



3. Plaintiff is Dr. Brian Gordon, DVM, who currently resides at 110 Crestview Drive, Belmont, North Carolina 28012. During all times relevant to this lawsuit, Plaintiff was a resident and domicile of Texas and the employee of Defendant University of Texas Medical Branch d/b/a Animal Resource Center (referred to throughout as “Animal Resource Center”, “UTMB d/b/a ARC”, or “ARC”). Plaintiff served as the Attending Veterinarian and Executive Director of the Animal Resource Center.

4. Defendant University of Texas Medical Branch d/b/a Animal Resource Center is a governmental entity located in Galveston, Texas. The Animal Resource Center is funded primarily by federal grants, awards, loans and/or contracts. It maintains its principal place of business at 301 University Boulevard, Galveston, Texas 77555. UTMB d/b/a ARC is domiciled in Galveston County, Texas, and it may be served with process at its principal address. Defendant Toni D’Agostino is an employee of UTMB d/b/a ARC who was a resident and domicile of Texas during all relevant time periods. She may be served with process at 301 University Boulevard, Galveston, Texas 77555.

#### **IV. JURISDICTION AND VENUE**

5. These claims arise out of Dr. Gordon’s former employment with Defendant UTMB d/b/a ARC in Galveston, Texas. The Court has jurisdiction over this lawsuit because the amount in controversy exceeds this Court’s minimum jurisdictional requirements. Tex. R. Civ. P. 47(b).

6. The Court has jurisdiction over Defendant UTMB because it is a governmental entity that operates and maintains its principal office in Texas. Tex. Civ. Prac. & Rem. Code § 17.042. Defendant UTMB d/b/a ARC has systemic and continuous contacts with the State of Texas and the United States of America. UTMB d/b/a ARC hired Plaintiff Dr. Gordon to serve as its Attending Veterinarian and Executive Director at the Animal Resource Center in Galveston,

Texas, and this action arises out of Dr. Gordon's employment in that capacity and events that occurred within the state. At all relevant times, Defendant D'Agostino was an employee of Defendant UTMB d/b/a ARC who worked in Galveston, Texas. For these reasons, this Court has general jurisdiction over Defendants for all matters to which they are a party and specific jurisdiction over Defendants for the claims raised herein. Therefore, this Court has personal jurisdiction over the parties in this civil action.

7. Venue is proper in Galveston County, Texas pursuant to Texas Civil Practices & Remedies Code section 15.002 because all or a substantial part of events or omissions giving rise to the claims occurred in Galveston County, Texas.

## V. INTRODUCTION

### *Veterinarian's Oath*

*Being admitted to the profession of veterinary medicine, I solemnly swear to use my scientific knowledge and skills for the benefit of society through the protection of animal health and welfare, the prevention and relief of animal suffering, the conservation of animal resources, the promotion of public health, and the advancement of medical knowledge.*

*I will practice my profession conscientiously, with dignity, and in keeping with the principles of veterinary medical ethics.*

*I accept as a lifelong obligation the continual improvement of my professional knowledge and competence. American Veterinary Medical Association*

8. Brian Gordon, DVM, became a veterinarian to save animal lives and minimize the suffering of all creatures great and small. Dr. Gordon vowed in his heart that he would honor the Veterinarian's Oath in all of his actions throughout his life. Plaintiff Brian Gordon, DVM, brings this civil action against his former employer Defendant University of Texas Medical Branch d/b/a Animal Resource Center and his former supervisor Toni D'Agostino, *sued in her official and*

*individual capacity*, because he was fired when he spoke for the animals who cannot speak for themselves. Dr. Gordon's words to which his bosses objected were not spoken because of his statutory or contractual obligations; they were spoken because of his ethical oath to animals and society. As described more fully below, Defendants wrongfully terminated Dr. Gordon from his employment and published defamatory statements that have damaged his reputation and caused him financial harm. Defendants violated the Texas Whistleblower Act and the Texas Civil Practices and Remedies Code. Plaintiff has suffered significant damages as a result of this unlawful conduct.

## **VI. FACTS**

9. The Animal Resource Center provides animals, animal care and holding space to support a wide range of animal models, surgery and research for the animals in research laboratories in the Galveston area including the Galveston National Laboratory, Shriners Hospital for Children (Galveston) and various departments of UTMB Galveston such as the Department of Surgery, Department of Microbiology, Department of Pharmacology, and Department of Anesthesiology to name a few. The Animal Resource Center has nine buildings with research animals encompassing approximately 180,000 square feet of research space. The Animal Resource Center is primarily federally funded and has a national mission to support research that has nationwide and worldwide implications. The mission includes understanding the fundamental mechanisms underlying the spread of infectious diseases and the pathogenesis of the diseases they cause with a national goal of promoting strategies to control the spread of infectious disease. One of the facilities is the Galveston National Laboratory. The Galveston National Laboratory is one of two National Biocontainment Laboratories constructed under grants awarded by the National Institute of Allergy and Infectious Diseases/National Institutes of Health (NIAID/NIH). UTMB

d/b/a ARC has at times employed approximately sixty-five (65) to seventy (70) employees. Research is performed on a variety of animal species. At any given time, the ARC might care for and submit for research projects as many as 4,000 mice, 500 rats, 20-50 non-human primates, 30 sheep, 20-25 pigs, and a range of ferrets, rabbits, guinea pigs, and other animal types.

10. Defendant UTMB d/b/a/ ARC is a designated Research Facility within the meaning of the federal Animal Welfare Act (AWA) because it receives federal funds under grant, award, loan and/or contract from a department, agency or instrumentality of the United States, and therefore Defendants' conduct is governed by the provisions of federal law. Congress passed the Animal Welfare Act, 7 U.S. Code §§2131-2159, in order to ensure that animals intended for use in research facilities are provided humane care and treatment. The Animal Welfare Act establishes standards for animal care, treatment, and practices to ensure that animal pain and distress are minimized, including requiring adequate veterinary care with the appropriate use of anesthetic, analgesic, tranquilizing drugs and/or euthanasia. In any practice which could cause pain to animals, the Animal Welfare Act requires that a doctor of veterinary medicine is consulted in the planning of such procedures and further provides for the use of tranquilizers, analgesics, and anesthetics. In order to seek federal funds, a research facility must have a letter of assurance on file with the Office of Laboratory Animal Welfare (OLAW) that it will follow these guidelines, and it must be registered with the United States Department of Agriculture affirming that it will comply with federal law. The Animal Resource Center claims it has met these requirements.

