

# EXHIBIT 2

*Stefanie Smith's Objections to Subpoenas*

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

CARRINGTON, ET AL.,

*Plaintiffs,*

*v.*

DUKE UNIVERSITY, ET AL.,

*Defendants.*

1:08 CV 119

**STEFANIE A. SMITH'S OBJECTIONS TO DUKE  
UNIVERSITY DEFENDANTS' SUBPOENA FOR  
DOCUMENTS AND SUBPOENA FOR DEPOSITION  
TESTIMONY**

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Pursuant to Rule 45, Stefanie A. Smith ("Respondent") submits the following objections to the subpoena to produce documents, information, or objects or to permit inspection of premises in a civil action served on Stefanie A. Smith on August 17, 2012 and the subpoena for deposition testimony of Stefanie A. Smith also served on August 17, 2012. Respondent explicitly reserves the right to assert further objections.

**GENERAL OBJECTIONS**

1. Respondent objects to each request to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the work product

doctrine, and/or other applicable privileges or protections.

2. Respondent objects to each request to the extent that it does not state with reasonable particularity the information requested.

3. Respondent objects to each request to the extent that it seeks information not relevant to any claim or defense asserted in this proceeding, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise beyond the scope of permissible discovery in this proceeding as authorized by the Federal Rules of Civil Procedure, the Local Rules, and the standing orders of the Court.

4. Respondent objects to each request to the extent that it is overly broad, unduly burdensome, oppressive, redundant, vague, and/or ambiguous.

5. Respondent objects to each request to the extent that it seeks to impose on Respondent obligations greater than or different from those imposed under the Federal Rules of Civil Procedure, or any other applicable law.

6. Respondent objects to each request to the extent it is a premature contention request or otherwise purports to require Respondent to identify all facts or evidence with respect to a particular topic or issue, particularly in connection with Claim 24 in *McFadyen, et al. v. Duke University, et al.*, where Respondent represents the Plaintiffs.

7. Respondent objects to each request to the extent it purports to require

Respondent, a non-party to this litigation, to perform an unreasonable search for information, as such a request is unduly burdensome and oppressive, and where such a request may be equally available from a party to the litigation.

8. Respondent objects to each request to the extent it calls for information protected from disclosure by Federal Rule of Evidence 408.

9. Respondent objects to each request to the extent that it seeks information already within Duke University's knowledge or control, or equally or more easily available to it, on the grounds that such request is unduly burdensome or oppressive.

10. Respondent objects to each request to the extent it seeks a response about which Respondent would have to draw a legal conclusion in order to make a proper response.

11. Respondent objects to each request to the extent that it purports to require disclosure of information not within Respondent's possession, custody, or control.

12. Respondent objects to each request to the extent that it purports to require Respondent to disclose information, which Respondent is required to maintain in confidence pursuant to an agreement or understanding with any third party.

Respondent will not disclose this information without an appropriate release from any such third party.

13. Any response by Respondent will be made without in any way waiving or intending to waive, but rather, to the contrary, by preserving and intending to preserve:

(a) All questions as to the competence, relevance, materiality, and admissibility as evidence for any purpose of the information or the subject matter thereof, in any aspect of this or other judicial proceeding, or other administrative proceeding or investigation;

(b) The right to object on any ground to the use of any such information, or the subject matter thereof, in any aspect of this or other judicial proceeding, or other administrative proceeding or investigation;

(c) The right to object at any time for any further response to this or any other request for information or production of documents;

(d) The right to rely on information discovered or generated subsequent to these responses; and

(e) The right at any time to supplement this response.

14. Any response by Respondent will be made without waiving or intending to waive, but rather preserving and intending to preserve, her right to object to any other discovery including without limitation to any other request.

15. Respondent objects to each request because the subpoenas fail to allow a reasonable time to comply, especially considered the legal complexities regarding these subpoenas, and recent events which if necessary, Respondent will provide to the Court in more detail.

**SPECIFIC OBJECTIONS AS TO THE SUBPOENA FOR DOCUMENTS  
AND TANGIBLE THINGS**

**REQUEST #1**

Respondent incorporates each of her general objections by reference. Respondent further objects to this request on the grounds that: (i) it is vague and ambiguous; (ii) it is overbroad and unduly burdensome, particularly in that it is unlimited as to time; (iii) it is unduly burdensome in that it seeks information that is cumulative of other requests or otherwise as accessible to Duke University as it is to Respondent and/or information already known to Duke University; (iv) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (v) it seeks information not within the possession, custody, or control of Respondent; (vi) it seeks information protected by the attorney-client privilege and/or the attorney work product doctrine, or another applicable privilege or doctrine; and (vii) it seeks information that has already been produced in discovery.

