

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:07-CV-953

RYAN McFADYEN; MATTHEW
WILSON; and BRECK ARCHER,
Plaintiffs,

v.

DUKE UNIVERSITY; DUKE
UNIVERSITY POLICE DEPARTMENT;
AARON GRAVES; ROBERT DEAN;
LEILA HUMPHRIES; PHYLLIS COOPER;
WILLIAM F. GARBER, II; JAMES
SCHWAB; JOSEPH FLEMING; JEFFREY
O. BEST; GARY N. SMITH; GREG
STOTSENBERG; ROBERT K. STEELE;
RICHARD H. BRODHEAD, Ph.D.; PETER
LANGE, Ph.D.; TALLMAN TRASK, III,
Ph.D.; JOHN BURNES; LARRY
MONETA, Ed.D.; VICTOR J. DZAU, M.D.;
ALLISON HALTOM; KEMEL DAWKINS;
SUZANNE WASIOLEK; STEPHEN
BRYAN; MATTHEW DRUMMOND;
DUKE UNIVERSITY HEALTH
SYSTEMS, INC.; PRIVATE DIAGNOSTIC
CLINIC, PLLC; JULIE MANLY, M.D.;
THERESA ARICO, R.N.; TARA LEVICY,
R.N.; THE CITY OF DURHAM, NORTH
CAROLINA; MICHAEL B. NIFONG;
PATRICK BAKER; STEVEN CHALMERS;
RONALD HODGE; LEE RUSS; STEPHEN
MIHAICH; BEVERLY COUNCIL; JEFF
LAMB; MICHAEL RIPBERGER; LAIRD
EVANS; JAMES T. SOUKUP; KAMMIE
MICHAEL; DAVID W. ADDISON; MARK
D. GOTTLIEB; BENJAMIN W. HIMAN;
LINWOOD WILSON; RICHARD D.
CLAYTON; DNA SECURITY, INC.;
RICHARD CLARK; and BRIAN MEEHAN,
Ph.D.

Defendants.

**DNA SECURITY, INC.'S AND
RICHARD CLARK'S
ANSWER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT**

NOW COME Defendants DNA Security, Inc. (“DSI”) and Richard Clark (“Clark”), by and through counsel, and hereby respond to the allegations of Plaintiffs’ Second Amended Complaint (“Complaint”) as follows:

**FIRST DEFENSE
(Answer)**

Answering the correspondingly numbered paragraphs of the Second Amended Complaint, Defendants DSI and Clark respond as follows:

1. To the extent that the allegations in this Paragraph relate to Defendants DSI, Clark, or Dr. Brian Meehan (“Meehan”), the allegations are denied. As to the allegations regarding the other Defendants, DSI and Clark lack sufficient knowledge to respond, and therefore such allegations are denied.

2. To the extent that the allegations in this Paragraph relate to Defendants DSI, Clark, or Meehan, the allegations are denied. As to the allegations regarding the other Defendants, DSI and Clark lack sufficient knowledge to respond, and therefore such allegations are denied.

3. To the extent that the allegations in this Paragraph relate to Defendants DSI, Clark, or Meehan, the allegations are denied. As to the allegations regarding the other Defendants, DSI and Clark lack sufficient knowledge to respond, and therefore such allegations are denied.

4. To the extent that the allegations in this Paragraph relate to Defendants DSI, Clark, or Meehan, the allegations are denied. As to the allegations regarding the

other Defendants, DSI and Clark lack sufficient knowledge to respond, and therefore such allegations are denied.

5. The allegations of Paragraph 5 do not appear to be directed to DSI or Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark lack information sufficient to respond to the allegations in this Paragraph and, therefore, deny the same.

6-8. Admitted, upon information and belief.

9. DSI and Clark lack sufficient information to respond to the allegations in this Paragraph. Such allegations are therefore denied.

10. It is admitted that Duke University is an educational institution located in Durham, North Carolina. Except as so admitted, DSI and Clark lack sufficient information to respond to the allegations in this Paragraph. Such allegations are therefore denied.

11-38. DSI and Clark lack sufficient information to respond to the allegations in these Paragraphs. Such allegations are therefore denied.

39-47. Defendants DSI and Clark admit that Plaintiffs, in the Second Amended Complaint, refer to certain groups of Defendants by using the collective titles set forth in Paragraphs 39 through 47, but specifically deny that said titles are of any legal or factual significance. Any remaining allegations of these Paragraphs are denied.

48. It is admitted that Durham is a municipality in North Carolina. Except as so admitted, DSI and Clark lack sufficient information to respond to the allegations in this Paragraph. Such allegations are therefore denied.

