admit that any alleged material and substantial breach of the Agreement by the University has not gone uncured for thirty (30) days after the University's receipt of written notice of such breach.*

Defendant can neither admit nor deny this request as he has no knowledge as to whether Plaintiff has cured any of the material and substantial breaches following Plaintiff's receipt of Defendant's January 12, 2008 correspondence outlining the various breaches by the University which caused Defendant to resign.

Interrogatory No. 4: *If the response to Request for Admission No. 4 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

See January 12, 2008 correspondence from Defendant to representatives of Plaintiff.

Request for Production No. 4: *If the response to Request for Admission No. 4 is other than an unqualified admission, please provide all documents which form the basis of, or*

relate to, defendant's failure to make an unqualified admission, including, but not limited to, any and all documents or other tangible items which reflect or support any contention that any alleged material and substantial breach of the Agreement by the University has gone uncured for thirty (30) days after the University's receipt of written notice of such breach.

Response:

Will supplement, if any.

Request for Admission No. 5: *Admit that the defendant terminated his employment under the Agreement for a reason other than as set forth under Article V(D)(1) of the Agreement.*

DENIED.

Interrogatory No. 5: *If the response to Request for Admission No. 5 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

President Garrison was informed of various material breaches of the Agreement by the University at the meeting which occurred on or about December 15, 2007, and stated that nothing would be done to cure the same thereby constituting an anticipatory repudiation of the Employment Agreement.

Request for Production No. 5: *If the response to Request for Admission No. 5 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission, including, but not limited to, any and all documents other tangible items reflecting defendant's termination of his employment under the Agreement for reasons other than as set forth under Article V(D)(1).*

Response:

Will supplement, if any.

Request for Admission No. 6: *Admit that the defendant terminated his employment under the Agreement after August 31, 2007 and before August 31, 2008.*

ADMIT.

Interrogatory No. 6: *If the response to Request for Admission No. 61 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

Not applicable.

Request for Production No. 6: *If the response to Request for Admission No. 6 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.*

Response:

Not applicable.

Request for Admission No. 7: *Admit that prior to the defendant's termination of his employment under the Agreement, the defendant engaged in discussions with representatives of the University of Michigan regarding employment as the head coach of the University of Michigan football team.*

ADMIT.

Interrogatory No. 7: *If the response to Request for Admission No. 7 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

Not applicable.

Request for Production No. 7: *If the response to Request for Admission No. 7 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.*

Response:

Not applicable.

Request for Admission No. 8: *Admit that prior to the defendant terminating his employment under the Agreement, the defendant engaged in discussions with representatives of the University of Michigan regarding his employment as the head coach of the University of Michigan football team without the prior knowledge or consent of the University.*

Plaintiff is without sufficient knowledge to admit or deny.

Interrogatory No. 8: *If the response to Request for Admission No. 8 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

Defendant has no knowledge of what knowledge the University had.

Request for Production No. 8: *If the response to Request for Admission No. 8 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.*

Response:

Not applicable.

Request for Admission No. 9: *Admit that prior to the defendant's termination of his employment under the Agreement, the defendant and/or other individuals under the defendant's direction contacted or communicated with student athlete recruits of the University for the 2008 football season regarding defendant's employment as the head coach of the University of Michigan football team.*

DENIED.

Interrogatory No. 9: *If the response to Request for Admission No. 9 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

Neither Defendant nor anyone on his behalf contacted any "student athlete recruits" prior to Defendant's announcement of his resignation.

Request for Production No. 9: *If the response to Request for Admission No. 9 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.*

Response:

Will supplement, if any.

Request for Admission No. 10: *Admit that the defendant voluntarily resigned from the position of head coach of the University Football team, effective December 19, 2007.*

Defendant ADMITS that he resigned from the position of head coach of the WVU football team effective December 19, 2007. Defendant DENIES that said resignation was "voluntary", given the anticipatory repudiation of the Employment Agreement by representatives of Plaintiff as discussed previously.

Interrogatory No. 10: *If the response to Request for Admission No. 10 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

See response to Request for Admission No. 10. See also, Defendant's Answer, Counterclaim, and Third Party Complaint.

Request for Production No. 10: *If the response to Request for Admission No. 10 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.*

Response:

Will supplement, if any.

Request for Admission No. 11: *Admit that the defendant's termination of his employment under the Agreement with the University was not the result of the defendant's death, disability or permanent retirement.*

ADMIT.

Interrogatory No. 11: *If the response to Request for Admission No. 11 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.*

Response:

Not applicable.

Request for Production No. 11: *If the response to Request for Admission No. 11 is*

other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.

Response:

Not applicable.

Interrogatory No. 12: *Please state the date, location and participants of all meetings, including all meetings conducted by telecommunications or other electronic communication, between the defendant, or representatives of the defendant, and representatives of the University of Michigan regarding employment of the defendant as the head coach of the University of Michigan Football team.*

Response:

Objection – the information requested is not relevant to any of Plaintiff's claims nor Defendant's defenses/counterclaims, and is not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request for Production No. 12: *Please produce all documents or other tangible items reflecting and/or relating in any manner to all meetings, including all meetings conducted by telecommunication or other electronic communication, between the defendant or representatives of the defendant, and representatives of the University of Michigan regarding defendant's employment as the head coach of the University of Michigan Football team.*

Response:

Objection – the information requested is not relevant to any of Plaintiff's claims nor Defendant's defenses/counterclaims, and is not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Interrogatory No. 13: *Please state the name and date of contact of all student athlete recruits of the University for the 2008 football season contacted by any means by the*

defendant or others under the direction of the defendant from December 16, 2007 up to and including December 18, 2007.

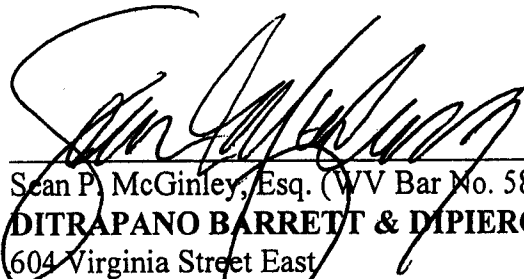
Response:

Objection – the information requested is not relevant to any of Plaintiff’s claims nor Defendant’s defenses/counterclaims, and is not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request for Production No. 13: *Please produce full and complete copies of all cell phone records, text message records, phone records, and e-mails for the time period between December 1, 2007, up to and including December 18, 2007.*

Response:

Defendant does not have possession of any cell phone records, text message records, phone records, or emails that are not already in Plaintiff’s possession.



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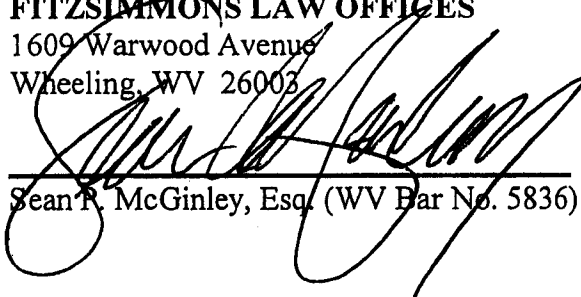
Third Party Defendant.

CERTIFICATE OF SERVICE

I, Sean P. McGinley, hereby certify that **DEFENDANT'S RESPONSE TO PLAINTIFF'S COMBINED FIRST REQUEST FOR ADMISSIONS, INTERROGATORIES, AND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was served on the following via facsimile on this 12th day of February 2008:

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