

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**AMERICAN BOARD OF INTERNAL
MEDICINE,**

Plaintiff,

v.

JAIME A. SALAS RUSHFORD, M.D.,

Defendant.

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: Civil Action No. 14-cv-06428-KSH-CLW
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**PLAINTIFF AMERICAN BOARD OF INTERNAL MEDICINE’S
SUPPLEMENTAL OBJECTIONS AND RESPONSES
DEFENDANT’S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, plaintiff American Board of Internal Medicine (“ABIM”), by its undersigned counsel, hereby serves its supplemental objections and responses to defendant Jaime Salas Rushford, M.D.’s first set of interrogatories.

GENERAL OBJECTIONS

1. Discovery is not yet complete, and ABIM’s investigation is ongoing.

Therefore, the responses below reflect ABIM’s current knowledge regarding the topics of the interrogatories. ABIM reserves the right to supplement these responses as appropriate through the end of discovery.

2. ABIM objects to each and every interrogatory, including the definitions

and instructions, to the extent they call for information outside the permissible scope of

discovery or seek to impose rules, requirements, definitions, or obligations on ABIM that are inconsistent with or beyond those contained in the Federal Rules of Civil Procedure.

3. ABIM's responses are not intended to be, nor shall be, construed as (a) admitting the admissibility of any document that is the subject of any interrogatory, (b) admitting the "relevance" of any such document or that the documents inquired of have any specific legal effect or import, (c) admitting the truth of any statement contained in any such document, (d) admitting (i) in the case of a document allegedly authored, created and/or transmitted by a person or party other than ABIM, that the "original" thereof was actually authored, created and/or transmitted by such person or (ii) in the case of a document allegedly maintained by a person or party other than ABIM, that the document is actually kept or maintained by such person or party in the form as produced by ABIM, and/or (e) admitting that any such document is a business record of ABIM.

4. ABIM does not waive any objection on any ground, including without limitation, competence, privilege, relevance, materiality, hearsay, or to the use of any such information for any purpose, in whole or in part, in any subsequent stage or proceeding in this action or any other action.

5. ABIM objects to each and every interrogatory to the extent they call for information that is protected by the attorney-client privilege or work product doctrine.

6. ABIM objects to defendant's definition of "ABIM," "You," "Your," and "Plaintiff" as overbroad to the extent they purport to define ABIM to include individuals or entities over which ABIM has no control, or purport to require that ABIM provide information that is not currently in its possession, custody, or control.

7. ABIM objects to defendant's definition and use of the term "author" to the extent such use is inconsistent with the meaning of the term under the Copyright Act, and thereby purports to require that ABIM produce documents relating to individuals or entities not relevant to this Action.

8. ABIM objects to each and every interrogatory as unduly burdensome to the extent it requires that ABIM produce documents that would be relevant only to defendant's counterclaims while ABIM's motion to dismiss such claims (ECF No. 34) remains pending.

9. ABIM objects to each and every request to the extent it calls for the production of confidential documents or interrogatory, as there has not yet been a protective order entered in this case. ABIM will produce such documents only once a suitable Protective Order has been negotiated by the parties and entered by the Court.

10. These general objections shall be deemed continuing and incorporated by reference in response to each request for production as if fully set forth therein, and are not waived by a response to any particular request for production. To the extent that specific objections are cited in a specific response, those specific objections are provided because they are particularly applicable to a specific request for production and are not to be construed as a waiver of any general objection applicable to the scope of the request for production.

REQUESTS

1. Identify the person answering these interrogatories and further provide the identity of his or her boss or supervisor; and the authority under which the person answers these interrogatories on behalf of Plaintiff. Also identify each person who participated or assisted in preparing the answers to these interrogatories or supplied any of the information contained in the answers to these interrogatories. For each person identified, list the interrogatories that he or she

helped answer and their relationship to a particular interrogatory if it is not apparent from their job position.¹

ANSWER: ABIM objects to this request to the extent it seeks information protected by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, ABIM responds that the answers were prepared by counsel for ABIM. ABIM further identifies Jeremy W. Dugosh, Ph.D., Director of Test Development Operations of ABIM, as a person who supplied information contained in the answers to these interrogatories and who should be contacted through counsel of record in this matter, Ballard Spahr, LLP, 210 Lake Drive East - Suite 200, Cherry Hill, NJ 08002.

2. Explain in detail all steps ABIM took to identify the owner of the padrinojr@yahoo.com account; state the date and time of each action or step; identify the specific means and locations of all actions or steps involved and the specific results of each action or step; and identify all persons involved in any way in each action or step, regardless of whether they did so on behalf of ABIM or of any third party.²

¹ This interrogatory consists of four separate interrogatories because it requires (1) identifying the person answering the interrogatories and his or her authority for doing so on behalf of ABIM; (2) identifying the answering person's boss or supervisor; (3) identifying each person who participated, assisted, or supplied information for the interrogatories; and (4) for each identified person in (3), specifying which interrogatories the person assisted with and the "relationship" of the person to the interrogatory.