49. It is admitted that Defendant Nifong was the District Attorney in Durham County during periods relevant to this action. Except as so admitted, DSI and Clark lack sufficient information to respond to the allegations in this Paragraph. Such allegations are therefore denied.

50-61. DSI and Clark lack sufficient information to respond to the allegations in these Paragraphs. Such allegations are therefore denied.

62. It is admitted that Gottlieb was an officer with the Durham Police Department. Except as so admitted, DSI and Clark lack sufficient information to respond to the allegations in this Paragraph. Such allegations are therefore denied.

63. It is admitted that Himan was an officer with the Durham Police Department. Except as so admitted, DSI and Clark lack sufficient information to respond to the allegations in this Paragraph. Such allegations are therefore denied.

64-65. DSI and Clark lack sufficient information to respond to the allegations in these Paragraphs. Such allegations are therefore denied.

66-72. DSI and Clark admit that Plaintiffs, in the Second Amended Complaint, refer to certain groups of Defendants by using the collective titles set forth in Paragraphs 66 through 72, but specifically deny that said titles are of any legal or factual significance. Any remaining allegations of these Paragraphs are denied.

73. It is admitted that DNA Security, Inc. is a North Carolina corporation with its primary place of business in Burlington, North Carolina. It is further admitted that DSI was retained to provide services relating to a matter involving members of the Duke lacrosse team. Except as admitted herein, the allegations of Paragraph 73 are denied.

74. It is admitted that Defendant Clark is the President of DSI and resides in the State of North Carolina. Except as admitted herein, the allegations of Paragraph 74 are denied.

75. It is admitted that Defendant Brian Meehan, from 1998 until approximately November of 2007, served as a Laboratory Director at DSI. It is admitted, upon information and belief, that Meehan resides in the State of North Carolina. It is further admitted that DSI was retained to provide services relating to a matter involving members of the Duke lacrosse team and that Meehan was involved in providing such services. Except as admitted herein, the allegations of this Paragraph are denied.

76. Defendants DSI and Clark admit that Plaintiffs, in the Second Amended Complaint, refer to a certain group of Defendants by using the collective title, as set forth in Paragraph 76, but specifically deny that said title is of any legal or factual significance.

77. To the extent that the allegations in this Paragraph relate to Defendants DSI, Clark, or Meehan, the allegations are denied. As to the allegations regarding the other Defendants, DSI and Clark lack sufficient knowledge to respond, and therefore such allegations are denied.

78-81. The allegations of Paragraphs 78 through 81 of the Second Amended Complaint state legal conclusions to which no response is necessary. To the extent a response is deemed necessary, DSI and Clark state that they lack sufficient information to respond to such allegations and the same are therefore denied.

82-628. The allegations of Paragraphs 82 through 628 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such

that no response is necessary. To the extent a response is deemed necessary, the allegations of these Paragraphs are denied as to DSI, Clark, and Meehan. DSI and Clark are without information sufficient to form a belief as to the truth of the allegations regarding Defendants other than DSI and Clark and, therefore, deny the same.

629. To the extent that the allegations in this Paragraph relate to Defendants DSI, Clark, or Meehan, the allegations are denied. As to the allegations regarding the other Defendants, DSI and Clark lack sufficient knowledge to respond, and therefore such allegations are denied.

630-639. The allegations of Paragraphs 630 through 639 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is necessary. To the extent a response is deemed necessary, DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of these Paragraphs and, therefore, deny the same.

640. To the extent that the allegations in Para. 640 relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations, DSI and Clark lack sufficient information to respond and therefore such allegations are denied.

641-655. The allegations of Paragraphs 641 through 655 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is necessary. To the extent a response is deemed necessary, the allegations of these Paragraphs are denied as to DSI and Clark. DSI and Clark are without information sufficient to form a belief as to the truth of the allegations regarding Defendants other than DSI and Clark and, therefore, deny the same.

656. It is admitted that Meehan had communications with Durham officials and that DSI was capable of performing DNA analysis of various types. Except as so admitted, the allegations in Para. 656 are denied.

657-687. The allegations in these Paragraphs do not appear to relate to DSI, Clark, or Meehan. To the extent that any such allegations relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations, DSI and Clark lack sufficient information to form a response and such allegations are therefore denied.

688. It is admitted, upon information and belief, that the referenced Order was signed. Except as so admitted, DSI and Clark are without information sufficient to respond to the remaining allegations in this Paragraph and the same are denied.

689. DSI and Clark are without information sufficient to form a response to the allegations in this Paragraph and the same are therefore denied.

