

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

RYAN McFADYEN, et al.,  
Plaintiffs,  
v.  
DUKE UNIVERSITY, et al.,  
Defendants.

Civil Action No. 1:07-cv-953

---

**PLAINTIFFS' MOTION FOR LEAVE TO FILE PLAINTIFFS' OPPOSITION  
BRIEFS TO DEFENDANTS' 12(B)(6) MOTION**

---

PLAINTIFFS, Ryan McFadyen, Matthew Wilson and Breck Archer, move the Court for an Order allowing them to file opposition briefs to Defendants' 12(b)(6) motions pursuant to LR 7.2 and 7.3.

WHEREFORE, for the reasons set forth in Plaintiffs' supporting brief, which has been submitted along with this motion, Plaintiffs respectfully request that the Court grant leave to issue the subpoena at this time.

IN FURTHER SUPPORT of this motion, the Plaintiffs respectfully offer and rely on the following exhibits, attached to this motion:

1. Exhibit 1 – Plaintiffs’ Opposition Brief to Defendant City of Durham’s Motion to Dismiss
2. Exhibit 2 – Plaintiffs’ Opposition Brief to Duke University Defendants’ (Duke University, Brodhead, Bryan, Burness, Dawkins, Drummond, Dzau, Haltom, Lange, Moneta, Steel, Trask and Wasiolek) Motion to Dismiss
3. Exhibit 3 – Plaintiffs’ Opposition Brief to the Duke University Police Defendants’ (Graves, Best, Cooper, Dean, Fleming, Garber, Humphries, Schwab, Smith and Stotsenberg) Motion to Dismiss
4. Exhibit 4 – Plaintiffs’ Opposition Brief to Duke SANE Defendants’ ( Duke University Health System, the Private Diagnostic Clinic, Arico, Levicy and Manly) Motion to Dismiss
5. Exhibit 5 – Plaintiffs’ Opposition Brief to Defendants Hodge’s Motion to Dismiss and Defendants Baker, Chalmers, Russ, Michaich, Council, Lamb, Ripbererger and Evan’s Motion to Dismiss
6. Exhibit 6 – Plaintiffs’ Opposition Brief to Defendants Soukup, Michael, Addison and Clayton’s Motion to Dismiss
7. Exhibit 7 – Plaintiffs’ Opposition Brief to Defendant Gottlieb’s Motion to Dismiss
8. Exhibit 8 – Plaintiffs’ Opposition Brief to Defendant Himan’s Motion to Dismiss
9. Exhibit 9 – Plaintiffs’ Opposition Brief to Defendants DNA Security, Inc., Clark and Meehan’s Motion to Dismiss
10. Exhibit 10 – Plaintiffs’ Opposition Brief to Defendant Wilson’s Motion to Dismiss

Dated: October 6, 2008

**EKSTRAND & EKSTRAND LLP**

/s/ Robert C. Ekstrand

---

Robert C. Ekstrand (NC Bar #26673)  
Attn. Stefanie A. Sparks  
811 Ninth Street, Suite 260  
Durham, North Carolina 27705

*Counsel for Plaintiffs Ryan McFadyen,  
Matthew Wilson, and Breck Archer*

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

RYAN MCFADYEN, ET AL.,

Plaintiffs,

V.

DUKE UNIVERSITY, ET AL.,

Defendants.

