

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

2016 JUL 27 AM 9:19

CHEROKEE NATION EDUCATION
CORPORATION, d/b/a CHEROKEE
NATION FOUNDATION,
Plaintiff,

Case No. CV-16-397

CHEROKEE NATION
DISTRICT COURT
ERIST, HINGBOYEA
COURT CLERK

vs.

KIMBERLIE GILLILAND,
Defendant.

REQUESTS FOR ADMISSIONS

TO: Kimberlie A. Gilliland
28177 S Boat House Ln.
Park Hill, OK 74451

Plaintiff, Cherokee Nation Education Corporation d/b/a Cherokee Nation Foundation (hereinafter "Foundation"), pursuant to FRCP Rule 36, requests the defendant respond to the following requests for admissions and serve the same upon plaintiffs through their attorney of record within thirty (30) days of the service of these requests. The plaintiff hereby demands that the defendant respond in writing, under oath, to each of the following Request for Admissions pursuant to Federal statutes. **Failure to respond will be treated as an admission by the defendant.** If you dispute a part, but not all of any Request for Admission, you must admit the part you do not dispute and deny only the part in controversy. If you fail to admit any fact that is later proven at trial, the costs of making such proof, including a reasonable attorney's fee, may be awarded against you.

DEFINITIONS

- A. "You" or "your" shall refer to the named defendant, Kimberlie A. Gilliland.
- B. "Foundation" shall refer to the named plaintiff, Cherokee Nation Education Corporation d/b/a Cherokee Nation Foundation.

C. "Writing" shall refer to any written material, whether typed, handwritten, printed or otherwise, or any photograph, Photostat, microfilm, or any other reproduction thereof, and including, without limitation, each note, memorandum, letter, telegram, circular, release, article, report, analysis, chart, account, book, draft, agreement, contract, order, monthly statement, invoice, pamphlet, correspondence, meeting minutes, interoffice and intra-office communication, ledgers, book of accounts, vouchers, bank check or draft, bank statements, check stubs, deposit slips, charge slips, recorded or written information of whatsoever nature or form and howsoever produces or reproduced.

D. "Identify" of "identification" when used with reference to an individual person, means to state the full name, residential address, present or last known position and business affiliation and telephone number. "Identify" of "identification" when used with reference to a corporation, firm or other entity, means its full name, form of organization and its present or last known address. "Identify" of "identification" when used with reference to a writing, means a description of that writing in a manner sufficient for a subpoena duces tecum or for production, pursuant to Oklahoma statutes. Also give its present location or custodian. If any such writing was, but no longer is, in your possession or control, state what disposition was made of it, the date thereof, the person responsible for making the decision as to such disposition, and the person responsible for carrying out such disposition.

INSTRUCTIONS

Finally, please note that these Request for Admissions are to be regarded as continuing to the extent allowed under Rule 26(e) of the Federal Rules of Civil Procedure as to require additional responses if you acquire additional information between the time the responses are

served and the time of trial. Such additional responses shall be under oath, served seasonably, but not later than thirty (30) days after such further information is received.

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Please admit that on December 22, 2008, Principal Chief Chad Smith endorsed a Council resolution confirming your nomination and appointment to serve on the Foundation Board of Directors for a term of four years.

REQUEST FOR ADMISSION NO. 2: Please admit that you served on the Foundation Board of Directors, including a partial term as President, until your voluntary resignation on October 5, 2009, when you assumed the duties and responsibilities as Executive Director of the Foundation.

REQUEST FOR ADMISSION NO. 3: Please admit that under the Foundation bylaws, the Executive Director has the affirmative duty to cause to be deposited all monies, drafts and checks in the name of, and to the credit of the corporation in such banks and depositories as a majority of the whole Board of Directors shall designate.

REQUEST FOR ADMISSION NO. 4: Please admit that under the Foundation bylaws, the Executive Director has the affirmative duty to render to the President and the Directors, whenever required, an account of all transactions by, and/or the financial conditions of the corporation.

REQUEST FOR ADMISSION NO. 5: Please admit that under the Foundation bylaws, the Executive Director has the affirmative duty to be the administrator of the corporation and be charged with the responsibility of managing the business of the corporation in the role of the chief executive officer and shall perform such other duties as maybe prescribed by the Board of Directors or the President.