11. In order to secure federal funds, there are well-established procedures for formulating scientific studies involving animal research. For example, when a study is being planned, the researcher must present sufficient scientific justification to warrant research on animals. Different classifications of studies require different levels of scientific justification

because the desire to advance science must be balanced against the interests of the animals being used for testing. Once a study is approved, researchers must follow the specific protocols that have been approved for the project to minimize the animal suffering ensuring that the lab animals do not suffer any decline in health that has not been intentionally sanctioned for that study.

12. Also in order to secure federal funds, the AWA and its implementing regulations require a Research Facility to employ an Attending Veterinarian to provide adequate veterinary care to its animals. 9 CFR § 2.40. The AWA and its implementing regulations likewise require that a facility “shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.” 9 CFR § 2.40.

13. The AWA and its implementing regulations also require that a Research Facility establish at least one Committee, identified by regulation as the Institutional Animal Care and Use Committee (IACUC), or designate an IACUC established by another Research Facility. The IACUC must possess sufficient ability (including authority) to assess animal care, treatment and practices in experimental research. 9 CFR § 2.31. At least one member of the IACUC shall not be affiliated in any way with such facility and this member is intended to provide representation for general community interests in the proper care and treatment of animals. 7 U.S. Code § 2143(b)(1)(B). Therefore, the IACUC is not simply another form of internal supervision, but creates a means of external supervision for the interests of the general community protected by the external membership. The IACUC is charged with **representing society’s concerns regarding the welfare of animal subjects used at such facility**. 7 U.S. Code §2143(b). The IACUC **shall inspect** at least semiannually all animal study areas and animal facilities of the research facility examining the practices involving pain to animal and the condition of the animals to ensure

compliance with the provisions of the AWA to minimize pain and distress to animals. The IACUC reports shall remain on file for at least three years and shall be available to the Animal and Plant Health Inspection Service and any funding Federal agency. In order to give the research facility an opportunity to correct any deficiencies in animal care, the IACUC is to first notify the administrative representative of the research facility of any deficiencies. If after notification and an opportunity for correction, such deficiencies remain uncorrected, the IACUC **shall notify (in writing) the Animal and Plant Health Inspection Services and the funding Federal agency of such deficiencies.** Therefore, the IACUC has external law enforcement reporting requirements, not simply internal supervisory requirements. By regulation the IACUC also reviews every proposed research protocol at the lab, and approves, denies, or proposes modifications thereto. 9 CFR § 2.31(d). Notably, the AWA and its implementing regulations do not provide any mechanism whereby the Research Facility or its administration can overturn the IACUC's decisions regarding animal care. By regulation, the IACUC has the authority to suspend an activity that involves animals and violates the AWA or is not being conducted according to approved procedures. 9 CFR § 2.31(c) and (d).

14. In order to comply with federal law and be able to secure federal funding, UTMB d/b/a ARC appointed an IACUC including the appointment of at least one member who is not connected in any way to Defendant UTMB d/b/a ARC. Departments of UTMB designate the IACUC that was appointed by UTMB in their research grant applications. In addition, other entities including the Galveston National Laboratory, Shriners Hospital for Children (Galveston) designate the IACUC appointed by UTMB in their research grant applications.

15. In order to comply with federal law and be able to secure federal funding, Defendant UTMB d/b/a ARC hired Dr. Gordon on March 1, 2013 as the Attending Veterinarian

and Executive Director of the Animal Resources Center. Approximately one (1) year after Dr. Gordon began in that role, Defendant Toni D'Agostino became his direct supervisor.

16. Dr. Gordon was highly qualified for his role at the Animal Resource Center. He had previously served as Director of Animal Resources and Attending Veterinarian at the Max Planck Florida Institute in Jupiter, FL from 2010 to 2013; Director of Scientific Support and Director of Comparative Medicine at Oklahoma Medical Research Foundation in Oklahoma City, Oklahoma from 2000 to 2009; Attending Veterinarian at Genzyme in Oklahoma City, OK from 2001 to 2009; and held several other similar positions.

17. During Dr. Gordon's employment with Defendant UTMB d/b/a ARC, he received one performance evaluation. This evaluation indicated that **Plaintiff was meeting or exceeding expectations** in his fulfillment of the duties of Attending Veterinarian. Throughout his employment at UTMB d/b/a ARC, Plaintiff sought to maintain the program he oversaw in full regulatory compliance with the U. S. Department of Agriculture (USDA), which is charged with enforcing the AWA. Nevertheless, he was prevented from doing so by his supervisors, as further described below.

18. Dr. Gordon repeatedly complained about practices of veterinary care that did not minimize pain and suffering to the animals and otherwise do not constitute adequate veterinary care. Practices that do not minimize pain and suffering and otherwise do not constitute adequate veterinary care violate the AWA. Dr. Gordon reported these practices including the violations of the AWA because of his personal ethical interest in protecting animals from suffering including painful death. Defendant UTMB d/b/a ARC's administration, specifically but not limited to Defendant D'Agostino, ignored Dr. Gordon's complaints, restricted his authority to make decisions regarding animal care, and intervened with his directives to subordinates regarding

animal care. Thereby preventing Dr. Gordon from resolving the problems with veterinary care and protecting the animals himself. Defendant UTMB d/b/a ARC's administrators', specifically but not limited to Defendant D'Agostino, refusal to give Dr. Gordon the power to ensure adequate veterinary care at the Research Facility, violated the AWA. At various times during his employment, Dr. Gordon was admonished for expressing his opinion regarding animal care and safety at the facility, and Dr. Gordon was accused of not being a team player because he would not participate in the cover up of inadequate veterinary care and safety concerns.

19. One example of Dr. Gordon's effort to protect the animals and Defendants unlawful conduct in violation of Dr. Gordon's clearly established rights pertained to housing of the primates. In 2014 there were plans to build a primate facility below sea level. Dr. Gordon objected to this plan because it would put the animals at risk of drowning in the event of a severe storm such as a hurricane, a known risk on the Gulf Coast. In order to protect animal interests, Dr. Gordon complained to the IACUC at an official IACUC meeting with Ms. D'Agostino present. In response, Ms. D'Agostino accused Dr. Gordon of misconduct and formally reprimanded him for reporting the animal care concern to the IACUC. D'Agostino's interference with Dr. Gordon's efforts to ensure humane care of the animals started a trend that would be repeated by her throughout Dr. Gordon's employment finally ending his employment.