² This interrogatory consists of three separate interrogatories because it requires (1) explaining all steps taken to identify the owner of the padrinojr@yahoo.com email address, including the date and time; (2) identifying the means and location of each step, and the result of each; and (3) identifying all persons involved in each step.

ANSWER: ABIM specifically objects to this interrogatory as calling for information protected by the attorney-client privilege or work product doctrine. Investigative steps taken by or at the advice of counsel are subject to the attorney-client privilege and work product doctrine.

Subject to and without waiving the foregoing objections, ABIM responds as follows:

- i. On December 8, 2009, ABIM executed on an *ex parte* seizure order against the Arora Board Review. Although ABIM did not know it at the time, among the tens of thousands of pages of documents recovered from the Arora Board Review were the emails sent to Dr. Arora by defendant containing infringing content and using the `padrinojr@yahoo.com` email address.
- ii. ABIM checked its internal records and databases, but had no record of the `padrinojr@yahoo.com` email address. To ABIM's knowledge, defendant never used that address to communicate with ABIM.
- iii. ABIM diligently investigated the owner of the `padrinojr@yahoo.com` email address by, among other things:
 - a. Using online resources and investigative tools to identify the owner of the `padrinojr@yahoo.com` email address, but was unsuccessful.
 - b. ABIM identified the owners of other email addresses included on the emails sent by `padrinojr@yahoo.com`. ABIM contacted the owners of those email addresses, but they claimed they could not identify the owner of the `padrinojr@yahoo.com` email address.

- c. As part of its investigation into the emails found in possession of the Arora Board Review, ABIM learned that Matilde Ortiz, the Internal Medicine Coordinator for the San Juan City Hospital Pulmonary and Endocrinology Fellowships, investigated the padrinojr@yahoo.com email address. Ms. Ortiz checked her organizations records and all of its emails, but was unable to determine the identity of the owner of the padrinojr@yahoo.com email address, even though Defendant previously had been a resident at San Juan City Hospital.
- iv. In January 2012, a physician with knowledge of defendant's communications with Arora Board Review identified defendant as the owner of the padrinojr@yahoo.com email address.

3. Fully identify the specific questions that, according to paragraph 49 of the Complaint, ABIM discovered on the ABR website and which ABIM "believed were copied from" the ABIM Examination. State exactly when the "discovery" took place, identifying by whom. State exactly what led to that "belief" and produce all documentary evidence to support that claim.³

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further

³ This interrogatory consists of four separate interrogatories because it requires (1) identifying all specific questions that ABIM discovered on the ABR website that it believed were copied from the ABIM Examination; (2) stating when the discovery took place and by whom; (3) stating exactly what led to the "belief" that the items were copied; and (4) producing all documents supporting that claim.

specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

4. Identify the person or persons who attended any ABR course on ABIM's behalf; explain all the means, including copies of all documents, that person used to register for the particular course; explain any interactions the person had with Dr. Salas Rushford or related to Dr. Salas Rushford; identify all documents produced as a result of those persons' actions in investigating Dr. Arora or any other person in relation to the same matter.⁴

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

5. Identify all persons that had any role at all concerning how ABIM learned about Dr. Arora's alleged use and disclosure of content from ABIM Examinations, and the extent of such use and disclosure, on or before August 20, 2009. Explain each person's role, actions and results, including times and dates, with specificity.⁵

⁴ This interrogatory consists of four separate interrogatories because it requires (1) identifying any persons who attended an ABR course on ABIM's behalf; (2) explaining the means used to register for such courses; (3) explaining any interactions the person had with or related to Dr. Salas Rushford; and (4) identifying all documents produced as a result of the person's actions.

⁵ This interrogatory consists of two separate interrogatories, because it requires (1) identifying all persons who had a role in ABIM's discovery of Dr. Arora's use of ABIM examination content, and (2) explaining each person's role.

ANSWER: ABIM specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

6. Did ABIM eliminate from all ABIM Examinations all of the questions leaked to or by Arora Board Review, any other test preparation companies and/or candidates or certified physicians? Explain.⁶

ANSWER: ABIM specifically objects to this request as vague and ambiguous to the extent it seeks information relating to questions leaked to “other test preparation companies and/or candidates or certified physicians.” ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

Subject to and without waiving the foregoing objections, ABIM states that it eliminated from all ABIM Examinations the infringed questions that it found or identified in the course of its investigation and legal action against Arora Board Review.

