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**MEMORANDUM**

**TO:** Thomas C. Shanahan, Senior Vice President and General Counsel

**FROM:** Womble Bond Dickinson (US) LLP

**DATE:** November 6, 2019

**RE:** Update on Requested Information

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You indicated that the Officers of the University of North Carolina (“UNC”) Board of Governors have requested that we provide additional information responsive to two specific aspects of our recent investigation into events surrounding former East Carolina University (“ECU”) Interim Chancellor Dan Gerlach. These specific inquiries relate to: (1) our communications with Board of Governors member Thomas Fetzer during the investigation and (2) preservation of video surveillance footage. As outlined in more detail below, we had several communications with Mr. Fetzer requesting that he provide all his communications from calendar year 2019 related to the UNC System or ECU. In response, Mr. Fetzer provided approximately 15 emails, none of which were communications with Peter Romary or North Carolina House Majority Leader John Bell about this matter under investigation. As a second matter, the Assistant City Attorney for Greenville has indicated that our request on October 14, 2019 for city surveillance camera footage had the effect of preserving that footage from automatic deletion.

**I. Communications with Board of Governors Member Thomas Fetzer**

On the evening of Friday, October 4, 2019, we sent a preservation hold to all members of the UNC Board of Governors and ECU Board of Trustees. This notice (Exhibit A) was sent electronically to Mr. Fetzer at 7:02 PM on October 4, 2019. The request indicated that Mr. Fetzer “must not delete, discard, destroy, and/or alter any documents or data that may in any way be



related to UNC System business or matters involving the UNC system or East Carolina University from January 1, 2019, to the present.” Further, the memo expressly advised Mr. Fetzer of his duty of confidentiality, stating:

Furthermore, please do not make any comments about these allegations to anyone. As a member of the Board of Governors of the University of North Carolina or the Board of Trustees of East Carolina University, you are required by North Carolina law, including Chapters 126 and 132 of the North Carolina General Statutes as well as the State Ethics Act, and University policy (see Sections 200.1 and 200.7 of the UNC Policy Manual) to maintain the confidentiality of information covered by those provisions, including but not limited to confidential personnel information and attorney-client privileged information.

On Friday, October 18, 2019, at 9:41 AM, Beth Tyner Jones sent an email to Mr. Fetzer (Exhibit B) “to obtain any ‘documents or data’ as described in that Notice [from October 4] that you may have related to UNC System business or matters involving the UNC System or East Carolina University from January 1, 2019 to date.” The email asked Mr. Fetzer to provide those documents “as soon as possible.” The email also specifically mentioned that the documents and data requested “includ[es], but [is] not limited to, any documents related to Interim Chancellor Dan Gerlach and the alleged events of September 25, 2019.”

Mr. Fetzer responded to Ms. Jones at 9:04 AM on Monday, October 21, 2019 (*see* Exhibit B). Mr. Fetzer indicated that he had “a busy week” coming up but “will do my best to get all I have delivered to you by week’s end.” Ms. Jones responded to Mr. Fetzer that same day at 7:58 PM. She asked that he provide documents as they become available rather than waiting until the end of the week to send everything. She also asked that he notify her if he could not provide the requested documents by the week’s end, so that she could request a delay of the investigative deadline. Mr. Fetzer did not respond to that email. Ms. Jones sent a follow-up email on Wednesday, October 23, 2019, at 10:59 AM (*see* Exhibit B). Ms. Jones asked that Mr. Fetzer confirm whether he would be sending information that week and also asked to arrange a time to talk with him about the investigation.

The following morning, Thursday, October 24, 2019, Mr. Fetzer responded by forwarding Ms. Jones approximately 15 emails (Exhibits C1-C15). These emails all had to do with ECU business, or publicly available press releases. There were not any related to UNC System business. Additionally, none of the emails included any communications with either Peter Romary or North Carolina House Majority Leader John Bell. At 7:21 AM that morning, Mr. Fetzer sent Ms. Jones



an email saying there is “[m]ore to come.” However, he did not provide any additional information.

On Saturday, October 26, 2019, at 12:43 PM, Ms. Jones sent Mr. Fetzer an email “to confirm that [he] do[es] not have any other emails, documents, data or texts responsive to our request.” (Exhibit D) Mr. Fetzer did not respond.

## **II. Obtaining and Preserving Footage**

The original allegations regarding Gerlach involved his conduct at Sup Dogs and Club 519. Bret Oliverio, the owner of Sup Dogs was interviewed on October 3, 2019. He confirmed that video surveillance was maintained and we obtained footage from Sup Dog on October 7, 2019. The owner of Club 519 was interviewed and confirmed that Club 519 did not have functioning surveillance cameras on the night of September 25, 2019.

The City of Greenville, North Carolina has a number of surveillance cameras around uptown Greenville. On October 14, 2019, contact was made with the City of Greenville Police Department and Assistant City Attorney Donald Phillips about reviewing or obtaining a copy of footage from the night of September 25, 2019 and the morning of September 26, 2019. We were not permitted to view this footage even though Mr. Gerlach through counsel consented to us joining in any review that Gerlach’s counsel could make of the video. It is our understanding that we made the first request to obtain this footage from the City of Greenville and that occurred on October 14, 2019. While at the courthouse for the previously scheduled October 30th hearing to obtain the footage, Greenville Assistant City Attorney Phillips confirmed that “as soon as the City knew” we were interested in obtaining the footage (i.e., from our request on October 14), the footage was not going to be deleted. This statement is further corroborated by an email from Bobby Burns, Executive Editor for the Daily Reflector, to ECU Board of Trustees Member Phil Lewis at 4:52 PM on Monday, October 28, 2019. Burns said that, according to the City, “[t]he video was not going to be deleted on Oct. 25 because of the Oct. 14 request from WBD.” (Exhibit E)

Additionally, on October 25, 2019 we emailed Phillips to formally request that the City preserve video at various locations, including video of the front of Club 519 on the evening of September 25, 2019 and outside Jack Brown’s Beer and Burger Joint on the afternoon of September 26, 2019, neither of which were included in the video footage requested by Peter Romary. On October 28, 2019, Attorney Phillips confirmed that this footage was being retained. Absent your authorization, we have not petitioned for release of this additional footage at this time.