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Warren V. Norred, TX Bar: 24045094
NORRED LAW, PLLC
200 E. Abram, Suite 300; Arlington, Texas 76010
O: 817-704-3984; F: 817-524-6686
wnorred@norredlaw.com
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KRISTIN BROWN, et al.,	§	
Plaintiffs.	§	
	§	**No. 4:15-CV-613-A**
v.	§	**CLASS ACTION**
	§	
TEXAS A&M UNIVERSITY	§	
SCHOOL OF LAW, et al.	§	
Defendants	§	

PLAINTIFFS' OBJECTION AND RESPONSE TO A&M DEFENDANTS' MOTION TO DISMISS

TO THE HONORABLE JUDGE JOHN McBRYDE:

Plaintiffs file this objection and response to the A&M Defendants' Motion to Dismiss ("Motion"). Plaintiffs have filed an Amended Complaint to add new defendants, including the Texas A&M University System, which eliminates at least one issue discussed by the Motion. The remaining issues are met as follows.

A. Response to the Motion regarding the trademark claim.

1. Plaintiffs have added the Texas A&M University System as a defendant in their First Amended Complaint regarding the trademark dispute, making moot the A&M Defendants' motion to dismiss the trademark claim based on the ownership issue.

2. Plaintiffs' First Amended Complaint adds contract claims against the A&M Defendants to better address Texas A&M University's failure to comply with its promises.

3. A&M Defendants' argument that plaintiffs do not have standing because no threat by Texas A&M University System has been alleged can only be made by ignoring the Complaint. Provost Watson has stated clearly that the Pre-Acquisition Graduates are not A&M alumni and that A&M is known for strong policing of its marks.

4. A&M seems to be arguing that only after attorneys who are bound by ethical rules must make fake diplomas and create an infringement rather than follow the case law cited in A&M Defendants' brief, which states clearly that "reasonable apprehension of suit" no longer applies, but that courts can recognize standing when "a substantial controversy, between parties having adverse legal interests, of sufficient immediacy

and reality to warrant the issuance of a declaratory judgment" exists. *Vantage Trailers, Inc. v. Beall Corp.*, 567 F.3d 745 (5th Cir. Tex. 2009). A&M Defendants are reading *Vantage* incorrectly.

5. Moreover, the A&M Defendants are missing the point of this suit, which is not a suit on infringement or even purely a suit on non-infringement, but a suit to determine the rights between the parties with respect to the federal trademark.

6. Lastly, the A&M Defendants claim that sovereign immunity protects their wrongful actions, citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (U.S. 1984), where the Supreme Court stated that federal courts could not enjoin state actors based on state law. But here again, the A&M Defendants misread the law. *Pennhurst* teaches the limitation only with regard to injunctive relief based on state claims, and states that the involvement of federally oriented claims can come to a different result. *Id.* at 103.

7. Again, this case is a declaratory judgment case attempting to clarify the rights and duties regarding federal trademarks for which plaintiffs allege they have the right to use on a contract basis, but which

is denied based on arbitrary and capricious actions by state actors in a violation of equal protection.

8. The A&M Defendants misuse the mundane case of *Idaho Potato Comm'n v. M&M Produce Farms & Sales*, 95 F. Supp. 2d 150 (S.D.N.Y. 2000), a simple non-infringement case that did not involve the 14th Amendment, contract rights that call for a court's adjudication.

9. To round out the misused cases, A&M Defendants cite and misrepresent the teaching of *College Sav. Bank v. Fla. Prepaidpostsecondary Ed. Expense Bd.*, 527 U.S. 666 (U.S. 1999), which addresses false advertising, but clearly states that the Landham Act can abrogate immunity under the 14th amendment. In this case, the property interests had not been characterized to be cognizable as due process issues, but the Supreme Court absolutely did not rule that trademark law does not abrogate immunity. *Id.* at 672-675.

10. Plaintiffs believe that the A&M Defendants' Motion is moot with respect to the trademark declaratory judgment claims discussed in Section B of its supporting brief.

B. Response to the Motion regarding the § 183 claim.

11. Plaintiffs have added additional verbiage in the First Amended Complaint regarding Dean Morriss, who fails every day to treat pre- and post-acquisition graduates similarly by his simple failure to provide the Post-Acquistion Graduates the library card that he gives to all other graduates. (Morriss also fails to uphold TAMU's implied contract duties, but that is a different claim.)