7. If the answer to the previous question is totally or partially affirmative, explain and provide evidence identifying each leaked question and the corresponding eliminated question; the date ABIM learned of each leak; the date each question was created, the date and registration number under which it was registered with the Copyright Office, and the date in which it was eliminated; who ordered each question’s elimination; and the percentage of questions eliminated from the ABIM Examination before August 2009 and after August 2009 in relation to the total number of questions eliminated because of leaks, the total number of

⁶ This interrogatory consists of a single interrogatory.

questions eliminated for all reasons, and the total number of questions live at the time in the ABIM Examination.⁷

ANSWER: ABIM specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

8. For every question replaced or eliminated from any ABIM Examination as a result of any leak, explain why the question would still have been current and not obsolete on the date in which the ABIM Examination immediately following such deletion was given and explain if and why that question would still be current today.⁸

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as overbroad and irrelevant to the extent it requests information relating to questions that do not relate to alleged infringements by defendant. ABIM further specifically objects to this interrogatory as irrelevant in light of ABIM's election to pursue statutory damages in this matter.

⁷ This interrogatory consists of four separate interrogatories because it requires (1) identifying each leaked question and the corresponding eliminated question, the date on which ABIM learned of each, and the date on which each question was eliminated; (2) identifying the date each question was created; (3) identifying the date and registration number under which each question was registered with the Copyright Office; and (4) identifying certain percentages related to the questions.

⁸ This interrogatory consists of three separate interrogatories because it requires (1) explaining why each eliminated question would have been current as of the date of the ABIM Examination following the elimination; and (2) explaining why the question would have been current today.

9. Explain in detail how ABIM determined the cost of eliminating the leaked questions and the cost of making new ones, excepting those added as a result of the usual procedures for reviewing and keeping the test current.⁹

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter.

10. Identify all known documents, whether published or unpublished, and each and every known copy of those documents, which contain in whole or in part, however small, any of the works, or any part, however small, of the works whose copyright protection is at issue in this Action, or which are compilations or derivative works or any sort of analogous derivations of any of the above, or which are the drafts or original source or inspiration of or for any part, however small, of the works whose copyright protection is at issue in this Action, regardless of whether copyright protection is claimed for that particular part or not. State how and when ABIM came to be aware of the existence of each document.¹⁰

ANSWER: ABIM specifically objects to the portion of this interrogatory demanding to know "how and when ABIM came to be aware of the existence of each document." ABIM is the Author of the works within the meaning of the Copyright Act, and thus "came to be aware of the existence of each document" when and as each was created. ABIM further specifically objects to this interrogatory as overbroad and unduly burdensome to the

⁹ This interrogatory consists of a single interrogatory.

¹⁰ This interrogatory consists of two separate interrogatories because it requires (1) identifying all known documents containing the works over which ABIM claims copyright protection in this Action; and (2) stating how and when ABIM became aware of the existence of each document.

extent it seeks to identify “every” document containing a portion of the Works, no matter how minimal.

Subject to and without waiving the foregoing objections, ABIM directs defendant to ABIM00056 through ABIM00165 of ABIM’s document production. ABIM further states that each examination question was first used on an ABIM examination on the following dates:

ABIM Document Production Number	Date of First Use
ABIM00054	9/15/1987
ABIM00055	8/21/1996
ABIM00056	8/20/1997
ABIM00057	8/24/1999
ABIM00058	8/22/2000
ABIM00059	8/21/2001
ABIM00060	8/20/2002
ABIM00061	8/23/2005
ABIM00062	8/23/2005
ABIM00063	8/23/2005
ABIM00064	8/23/2005
ABIM00065	8/1/2007
ABIM00066	8/1/2008
ABIM00067	8/24/2004
ABIM00068	11/7/1989
ABIM00069	8/22/2000
ABIM00070	8/19/2003
ABIM00071	8/24/2004
ABIM00072	8/24/2004
ABIM00073	9/25/1991
ABIM00074	8/23/1995
ABIM00075	8/19/2003
ABIM00076	8/23/2005
ABIM00077	8/21/2001
ABIM00078	8/24/2004
ABIM00079	8/24/2004
ABIM00080	8/24/1994
ABIM00081	8/23/2005
ABIM00082	9/25/1991
ABIM00083	8/1/2006
ABIM00084	8/23/1995
ABIM00085	8/1/2007