20. Another example of Dr. Gordon's effort to protect animals and Defendants unlawful conduct in violation of Dr. Gordon's clearly established rights was the death of animals under Dr. Gordon's care. Dr. Gordon suspected that animals were suffering and dying without the benefit of pain killers and euthanasia. Dr. Gordon would conduct rounds of all Research Facilities that utilized animals that were under his care three times per week. All of the veterinarians and veterinary health technicians were supposed to attend these rounds and provide health reports for

all animal deaths and for all cases needing attention. Dr. Klages from the Galveston National Laboratory would always state that he had nothing to report. Based upon Dr. Gordon's many years of experience in animal care at research facilities, Dr. Gordon knew the odds of Klages never having a monkey die unexpectedly were suspicious. When Dr. Gordon inquired about the cause of death of the animals under Dr. Gordon's care who were being used by Dr. Klages, Dr. Klages would consistently state that the animals were euthanized according to protocol. Subsequent to Dr. Klages' reports, Dr. Gordon learned this was not true, as monkeys had suffered painful deaths. Monkey deaths from Marburg virus, Ebola and other lethal pathogens were also hidden from the IACUC. This practice of hiding the true cause of animal deaths and preventing the Attending Veterinarian from correcting deficiencies that cause those deaths and preventing the IACUC from investigating those deaths violated approved protocols and federal requirements under the AWA. See 9 CFR § 2.33(a)(2). On numerous occasions Dr. Gordon told Defendant D'Agostino that he believed that Dr. Curtis Klages was failing to take steps to protect the interests of the monkeys. Dr. Gordon told Defendant D'Agostino that he suspected Dr. Klages was hiding information, and there was insufficient oversight at ARC to catch the problem. Dr. Gordon specifically requested that Defendant D'Agostino grant him authority to increase oversight of the Research Facilities. Defendant D'Agostino refused to allow Dr. Gordon to increase the oversight of the Research Facilities, disabling Dr. Gordon's ability to ensure the Research Facilities comply with the AWA. Ultimately, as is set out below when Dr. Gordon learned of the deaths and reported the deaths to the IACUC, Defendant D'Agostino set Dr. Gordon on a track to termination.

21. Subsequently, it came to light that Dr. Gordon was correct about Dr. Klages. The National Institute for Allergy and Infectious Disease (NIAID) discovered in an audit of the facility that monkeys suffered painful deaths as opposed to humane euthanasia in the study of the Marburg

virus. The condition of the monkeys including the failure to render adequate veterinary care and failure to follow the research protocol were kept from Dr. Gordon. The audit occurred in January 2015, and it concerned a study in which twelve monkeys were injected with the Marburg virus. NIAID had a contract for this research and also provided the grant funding. A category pain level protocol was approved for this study. This meant the injected animals would experience pain and suffering as a result of the virus, and no relief would be administered for that pain and suffering. The animals were supposed to be humanely euthanized once their condition deteriorated to a certain degree, and researchers had specified that death was never supposed to be an endpoint. The pain specifications had been approved in the protocol and, therefore, the AWA required that the pain specifications be followed. To that end, the protocol implemented a behavioral scoring table. If used appropriately, the scoring table would help researchers determine when a monkey should be euthanized to prevent the unnecessary pain and distress of being allowed to die. Failing to euthanize animals according to these approved protocols was a direct violation of 9 CFR § 2.31(d)(iii)(v) (“Animals that would otherwise experience severe or chronic pain or distress that cannot be relieved will be painlessly euthanized at the end of the procedure or, if appropriate, during the procedure.”)

22. In addition, the study’s protocols governed what must occur when an animal died unexpectedly and without the benefit of humane euthanasia. As Attending Veterinarian, Dr. Gordon was supposed to be informed of any unexpected death during his regular rounds so that he could investigate the cause and determine whether the animals were being cared for appropriately. The death should also have been reported to the IACUC so that the IACUC could inspect and investigate what had happened. These guidelines were designed to ensure that incidents of deficiencies in animal care that lead to death of the animals as opposed to euthanasia are corrected

by the Attending Veterinarian, and inspected by the authority responsible for investigation, the IACUC. Following its investigation, the IACUC is then responsible for reporting uncorrected deficiencies to federal authorities. These federal guidelines exist in order to prevent unnecessary suffering by the animals. They operate as a check to ensure that appropriately justified scientific research does not become institutional torture.

23. NIAID prepared an audit report after completing its investigation in early 2015. The report identified significant animal welfare concerns within Defendant UTMB d/b/a ARC's animal research program. Both Defendants received copies of the audit report from NIAID. Neither Defendant ever gave Dr. Gordon or the IACUC a copy of the NIAID audit report. When Dr. Gordon questioned Defendant D'Agostino about the NIAID audit, she told Dr. Gordon that upper management would handle the NIAID complaint. Defendant D'Agostino's decision that upper management would handle the NIAID complaint violated the AWA requirement that all animal care should be controlled by the Attending Veterinarian. Defendant D'Agostino's behavior in failing to provide copies of the report to Dr. Gordon and the IACUC indicates that she was attempting to cover up the problems revealed in the report. Dr. Gordon reported the existence of the NIAID audit and his concern about not receiving a copy to the IACUC.

24. Defendants' failure to disclose the NIAID audit report disabled Dr. Gordon and the IACUC from fulfilling their respective duties under the AWA. Dr. Gordon was responsible for animal care at the Research Facility. The IACUC was responsible for inspecting and reporting uncorrected deficiencies in animal care. Defendant D'Agostino should have given the report to Dr. Gordon as her employee responsible for animal care in order to ensure that he directed the ARC employees to correct the deficiencies in animal care. Defendant D'Agostino should have reported the contents of the report to the IACUC so that future inspections by IACUC could determine if

the deficiencies discovered by the audit had been corrected and if not the IACUC could report the continued failures to NIAID. Defendant D'Agostino prevented this inspection from occurring and therefore prevented the IACUC from reporting any continued problems with veterinary care to appropriate federal agencies. The report is now publicly available online at:

<http://www.niaid.nih.gov/about/organization/dmid/about/Documents/NIH-Quality-Audit-Report-STDY-13-0005-TG.pdf>.