690. The referenced Order speaks for itself. Except as so addressed, the allegations in this Paragraph are denied.

691-745. To the extent a response is deemed necessary to the allegations in these Paragraphs, DSI and Clark lack sufficient information to form a response and the same are, therefore, denied.

746. It is admitted that various materials were delivered to DSI. Except as so admitted, the allegations in this Paragraph are denied.

747. It is admitted that DSI conducted DNA analyses of the samples provided and reported the results of said analyses to certain law enforcement and prosecutorial officials. Any remaining allegations of this Paragraph are denied.

748. The allegations of Paragraph 748 appear to refer to the contents of documents were prepared by DSI, which speak for themselves. Any remaining allegations of this Paragraph are denied.

749. It is admitted that a meeting occurred with certain law enforcement and prosecutorial officials for the purpose of reporting to said officials the results of the analysis conducted by DSI on items collected from the alleged victim and team members. It is further admitted that DSI conducted DNA analyses of the samples provided and reported the results of said analyses to the aforementioned law enforcement and prosecutorial officials. The allegations of this Paragraph appear to refer to the contents of certain reports and other documents summarizing the results of DSI's DNA analysis, which reports and documents speak for themselves. Any remaining allegations of this Paragraph are denied.

750-754. The allegations of Paragraphs 750 through 754 of the Second Amended Complaint appear to be directed to a Defendant other than DSI or Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of Paragraph 750 to 754 and, therefore, deny the same.

755. It is admitted that additional meetings occurred. Except as so admitted, the allegations in this Paragraph are denied.

756. It is admitted that a written report was provided. Except as so admitted, the allegations in this Paragraph are denied.

757. The allegations of Paragraph 757 of the Second Amended Complaint appear to be directed to a Defendant other than DSI or Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of Paragraph 757 and, therefore, deny the same.

758. This Paragraph relates to the contents of documents, which speak for themselves. Except as so addressed, the allegations in this Paragraph are denied.

759. The allegations of Paragraph 759 of the Second Amended Complaint state legal conclusions to which no response is necessary. To the extent a response is deemed necessary, such allegations are denied.

760-764. The allegations of Paragraphs 760 through 764 of the Second Amended Complaint appear to be directed to a Defendant other than DSI or Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of Paragraphs 760 through 764 and, therefore, deny the same.

765. It is admitted that Clark and Meehan, on behalf of DSI, met with certain law enforcement and prosecutorial officials for the purpose of Meehan reporting to said officials the results of the DNA analysis. Any remaining allegations of this Paragraph are denied.

766. The terms of the referenced document speak for themselves. The remaining allegations of this Paragraph are denied.

767. Meehan's testimony, which exists in written form, speaks for itself. The remaining allegations of this Paragraph are denied.

768. The terms of the referenced document speak for themselves. The remaining allegations of this Paragraph are denied.

769. The terms of the referenced document speak for themselves. The remaining allegations of this Paragraph are denied.

770. The allegations of Paragraph 770 are denied.

771. The allegations of Paragraph 771 are denied.

772-799. The allegations of Paragraphs 772 through 799 of the Second Amended Complaint appear to be directed to Defendants other than DSI or Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of these Paragraphs and, therefore, deny the same.

800. DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of this Paragraph and, therefore, deny the same.

801. It is admitted that Clark and Meehan met with certain law enforcement and prosecutorial officials for the purpose of reporting to said officials the results of the DNA analysis conducted. It is further admitted that DSI reported the results of said analyses to the aforementioned law enforcement and prosecutorial officials. Any remaining allegations of this Paragraph are denied.

802. It is admitted that Meehan advised Nifong and other officials of the results of the analysis performed by DSI. It is further admitted that a report was prepared dated

May 12, 2006, the contents of which speak for themselves. Except as so admitted, the allegations in Para. 802 are denied.

803. It is admitted that Clark and Meehan, on behalf of DSI, met with certain law enforcement and prosecutorial officials for the purpose of Meehan reporting to said officials the results of the forensic DNA analysis conducted by DSI. It is further admitted that DSI and Meehan fully reported the results of said analyses to the aforementioned law enforcement and prosecutorial officials, including Nifong. The specific analytical results are reflected in documents, which speak for themselves. Any remaining allegations of this Paragraph are denied.

804-871. The allegations of Paragraphs 804 through 871 of the Second Amended Complaint appear to be directed to Defendants other than DSI or Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without information sufficient to form a belief as to the truth of the allegations of these Paragraphs and, therefore, deny the same.

