

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

CIVIL ACTION NUMBER 1:07-CV-00953

RYAN MCFADYEN, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendants.

**DUKE UNIVERSITY'S MOTION
FOR A PROTECTIVE ORDER
LIMITING THE RULE 30(b)(6)
DEPOSITION NOTICED BY
PLAINTIFFS**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Defendant Duke University (“Duke”) respectfully moves this Court to enter a protective order concerning Plaintiff’s cross-notice of a deposition pursuant to Rule 30(b)(6) issued by the Plaintiffs on 9 December 2011 to Duke. Duke seeks an order instructing Plaintiffs not to inquire into Topics 6, 8, 14, or 15 during the Rule 30(b)(6) deposition of Duke’s representative. Duke further seeks an order limiting the scope of Topics 5, 12, and 16 of the notice to issues relevant to Counts 21 and 24 of the Second Amended Complaint. In support of this Motion, Duke states as follows:

1. On 9 December 2011, Plaintiffs issued a cross-notice of deposition to Duke University pursuant to Federal Rule of Civil Procedure 30(b)(6), which

included the following topics:

a. Topic 5:

Defendant's policies and practices for preserving data - both electronic and hard-copy - that may relate to the Rape Allegations, including:

- a. When Defendant first anticipated that litigation may arise from the Rape Allegations;
- b. Defendant's establishment of a litigation hold for data that may relate to the Rape Allegations, including when such a hold was instituted, communications related to the hold, and efforts to monitor compliance.
- c. Defendant's efforts to locate and preserve data that may relate to the Rape Allegations from:
 - i. Personal email accounts;
 - ii. Other non-Duke email accounts, such as employer email accounts;
 - iii. Duke email accounts;
 - iv. Postings to social media websites and blogs;
 - v. Text messages;
 - vi. Voice mails;
 - vii. Alumni correspondence;
 - viii. Board meetings and other meetings of Duke officials;
 - ix. Individual notes or files;
 - x. Presentations;
 - xi. Press releases;
 - xii. Communications with Durham; and
 - xiii. Any other sources of data;
- d. The manner in which Defendant maintains data that may relate to the Rape Allegations, including the location of such data and any software used for that purpose;
- e. Any indexing, processing, or reviewing Duke has done of

data that may relate to the Rape Allegations;

- f. The identity and activities of any outside vendors or other third parties Duke has used to assist in its preservation efforts;
- g. The manner in which Defendant identifies custodians whose data is being preserved and the identity of such custodians, including the 252 custodians of electronically stored information identified in Defendant's letter of June 30, 2008.

b. **Topic 6:** “Communications with insurance carriers regarding the Rape Allegations including the dates of such communications.”

c. **Topic 8:** “Duke’s public relations strategy with respect to the Rape Allegations, including the process for developing that strategy, its implementation, and any consideration of its impact on Plaintiffs’ reputations.”

d. **Topic 12:** “Duke’s communications with Durham regarding the Rape Allegations, including communications relating to meeting with members of the Lacrosse Team and information disclosed by members of the Lacrosse Team.”

e. **Topic 14:**

Duke’s decision-making process for responding to the Rape Allegations, including: (a) communicating with and/or advising members of the Lacrosse Team, their coaching staff, their parents, and their attorneys on matters relating to the Rape Allegations; (b) responding to and participating in Durham’s investigation of the Rape Allegations; (c) determining the truth

of the Rape Allegations; (d) cancelling the 2005-2006 men's lacrosse season; (e) forcing Mike Pressler to resign as lacrosse coach; (f) formulating public statements relating to the Rape Allegations; (g) considering how Duke's response would affect members of the Lacrosse Team."

- f. **Topic 15:** "Duke's knowledge of any results of DNA testing related to the Rape Allegations, including the date when Duke first learned of those results."
- g. **Topic 16:** "Duke's supervision of the actions of Richard Brodhead, Tallman Trask, and Suzanne Wasiolek relating to the Rape Allegations, including the identity of the persons involved in such supervision, the selection of those persons, the supervisory actions taken by those persons, and the manner and substance of those persons' communications with each other and with President Brodhead, Dr. Trask, and Dean Wasiolek."

2. Pursuant to the Court's 9 June 2011 Order [DE 218], discovery may proceed only with respect to two claims: Counts 21 and 24. Count 21 alleges a claim against Duke University for breach of contract, limited to the allegation that Duke imposed disciplinary measures against Plaintiffs, specifically suspension, without providing them the process that was promised. Count 24 alleges a claim against Duke University for fraud based on alleged fraudulent misrepresentation in letters to Plaintiffs regarding Plaintiffs' Duke Card information.

3. Topics 5, 6, 8, 12, 14, 15, and 16 go beyond the three narrow claims presently before this Court. Those topics are not relevant to any party's claim or defense to Counts 21 or 24, and/or are over broad as written.

4. Thus, inquiry into these topics is outside the scope of discovery permitted by Fed. R. Civ. P. 26(b).

5. In accordance with Fed. R. Civ. P. 26(c)(1), the undersigned counsel for Duke University certifies that they conferred in good faith with Plaintiffs' counsel in an effort to resolve this discovery dispute prior to filing this Motion. Counsel for Duke presented their specific objections to each of the above-listed topics to Plaintiffs' counsel and suggested to Plaintiffs' counsel that Plaintiffs limit the scope of their notice. Plaintiffs' counsel rejected this suggestion.

6. Specifically, on 17 January 2012, Duke's counsel, Paul Sun, and Plaintiffs' counsel, Stefanie Sparks, met in person and discussed Plaintiffs' cross notice and Duke's objections, but were unable to reach agreement.

7. For the foregoing reasons, as more fully explained in Duke's brief contemporaneously filed with this Motion, Duke respectfully requests that the Court order Plaintiffs not to pose questions relating to Topics 6, 8, 14, and 15 during the Rule 30(b)(6) deposition of any Duke representative, and to limit the scope of Topics 5, 12, and 16 of their notice to the issues relevant to Counts 21 and 24 of the First Amended Complaint.

This the 18th day of January, 2012.

/s/ Paul K. Sun, Jr.

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CERTIFICATE OF SERVICE

It is hereby certified that on January 18, 2012, I electronically filed the foregoing **Duke University's Brief in Support of its Motion for a Protective Order Limiting the Rule 30(b)(6) Deposition Cross Noticed by Plaintiffs** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and to Mr. Linwood Wilson, who is also registered to use the CM/ECF system.

This the 18th day of January, 2012.

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