C. Response to the Standing Argument regarding §1983 claims.

12. A&M Defendants claim that alumni groups have no standing, citing *Ad Hoc Comm. of Baruch Black & Hispanic Alumni Ass'n v. Bernard M. Baruch College*, 726 F. Supp. 522 (S.D.N.Y. 1989).

13. It is true that this case discusses standing, alumni issues, and duties of colleges. However, this case is easily distinguished, in that it concerns a group of alumni who want to break away and start another alumni group. There is no contract issue. There is no trademark issue. There is no real-world issue affirmatively created by the actions of the defendants in the cited case. There is no "claim my academic achievements and buy my accreditation but don't let me call you my alma mater" issue. The court in the case recognizes that the decision is

rational and has a basis. *Id.* at 524. Even the one sentence cited by the Motion agrees that alumni should be able to look to their alma mater for transcript of grades. *Id.* at 523. One can assume that the court would also agree that alumni should be able to have those grades and academic achievement easily verifiable in the same way that all of its alumni can.

14. A&M Defendants do reach a real issue when they assert that plaintiffs lack standing in this case to sue A&M Law because they did not receive their degrees from that institution. But this is a fundamental question that this suit seeks to determine. As the Complaint states, over and over, TAMU and TWU both stated that the law school was not closing, but merely being renamed. If the law school never closed, and its name was merely changed, and the accreditation from the American Bar Association says that TAMU School of Law was accredited in 1994 and formerly known as Texas Wesleyan University[1], the logical conclusion is that it is the same institution. If it is not the same institution in the eyes of the American Bar Association, one

[1] See http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/in_alphabetical_order.html

wonders who's bar test results are being reported on the TAMU School of Law website for the years of 2010.[2]

15. The issue of whether TAMU can, should, or must reissue diplomas is a matter for this suit. Plaintiffs have provide myriad examples showing that both TAMU and TWU obtained the academic accreditation only saying, over and over, that the institution was the same institution. The issue has been well pled, and plaintiffs assert that this is not a matter for a motion to dismiss.

16. Additionally, as already pled, SACS President Belle Wheelan was asked about the claimed request for a waiver in a public interview and she reportedly stated that said she did not recall TAMU asking for any waivers and that diploma reissuance "is not an accreditation issue; that is the university's issue."

17. The struggle that the A&M Defendants appear to have is that they simply do not want to reissue diplomas, so they take the position that they cannot. TAMU Provost Karan Watson stated in the question and answer session of September 12, 2013 that TAMU asked for a

[2] https://law.tamu.edu/docs/default-source/prospective-student-documents/std509inforeport-2013.pdf?sfvrsn=2

waiver, and just could not get SACS to agree. Watson also stated that reissuing degrees would be against federal law...which does not exist.

18. Plaintiffs' First Amended Complaint adds defendants who can determine that new degrees be issued and that portion of the A&M Defendants' argument is moot.

D. Response to the Morriss individual capacity §1983 claims.

19. Plaintiffs' First Amended Complaint clarifies this issue, making this section moot. Morriss does have personal control over the facility's treatment of pre- and post-acquisition graduates, which gives post-acquisition graduates of the law school a library card giving access without having to go through the front door and sign in, as though the alumni were strangers to the institution. The Pre-Acquisition Graduates are not issued such cards. Thus, Morriss, who is the dean and runs the law school could decide to treat everyone the same way who graduated from the law school under the accreditation given by the ABA in 1994, but he chooses not to.

E. Response to final note.

20. Plaintiffs have made no effort to control admissions of TAMU admissions. It is rather that TAMU wants to buy an accreditation from

1994 and then ignore those individuals who depend on that accreditation. The legal profession is highly regulated, and the inability of an attorney to quickly prove his academic background can easily be a delay that can cost someone a chance to be employed. Three years ago, graduates of Texas Wesleyan University could go to a legal recruiting website, and find their school as one of the options to choose as an accredited school. Now they cannot, and that change is due directly to the actions of TWU and TAMU.

F. Conclusion

Plaintiffs ask that the Court deny TAMU's Motion and grant such other relief as plaintiffs are justly entitled.

Respectfully submitted this November 9, 2015,

Warren V. Norred, TX Bar: 24045094
NORRED LAW, PLLC
200 E. Abram, Suite 300; Arlington, Texas 76010
O: 817-704-3984; F: 817-524-6686
wnorred@norredlaw.com
Attorney for Plaintiffs