25. Shortly thereafter, in approximately March 2015, Dr. Gordon learned from one of the other veterinarians employed by Defendant that details regarding the health of monkeys in Defendant's care had been purposefully hidden from Dr. Gordon. Dr. Gordon also learned that instead of one monkey death, there were multiple deaths. Dr. Gordon still was not fully informed regarding the number of deaths. The information about the exact number of deaths from the Marburg study was in the NIAID audit, but Dr. Gordon still had not received a copy of the NIAID report. The deaths, as opposed to humane euthanasia, occurred in direct violation of the study's protocols, the standards set forth in the AWA, and Dr. Gordon's orders. The animals died unexpectedly without euthanasia, the deaths had gone unreported, and no investigation had been conducted as to whether the animals were being handled humanely.

26. At least three UTMB d/b/a ARC employees had an obligation to report the monkey deaths to Plaintiff for him to remedy and to the IACUC for formal investigation. Both the study's director, Jason Comer, and the biocontainment veterinarian directly responsible for the monkeys' veterinary care, Curtis Klages, should have reported that the monkeys were dying during the research without receiving humane euthanasia. Had Dr. Gordon been informed of the deaths, he would have requested that the research be stopped in order to identify a better system of monitoring the animals than the behavioral scoring systems they were using. In fact, Dr. Gordon was already

aware of several alternative methods that could have been considered and instituted which would have better identified the point at which euthanasia should have been used. Because Dr. Gordon was never informed there was a problem and because Defendant D'Agostino failed to authorize Dr. Gordon to implement more oversight which would have brought the problem to his attention promptly, Dr. Gordon could not preserve the interests of the animals by implementing these more humane methods for monitoring the animals. This was a direct violation of the AWA requirement that alternatives be considered. 9 CFR § 2.31(d)(ii). As the Institutional Officer who has the authority to affirm to the federal government that the Research Facility will comply with the AWA, Defendant D'Agostino also should have informed Dr. Gordon of the deaths and directed Dr. Gordon as her employee to ensure the deficiencies were corrected. Defendant D'Agostino failed to carry out her duties and instead withheld the information. Defendant D'Agostino is not a licensed veterinarian and does not have the expertise to evaluate the impact of institutional decisions on the welfare of the animals housed by the ARC. Rather, in accordance with the AWA, Defendant D'Agostino must rely on the professional judgment of the Attending Veterinarian to understand how various policies and procedures will affect veterinary care and impact the health of the animals.

27. Dr. Gordon later learned there had been a longstanding practice of hiding the true cause of animal deaths. The Animal Resource Center had conducted similar research on monkeys involving Ebola and other lethal pathogens. Several hundred monkeys had been housed at Defendant's facility during Plaintiff's employment alone. Dr. Gordon never received reports that monkeys had died unexpectedly or without the aid of euthanasia.

28. Very soon after Dr. Gordon learned of the undisclosed primate deaths, he reported the deaths to the IACUC. When he reported animal welfare issues to the IACUC, he was

complaining as a citizen and member of the public based upon his personal ethics and beliefs. He wanted to report UTMB's failure to comply with AWA because it was causing unnecessary pain to animals. As a matter of public policy, he felt he had an ethical duty to speak out about the unlawful conduct he saw happening at UTMB. Dr. Gordon reported in good faith to the current IACUC chairman Ron Tilton and other IACUC members that UTMB d/b/a ARC had violated the AWA. Dr. Gordon specifically told the IACUC members that UTMB d/b/a ARC representatives had intentionally failed to disclose the unexpected deaths of an unknown number of monkeys at the Research Facilities in direct conflict with the Defendants representations to the IACUC and other oversight agencies that all approved protocols were being followed.

29. Defendant D'Agostino told Dr. Gordon repeatedly that she would handle the issues Dr. Gordon raised concerning animal care, but she in fact failed to do so and refused to give Dr. Gordon the authority to do so. After Defendant D'Agostino repeatedly refused to give Dr. Gordon authority to correct the problems that were impacting animal care, Dr. Gordon emailed Defendant D'Agostino requesting to meet with Dr. Callender, President of UTMB. Dr. Gordon was seeking to talk to Dr. Callender about the IACUC as well as inexperienced leaders at the research facilities who were hindering Dr. Gordon's ability to make adjustments to a long broken program. The changes Dr. Gordon sought to propose to Dr. Callender would have improved animal care as well as supported research while decreasing the regulatory burden and increasing regulatory compliance. Despite the fact that the email requesting to meet with Dr. Callender was a private email to Defendant D'Agostino, another employee of Defendant UTMB d/b/a ARC approached Dr. Gordon and told Dr. Gordon that Defendant D'Agostino was very upset that Dr. Gordon sought to inform Dr. Callender about his concerns about animal care. This employee warned Dr. Gordon that if Dr. Gordon continued to try to see Dr. Callender to inform Dr. Callender about his concerns,

Defendant D'Agostino would fire Dr. Gordon. Not surprisingly, Defendant D'Agostino failed to approve Dr. Gordon's request for meeting with President Callender and therefore Dr. Gordon was not permitted to voice his concerns to President Callender. Instead of approving the meeting, Defendant D'Agostino counseled Dr. Gordon for his negative reaction to being informed by another employee that Defendant D'Agostino would fire Dr. Gordon if Dr. Gordon expressed his concerns to President Callender.

30. In addition to Dr. Gordon's refusal to forego compliance with federal animal welfare standards, Dr. Gordon likewise refused to reallocate funding in a manner he believed was illegal. In his role as Executive Director of the Animal Resource Center, Dr. Gordon was responsible for complying with human resources policy and managing the program budget for the ARC. The program received federal funds based on a per diem rate for housing animals at the facility. In the Spring of 2015, Defendant UTMB d/b/a ARC management, including Dr. James LeDuc, Director of the Galveston National Laboratory, and Administrator Andy McNeese, directed Plaintiff to allocate costs from one part of the animal program to cover another portion of the animal program by making campus-wide adjustments to the per diem rates for animal care. Defendant D'Agostino participated in the meeting where Dr. Gordon received this directive and supported the directive. The purpose of mis-characterizing funds in this manner was to access additional funding without exposing the problems identified in the NIAID audit. Dr. Gordon refused to do this because he knew it was illegal to misrepresent facts related to federal funds to a federal agency. Dr. Gordon was particularly concerned about the mishandling of taxpayer money. As a result of Dr. Gordon's refusal to reallocate funds, Defendant D'Agostino took the action she desired to take anyway and directed Dr. Gordon to follow her directive. Once again, Dr. Gordon

was not given full authority to carry out his role as Attending Veterinarian and his expert opinion and his concerns were silenced.