## **REQUEST #2**

Respondent incorporates each of her general objections by reference. Respondent further objects to this request on the grounds that: (i) it is vague and ambiguous; (ii) it is overbroad and unduly burdensome, particularly in that it is unlimited as to time; (iii) it is unduly burdensome in that it seeks information that is cumulative of other requests or otherwise as accessible to Duke University as it is to Respondent and/or information already known to Duke University; (iv) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (v) it seeks information not within the possession, custody, or control of Respondent; and (vi) it seeks information that has already been produced in discovery.

## **REQUEST #3**

Respondent incorporates each of her general objections by reference. Respondent further objects to this request on the grounds that: (i) it is vague and ambiguous; (ii) it is overbroad and unduly burdensome, particularly in that it is unlimited as to time; (iii) it is unduly burdensome in that it seeks information that is cumulative of other requests or otherwise as accessible to Duke University as it is to Respondent and/or information already known to Duke University; (iv) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (v) it seeks information not within the possession, custody, or control of Respondent;

and (vi) it seeks information that has already been produced in discovery.

#### **REQUEST #4**

Respondent incorporates each of her general objections by reference. Respondent further objects to this request on the grounds that: (i) it is vague and ambiguous; (ii) it is overbroad and unduly burdensome, particularly in that it is unlimited as to time; (iii) it is unduly burdensome in that it seeks information that is cumulative of other requests or otherwise as accessible to Duke University as it is to Respondent and/or information already known to Duke University; (iv) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (v) it seeks information not within the possession, custody, or control of Respondent; (vi) it seeks information protected by the attorney work product doctrine or another applicable privilege or doctrine; and (vii) it seeks information that has already been produced in discovery.

#### **REQUEST #5**

Respondent incorporates each of her general objections by reference. Respondent further objects to this request on the grounds that: (i) it is vague and ambiguous; (ii) it is overbroad and unduly burdensome, particularly in that it is unlimited as to time; (iii) it is unduly burdensome in that it seeks information that is cumulative of other



requests or otherwise as accessible to Duke University as it is to Respondent and/or information already known to Duke University; (iv) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (v) it seeks information not within the possession, custody, or control of Respondent; (vi) it seeks information protected by the attorney-client privilege and/or the attorney work product doctrine, or another applicable privilege or doctrine; and (vii) it seeks information that has already been produced in discovery.

### **SPECIFIC OBJECTIONS AS TO THE SUBPOENA FOR DEPOSITION TESTIMONY**

Respondent Stefanie A. Smith incorporates each of the general objections by reference. Respondent further objects to this subpoena for testimony on the grounds that the subpoena: (i) subjects Respondent to undue burden where other less burdensome means are available under the Federal Rules of Civil Procedure including, but not limited to, Rule 31; (ii) seeks information that is cumulative of other requests or otherwise as accessible to Duke University as it is to Respondent, and/or information already known to Duke University or other parties in this litigation; (iii) is a premature contention or otherwise purports to require Respondent to identify all facts or evidence with respect to a particular topic or issue, particularly in connection

with Claim 24 in *McFadyen, et al. v. Duke University, et al.*, where Respondent represents the Plaintiffs; (iv) seeks information protected by the attorney-client privilege and/or the attorney work product doctrine, or another applicable privilege or doctrine; (v) is premature and does not meet the requirement of good cause as this point in discovery; and (vi) is wholly improper in light of Respondent's role in *McFadyen, et al. v. Duke University, et al.* Additionally, the proposed fee for Respondent will not accommodate Respondent for her time.

Dated: August 31, 2012

Respectfully submitted by:

**EKSTRAND & EKSTRAND LLP**

/s/ Robert Ekstrand

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Robert C. Ekstrand (N.C. Bar No. 26673)

811 Ninth Street, Suite 260

Durham, North Carolina 27705

rce@ninthstreetlaw.com

Tel: (919) 416-4590

Fax: (919) 416-4591

**EKSTRAND & EKSTRAND LLP**

/s/ Stefanie A. Smith

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Stefanie A. Smith (N.C. Bar. No. 42345)

811 Ninth Street, Suite 260

Durham, North Carolina 27705

[sas@ninthstreetlaw.com](mailto:sas@ninthstreetlaw.com)

Tel: (919) 416-4590

Fax: (919) 416-4591

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**CERTIFICATE OF SERVICE<sup>1</sup>**

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I hereby certify that on August 31, 2012, a copy of the foregoing Objections was served via electronic mail, pursuant to agreement, to the following counsel of record:

Richard W. Ellis

dick.ellis@elliswinters.com

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<sup>1</sup> Pursuant to the Court's Order, counsel in *McFadyen, et al. v. Duke University, et al.*, 1:07-cv-953, have been provided with a copy of these Objections via electronic mail.

Dixie T. Wells

[dixie.wells@elliswinters.com](mailto:dixie.wells@elliswinters.com)

Jeremy M. Falcone

[jfalcone@elliswinters.com](mailto:jfalcone@elliswinters.com)

Paul K. Sun, Jr.