872-903. The allegations of Paragraphs 872 through 903 of the Second Amended Complaint appear to be directed to Defendants other than DSI or Clark, such that no response is required. To the extent a response is deemed necessary, DSI and Clark specifically deny that they participated in any conspiracy, "consortium," or improper agreement or activity of any kind. DSI and Clark lack sufficient information to form a belief as to the truth of the allegations regarding the actions taken by or mental states of individuals or entities other than DSI and Clark and, therefore, deny the same. Any remaining allegations of Paragraphs 872 through 903 are denied.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: SEARCH AND SEIZURE IN VIOLATION OF 42 U.S.C. § 1983 & CONSPIRACY

904-917. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 904 through 917 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 904 through 917 are denied.

SECOND CAUSE OF ACTION: SEARCH AND SEIZURE IN VIOLATION OF 42 U.S.C. § 1983 & CONSPIRACY

918-928. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 918 through 928 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 918 through 928 are denied.

THIRD CAUSE OF ACTION: ABUSE OF PROCESS AND CONSPIRACY IN VIOLATION OF 42 U.S.C. § 1983

929-940. The Third Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed

required, the allegations of Paragraphs 929 through 940 of the Second Amended Complaint are denied.

**FOURTH CAUSE OF ACTION:
DEPRIVATION OF PROPERTY IN VIOLATION OF 42 U.S.C. § 1983**

941-953. The Fourth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 941 through 953 of the Second Amended Complaint are denied.

**FIFTH CAUSE OF ACTION:
FALSE PUBLIC STATEMENT IN VIOLATION OF 42 U.S.C. § 1983**

954-968. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 954 through 968 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 954 through 968 are denied.

**SIXTH CAUSE OF ACTION
MANUFACTURE OF A FALSE INCULPATORY EVIDENCE & CONSPIRACY
IN VIOLATION OF 42 U.S.C. § 1983**

969-977. The Sixth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed

required, the allegations of Paragraphs 969 through 977 of the Second Amended Complaint are denied.

**SEVENTH CAUSE OF ACTION
CONCEALMENT OF EXCULPATORY EVIDENCE & CONSPIRACY IN
VIOLATION OF 42 U.S.C. § 1983**

978-985. The Seventh Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 978 through 985 of the Second Amended Complaint are denied.

**EIGHTH CAUSE OF ACTION
INTERFERING WITH RIGHT ENGAGE IN POLITICAL PROCESSES IN
VIOLATION OF 42 U.S.C. § 1983 AND CONSPIRACY**

986-991. The Eighth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 986 through 991 of the Second Amended Complaint are denied.

**NINTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF 42 U.S.C. § 1983 & CONSPIRACY**

992-1001. The Ninth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed

required, the allegations of Paragraphs 992 through 1001 of the Second Amended Complaint are denied.

**TENTH CAUSE OF ACTION:
DEPRIVATION OF THE PRIVILEGES AND IMMUNITIES OF NORTH CAROLINA
CITIZENS IN VIOLATION OF 42 U.S.C. § 1983**

1002-1007. The Tenth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1002 through 1007 of the Second Amended Complaint are denied.

**ELEVENTH CAUSE OF ACTION:
FAILURE TO PREVENT DEPRIVATION OF CONSTITUTIONAL RIGHTS IN
VIOLATION OF 42 U.S.C. § 1983**

1008-1036. The Eleventh Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1008 through 1036 of the Second Amended Complaint are denied.

**TWELFTH CAUSE OF ACTION:
MONELL LIABILITY FOR VIOLATIONS OF 42 U.S.C. § 1983**

1037-1106. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1037 through 1106 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is

required. To the extent a response is deemed required, the allegations of Paragraphs 1037 through 1106 are denied.

**THIRTEENTH CAUSE OF ACTION:
SUPERVISORY LIABILITY FOR VIOLATIONS OF 42 U.S.C. § 1983**

1107-1140. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1107 through 1140 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1107 through 1140 are denied.

**FOURTEENTH CAUSE OF ACTION:
FAILURE TO TRAIN IN VIOLATION OF 42 U.S.C. § 1983**

1141-1146. The Fourteenth Cause of Action has been dismissed as to Defendant DSI, pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1141 through 1146 of the Second Amended Complaint are denied.

**FIFTEENTH CAUSE OF ACTION:
CONSPIRACY IN VIOLATION OF 42 U.S.C. § 1983**

1147-1155. The Fifteenth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed

required, the allegations of Paragraphs 1147 through 1155 of the Second Amended Complaint are denied.

**SIXTEENTH CAUSE OF ACTION:
CONSPIRACY IN VIOLATION OF 42 U.S.C. § 1985**

1156-1169. The Sixteenth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1156 through 1169 of the Second Amended Complaint are denied.

**SEVENTEENTH CAUSE OF ACTION:
FAILURE TO INTERVENE IN VIOLATION OF 42 U.S.C. § 1986**

1170-1188. The Seventeenth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1170 through 1188 of the Second Amended Complaint are denied.