**Civil Action No. 1:07-cv-953**

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 6, 2008, I electronically filed the foregoing PLAINTIFFS' MOTION FOR LEAVE TO FILE PLAINTIFFS' OPPOSITION BRIEFS TO DEFENDANTS' 12(B)(6) MOTION with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James Donald Cowan, Jr.  
Ellis & Winters, LLP  
100 North Greene Street, Suite 102  
Greensboro, NC 27401  
*Counsel for the University Defendants*

Dixie Wells  
Ellis & Winters, LLP  
100 North Greene Street, Suite 102  
Greensboro, NC 27401  
*Counsel for he University Defendants*

Jamie S. Gorelick  
Wilmer Cutler Pickering Hale and Dorr, LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
***Counsel for the University Defendants***

Jennifer M. O'Connor  
Wilmer Cutler Pickering Hale and Dorr, LLP  
1875 Pennsylvania Ave., N.W.  
Washington, DC 20006  
***Counsel for the University Defendants***

Paul R.Q. Wolfson  
Wilmer Cutler Pickering Hale and Dorr, LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
***Counsel for the University Defendants***

William F. Lee  
Wilmer Cutler Pickering Hale and Dorr, LLP  
60 State Street  
Boston, MA 02109  
***Counsel for the University Defendants***

Dan J. McLamb  
Yates, McLamb & Weyher, LLP  
One Bank of America Plaza, Ste 1200  
421 Fayetteville Street  
Raleigh, NC 27601  
***Counsel for the Sane Defendants***

Reginald B. Gillespie, Jr.  
Faison & Gillespie  
P.O. Box 51729  
Durham, NC 27717  
***Counsel for City of Durham, North Carolina***

Patricia P. Kerner  
Troutman Saunders, LLP  
434 Fayetteville Street, Suite 1900  
Raleigh, NC 27601

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

D. Martin Warf  
Troutman Sanders LLP  
P.O. Drawer 1389  
Raleigh, North Carolina 27602

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

James B. Maxwell  
Maxwell, Freeman & Bowman  
P.O. Box 52396  
Durham, NC 27717-2396

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

Joel M. Craig  
Kennon, Craver, Belo, Craig & McKee  
4011 University Drive, Suite 300  
Durham, NC 27707

***Counsel for Benjamin W. Himan***

Edwin M. Speas, Jr.  
Poyner & Spruill, LLP  
P.O. Box 10096  
Raleigh, NC 27605-0096

***Counsel for Mark Gottlieb***

Eric P. Stevens  
Poyner & Spruill, LLP  
P.O. Box 10096  
Raleigh, NC 27605-0096

***Counsel for Mark Gottlieb***

Kearns Davis  
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.  
P.O. Box 26000  
Greensboro, NC 27420  
***Counsel for DNA Security, Inc. and Richard Clark***

Robert J. King, III  
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.  
P.O. Box 26000  
Greensboro, NC 27420  
***Counsel for DNA Security, Inc. and Richard Clark***

Linwood Wilson  
**\*\*ADDRESS REDACTED PURSUANT TO LOCAL RULE**

I further certify that I caused the foregoing document to be served by first-class mail, postage prepaid, to the following non CM/ECF participants:

Paul R. Dickinson, Jr.  
Lewis & Roberts, PLLC  
5960 Fairview Road, Suite 102  
Charlotte, NC 28210  
***Counsel for Brian Meehan***

James A. Roberts, III  
Lewis & Roberts, PLLC  
1305 Navaho Drive, Suite 400  
Raleigh, NC 27609-7482  
***Counsel for Brian Meehan***

Roger E. Warin  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20003  
***Counsel for City of Durham, North Carolina***

Robert A. Sar  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
2301 Sugar Bush Road, Suite 600  
Raleigh, NC 27612  
*Counsel for DNA Security, Inc.*

Nicholas J. Sanservino, Jr.  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
2301 Sugar Bush Road, Suite 600  
Raleigh, NC 27612  
*Counsel for DNA Security, Inc.*

Respectfully submitted,

**EKSTRAND & EKSTRAND LLP**

/s/ Robert C. Ekstrand

---

Robert C. Ekstrand, Esq.  
NC Bar #26673  
811 Ninth Street, Suite 260  
Durham, North Carolina 27705  
Email: [rce@ninthstreetlaw.com](mailto:rce@ninthstreetlaw.com)  
Phone: (919) 416-4590  
Counsel for Plaintiffs