[Paul.sun@elliswinters.com](mailto:Paul.sun@elliswinters.com)

Thomas H. Segars

[tom.segars@elliswinters.com](mailto:tom.segars@elliswinters.com)

James M. Weiss

[jamie.weiss@elliswinters.com](mailto:jamie.weiss@elliswinters.com)

Grant W. Garber

[grant.garber@elliswinters.com](mailto:grant.garber@elliswinters.com)

Meghan S. Thelen

[meghan.thelen@elliswinters.com](mailto:meghan.thelen@elliswinters.com)

Christopher Jackson

Chris.Jackson@elliswinters.com

Curtis J. Shipley

Curtis.Shipley@elliswinters.com

*Attorneys for Duke University, Robert K. Steel, Richard Brodhead, John Burness, Matthew Drummond, Victor J. Dzau, Aaron Graves, Robert Dean, and Gary N. Smith*

David Thompson

dthompson@cooperkirk.com

*Attorneys for Plaintiffs<sup>2</sup>*

Joel Miller Craig

[jcraig@kennoncraver.com](mailto:jcraig@kennoncraver.com)

*Attorney for Benjamin W. Himan*

Paul R. Dickinson, Jr.

[pauldickinson@lewis-roberts.com](mailto:pauldickinson@lewis-roberts.com)

*Attorney for Brian Meehan, PHD*

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<sup>2</sup> Other counsel from Cooper & Kirk have also been provided with a copy of these Objections via electronic mail.

Reginald B. Gillespie, Jr.

[RGillespie@w-rlaw.com](mailto:RGillespie@w-rlaw.com)

*Attorney for the City of Durham and Edward Sarvis*

Patricia P. Kerner

[tricia.kerner@troutmansanders.com](mailto:tricia.kerner@troutmansanders.com)

*Attorney for Jeff Lamb, Laird Evans, Lee Russ, Michael Ripberger, Patrick Baker, Ronald Hodge, Stephen Mibaich, Steven Chalmers, and Beverly Council*

Robert James King. III

[rking@brookspierce.com](mailto:rking@brookspierce.com)

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

Brian J. McMillan

[bmcmillan@brookspierce.com](mailto:bmcmillan@brookspierce.com)

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

David W. Long

[dwlong@poynerspruill.com](mailto:dwlong@poynerspruill.com)

*Attorney for Defendant Mark D. Gottlieb*

James B. Maxwell

[jmaxwell@mfbp.com](mailto:jmaxwell@mfbp.com)

*Attorney for David W. Addison, James T. Soukup, Kammie Michael, and Richard D. Clayton*

Dan Johnson McLamb

[dmclamb@ymwlaw.com](mailto:dmclamb@ymwlaw.com)

*Attorney for Duke University Health Systems, Inc., Private Diagnostic Clinic, PLLC, Julie Manly, M.D., Tara Levicy, R.N., and Theresa Arico, R.N.*

Shirley Maring Pruitt

[spruitt@ymwlaw.com](mailto:spruitt@ymwlaw.com)

*Attorney for Duke University Health Systems, Inc., Private Diagnostic Clinic, PLLC, Julie Manly, M.D., Tara Levicy, R.N., and Theresa Arico, R.N.*

James Avery Roberts, III

[jimroberts@lewis-roberts.com](mailto:jimroberts@lewis-roberts.com)

*Attorney for Brian Meehan, PHD*

Henry W. Sappenfield

[hsappenfield@kennoncraver.com](mailto:hsappenfield@kennoncraver.com)

*Attorney for Benjamin W. Himan*

Ryan M. Shuirman

[rshuirman@ymwlaw.com](mailto:rshuirman@ymwlaw.com)

*Attorney for Duke University Health Systems, Inc., Private Diagnostic Clinic, PLLC, Julie Manly, M.D., Tara Levicy, R.N., and Theresa Arico, R.N.*



Edwin M. Speas, Jr.

[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)

*Attorney for Defendant Mark D. Gottlieb*

Eric P. Stevens

[estevens@poyners.com](mailto:estevens@poyners.com)

*Attorney for Defendant Mark D. Gottlieb*

D. Martin Warf

[martin.warf@troutmansanders.com](mailto:martin.warf@troutmansanders.com)

*Attorneys for Jeff Lamb, Laird Evans, Lee Russ, Michael Ripberger, Patrick Baker, Ronald Hodge, Stephen Mibaich, Steven Chalmers, and Beverly Council*

Linwood Wilson

[LinwoodW@aol.com](mailto:LinwoodW@aol.com)

*Pro Se*

Dated: August 31, 2012

Respectfully submitted by:

/s/ Stefanie A. Smith

Stefanie A. Smith (NC Bar No. 42345)