**EIGHTEENTH CAUSE OF ACTION:
COMMON LAW OBSTRUCTION OF JUSTICE & CONSPIRACY**

1189. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein.

1190. To the extent that the allegations in this Paragraph relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations, DSI and Clark lack sufficient information to form a response and such allegations are therefore denied.

1191. The allegations of this Paragraph are denied.

1192. The allegations of Paragraph 1192 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without knowledge sufficient to form a response to the allegations of this Paragraph and, therefore, deny the same.

1193. The allegations of Paragraph 1193 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without knowledge sufficient to form a response to the allegations in this Paragraph and, therefore, deny the same.

1194. The allegations of this Paragraph are denied.

1195. The allegations of Paragraph 1195 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without knowledge sufficient to form a response to the allegations of this Paragraph and, therefore, deny the same.

1196. The allegations of Paragraph 1196 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without knowledge sufficient to form a response to the allegations of this Paragraph and, therefore, deny the same.

1197. The allegations of Paragraph 1197 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without knowledge sufficient to form a response to the allegations of this Paragraph and, therefore, deny the same.

1198. The allegations of Paragraph 1198 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, DSI and Clark are without knowledge sufficient to form a response to the allegations of this Paragraph and, therefore, deny the same.

1199. To the extent that the allegations of this Paragraph relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations in this Paragraph, DSI and Clark lack sufficient information to form a response and therefore deny same.

1200. To the extent that the allegations of this Paragraph relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations in this Paragraph, DSI and Clark lack sufficient information to form a response and therefore deny same.

1201. To the extent that the allegations of this Paragraph relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations in this Paragraph, DSI and Clark lack sufficient information to form a response and therefore deny same.

1202. To the extent that the allegations of this Paragraph relate to DSI, Clark, or Meehan, such allegations are denied. As to the remaining allegations in this Paragraph, DSI and Clark lack sufficient information to form a response and therefore deny same.

**NINETEENTH CAUSE OF ACTION:
COMMON LAW ABUSE OF PROCESS & CONSPIRACY**

1203-1212. The Nineteenth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1203 through 1212 of the Second Amended Complaint are denied.

**TWENTIETH CAUSE OF ACTION:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND
CONSPIRACY**

1213-1222. The Twentieth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1213 through 1222 of the Second Amended Complaint are denied.

**TWENTY-FIRST CAUSE OF ACTION:
BREACH OF CONTRACT**

1223-1228. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1223 through 1228 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1223 through 1228 are denied.

**TWENTY-SECOND CAUSE OF ACTION:
INVASION OF PRIVACY**

1229-1234. The Twenty-Second Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1229 through 1234 of the Second Amended Complaint are denied.

**TWENTY-THIRD CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY & AIDING AND ABETTING**

1235-1248. The Twenty-Third Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1235 through 1248 of the Second Amended Complaint are denied.

TWENTY-FOURTH CAUSE OF ACTION

1249-1260. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1249 through 1260 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1249 through 1260 are denied.

**TWENTY-FIFTH CAUSE OF ACTION:
NEGLIGENCE (DURHAM POLICE)**

1261-1267. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1261 through 1267 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1261 through 1267 are denied.

**TWENTY-SIXTH CAUSE OF ACTION:
NEGLIGENT HIRING, RETENTION, SUPERVISION, TRAINING &
DISCIPLINE (DURHAM POLICE)**

1268-1276. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1268 through 1276 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1268 through 1276 are denied.

**TWENTY-SEVENTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (DURHAM PD)**

1277-1282. The Twenty-Seventh Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1277 through 1282 of the Second Amended Complaint are denied.

**TWENTY-EIGHTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

1283-1288. The Twenty-Eighth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1283 through 1288 of the Second Amended Complaint are denied.

**TWENTY-NINTH CAUSE OF ACTION:
NEGLIGENCE (DUKE POLICE)**

1289-1300. The Twenty-Ninth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1289 through 1300 of the Second Amended Complaint are denied.

**THIRTIETH CAUSE OF ACTION:
NEGLIGENCE (DUKE)**

1301-1308. The Thirtieth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1301 through 1308 of the Second Amended Complaint are denied.

**THIRTY-FIRST CAUSE OF ACTION:
NEGLIGENCE (SANE)**

1309-1317. The Thirty-First Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1309 through 1317 of the Second Amended Complaint are denied.

**THIRTY-SECOND CAUSE OF ACTION:
NEGLIGENT HIRING, RETENTION, SUPERVISION, TRAINING &
DISCIPLINE (SANE)**

1318-1325. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1318 through 1325 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1318 through 1325 are denied.

