

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

RYAN McFADYEN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Number
)	1:07-cv-00953
DUKE UNIVERSITY, et al.,)	
)	
Defendants.)	
_____)	

**MOTION FOR ENTRY OF PROTECTIVE ORDER ON
CONFIDENTIALITY AND PROSPECTIVE SEALING ORDER BY DUKE
UNIVERSITY**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Defendant Duke University (“Duke”), through counsel, respectfully moves this Court to enter a Protective Order on Confidentiality and Prospective Sealing Order in the form attached as Exhibit A to Duke’s Brief in Support of this Motion. In support of this Motion, Duke shows the Court the following.

1. In October 2011, Duke and Plaintiffs began negotiating a protective order to govern the discovery and filing of confidential information in this case. Since then, counsel have met and conferred several times regarding this matter, including through email and/or by phone on 8, 15-16 and 30 November, 1 December, 10 and 24 February 2012, and 3 and 16 March 2012.

2. Although the parties agree that a blanket protective order is

appropriate, they have not agreed on the contents of such an order. Duke's proposed order is attached as Exhibit A to the brief. Plaintiffs' version is attached as Exhibit B. After a final exchange of drafts, the parties continue to disagree on several aspects of the order.

3. The order proposed by Duke should be adopted in its entirety. The Court entered a materially identical order in *Carrington v. Duke University*, Case No. 1:08CV119, and the Court should find good cause to re-approve it here for that reason alone, especially as depositions are being cross-noticed in the two cases.

4. Further, there is independent good cause to approve Duke's version of the order. Under it, parties are allowed to designate several categories of information as confidential, including "personal financial information," "disciplinary information," "personnel records," "minutes of meetings of the Duke University board of trustees," information related to "decisions involving faculty hiring, retention, and compensation," "insurance policies" and "information related to police investigations." As demonstrated in the attached brief, all of this information warrants confidential treatment during discovery.

5. There is also good cause to adopt the procedural aspects of Duke's proposal, which are fair and efficient. Specifically:

- Consistent with its precedent, the Court should approve Duke’s prospective sealing provisions and reject Plaintiffs’ proposal, which would allow parties to file confidential information under seal absent a specific Court order.
- Parties should be prohibited from using confidential information in other litigation and disclosing it to those who have not agreed to abide by the protective order.
- Individuals who access confidential information should be required to execute a standard confidentiality agreement.
- Parties should not be allowed to modify the protective order without court approval.
- Parties should not be forced to identify their document management consultants.
- Parties should be allowed to redact irrelevant confidential information from documents they produce, including information protected by the Federal Educational Rights and Privacy Act (“FERPA”).
- Parties should have 30 days (rather than 10 days) following a deposition to designate the transcript as confidential, and the parties should not be allowed to “claw back” confidential documents

indefinitely.

- Parties should not be forced to scrutinize the history of a non-confidential, publicly-available document in order to determine whether it was disclosed “in violation of law.”
- Parties should not be required to itemize all confidential information that appears on the face of every designated document.
- There should be a separate designation process for documents produced for inspection.

6. For the foregoing reasons, and as more fully explained in the attached brief, Duke respectfully requests that the Court grant this Motion and enter the protective order proposed by Duke.

This the 26th day of March, 2012.

/s/ Paul K. Sun, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on 26 March 2012, I electronically filed the foregoing **Defendants' Motion for Entry of a Protective Order** 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 26th day of March, 2012.

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