31. Thereafter, on approximately Saturday, June 6, 2015, Dr. Gordon wrote an email to the Vice Provost David Anderson requesting a meeting to discuss his concerns about the problems within the animal research program at Defendant UTMB d/b/a ARC. The Vice Provost scheduled Dr. Gordon an appointment for Monday, June 8, 2015 at 10:00 am. Before this meeting, Dr. Gordon informed the IACUC of the same concerns he intended to express to the Vice Provost. Based on an email communication Dr. Gordon received from Defendant D'Agostino, it is clear that Defendant D'Agostino knew Dr. Gordon had scheduled the meeting with the Vice Provost. In addition, it is clear that Defendant D'Agostino had learned that Dr. Gordon reported his concerns about animal care to the IACUC for investigation because Defendant D'Agostino attempted to stop the IACUC from talking to Dr. Gordon. Dr. Gordon was never allowed to meet with the Vice Provost because Defendant D'Agostino terminated Dr. Gordon and sent him home before the meeting could take place. Dr. Gordon has a clearly established first amendment constitutional right to report his concerns about animal welfare externally. By reporting those concerns to the IACUC (which is required to have and did have at least one member who is not connected to the Research Facility), Dr. Gordon did in fact report his concerns externally. In addition, Dr. Gordon has a clearly established due process right to perform his statutory and contractual duties without being threatened with termination of his employment or actually terminated. Defendant D'Agostino violated these clearly established rights when she threatened to terminate Dr. Gordon and then again when she terminated Dr. Gordon for reporting his concerns about animal care to the IACUC.

32. Defendants caused Dr. Gordon to suffer tremendously. Dr. Gordon had long been a controlled diabetic. As Defendants took steps to restrict Dr. Gordon's authority over animal welfare and asked him to participate in illegal conduct, the stress of the situation caused Dr. Gordon's health to deteriorate rapidly. Dr. Gordon was trained as a veterinarian to care for and minimize the suffering of animals instead he was being forced to preside over a program that was secretly allowing animals to suffer horrible pain and die in agony. Dr. Gordon was devastated. Defendants' conduct caused Dr. Gordon tremendous mental duress, and he felt physically sick as a result. Dr. Gordon's diabetes suddenly became uncontrollable. His doctor's explanation for this dramatic change in his health was that stress was the cause. On one occasion Dr. Gordon left work to go to the emergency room because his blood glucose level had skyrocketed to well over 300, a very unsafe level. Dr. Gordon also suffered sleeplessness and weight loss. In addition, he felt the career he had built was crumbling around him. Despite his efforts to maintain UTMB d/b/a ARC's program in full regulatory compliance, he came to understand that Defendants made that impossible. Dr. Gordon's career was damaged as a result.

33. On the morning of Monday, June 8, 2015, Defendant UTMB d/b/a ARC issued Plaintiff a Notice of Intent to Terminate in a letter signed by Defendant Toni D'Agostino. The Notice contained multiple false statements regarding Dr. Gordon's job performance and mischaracterized Dr. Gordon's interactions with staff and administration at UTMB d/b/a ARC. Defendant D'Agostino was upset that Dr. Gordon continued to attempt to exercise independent professional judgment as Attending Veterinarian rather than blindly supporting anything Defendant D'Agostino asked him to support. Defendant D'Agostino wrongfully claimed that investigators and staff had lost confidence in Dr. Gordon, but Dr. Gordon had never been told that any investigator or staff member had complained about him. From that moment Dr. Gordon was

denied access to his office and to his computer and files. Dr. Gordon made one final effort to protect animal welfare at the facility before his employment ended. He made another good faith report of a violation of law to the IACUC. He did this for the same reasons outlined in ¶26 above. He spoke out as a citizen and member of the public based upon his personal ethics and beliefs. Dr. Gordon provided the IACUC with a list of thirteen deficiencies at the facility that jeopardized animal care in violation of the AWA. His complaint included that Defendants had directed him to misuse and misallocate federal funds in his role within the ARC in a manner that was illegal. Since Dr. Gordon did not have access to his computer at the time, he provided this list verbally during a telephone conversation so that Mr. Tilton could deliver the information to the rest of the members of the IACUC. Based on their conversation, Dr. Gordon understood that Mr. Tilton was writing down the list and would circulate the information to the other members of the IACUC.

34. The next morning Dr. Gordon met with Defendant D'Agostino regarding the proposed termination. Dr. Gordon expressed his total disagreement with all of the allegations in the Notice of Intent to Terminate. Dr. Gordon indicated the reasons given for his termination were false and motivated by personal animus. Dr. Gordon also informed Defendant D'Agostino that they were violating his rights. Later that same day, within hours of their conversation, Defendant D'Agostino called Dr. Gordon to inform him that Defendant UTMB d/b/a ARC was officially terminating Dr. Gordon's employment effective June 9, 2015. Defendant D'Agostino indicated that she made the decision to terminate. Given the speed with which Defendant D'Agostino finalized Dr. Gordon's termination, Dr. Gordon's response to the termination letter was not given any meaningful consideration. There simply was no time for further investigation into Dr. Gordon's response or any significant contemplation of Dr. Gordon's comments.

35. Dr. Gordon continued to experience mental duress and sleeplessness after he left Defendant UTMB d/b/a ARC. He was devastated by his termination and the career he had built over several decades was now tarnished. He learned that Defendant UTMB d/b/a ARC was continuing to take action against him. In approximately September 2015, an editor for the publication *Science* named David Grimm contacted Dr. Gordon to follow up on a story he was writing. They discussed some issues that had occurred at UTMB. Grimm had previously spoken with Dr. David Niesel, the Chief Scientific Officer at UTMB. Grimm informed Dr. Gordon that Niesel described him as a bad employee and commented that Grimm should not believe anything he said. At the time of his comments regarding my work performance Niesel was the direct supervisor of D'Agostino. Dr. Gordon never had any direct interactions with Niesel. Niesel never performed, nor was every party to, any of my employee performance evaluations. They never had any direct conversations. Any information that Niesel would have had regarding my job performance would have come directly from D'Agostino because she was his supervisor. These statements damaged his reputation and his likelihood of finding subsequent employment of the same caliber as his position at UTMB d/b/a ARC.