**THIRTY-THIRD CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (SANE)**

1326-1331. The Thirty-Third Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1326 through 1331 of the Second Amended Complaint are denied.

**THIRTY-FOURTH CAUSE OF ACTION:
NEGLIGENCE (DNASI)**

1332-1339. The Thirty-Fourth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1332 through 1339 of the Second Amended Complaint are denied.

**THIRTY-FIFTH CAUSE OF ACTION:
NEGLIGENT SUPERVISION, HIRING, TRAINING, DISCIPLINE, AND
RETENTION (DNASI)**

1340. Paragraph 1340 of the Second Amended Complaint does not contain any allegations. As such, no response is required of DSI or Clark. To the extent a response is deemed required, Paragraph 1340 is denied.

1341. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein.

1342. The allegations of Paragraph 1342 of the Second Amended Complaint state legal conclusions to which no response is deemed required. To the extent a response is deemed required, its is admitted only that Defendant Brian Meehan, from 1998 until approximately November of 2007, served as a Laboratory Director at DSI. It is further admitted that Defendant Clark was, as of 2006, the President of DSI. Except as stated or admitted herein, the allegations of this Paragraph are denied.

1343. The allegations of Paragraph 1343 of the Second Amended Complaint state legal conclusions to which no response is deemed required. To the extent a response is deemed required, the allegations of this Paragraph are denied.

1344. The allegations of this Paragraph are denied.

1345. The allegations of this Paragraph are denied.

1346. The allegations of this Paragraph are denied.

1347. The allegations of this Paragraph are denied.

**THIRTY-SIXTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (DNASI)**

1348-1353. The Thirty-Sixth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1348 through 1353 of the Second Amended Complaint are denied.

**THIRTY-SEVENTH CAUSE OF ACTION:
NEGLIGENCE (DUKE POLICE)**

1354-1359. The Thirty-Seventh Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1354 through 1359 of the Second Amended Complaint are denied.

**THIRTY-EIGHTH CAUSE OF ACTION:
NEGLIGENT SUPERVISION (DUKE POLICE)**

1360-1365. The Thirty-Eighth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1360 through 1365 of the Second Amended Complaint are denied.

**THIRTY-NINTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (DUKE POLICE)**

1366-1371. The Thirty-Ninth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1366 through 1371 of the Second Amended Complaint are denied.

**FORTIETH CAUSE OF ACTION:
NEGLIGENT ENTRUSTMENT (DUKE POLICE)**

1372-1381 The Fortieth Cause of Action has been dismissed pursuant to this Court's Memorandum Opinion of March 31, 2011 (Document No. 186). As such, no response is required of Defendants DSI and Clark. To the extent a response is deemed required, the allegations of Paragraphs 1372 through 1381 of the Second Amended Complaint are denied.

**FORTY-FIRST CAUSE OF ACTION:
VIOLATIONS OF ARTICLE I AND ARTICLE IX OF THE NORTH CAROLINA
CONSTITUTION AND CONSPIRACY**

1382-1385. DSI and Clark reassert and incorporate by reference their responses to all previous paragraphs of the Second Amended Complaint as if fully set forth herein. The allegations of Paragraphs 1382 through 1385 of the Second Amended Complaint appear to be directed to Defendants other than DSI and Clark, such that no response is required. To the extent a response is deemed required, the allegations of Paragraphs 1382 through 1385 are denied.

1386. DSI and Clark lack sufficient information to form a belief as to the truth of the allegations of Paragraph 1386 of the Second Amended Complaint and, therefore, deny the same.

1387. It is admitted that Plaintiffs have made the referenced request.

1388. DSI and Clark admit that Plaintiffs are requesting the relief set forth in the numbered “WHEREFORE” paragraph of the Second Amended Complaint, but specifically deny that Plaintiffs are entitled to the relief they seek.

SECOND DEFENSE

Plaintiffs’ claims against DSI and Clark must be dismissed because the Court lacks subject matter jurisdiction over those claims.

THIRD DEFENSE

Plaintiffs’ claims are barred in whole or in part because DSI and Clark (and any person whose actions are chargeable to either of them) owed no legal duties or obligations to Plaintiffs.

FOURTH DEFENSE

Plaintiffs' claims are barred in whole or in part because DSI and Clark's actions, as well as any person's actions chargeable to either of them, were in accordance with any applicable standard of care and any duties owed to Plaintiffs (which duties are denied).

