

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. 1:07-CV-739-JAB-WWD

DAVID F. EVANS, COLLIN FINNERTY,)
and READE SELIGMANN,)

Plaintiffs,)

vs.)

THE CITY OF DURHAM, NORTH)
CAROLINA, MICHAEL B. NIFONG,)
MARK GOTTLIEB, BENJAMIN HIMAN,)
DAVID ADDISON, LINWOOD WILSON,)
PATRICK BAKER, STEVEN CHALMERS,)
BEVERLY COUNCIL, RONALD HODGE,)
JEFF LAMB, MICHAEL RIPBERGER,)
LEE RUSS, DNA SECURITY, INC.,)
RICHARD CLARK, and BRIAN MEEHAN,)

Defendants.)

**DEFENDANT BENJAMIN
HIMAN’S MOTION TO DISMISS
PLAINTIFFS’ SECOND
AMENDED COMPLAINT**

Defendant Benjamin Himan (Investigator Himan), through his undersigned attorneys, moves pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing this action in its entirety as to this Defendant upon the grounds that the Second Amended Complaint fails to state a claim upon which relief may be granted and, in the alternative, that all claims asserted against Investigator Himan are barred by the doctrines of qualified and public officer immunity.

In support of this motion, and pursuant to this Court's February 16, 2010 Order, document #115, Investigator Himan hereby incorporates by reference the following previous arguments and authorities in this case:

Defendant Benjamin Himan's Motion to Dismiss, filed January 15, 2008, document #36;

Defendant Benjamin Himan's Brief in Support of Motion to Dismiss, filed January 15, 2008, document #37;

Defendants Mark Gottlieb and Benjamin Himan's Joint Reply Memorandum in Support of Motion to Dismiss, document #61;

Defendants Mark Gottlieb, Benjamin Himan and the City of Durham's Supplemental Brief in Support of Motions to Dismiss, document #100; and

Suggestion of Subsequently Decided Authority, document #114.

WHEREFORE, Defendant Benjamin Himan respectfully prays the Court that:

1. The Action against him be dismissed;
2. Judgment be entered for Defendant Benjamin Himan on all claims against him;
3. Plaintiffs have and recover nothing from Defendant Benjamin Himan; and
4. Defendant Benjamin Himan have such other and further relief as the Court shall deem just and proper.

This the 10th day of March, 2010.

KENNON, CRAVER, BELO,
CRAIG & MCKEE, PLLC

By: /s/ Joel M. Craig
North Carolina State Bar No. 9179

By: /s/ Henry W. Sappenfield
North Carolina State Bar No. 37419

Attorneys for Defendant Benjamin
Himan
4011 University Drive, Suite 300
P.O. Box 51579
Durham, NC 27717-1579
(919) 490-0500
jcraig@kennoncraver.com
hsappenfield@kennoncraver.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing Defendant Benjamin Himan's Motion to Dismiss Plaintiff's Second Amended Complaint was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Christopher N. Manning
Robert M. Cary
Charles Davant, IV
Brendan V. Sullivan, Jr.
Williams & Connolly LLP
725 12th St. N.W.
Washington, DC 20005
Attorneys for Plaintiffs Collin Finnerty and David F. Evans

David S. Rudolf
Rudolf, Widenhouse & Fialko
312 W. Franklin St.
Chapel Hill, NC 27516

Richard D. Emery
Ilann M. Maazel
Emery Celli Brinckerhoff & Abady LLP
75 Rockefeller Plaza, 20th Floor
New York, NY 10019
Attorneys for Plaintiff Reade Seligmann

James B. Craven, III
P.O. Box 1366
Durham, NC 27702
Attorney for Defendant Michael B. Nifong

Robert James King, III
Kearns Davis
Brooks, Pierce, McClendon, Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420-6000
Attorneys for Defendants DNA Security, Inc. and Richard Clark

Nicholas J. Sanservino
Robert A. Sar
Ogletree Deakins Nash Smoak & Stewart, P.C.
P.O. Box 31608
Raleigh, NC 27622
Attorneys for DNA Security, Inc.

Reginald B. Gillespie, Jr.
Faison & Gillespie
P. O. Box 51729
Durham, NC 27717-1729
Attorneys for Defendant City of Durham, North Carolina

Patricia P. Kerner
D. Martin Warf
Hannah G. Styron
Troutman Sanders, LLP
P.O. Box 1389
Raleigh, NC 27602-1389
Attorneys for Defendants Beverly Council, Jeff Lamb, Michael Ripberger, Ronald Hodge, Steven W. Chalmers, Lee Russ and Patrick Baker

James B. Maxwell
Maxwell, Freeman & Bowman, P.A.
P.O. Box 52396
Durham, NC 27717-2396
Attorneys for Defendant David Addison

Edwin M. Speas, Jr.
Eric P. Stevens
Poyner & Spruill LLP
P.O. Box 1801
Raleigh, NC 27602-1801
Attorneys for Defendant Mark Gottlieb

James Avery Roberts, III
Lewis & Roberts, PLLC
P.O. Box 17529
Raleigh, NC 27619
Paul R. Dickinson, Jr.
Lewis & Roberts, PLLC
5960 Fairview Road, suite 102
Charlotte, NC 28210
Attorneys for Defendant Brian Meehan

Linwood Wilson
Bahama, NC
Pro Se

This the 10th day of March, 2010.

KENNON, CRAVER, BELO,
CRAIG & MCKEE, PLLC

By: */s/Henry W. Sappenfield*
North Carolina State Bar No. 37419
Attorneys for Defendant Benjamin
Himan
4011 University Drive, Suite 300
P.O. Box 51579
Durham, NC 27717-1579
(919) 490-0500
jcraig@kennoncraver.com