36. In September 2015 Dr. Gordon submitted a detailed complaint to the USDA regarding the problems he saw in the animal research program at UTMB d/b/a ARC. He described numerous problems in the research procedures at the facility that he believed threatened animal welfare. He identified multiple instances of illegal conduct by UTMB d/b/a ARC representatives.

37. Dr. Gordon made numerous efforts to obtain comparable employment with another organization after his employment ended at UTMB d/b/a ARC. When he applied for comparable positions in the field of research veterinary medicine, the career he had spent twenty-five years developing, he was repeatedly rejected. He remained unemployed for approximately four (4)

months. In order to make ends meet, he was forced to sell his house at a substantial loss. Because of his lack of income, he was also forced to relocate to a new city so that he could live with a friend. On October 13, 2015, he began a short-term posting with the USDA at a substantially reduced salary from what he earned at UTMB d/b/a ARC and his prior employers. The posting was expected to last for thirteen (13) months with the possibility that the agency will renew the posting for up to three (3) years. It was a junior position outside the field of veterinary medicine. In his short-term posting at the USDA he had no management expectations, he had been awarded no budget, he had no supervisory expectations, and his job responsibilities did not require his level of expertise. The job position was not renewed; therefore, Dr. Gordon was unemployed for another period of time. He has just found and accepted a position as an Associate Veterinarian for a significantly reduced salary and therefore continues to suffer losses due to his wrongful termination.

38. UTMB d/b/a ARC has a track record of being unable to retain employees to oversee animal care at its facility. UTMB d/b/a ARC has employed approximately five (5) different Attending Veterinarians in the past thirteen (13) years. All of them have solid credentials and appear to be well-qualified professionals capable of ensuring adequate animal care for its research programs. Nevertheless, UTMB d/b/a ARC has had a very high turnover rate for that position. In the same vein as Dr. Gordon, at least one other former Attending Veterinarian was terminated by UTMB d/b/a ARC and has been unable to find subsequent employment in the field of veterinary medicine of the same stature and compensation level as the UTMB d/b/a ARC posting.

## **VII. CAUSES OF ACTION**

### **Count 1 against Defendant UTMB d/b/a ARC**

#### **Wrongful Termination under the Texas Whistleblower Act**

39. The preceding paragraphs are incorporated by reference in the following claim for relief.

40. Defendant UTMB d/b/a ARC is a governmental entity within the meaning of Texas Government Code Section 554.001. Dr. Gordon is not making any statement regarding the structure of this entity as it pertains to sovereign immunity.

41. Dr. Gordon was a public employee within the meaning of Government Code Section 554.001. At all times relevant, Dr. Gordon was employed by UTMB d/b/a ARC.

42. Dr. Gordon made a good faith report of particular and ongoing violations of law by a government agency when he informed the IACUC of his concerns regarding animal care at the Research Facility specifically including but not limited to that UTMB d/b/a ARC representatives had intentionally failed to disclose the unexpected deaths of multiple primates at the facility in violation of the AWA despite their representations to the IACUC and other oversight agencies that all protocols were being followed at the facility. Plaintiff expressed concerns about compliance with the AWA throughout his employment with Defendant. Plaintiff specifically reported the unexpected deaths of monkeys a few months prior to the date on which UTMB d/b/a ARC determined to terminate him. In addition, approximately one day before his termination, Dr. Gordon made another good faith report of a violation of law when he provided the chairman of the IACUC Mr. Tilton with a list of thirteen deficiencies at the facility that jeopardized animal care in violation of the AWA. These deficiencies were to be provided to the rest of the members of the IACUC by Mr. Tilton.

43. The IACUC is an “appropriate law enforcement authority,” as that term is used in Texas Government Code Section 554.001, because it has the authority to regulate under, investigate, and enforce the provisions of the Animal Welfare Act. Under Title 9, the IACUC

committee is charged with assessing the research facility's animal program, facilities, and procedures. 9 CFR § 2.31(a). Specifically, the IACUC must review the facility's program for humane care and use of animals at least every six months, inspect the facilities at least every six months, prepare reports, and review and investigate complaints from personnel or the public regarding the care and use of animals at the research facility. 9 CFR § 2.31(c). The IACUC has at least one member who is not connected to the Research Facility in any way. The IACUC is created to represent society's concerns regarding the welfare of animal subjects at UTMB d/b/a ARC. 7 U.S. Code §2143(b). The IACUC does not represent the interests of the Research Facility. The IACUC is required to review and approve proposed activities and suspend any activity involving animals that do not meet certain standards. 9 CFR § 2.31(c) and (d). Although the IACUC in question was appointed by UTMB, other entities (the Galveston National Laboratory, Shriners Hospital for Children (Galveston), and others) designate the IACUC created by UTMB in their research grant proposals. The IACUC is charged with investigating complaints from internal and external sources, including complaints from members of the public. When it finds a violation has occurred, the Committee has the power to suspend research. When violations are not corrected, the IACUC reports the deficiencies externally.

44. Dr. Gordon suffered retaliation for repeated reports to the IACUC when UTMB d/b/a ARC, and more specifically his supervisor Defendant D'Agostino, terminated his employment on June 8, 2015. Dr. Gordon's wrongful termination occurred after his repeated reports of animal welfare concerns to the IACUC throughout his employment, specifically including within months of him making his good faith report to the IACUC about monkey deaths and within days of him making his good faith report of a list of 13 deficiencies to the Chairman of the IACUC for presentation to the entire IACUC membership. Dr. Gordon was terminated because

of his repeated reports to the IACUC not because of any work performance concerns. There were no problems with Dr. Gordon's work performance.

45. As a result of Defendants' unlawful conduct, Dr. Gordon has suffered and will continue to suffer damages in the form of lost back wages, lost future wages (i.e., front pay), loss of retirement benefits, loss of earning capacity, compensatory damages for past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of reputation, loss of opportunities for career advancement, loss of enjoyment of life, and other non-pecuniary losses.

46. Defendants' actions were malicious and motivated by ill will, spite, and evil motive, and taken for the purpose of injuring the plaintiff. An award of exemplary damages to the plaintiff is therefore appropriate to deter future similar misconduct.

47. Dr. Gordon has exhausted all applicable administrative prerequisites and has timely filed his claim against Defendants. Defendants had actual notice of these impending claims.