FIFTH DEFENSE

Plaintiffs' claims are barred in whole or in part because DSI and Clark (and any person whose actions are chargeable to either of them) acted in good faith and in the reasonable belief that their actions were lawful and authorized, and within the exercise of their best judgment and without malice, corruption and wrongful intent. Moreover, the work undertaken by DSI was pursuant to an Order of the Court, which directed specific actions by DSI.

SIXTH DEFENSE

Plaintiffs' claims are barred in whole or in part because, upon information and belief, the non-testimonial order seeking evidence from Plaintiffs was reasonable and based upon probable cause.

SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because DSI and Clark (and any person whose actions are chargeable to either of them) performed all of their obligations and/or substantially fulfilled all of their legal duties and obligations, if any, imposed pursuant to DSI's engagement.

EIGHTH DEFENSE

Plaintiffs' claims are barred in whole or in part because DSI and Clark (and any person whose actions are chargeable to either of them) provided any information known by them truthfully, honestly, completely and promptly to all those persons to whom they had any duty to provide such information.

NINTH DEFENSE

Plaintiffs' claims are barred in whole or in part because DSI and Clark (and any person whose actions are chargeable to either of them) did not deprive Plaintiffs of any right guaranteed under any laws, and moreover did not do so intentionally or knowingly.

TENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Plaintiffs were not subject to arrest, seizure, trial, conviction, or punishment and otherwise were not a party to any proceeding that could give rise to any claims against DSI and Clark.

ELEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because the conduct of DSI and Clark (and any person whose actions are chargeable to either of them) were not a substantial, actual, or proximate cause of Plaintiffs' alleged injuries or damages, if any.

TWELFTH DEFENSE

Plaintiffs' claims are barred in whole or in part because of their failure to exhaust state or administrative remedies.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent that DSI and Clark (and any person whose actions are chargeable to either of them) relied upon and were subject to the determination of the district attorney's office as to the nature, scope, fashion, timing and format of the evidence to be disclosed, all of which were matters within the control and discretion of the district attorney's office.

FOURTEENTH DEFENSE

Plaintiffs' alleged injuries and damages (if any) were not proximately or in-fact caused by the alleged wrongful actions of DSI, Clark, or any person whose actions are chargeable to either of them. Instead their sole proximate cause was the combination of action, non-action, or negligence of a person or persons other than DSI, Clark and any person whose actions are chargeable to either of them. Plaintiffs are, therefore, not entitled to recover from DSI and Clark in this action.

FIFTEENTH DEFENSE

Plaintiffs' alleged injuries and damages (if any) were proximately caused by intervening and/or superseding actions for which DSI and Clark (or any person whose actions are chargeable to either of them) are not responsible, that were not foreseeable to DSI and Clark, and that DSI and Clark had no opportunity or right to control.

SIXTEENTH DEFENSE

Plaintiffs are not entitled to recover to the extent that their alleged injuries and damages (if any) were proximately caused by actions of DSI and Clark (and any person whose actions are chargeable to either of them) that were not wrongful.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent that their injuries and damages (if any) were caused by the intentional behavior and/or negligence of Plaintiffs themselves.

EIGHTEENTH DEFENSE

Plaintiffs lack standing, authority and/or otherwise lack capacity to recover some or all of the damages they seek, including but not limited to any damages allegedly suffered by individuals and entities other than Plaintiffs.

NINETEENTH DEFENSE

Plaintiffs are not entitled to recover speculative, incidental or unforeseeable damages.

TWENTIETH DEFENSE

Plaintiffs failed to mitigate those damages, if any, that they seek to recover.

TWENTY-FIRST DEFENSE

Plaintiffs' claims must be dismissed to the extent that they are barred by the applicable statute(s) of limitations.

TWENTY-SECOND DEFENSE

Plaintiffs' claims must be dismissed to the extent that they are barred by the applicable statute(s) of repose.

TWENTY-THIRD DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

TWENTY-FOURTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

TWENTY-FIFTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

TWENTY-SIXTH DEFENSE

Plaintiffs' claims are barred in whole or in part by principles of unclean hands.

TWENTY-SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrines of collateral estoppel, res judicata and/or the Court's Order of March 31, 2011.

TWENTY-EIGHTH DEFENSE

Plaintiffs' claims are barred in whole or in part by Plaintiffs' own contributory negligence, including, but not limited to, failing to investigate and make appropriate inquiries into matters alleged and/or failing to provide or act upon information known to Plaintiffs.

TWENTY-NINTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Plaintiffs assumed the risk of the events in the underlying action because, among other reasons, Plaintiffs failed to investigate and make appropriate inquiries into matters alleged and/or failed to provide or act upon information known to Plaintiffs.

THIRTIETH DEFENSE

Plaintiffs' claims are barred in whole or in part because of the doctrine of avoidable consequences.