ABIM Document Production Number	Date of First Use
ABIM00086	8/1/2007
ABIM00087	8/23/2005
ABIM00088	8/23/1995
ABIM00089	8/1/2006
ABIM00090	8/24/2004
ABIM00091	8/23/2005
ABIM00092	8/23/2005
ABIM00093	8/24/1994
ABIM00094	8/21/2001
ABIM00095	8/20/2002
ABIM00096	8/19/2003
ABIM00097	8/23/2005
ABIM00098	8/26/1998
ABIM00099	8/19/2003
ABIM00100	8/21/1996
ABIM00101	8/20/2002
ABIM00102	8/22/2000
ABIM00103	8/19/2003
ABIM00104	8/1/2007
ABIM00105	8/19/2003
ABIM00106	8/21/1996
ABIM00107	8/1/2009
ABIM00108	8/1/2006
ABIM00109	8/24/2004
ABIM00110	8/23/2005
ABIM00111	8/23/2005
ABIM00112	8/20/2002
ABIM00113	8/20/1997
ABIM00114	8/20/1997
ABIM00115	8/24/2004
ABIM00116	8/1/2009
ABIM00117	8/1/2007
ABIM00118	8/20/2002
ABIM00119	8/24/1999
ABIM00120	8/1/2007
ABIM00121	8/19/2003
ABIM00122	8/24/1999
ABIM00123	8/22/2000
ABIM00124	8/24/2004

ABIM Document Production Number	Date of First Use
ABIM00125	8/22/2000
ABIM00126-127	8/20/1997
ABIM00128	8/20/2002
ABIM00129	8/23/2005
ABIM00130	8/20/1997
ABIM00131	8/1/2007
ABIM00132	8/21/2001
ABIM00133	8/24/2004
ABIM00134	8/20/1997
ABIM00135	8/24/2004
ABIM00136	8/24/2004
ABIM00137	8/23/2005
ABIM00138	8/23/2005
ABIM00139	8/24/1994
ABIM00140	8/24/1999
ABIM00141	8/1/2007
ABIM00142	8/22/2000
ABIM00143	9/25/1991
ABIM00144	8/24/2004
ABIM00145	8/1/2006
ABIM00146	8/20/2002
ABIM00147	9/22/1993
ABIM00148	8/19/2003
ABIM00149	8/22/2000
ABIM00150	8/21/1996
ABIM00151	8/1/2006
ABIM00152	8/24/2004
ABIM00153	8/23/2005
ABIM00154	8/20/2002
ABIM00155	8/24/1994
ABIM00156	8/24/2004
ABIM00157	8/23/2005
ABIM00158	8/21/1996
ABIM00159	8/1/2007
ABIM00160	8/1/2009
ABIM00161	8/23/2005
ABIM00162	8/24/2004
ABIM00163	8/23/2005
ABIM00164	8/23/1995

ABIM Document Production Number	Date of First Use
ABIM00165	9/12/1990

11. Identify all persons who were the actual authors or creators or in any way contributed to the creation of any part of the content of the works whose copyright protection is at issue in this Action, stating with particularity what their actual contribution was, when it occurred, under what grounds, relationship, contract or authority it occurred, and identifying any documents or things each referred to, relied upon, consulted, were inspired by or used in any way, directly or indirectly, regardless of whether or not credit was given, to provide that actual contribution.¹¹

ANSWER: Subject to and without waiving the foregoing objections, ABIM states that it does not retain in its files supporting materials for ABIM examination questions. ABIM identifies the following authors as persons who contributed original content to each examination question:

ABIM Document Production Number	Author(s)
ABIM00054	Johanson
ABIM00055	Steven R. McGee
ABIM00056	Edson
ABIM00057	Edward W. Hook/Richard F. LeBlond
ABIM00058	David Goldmann/Robert A. Vigersky

¹¹ This interrogatory consists of three separate interrogatories because it requires (1) identifying all persons who were authors of the works for which ABIM claims copyright protection in this action; (2) explaining the nature of each authors contribution; (3) identifying any materials referred to to provide the contribution.

ABIM Document Production Number	Author(s)
ABIM00059	Ronald V. Loge/Catherine Lucey
ABIM00060	Polly E. Parsons
ABIM00061	John Popovich, Jr.
ABIM00062	Ronald V. Loge
ABIM00063	Valerie K. Ulstad
ABIM00064	Joseph T. Ruggiero
ABIM00065	Kevin P. High
ABIM00066	Catherine Lucey/John Harold
ABIM00067	Kevin P. High
ABIM00068	Philip Toskes
ABIM00069	Patrick G. Brady
ABIM00070	Patrick G. Brady
ABIM00071	Patrick G. Brady
ABIM00072	Beverly Woo
ABIM00073	John Bartlett/Brown
ABIM00074	Nicolaos Madias
ABIM00075	David B. Hellmann
ABIM00076	Steven R. McGee
ABIM00077	Patrick G. Brady
ABIM00078	Ronald V. Loge
ABIM00079	Joseph T. Ruggiero
ABIM00080	Robert Mayer
ABIM00081	Richard F. LeBlond
ABIM00082	Beverly Woo/Kevin P. High
ABIM00083	Steven R. McGee
ABIM00084	Galbraith
ABIM00085	Steven R. McGee
ABIM00086	Ronald V. Loge
ABIM00087	Valerie K. Ulstad
ABIM00088	Janice G. Douglas
ABIM00089	Ronald V. Loge
ABIM00090	Polly E. Parsons
ABIM00091	Valerie K. Ulstad
ABIM00092	Lorna Lynn
ABIM00093	Mark Klempner
ABIM00094	Jeffrey S. Schwartz
ABIM00095	Ronald V. Loge