### **Claim 2 – Defamation**

48. The preceding paragraphs are incorporated by reference in the following claim for relief.

49. Libel is a defamatory statement in written form that tends to harm a person's reputation and expose the person to public hatred, contempt, ridicule, or financial injury. Tex. Civ. Prac. & Rem. Code § 73.001. On at least one occasion, Defendants published false and defamatory statements regarding Plaintiff's employment and termination from UTMB d/b/a ARC. Defendant D'Agostino was Dr. Gordon's direct supervisor and the primary decision-maker regarding his termination, so based on information and belief she was the source of all information regarding his employment and termination. Defendants shared false information regarding Plaintiff, his employment, and his termination with a member of the public who was a science editor.

Defendants made these statements either orally or in writing. Discovery is necessary to more clearly define the link between Defendants, the timing and nature of their comments, and the third-parties who heard the defamatory statements regarding Plaintiff's employment and termination.

50. These statements were defamatory because they tended to injure Plaintiff's reputation and expose the Plaintiff to public hatred, contempt, ridicule, and financial injury related to his diminished ability to obtain employment. The statements also impeached his honesty and integrity.

51. Defendants made the false and defamatory statements by negligently failing to state the truth. Defendants and Defendants' representative either knew or should have known that the statements were false.

52. Defendants published the defamatory statements when they communicated them to a third party. This publication was not privileged because the third party had no legitimate interest in receiving information regarding Plaintiff's employment and termination and the statements were made with malice.

53. Defendants acted with malice because they published the defamatory statements with knowledge that they were false or with substantial grounds for knowing that they might be false and with reckless disregard to whether they were true or false.

54. As a result of Defendants' wrongful conduct, Plaintiff's reputation was seriously damaged to the extent that he has been unable to obtain employment of the same stature as he had at UTMB d/b/a ARC and in prior positions.

55. As a result of Defendants' unlawful conduct, Plaintiff has suffered and will continue to suffer damages in the form of lost back wages, lost future wages (i.e., front pay), loss of retirement benefits, loss of earning capacity, compensatory damages for past and future

pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of reputation, loss of opportunities for career advancement, loss of enjoyment of life, and other non-pecuniary losses.

56. Defendants' actions were malicious and motivated by ill will, spite, and evil motive, and taken for the purpose of injuring the plaintiff. An award of exemplary damages to the plaintiff is therefore appropriate to deter future similar misconduct.

57. Plaintiff has exhausted all applicable administrative prerequisites and has timely filed its claim against Defendants. Defendants have had actual notice of these impending claims.

### **VIII. DAMAGES**

58. As a direct and proximate result of result of Defendants' unlawful conduct, Plaintiff suffered significant injuries and damages.

59. Plaintiff was discharged from employment at UTMB d/b/a ARC, suffering lost pay and benefits in the past, present, and future and loss of earning capacity. Plaintiff lost retirement benefits as a result of his termination. Although he sought other employment, he has been unable to find a job with comparable salary and benefits. Instead, he has found a short-term posting at a significantly reduced salary with a severe reduction in responsibility and stature. It is a junior position outside the field of veterinary medicine, the field he to which he has dedicated his twenty-five-year career. In his short-term posting at the USDA he has no management expectations, he has been awarded no budget, he has no supervisory expectations, and his job responsibilities do not require his level of expertise. In addition, Plaintiff has incurred expenses in seeking other employment.

60. Due to Defendants' termination of Plaintiff and his loss of income, Plaintiff was forced to sell his home at a loss. He incurred costs related to that transaction, including realtor

fees and closing costs. Defendants also incurred moving expenses and relocation costs, as he was forced to relocate to alternative housing.

61. Plaintiff has suffered mental anguish, emotional distress, inconvenience, humiliation, embarrassment, loss of opportunities for career advancement, and damage to reputation. Plaintiff has suffered this harm as a result of Defendants' conduct, his loss of employment and livelihood, and the defamatory statements made about him, and the violation of his rights.

62. Plaintiff will also seek prejudgment interest, costs of court, and attorney's fees, costs, and expenses.

#### **IX. EXEMPLARY DAMAGES**

63. Defendants acted with oppression and malice with the purpose and intent of intimidating Plaintiff into participating in their illegal activity. The acts and omissions of Defendants complained of herein were committed with malice or reckless indifference to the protected rights of Plaintiff. Plaintiff is, thus, entitled to exemplary damages in an amount sufficient to deter Defendants from such wrongful conduct in the future.

#### **X. JURY DEMAND**

64. Plaintiff hereby requests a trial by jury of all issues of act in this case and tenders the appropriate jury fee with this Petition.

#### **XI. REQUEST FOR DISCLOSURE TO DEFENDANT**

65. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests that Defendant UTMB disclose, within fifty (50) days of the service of this request, the information or materials described in Rule 194.2 and *Plaintiff's First Request for Disclosures*, which is attached to this Petition as **Exhibit A**.

## **XII. REQUEST FOR PRODUCTION TO DEFENDANT**

77. Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Plaintiff requests that Defendant UTMB produce, within fifty (50) days of the service of this request, the documents and tangible things requested in *Plaintiff's First Requests for Production*, which is attached to this Petition as **Exhibit B**.

## **XIII. PRAYER**

WHEREFORE, Plaintiff BRIAN GORDON, DVM, requests that Defendant UNIVERSITY OF TEXAS MEDICAL BRANCH and TONI D'AGOSTINO be cited to appear and answer, and on final trial, that the court enter judgment for the plaintiff and against the defendant for the following:

- a. For back pay, plus prejudgment interest as provided by law, from the date of the plaintiff's termination until the date of judgment.
- b. For an award of the present value of front pay due to the plaintiff for a reasonable period following the date of the judgment, calculated as of the date of judgment.
- c. For additional compensatory damages in an amount within the jurisdiction of this court.
- d. For exemplary damages against the defendant in a sum determined by the trier of fact.
- e. For reasonable attorney's fees.
- f. For interest after judgment as provided by law.
- g. For costs of suit.
- h. Such other and further relief to which plaintiff may be entitled.

