

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, MATTHEW WILSON)
and BRECK ARCHER)

Plaintiffs,)

v.)

1:07CV953

DUKE UNIVERSITY, et al.,)

Defendants.)

ORDER

This case involves 40 claims set out in a 427-page Amended Complaint [Doc. #34] by Plaintiffs Ryan McFadyen (“McFadyen”), Matthew Wilson (“Wilson”), and Breck Archer (“Archer”) against Defendants Duke University (“Duke”), the Duke University Police Department (“Duke Police”), Duke University Associate Vice President for Campus Safety and Security Aaron Graves (“Graves”), Director and Chief of the Duke Police Department Robert Dean (“Dean”), Duke Police Assistant Police Chief Leila Humphries (“Humphries”), Duke Police Major Phyllis Cooper (“Cooper”), Duke Police Medical Center Affairs Manager William F. Garber, II (“Garber”), Duke Police Major James Schwab (“Schwab”), Duke Police Lieutenant Joseph Fleming (“Fleming”), Duke Police Lieutenant Jeffrey O. Best (“Best”), Duke Police First Sergeant Gary N. Smith (“Smith”), Duke Police First Sergeant Greg Stotsenberg (“Stotsenberg”), Chairman of the Executive Committee of the Duke Board of Trustees Robert K. Steel (“Steel”), Duke President Richard H. Brodhead (“Brodhead”), Duke Provost Peter Lange (“Lange”), Duke Executive Vice President Tallman Trask, III (“Trask”), Duke Senior Vice President for Public Affairs and Government Relations John Burness (“Burness”), Duke

Vice President for Student Affairs Larry Moneta (“Moneta”), Duke Chancellor for Health Affairs and President and Chief Executive Officer of Duke University Health Systems Inc. Victor J. Dzau (“Dzau”), Duke Secretary Allison Haltom (“Haltom”), Duke Vice President for Campus Services Kemel Dawkins (“Dawkins”), Duke Assistant Vice President for Student Affairs and Dean of Students Suzanne Wasiolek (“Wasiolek”), Duke Associate Dean of Students and Director of Judicial Affairs Stephen Bryan (“Bryan”), Duke Auxiliary Services Senior Manager IT and Head of the Duke Card Office Matthew Drummond (“Drummond”), Duke University Health Systems, Inc. (“Duke Health”), Private Diagnostic Clinic, PLLC (“Private Diagnostic”), Duke Health Dr. Julie Manly (“Manly”), Duke Health Nurse Theresa Arico (“Arico”), Duke Health Nurse Tara Levicy (“Levicy”), the City of Durham (“the City”), former District Attorney Michael B. Nifong (“Nifong”), Durham City Manager Patrick Baker (“Baker”), Durham Chief of Police Steven W. Chalmers (“Chalmers”), Deputy Chief of Police Ronald Hodge (“Hodge”), Executive Officer to the Chief of Police Lee Russ (“Russ”), Durham Police Commander of Investigative Services Stephen Mihaich (“Mihaich”), Durham Police Uniform Patrol Bureau Commander Beverly Council (“Council”), Durham Police Patrol District Two Commander Jeff Lamb (“Lamb”), Durham Police Department Lieutenant Michael Ripberger (“Ripberger”), Durham Police District Two Sergeant Laird Evans (“Evans”), Director of the Durham Emergency Communications Center James T. Soukup (“Soukup”), Durham Police Public Relations Coordinator and Public Information Officer Kammie Michael (“Michael”), Durham Police Department CrimeStoppers Coordinator David Addison (“Addison”), Durham Police Department Sergeant Mark Gottlieb (“Gottlieb”), Durham Police Department

Investigator Benjamin Himan (“Himan”), District Attorney’s Office Investigator Linwood Wilson (“Wilson”), Durham Police District Two Patrol Officer Richard D. Clayton (“Clayton”), DNA Security, Inc. (“DSI”), DSI President Richard Clark (“Clark”), and DSI Lab Director Brian Meehan (“Meehan”).

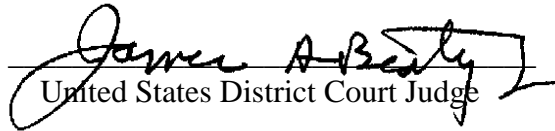
Defendants have collectively filed multiple Motions to Dismiss, specifically, a Motion to Dismiss by Defendant Meehan [Doc. #40], a Motion to Dismiss by Defendants Soukup, Michael, Addison and Clayton [Doc. #41], a Motion to Dismiss by Defendant Linwood Wilson [Doc. #44], a Motion to Dismiss by Defendants Duke, Brodhead, Bryan, Burness, Dawkins, Drummond, Dzau, Graves, Haltom, Lange, Moneta, Steel, Trask, and Wasiolek (collectively, the “Duke University Defendants”) [Doc. #45], a Motion to Dismiss by Defendants Duke Health, Private Diagnostic, Arico, Levicy, and Manly (collectively, the “Duke SANE Defendants”) [Doc. #47], a Motion to Dismiss by Duke Police, Best, Cooper, Dean, Fleming, Garber, Humphries, Schwab, Smith and Stotsenberg (collectively, the “Duke Police Defendants”) [Doc. #49], a Motion to Dismiss by Defendant Himan [Doc. #51], a Motion to Dismiss by Defendant Gottlieb [Doc. #53], a Motion to Dismiss by Defendants Baker, Chalmers, Russ, Mihaich, Council, Lamb, Ripberger, and Evans [Doc. #55], a Motion to Dismiss by Defendant Hodge [Doc. #57], a Motion to Dismiss by Defendants DSI and Clark [Doc. #59], and a Motion to Dismiss by the City [Doc. #61].

All of these pending motions have now been fully briefed and referred to the Court for determination. Having undertaken a preliminary review of these matters, the Court notes that all of the Motions to Dismiss involve overlapping legal issues best addressed by the Court in a

single determination that addresses all of the issues raised by the various Defendants. Therefore, the Court enters this preliminary Order for administrative purposes to consolidate all of the pending Motions to Dismiss into a single Motion to Dismiss for determination by the Court. The Court will consider the arguments raised by the parties in their respective briefs as part of the consolidated determination.¹

IT IS THEREFORE ORDERED that for administrative purposes, the various Motions to Dismiss [Doc. #40, #41, #44, #45, #47, #49, #51, #53, #55, #57, #59, #61] are CONSOLIDATED into a single Motion to Dismiss [designated as Doc. #61] for further review and consideration by the Court.

This, the 30th day of March, 2009.


United States District Court Judge

¹The Court notes that some of the issues raised in the Motions to Dismiss in the present case are similar to certain of the issues raised in two other cases in this District that have been identified by the parties and the Clerk's Office as "related" to the present case: Carrington, et al. v. Duke University, et al. (1:08CV119) and Evans, et al. v. City of Durham, et al. (1:07CV719). Those cases also involve multiple Motions to Dismiss for which briefing has now been completed and which have been referred to the Court for consideration. It is the Court's intent to resolve the Motions to Dismiss in these cases at the same time, in order to avoid piecemeal consideration of the common issues raised.