ABIM Document Production Number	Author(s)
ABIM00096	Edward W. Hook
ABIM00097	David B. Hellmann
ABIM00098	Janet A. Schlechte
ABIM00099	David Gullen
ABIM00100	Stewart/Siegler
ABIM00101	Edward W. Hook
ABIM00102	Jeanette Mladenovic/Kenneth K. Wu
ABIM00103	
ABIM00104	Richard J. Simons
ABIM00105	Heather Gantzer
ABIM00106	Brent Pistorese
ABIM00107	Kathryn Martin/Kevin P. High
ABIM00108	Kevin P. High
ABIM00109	Steven R. McGee
ABIM00110	Valerie K. Ulstad
ABIM00111	John Popovich, Jr.
ABIM00112	Lorna Lynn
ABIM00113	James Naughton
ABIM00114	Janet A. Schlechte
ABIM00115	David Goldmann
ABIM00116	Janet A. Schlechte
ABIM00117	Mack C. Mitchell, Jr.
ABIM00118	Mack C. Mitchell, Jr.
ABIM00119	Gilroy/Jeanette Mladenovic
ABIM00120	Dorothy D. Sherwood
ABIM00121	David B. Hellmann
ABIM00122	Edward W. Hook
ABIM00123	Ellen E. Gordon
ABIM00124	Richard Baron
ABIM00125	Edward W. Hook/Steven R. McGee
ABIM00126-127	Lorna Lynn
ABIM00128	Jeanette Mladenovic
ABIM00129	Heudebert
ABIM00130	Edson

ABIM Document Production Number	Author(s)
ABIM00131	Richard J. Simons
ABIM00132	Lorna Lynn
ABIM00133	Stephanie Studenski
ABIM00134	James Naughton
ABIM00135	Jeffrey S. Schwartz
ABIM00136	Heather Gantzer
ABIM00137	Lorna Lynn
ABIM00138	David Goldmann
ABIM00139	Christine Stoltz
ABIM00140	Sharon Anderson/Sidney Block
ABIM00141	Ronald V. Loge
ABIM00142	Patrick G. Brady
ABIM00143	John Bartlett/Marie T. Brown
ABIM00144	Ronald V. Loge
ABIM00145	Ronald V. Loge
ABIM00146	Ronald V. Loge
ABIM00147	Russell
ABIM00148	David Gullen
ABIM00149	Jeanette Mladenovic/Kenneth K. Wu
ABIM00150	Brent Pistorese
ABIM00151	Kevin P. High
ABIM00152	Steven R. McGee
ABIM00153	John Popovich, Jr.
ABIM00154	Lorna Lynn
ABIM00155	Mark Klempner
ABIM00156	Robert A. Vigersky
ABIM00157	Joseph T. Ruggiero
ABIM00158	Marie Ann Savard
ABIM00159	Abrass I
ABIM00160	Catherine Lucey
ABIM00161	Lorna Lynn
ABIM00162	Edward W. Hook
ABIM00163	Valerie K. Ulstad
ABIM00164	Galbraith
ABIM00165	Mack C. Mitchell, Jr.

12. Identify all persons who have been authorized in any way, explicitly or implicitly, at any time, to actually access any or all or part, specifying this with particularity, of the works whose copyright protection is at issue in this Action, or to any drafts, derivative works, or compilations containing any or all or part, however small, of those works, or to the original source of any part, however small, of those works, and do so regardless of whether or not copyright ownership and protection is actually claimed in this Action for the particular part accessed by the person; state the reason for the authorization; when their access took or has taken place; the scope of that access; how long their authorized access lasted or has lasted; identify who granted the authorization; and identify any persons who witnessed the authorized person's activities while or after the authorized person accessed the works, explaining the extent of the witness' ability to monitor the activities.¹²

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case. ABIM further specifically objects to this interrogatory as overbroad to the extent it requests information about questions not alleged to have been infringed by defendant.

¹² This interrogatory consists of six separate interrogatories because it requires (1) identifying all persons who were authorized to access to the works whose copyright protection is at issue in this Action; (2) stating the reason for the authorization and who granted it; (3) stating when the access took place; (4) stating the scope of the authorized access; (5) stating how long the authorized access lasted; (6) identifying any person who witnessed the authorized person's activities and the extent of that person's ability to monitor the activities.

