

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. 1:07-CV-00953

RYAN MCFADYEN, MATTHEW WILSON,)
and BRECK ARCHER,)

Plaintiffs,)

vs.)

**DEFENDANT BENJAMIN W.
HIMAN'S MOTION TO DISMISS**

DUKE UNIVERSITY, DUKE UNIVERSITY)
POLICE DEPARTMENT, AARON GRAVES,)
ROBERT DEAN, LEILA HUMPHRIES,)
PHYLLIS COOPER, WILLIAM F. GARBER,)
II, JAMES SCHWAB, JOSEPH FLEMING,)
JEFFREY O. BEST, GARY N. SMITH, GREG)
STOTSBERG, ROBERT K. STEEL,)
RICHARD H. BROADHEAD, Ph.D., JOHN)
BURNES, LARRY MONETA, Ed.D.,)
VICTOR J. DZAU, M.D., ALLISON)
HALTON, KEMEL DAWKINS, SUZZANE)
WASIOLEK, STEPHEN BRYAN, MATTHEW)
DRUMMOND, DUKE UNIVERSITY)
HEALTH SYSTEMS, INC., PRIVATE)
DIAGNOSTIC CLINIC, PLLC, JULIE)
MANLY, M.D., THERESA ARICO, R.N.)
TARA LEVICY, R.N., THE CITY OF)
DURHAM, NORTH CAROLINA, MICHAEL)
B. NIFONG, PATRICK BAKER, STEVEN)
CHALMERS, RONALD HODGE, LEE RUSS,)
STEPHEN MIHAICH, BEVERLY COUNCIL,)
EDWARD SARVIS, JEFF LAMB, MICHAEL)
RIPBERGER, LAIRD EVANS, JAMES T.)
SOUKUP, KAMMIE MICHAEL, DAVID W.)
ADDISON, MARK D. GOTTLIEB,)
BENJAMIN W. HIMAN, LINWOOD)

WILSON, RICHARD D. CLAYTON,)
DNA SECURITY, INC., RICHARD CLARK,)
and BRIAN MEEHAN, Ph.D.,)
)
Defendants.)

Defendant Benjamin W. Himan (Investigator Himan), through his undersigned attorneys, moves pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing this action in its entirety as to this Defendant upon the grounds that the Complaint fails to state a claim upon which relief may be granted and, in the alternative, that all claims asserted against Investigator Himan are barred by the doctrines of qualified and public official immunity.

In support of this Motion, Defendant submits the accompanying memorandum of law.

WHEREFORE, Defendant Benjamin W. Himan prays that all claims against him in this action be dismissed with prejudice.

Respectfully submitted this the 2nd day of July, 2008.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that I electronically filed the foregoing Defendant Benjamin W. Himanø Motion to Dismiss with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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The undersigned further certifies that the foregoing document was served by first-class mail, postage prepaid to the following non CM/ECF participant:

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This the 2nd day of July, 2008.

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