

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-JAB-JEP

**STATUS REPORT OF REMAINING CLAIMS AND DEFENDANTS**

During the Status Conference conducted by the Court today, March 14, 2014, Plaintiffs' counsel presented a summary of the claims and defendants remaining in this action in light of the Opinion and Judgment of the Court of Appeals for the Fourth Circuit issued on December 17, 2012, and the denial of Plaintiffs' Petition for a Writ of Certiorari by the Supreme Court of the United States. To further assist the Court, a chart of those remaining claims and defendants is set out below.

<b>Claim</b>	<b>Defendants</b>
Count 1: Search and Seizure in Violation of 42 U.S.C. § 1983 and Conspiracy	Levicy
Count 2: Search and Seizure in Violation of 42 U.S.C. § 1983 and Conspiracy	Levicy and Smith*
Count 5: False Public Statements in Violation of 42 U.S.C. § 1983	Wilson*
Count 18: Common Law Obstruction of Justice and Conspiracy	Levicy, Wilson, Steel, Brodhead, Dzau, Burness, Duke, and Duke Health
Count 21: Breach of Contract	Duke
Count 24: Fraud	Smith, Graves, Dean, Drummond and Duke
Count 32: Negligent Hiring, Retention, Supervision, Training and Discipline	Duke and Duke Health
Count 41: Violations of Article I and Article IX of the North Carolina Constitution and Conspiracy	City of Durham, North Carolina

\* The Fourth Circuit's ruling that Counts 2 and 5 do not state a constitutional violation applies with equal force to these defendants, and those claims should therefore be dismissed.

With respect to Plaintiffs' claims against Michael B. Nifong, those claims were not affected by the Fourth Circuit's decision. However, on January 15, 2008, Plaintiffs were served with Nifong's Voluntary Petition (Chapter 7) for Bankruptcy as creditors, elected not to contest the petition, and stipulate to Nifong's dismissal from this action.

Finally, Plaintiffs are filing an amended response to the pending motion for judgment on the pleadings to correct Plaintiffs' references to Counts 1, 2, and 5, and to clarify Plaintiffs' position viz. the Fourth Circuit's decision as to those claims. Specifically, Plaintiffs' claims against Defendants Levicy and Smith in Count 2 and Defendant Wilson in Count 5 should be dismissed because the Fourth Circuit held that those counts failed to state a constitutional violation; whereas Plaintiffs' claim in Count 1 against Levicy should go forward because the Fourth Circuit did not reach the constitutional question raised in Count 1, holding, instead, that the police defendants were entitled to qualified immunity, which Levicy does not have.

March 14, 2014

Respectfully submitted by:

EKSTRAND & EKSTRAND LLP  
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/s/ Robert C. Ekstrand

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date stamped below, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of the filing to counsel of record for Defendants and Defendant Linwood Wilson, all of who are registered CM/ECF users.

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