13. Explain in detail ABIM's relationship and contracts with any and all test preparation companies from the date in which any part of the content of the works whose copyright protection is at issue in this Action went live on any ABIM Examination to the present time.¹³

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to "went live" as vague and ambiguous. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

14. Explain why ABIM never provided Dr. Salas Rushford a copy of the ABIM Policies and Procedures in effect at the time he applied to participate in the certification process.¹⁴

ANSWER: Subject to and without waiving the foregoing objections, ABIM responds that the relevant Policies and Procedures were at all times available to defendant, and to the public, on ABIM's website.

15. Explain the way in which and the reason why ABIM selected each and every person that took part in the process regarding Dr. Salas Rushford that gave rise to the letter to Dr. Salas Rushford signed by Ms. Lynn Langdon and dated May 8, 2012; identify those

¹³ This interrogatory consists of a single interrogatory.

¹⁴ This interrogatory consists of a single interrogatory.

persons and explain every single step they took and the evidence they used to reach each and every one of their statements and conclusions in that letter.¹⁵

ANSWER: ABIM specifically objects to this interrogatory as calling for information protected by the attorney-client privilege or work product doctrine. Investigative steps taken by or at the advice of counsel are subject to the attorney-client privilege and work product doctrine. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case. To the extent relevant to defendant's counterclaims, ABIM specifically objects to this interrogatory as unduly burdensome because it purports to demand a response while a motion to dismiss defendant's counterclaims remains pending.

Subject to and without waiving the foregoing objections, ABIM responds as follows:

- i. On December 8, 2009, ABIM executed on an *ex parte* seizure order against Arora Board Review. Although ABIM did not know it at the time, among the tens of thousands of pages of documents recovered from Arora Board Review were emails sent to Dr. Arora by defendant using his jsalasmd@yahoo.com email address, and other emails sent to Dr. Arora by defendant containing infringing content and using the padrinojr@yahoo.com email address and "Jimmy R" pseudonym.
- ii. Because they are highly familiar with the composition of ABIM examination questions, ABIM test development staff – including Jeremy W. Dugosh, PhD.

¹⁵ This interrogatory consists of four separate interrogatories because it requires (1) explaining how ABIM chose the individuals who took part in the process that gave rise to the May 8, 2012 letter; (2) explaining why ABIM chose the individuals; (3) identifying the individuals; (4) explaining the steps those persons took and the evidence supporting any statements in the May 8, 2012 letter.

and Linda E. Mills – carefully reviewed those emails and their attachments and compared them to ABIM’s secure, copyrighted examination questions to determine whether – and if so, the extent to which – the emails and their attachments contained material copied by the owner of the padrinojr@yahoo.com email address and others.

- iii. As described in the response to interrogatory 2(ii)-(iv), above, ABIM ultimately identified defendant as the owner of the padrinojr@yahoo.com email address.
- iv. Thus, ABIM concluded that the evidence it seized from Arora Board Review demonstrated that between May 2009 and August 2009: defendant collected and compiled hundreds of ABIM examination questions from multiple sources in preparation for his ABIM examination; defendant sent several emails to Arora Board Review from his email address jsalasmd@yahoo.com, and other emails, which contained hundreds of ABIM examination questions, to Arora Board Review from a disguised email address padrinojr@yahoo.com under the pseudonym “Jimmy R.”; and that such conduct constituted grounds for revocation or suspension of defendant’s Board Certification under ABIM’s Policies & Procedures for Certification. ABIM documented those conclusions in its letter to defendant dated May 8, 2012, which was signed by Lynn O. Langdon, MS, in her then-capacity as ABIM’s Chief Operating Officer, in which capacity – with oversight and guidance from ABIM’s Board of Directors – she oversaw ABIM’s investigation of Arora Board Review and

process for imposing sanctions against ABIM candidates and diplomates arising from that investigation.

16. Explain the basis upon which ABIM concluded that Dr. Salas Rushford attended the Arora Board Review Crash Course held in New Jersey on August 2009.¹⁶

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter.

17. Explain, for the ABIM Examination held nationwide in August 2009, what courses, books or materials were approved by ABIM for study by candidates, the criteria for that approval and how that approval was relayed to candidates.¹⁷

ANSWER: ABIM specifically objects to this request as irrelevant and not proportional to the needs of the case.

Subject to and without waiving the foregoing objections, ABIM responds that it does not approve study materials for use by candidates.

18. List all persons that were notified, when they were notified and how and what they were told, about the suspicions of ABIM regarding ABR and/or findings of the ABIM investigation into ABR before they were made public.¹⁸

¹⁶ This interrogatory consists of a single interrogatory.

