

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

RYAN MCFADYEN, ET AL,

Plaintiffs,

v.

DUKE UNIVERSITY, ET AL,

Defendants.

1:07-CV-953

**REQUEST TO MODIFY THE PROTECTIVE
ORDER**

Plaintiffs respectfully request that the Protective Order (Doc. No. 284) be modified in the following ways:

1. Strike paragraph number 8, "Non-Relevant Confidential Information." The Protective Order already provides strict protections and procedural safeguards to preserve the confidentiality of information. Furthermore, the determination of relevancy is for trial.
2. Strike paragraph number 17, titled "Objections to Designations." The provisions therein will cause the parties to unnecessarily litigate the confidentiality of documents that may never be filed. Furthermore, as to those documents that will be filed, the procedures outlined by the Court for the preliminary sealing of documents designated as confidential upon filing are sufficient and narrowly tailored to apply only to documents that are actually

filed.

3. Modify paragraph number 21 to conform to the Court's procedures for sealing. As written, paragraph number 21 bars the parties from filing any confidential information under seal (or referring to or quoting any such material) without first obtaining an order granting leave to file the material under seal. The better approach, which has been outlined by the Court, provides that any material or information designated as "confidential" may be filed under seal, and upon such filing, it is for the party that designated the material as "confidential" to establish that it is, in fact, properly sealed. If the Court determines the material is not properly sealed, the seal will be removed. Likewise, if the Court determines that the material is properly sealed, the material simply remains sealed. As written, however, the Order bars the parties from filing under seal any document or information that the opposing party designated "confidential" unless the filing party first obtains an Order from the Court expressly permitting the material to be filed under seal.

Dated: August 8, 2012

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, August 8, 2012, pursuant to Rule 5 of the Federal Rules of Civil Procedure and Local Rules 5.3 and 5.4, I electronically filed the foregoing Request to Modify the Protective Order with the Clerk of the Court using the CM/ECF system, which will automatically generate and send notification of such filing to counsel of record. The Court's electronic records show that each party to this action is represented by at least one registered user of record (or that the party is a registered user of record), to each of whom the Notice of Electronic Filing will be sent.

Dated: August 8, 2012

Respectfully submitted by:

EKSTRAND & EKSTRAND LLP

/s/ Robert C. Ekstrand

Robert C. Ekstrand (NC Bar No. 26673)