THIRTY-FIRST DEFENSE

Plaintiffs' claims against DSI are barred in whole or in part to the extent that they seek to impose liability upon DSI under a theory of respondeat superior for alleged intentional torts of any alleged agents and employees.

THIRTY-SECOND DEFENSE

Plaintiffs' claims against DSI are barred in whole or in part to the extent that they seek to impose liability upon DSI for actions that it did not know or have reason to know that its agents or employees would undertake.

THIRTY-THIRD DEFENSE

Plaintiffs' claims against DSI and Clark are barred in whole or in part because they seek to impose liability upon DSI and Clark (or any person whose actions are chargeable to either of them) for the acts of others, including acts that are imposed solely upon the others by law, and that DSI and Clark had no duty, right or opportunity to control.

THIRTY-FOURTH DEFENSE

Plaintiffs' claims against DSI are barred in whole or in part to the extent that their claims are barred or fail against Clark, Meehan and any others person whose actions are chargeable to DSI.

THIRTY-FIFTH DEFENSE

Plaintiffs' claims against DSI are barred in whole or in part to the extent that Plaintiffs seek to impose liability for persons acting outside the scope of their employment and authority and whose actions were not ratified by DSI.

THIRTY-SIXTH DEFENSE

Plaintiffs' claims against DSI are barred in whole or in part because, at all times, no actions taken by any person whose actions are chargeable to it were taken pursuant to a policy, practice or custom of DSI.

THIRTY-SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because DSI and Clark are immune from such claims, including but not limited through the doctrines of absolute immunity, witness immunity, quasi-judicial immunity, public official immunity, prosecutorial immunity, good-faith immunity and/or qualified immunity.

THIRTY-EIGHTH DEFENSE

Plaintiffs' claims are barred in whole or in part because the actions undertaken by DSI and Clark (and any person whose actions are chargeable to either of them) were privileged absolutely or conditionally.

THIRTY-NINTH DEFENSE

Plaintiffs' claims against DSI and Clark are barred in whole or in part because neither DSI nor Clark (nor any person whose actions are chargeable to either of them) participated in any conspiracy, plan or practice to violate Plaintiffs' rights.

FORTIETH DEFENSE

Plaintiffs' claims against DSI and Clark are barred in whole or in part under the doctrine of intracorporate immunity or other similar doctrines protecting communications and acts between or among employees of a corporation or other legal entity.

FORTY-FIRST DEFENSE

Plaintiffs' claims against DSI and Clark are barred in whole or in part because any communications undertaken by DSI and Clark were undertaken with officials and attorneys who had retained DSI, and any communications or actions were within the scope of that retention.

FORTY-SECOND DEFENSE

To the extent that Plaintiffs have recovered, or in the future do recover, some or all of its damages from other parties or sources, DSI and Clark are entitled to a credit or setoff of all such recoveries.

FORTY-THIRD DEFENSE

Punitive damages may not be recovered from DSI and Clark, nor have grounds for recovery of punitive damages been pled with particularity against DSI and Clark. Further, such recovery would be contrary to public policy, inherently unfair, and would be a denial of DSI and Clark's constitutional rights, including but not limited to the right to equal protection and due process under the United States and North Carolina Constitutions, the prohibition on excessive fines and forfeitures, the right to procedural safeguards for alleged penal conduct, and the right to avoid penalties that do not bear a proportional or rational relationship to any actual damages or to the conduct of DSI and Clark.

FORTY-FOURTH DEFENSE

To the extent not inconsistent with anything pleaded herein, DSI and Clark reserve the right to join in the defenses asserted by any co-defendants.

FORTY-FIFTH DEFENSE

DSI and Clark reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, Defendants DNA Security, Inc. and Richard Clark respectfully pray to the Court for the following relief:

1. That Plaintiffs have and recover nothing on their Second Amended Complaint as to DSI and Clark;
2. That the Second Amended Complaint be dismissed, with prejudice, as to DSI and Clark;
3. That the costs of this action, including reasonable attorneys' and experts' fees, be taxed against Plaintiffs pursuant to 42 U.S.C. § 1988(b) or as otherwise allowed by law; and
4. For such other and further relief as to the Court seems just and proper.

JURY TRIAL DEMANDED

Respectfully submitted, this the 16th day of May, 2011.

/s/ Robert J. King III

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*Counsel for Defendants DNA Security,
Inc. and Richard Clark*

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing DNA SECURITY, INC.'S AND RICHARD CLARK'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT was filed electronically. Notice of this filing will be sent by operation of the Court's Electronic Filing System to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

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This the 16th day of May, 2001.

/s/ Robert J. King III

Robert J. King III