¹⁷ This interrogatory consists of three separate interrogatories because it requires (1) listing all persons notified of "suspicions of ABIM regarding ABR"; (2) listing when and how the persons were notified; and (3) explaining what they were told.

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case.

19. Fully identify the one hundred and thirty nine (139) doctors that ABIM sent letters to on June 8, 2010, or on any date after that, informing them that their certification was either revoked or suspended, and any others similarly situated, stating the reason for each and the evidence ABIM used to reach its decision.¹⁹

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as irrelevant and proportional to the needs of the case.

20. Fully explain any and all differences between ABIM and any entities listed in or similar to those listed in ABIM press release of October 21, 2008, entitled Warning

¹⁸ This interrogatory consists of three separate interrogatories because it requires (1) identifying all persons who were authors of the works for which ABIM claims copyright protection in this action; (2) explaining the nature of each authors contribution; (3) identifying any materials referred to to provide the contribution.

¹⁹ This interrogatory consists of two separate interrogatories because it requires (1) identifying all doctors who ABIM sent letters to on June 8, 2010; and (2) stating the reasons for each letter and the evidence used to reach the decision.

regarding scam “Certification Boards”, which is available in ABIM’s website at <http://www.abim.org/news/scam-certification-boards.aspx>.²⁰

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant’s October 30, 2015 letter. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case. ABIM further specifically objects to this interrogatory as vague, ambiguous, and unintelligible.

21. Identify all persons that have knowledge of any facts related to in [*sic*] the instant case and explain the nature of such knowledge and any topics to be covered by each and every one of said witnesses in their testimonies.²¹

ANSWER: ABIM specifically objects to this interrogatory as vague, ambiguous, overbroad and unduly burdensome, in that ABIM does not know the identity of every individual that may have knowledge of any facts related to the instant case. ABIM further specifically objects to this interrogatory to the extent it requests information duplicative of information required to be provided by ABIM in its initial disclosures under Federal Rule of Civil Procedure 26(a)(1). ABIM further specifically objects to this interrogatory to the extent it purports to require ABIM to identify persons having knowledge of any facts related to defendant’s counterclaims, which are currently the subject of a motion to dismiss.

²⁰ This interrogatory consists of a single interrogatory.

²¹ This interrogatory consists of three separate interrogatories because it requires (1) identifying all persons with knowledge of facts related to the instant case; (2) explaining the nature of such knowledge; and (3) for those identified persons who will testify, explaining the topics to be covered by each in their testimonies.

Subject to and without waiving the foregoing objections, ABIM responds that the following individuals not identified in its initial disclosures may have knowledge of the facts relating to ABIM's claim for copyright infringement. This list will be updated if the Court does not dismiss defendant's counterclaims:

INDIVIDUAL	NATURE OF INFORMATION
Dr. Jaime Salas-Rushford	Knowledge related to all aspects of ABIM's copyright infringement claim.
Dr. Rajender K. Arora	Knowledge of Defendant's contacts with the State of New Jersey; knowledge of Defendant's distribution of infringing material into the State of New Jersey.
Dr. Geraldine Luna	Knowledge relating to Defendant's communications with Arora Board Review using the email address padrinojr@yahoo.com .
Dr. Coromoto Angela Palermo	Knowledge relating to Defendant's communications with Arora Board Review using the email address padrinojr@yahoo.com .
Jeremy W. Dugosh, Ph.D.	Knowledge relating to ABIM's efforts to identify examination items copied by Defendant.

22. Identify all persons whose testimony You intend to use in the hearings or trial of this Action. Explain the topics to be covered by each and every one of said witnesses in their testimonies. If any of those persons are to testify as an expert, provide all information concerning the expert's qualifications, the subject matter on which they to testify, the opinions and theories they offer and the arguments that support said theories and opinions. If any statement given by these experts was produced in written form, provide a copy of said statements. Pursuant to Rule 26(a)(2)(b), of the Rules of Federal Civil Procedure, provide a report of the expert that contains all opinions to be expressed and their basis, including the data or other information considered by the expert in forming the opinions; any exhibits to be used as

a summary of or support for the opinions; the qualifications of the expert, including a list of publications authored by the expert within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years.²²

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as premature, as ABIM has not yet identified those individuals who may testify at trial in this Action. ABIM further specifically objects to this interrogatory as premature to the extent it seeks the disclosure of expert testimony prior to the time provided by the Federal Rules of Civil Procedure.

23. Identify every expert consulted by You in relation to the events in the instant case before or after the filing of this Action. For every expert consulted, explain their area of expertise, their theories and opinions, and their arguments supporting said theories and opinions. If any information obtained from these experts is in written form, provide a copy of said documents.²³

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when

²² This interrogatory consists of three separate interrogatories because it requires (1) identifying all persons ABIM intends to use in the hearings or trial of this Action; (2) explaining topics to be covered by each such person; and (3) identifying various pieces of information related to experts.