REQUEST FOR ADMISSION NO. 6: Please admit that under the Foundation bylaws, the Executive Director is granted authority to sign checks, receipts, deposit funds, enter into contracts, modify or cancel contracts, on behalf of the Board of Directors, not to exceed the amount of \$5,000.00.

REQUEST FOR ADMISSION NO. 7: Please admit that the above-described duties and responsibilities of the Executive Director created an affirmative fiduciary relationship between Foundation and you, relating to all of Foundation's business matters and general operations.

REQUEST FOR ADMISSION NO. 8: Please admit that this fiduciary relationship continuously existed from your assumption of the duties and responsibilities as Executive Director up until your final departure from Foundation's employment in July of 2013.

REQUEST FOR ADMISSION NO. 9: Please admit that you are a citizen of the Cherokee Nation.

REQUEST FOR ADMISSION NO. 10: Please admit that during your tenure as executive director of the Foundation you had exclusive control and discretion over all payroll matters including the approval of timesheets and payroll amounts made through the Paychex Payroll Service.

REQUEST FOR ADMISSION NO. 11: Please admit that you have an ownership interest in Cherokee Media Limited a/k/a Cherokee Media Ltd.

REQUEST FOR ADMISSION NO. 12: Please admit that you are a partner and/or officer of Cherokee Media Limited a/k/a Cherokee Media Ltd.

REQUEST FOR ADMISSION NO. 13: Please admit that Lisa Reed-Smith was your personal housekeeper while also employed by the Foundation.

REQUEST FOR ADMISSION NO. 14: Please admit that you allowed other Foundation employees to sign your name to Foundation checks.

REQUEST FOR ADMISSION NO. 15: Please admit that on or about November 13, 2010, the Foundation received a \$5,000.00 donation with a handwritten notation that it was to be used: "*for operations, unrestricted, your 'slush fund'.*"

REQUEST FOR ADMISSION NO. 16: Please admit that leading up to your final departure date, and following your final departure from Foundation employment, you took no action to discontinue or terminate the automatic payments of the executive director's health insurance for the remainder of the 2013 year.

REQUEST FOR ADMISSION NO. 17: Please admit that on or about June 10th and July 1st of 2013 that you and your husband personally took possession of over \$10,000.00 of computer equipment from the Apple Store in Tulsa, Oklahoma purchased with Foundation funds.

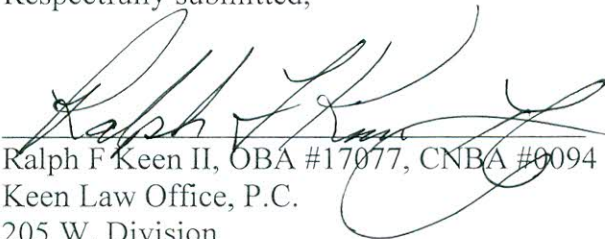
REQUEST FOR ADMISSION NO. 18: Please admit that when your severance agreement with Foundation was finalized on January 28, 2013, you had made no efforts to inform or notify the Board of Directors of any acts of embezzlement or conversion committed by you relating to Foundation assets or property.

REQUEST FOR ADMISSION NO. 19: Please admit that the Metasoft account information included information of a confidential or proprietary nature, and that your continued unauthorized use of the account after your departure of employment constituted a breach of the severance agreement.

REQUEST FOR ADMISSION NO. 20: Please admit that your numerous acts breaching your fiduciary duties through embezzlement and conversion were willful and wanton, committed with a culpable state of mind involving knowledge of, or gross recklessness in respect to, the proper

fiduciary behavior, in complete disregard of the consequences, and other such circumstances and conditions that a reasonable person would know, or have reason to know, that such conduct would, with a high degree of probability, result in harm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph F. Keen II", is written over a horizontal line.

Ralph F Keen II, OBA #17077, CNBA #0094
Keen Law Office, P.C.
205 W. Division
Stilwell, OK 74960
Telephone (918) 696-3355
Facsimile (918) 696-3576
keenlaw@windstream.net
Attorney for Plaintiff