

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

RYAN McFADYEN, ET AL.,

Plaintiffs,

v.

DUKE UNIVERSITY, ET AL.,

Defendants.

CIVIL ACTION NO. 1:07-CV-953

**REQUEST OF DEFENDANTS RICHARD CLARK, DNA SECURITY, INC.,
AND BRIAN MEEHAN TO INCLUDE PROVISIONS
IN SCHEDULING ORDER**

Pursuant to Fed. R. Civ. P. 16 and 26 and LR 16.1, Defendants Richard Clark (“Clark”), DNA Security, Inc. (“DSI”), and Brian Meehan (“Meehan”) (collectively, the “Requesting Defendants”) hereby submit their request to this Court to include certain protective provisions in its Scheduling Order.

On June 9, 2011, this Court granted in part Motions to Stay filed by the City Defendants, Clark, DSI, Meehan, and Linwood Wilson, but also ordered that “discovery may proceed with respect to Counts 21 and 24, but discovery may not be directed to any of the City Defendants until the resolution of the interlocutory appeal unless otherwise ordered by this Court.” (Doc No. 218 at 10.) Discovery concerning the claims against the Requesting Defendants was accordingly stayed.

The Requesting Defendants believe that it is appropriate to enter a Scheduling Order that governs only discovery on Counts 21 and 24, and for the Court to hold another initial pretrial conference if and when the stay is lifted on any remaining counts.

Furthermore, in order to avoid any controversies, confusion, or prejudice during the course of the discovery relating to Counts 21 and 24, the Requesting Defendants respectfully request that the Court include in its Scheduling Order the following provisions:

1. No written discovery may be propounded to any party except as to the issues raised in Counts 21 and 24.

2. No deposition questions may be propounded that directly relate to the issues raised in any Count other than Counts 21 and 24.

3. Because discovery is proceeding only on Counts 21 and 24, depositions taken during this phase of discovery may not be used at a hearing or trial against any party, other than Plaintiffs, Duke University, and Defendants Smith, Graves, Dean, and Drummond, even if that party was present or represented at the deposition or had reasonable notice of it.

4. All parties will be served with all discovery requests and responses.

5. All parties have the right to attend any deposition (with or without counsel) either for the purpose of enforcing the discovery limitations included in this Scheduling Order or for the purpose of discovery on the issues raised by Counts 21 and 24. No party, by virtue of its attendance at and/or participation in a deposition, consistent with the provisions of this Scheduling Order, shall be deemed to have initiated or exhausted its discovery as to any Counts other than Counts 21 or 24.

6. Attendance at and/or participation in any deposition, consistent with the terms of this Scheduling Order, does not constitute consent by the attending party to the

initiation of discovery against said party except as specifically authorized by this Scheduling Order.

7. Failure to attend a deposition under this Scheduling Order will not be deemed a waiver of the right to attend or participate in any other depositions allowed by this or any future Scheduling Order.

Respectfully submitted, this the 8th day of August, 2011.

/s/ Robert J. King III

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing REQUEST OF DEFENDANTS RICHARD CLARK, DNA SECURITY, INC., AND BRIAN MEEHAN TO INCLUDE PROVISIONS IN SCHEDULING ORDER was filed electronically and served upon each party to this action via the CM/ECF electronic filing system. Notice of this filing will be sent by operation of the Court's Electronic Filing System to counsel for all parties to this action, and to Defendant Linwood Wilson, who is proceeding *pro se* and has been granted access to the CM/ECF system.

This the 8th day of August, 2011.

/s/ Robert J. King III
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