²³ This interrogatory consists of two separate interrogatories because it requires (1) identifying every expert ABIM consulted in relation to the events of the case or the filing of the Action; and (2) explaining the area of expertise and opinions of such experts.

considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as improperly seeking information concerning consulting experts contrary to Federal Rule of Civil Procedure 26(b)(4)(D). ABIM further specifically objects to this request as seeking information protected by the work product doctrine. ABIM further specifically objects to this request as premature to the extent it seeks disclosure of an expert report prior to the time required by Federal Rule of Civil Procedure 26(a).

24. State all facts and produce all documents and evidence that support all Your claims in the present case.²⁴

ANSWER: ABIM objects to this question as unduly burdensome because it purports to require ABIM to identify facts and evidence that it has already produced in discovery, included in its pleadings, or that are in defendant's possession or easily accessible to defendant, or that are in the public domain. ABIM further specifically objects to this interrogatory to the extent certain facts supporting its claims are currently known only to defendant, as discovery is not yet complete and ABIM has not yet had an opportunity to take defendant's deposition.

Subject to and without waiving the foregoing objections, ABIM responds that the facts that support its claim for copyright infringement can be found in ABIM's pleadings and other papers filed in this Action, as well as in the documents produced by ABIM to defendant, or by defendant to ABIM. By way of further response, ABIM states as follows:

²⁴ This interrogatory consists of three separate interrogatories because it requires (1 and 2) stating all facts and evidence that supports the two elements of ABIM's copyright infringement claim; and (3) producing all documents that support ABIM's claims.

Copyright infringement involves ownership of a copyright and copying by the defendant:

i. Ownership: ABIM owns and has registered with the United States Copyright Office the copyright in its Internal Medicine examinations. ABIM's registrations are proof of its ownership. Furthermore, the items on ABIM's examinations are created by individuals as a "work made for hire" for ABIM. Such individuals sign a written instrument expressly agreeing that the items they create are works made for hire and are owned by ABIM.

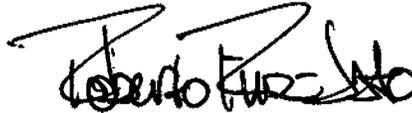
ii. Copying: Defendant copied ABIM's examination items before taking the 2009 Internal Medicine examination in Puerto Rico. Defendant then distributed those items into the State of New Jersey, specifically by email to Dr. Rajendar K. Arora. The examination items ABIM alleges that defendant infringed are contained in the emails attached to ABIM's Complaint as Exhibits B, C, D, and F. The actual items from ABIM's examinations were separately produced as ABIM00054-ABIM00165.

ABIM alleges that defendant gained access to the items recorded in Exhibits B and C (ABIM00067-ABIM00117) in a telephone conversation with a physician colleague in August 2009, shortly after the Internal Medicine examination period opened and shortly after that physician had taken the August 2009 Certifying Examination in Internal Medicine. Defendant took notes during this conversation, which ABIM believes ultimately became the handwritten notes attached to the emails sent by defendant to Dr. Arora on August 12, 2009. Those notes demonstrate copying from actual ABIM examination items (both the original ABIM examination questions and the emails sent by defendant have been produced to defendant.) Defendant also distributed to Dr. Arora the questions contained in Exhibits D and F of the Complaint, which infringe ABIM examination questions. ABIM has produced the original ABIM examination

questions to defendant (ABIM00054-ABIM00066 and ABIM00118-ABIM00165). ABIM is seeking statutory damages for infringement of ABIM's copyrighted works.

25. Identify all persons that authorized, participated in the determination or authorization or caused this Action and the Puerto Rico Action to be filed.²⁵

ANSWER: ABIM specifically objects to this interrogatory as exceeding the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a)(1) when considered in the order requested by defendant's October 30, 2015 letter. ABIM further specifically objects to this interrogatory as irrelevant and not proportional to the needs of the case. ABIM further specifically objects to this request as seeking information protected by the attorney-client privilege and work product doctrines.



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*Attorneys for Plaintiff
American Board of Internal Medicine*

DATED: April 22, 2016

²⁵ This interrogatory consists of a single interrogatory.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing first set of requests for production of documents from plaintiff American Board of Internal Medicine addressed to defendant Jaime Salas Rushford, M.D. to be served electronically on defendant's counsel via the email address contained in the Court's CM/ECF system.

A handwritten signature in black ink, appearing to read "Roberto A. Rivera-Soto", written over a solid horizontal line.

Roberto A. Rivera-Soto

DATED: April 22, 2016