Respectfully submitted,

**SILVERMAN LAW GROUP**

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Fax (512) \_\_\_\_\_  
daphnesilverman@gmail.com

/s/Daphne Pattison Silverman \_\_\_\_\_

Daphne Pattison Silverman  
State Bar Number 06739550

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/s/Jennifer D. Ward \_\_\_\_\_

Jennifer D. Ward  
State Bar Number 24090459



without limitation, letters, correspondence , telegrams, memoranda , notes, records , minutes, contracts, agreements, records, or notations of telephone or personal conversations, conferences, inter-office communications, E-mail, microfilm, bulletins, circulars, pamphlets, photographs, facsimiles, invoices, tape recordings, computer printouts and work sheets), including drafts and copies not identical to the originals, all photographs and graphic matter, however produced or reproduced , and all compilations of data from which information can be obtained, and any and all writings or recordings of any type or nature, in your actual possession , custody, or control , including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, however produced or reproduced , to which Plaintiff or your agents, representatives or attorney will have or have had access.

3. "Statement" includes any written or graphic statement signed or otherwise adopted or proved by the person making it, and any stenographic, mechanical, electrical, or other record or transcription thereof which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

4. "Communication" means any oral, written or electronic communication of which the Defendant have knowledge, information, or belief.

5. It is requested that all documents and/or other data compilations that concern the subject matter of this litigation be preserved and that any ongoing process of document destruction involving such documents cease. In the event that any items requested are unavailable due to loss or destruction of documents, loss of memory, failure to keep documents, or otherwise, please

identify the nature of the information, the last known person to have possession of the documents or information, the circumstances involved, and the date of each event.

6. To the extent any request is objected to, please set forth a complete basis for the objection. If you object to only a portion of a particular request, specifically identify the portion of the request to which you are objecting and respond to the remainder completely.

7. You are hereby notified that your answers to these discovery requests shall be made and signed by you, separately and fully in writing, while under oath. You are hereby further requested to serve your answers to such discovery requests upon the undersigned attorney within fifty (50) days after receipt of same.

6. These discovery requests shall be deemed continuing so as to require you or your attorney to reasonably supplement your answers if either you, your attorney or any other person acting on your behalf obtain further information between the time of your answers and time of trial. You are further hereby notified that your sworn answers to these discovery requests may be used in evidence upon the trial of this case.

### **FIRST REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce the complete personnel file for Plaintiff pertaining to his entire employment at UTMB.

#### **REQUEST FOR PRODUCTION NO. 2:**

Produce all employee handbooks, policy manuals, and memoranda detailing internal policies and procedures that were in effect from March 2013 through July 2015. To be complete, this

production should include all UTMB policies related to employee benefits, performance evaluations, internal grievances and appeals, disciplinary actions against employees, promotions, raises, and all other policies in effect during that timeframe.

**REQUEST FOR PRODUCTION NO. 3:**

Produce the Memo of Concern issued to Plaintiff in approximately December 2014 and referenced in the Notice of Intent to Terminate that Defendant issued to Plaintiff on approximately June 8, 2015.

**REQUEST FOR PRODUCTION NO. 4:**

Produce all performance evaluations issued to Plaintiff during his employment at UTMB.

**REQUEST FOR PRODUCTION NO. 5:**

Produce all documents related to reports and complaints you received from any source in 2013 through 2015 regarding Plaintiff's job performance at UTMB.

**REQUEST FOR PRODUCTION NO. 6:**

Produce all notes, electronic recordings, and related transcripts that have been obtained by you, your attorney, or anyone on your behalf that concern Plaintiff or Plaintiff's employment with UTMB. To be complete, this response should include all notes, recordings, and transcripts related to a meeting between Plaintiff and Toni D'Agostino, Associate Vice President of Research Administration, on approximately February 17, 2015 and referenced in the Notice of Intent to Terminate that Defendant issued to Plaintiff on approximately June 8, 2015.

**REQUEST FOR PRODUCTION NO. 7:**

Produce the minutes for all meetings of UTMB's Institutional Animal Care and Use Committee (IACUC) that occurred in 2013 through 2015.

**REQUEST FOR PRODUCTION NO. 8:**

Produce documents showing the sixty-nine protocols for animal care that were prepared by Tom Geisberg and implemented at Defendant's research facility from 2013 to 2015.

Respectfully submitted,

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Daphne Pattison Silverman

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State Bar Number 24090459

/s/Jennifer D. Ward  
Jennifer D. Ward

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above-referenced Plaintiff's First Request for Disclosure to Defendant University of Texas Medical Branch has been sent by facsimile transmission, on the 8<sup>th</sup> day of March, 2017, to the Defendants' counsel of record.

/s/Daphne Pattison Silverman  
Daphne Pattison Silverman  
Attorney

NO. \_\_\_\_\_

BRIAN GORDON,  
Plaintiff,

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IN THE DISTRICT COURT

V.

\_\_\_\_\_ JUDICIAL DISTRICT COURT

UNIVERSITY OF TEXAS MEDICAL  
BRANCH d/b/a ANIMAL RESOURCE  
CENTER and TONI D'AGOSTINO *in her*  
*official and individual capacity*,  
Defendants

GALVESTON COUNTY, TEXAS

**PLAINTIFF'S FIRST REQUEST FOR DISCLOSURE**  
**TO DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH**

TO: University of Texas Medical Branch, 301 University Boulevard, Galveston, Texas 77555,  
Galveston County, Texas.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (including all subparts) of the Texas Rules of Civil Procedure:

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
- (d) the amount and any method of calculating economic damages;
- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

- (f) for any testifying expert:
  - (1) the expert's name, address, and telephone number;
  - (2) the subject matter on which the expert will testify;
  - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
  - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
    - (A) all documents , tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
    - (B) the expert's current resume and bibliography;
- (g) any indemnity and insuring agreements described in Rule 192.3(f)
- (h) any settlement agreements described in Rule 192.3(g);
- (i) any witness statements described in Rule 192.3(h);
- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party
- (l) the name, address, and telephone number of any person who may be designated as a responsible third party.

Pursuant to Texas Civil Procedure Rule 194.5, no objections are permitted to these requests.

Respectfully submitted,

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/s/Jennifer D. Ward  
Jennifer D. Ward

ATTORNEYS FOR PLAINTIFF

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This is to certify that a true and correct copy of the above-referenced Plaintiff's First Request for Disclosure to Defendant University of Texas Medical Branch has been sent by facsimile transmission, on this 8<sup>th</sup> day of March, 2017, to counsel the Defendants' counsel of record:

/s/Daphne Pattison Silverman  
Daphne Pattison Silverman  
Attorney