

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

File No. 1:08-CV-119

EDWARD CARRINGTON, CASEY J. )  
CARROLL, MICHAEL P. CATALINO, GALE )  
CATALINO, THOMAS V. CLUTE, KEVIN )  
COLEMAN, JOSHUA R. COVELESKI, )  
EDWARD J. CROTTY, EDWARD S. )  
DOUGLAS, KYLE DOWD, PATRICIA DOWD, )  
DANIEL FLANNERY, RICHARD GIBBS )  
FOGARTY, ZACHARY GREER, IRENE )  
GREER, ERIK S. HENKELMAN, STEVEN W. )  
HENKELMAN, JOHN E. JENNISON, BEN )  
KOESTERER, MARK KOESTERER, JOYCE )  
KOESTERER, FRED KROM, PETER J. )  
LAMADE, ADAM LANGLEY, CHRISTOPHER )  
LOFTUS, DANIEL LOFTUS, BARBARA )  
LOFTUS, ANTHONY MCDEVITT, GLENN )  
NICK, NICHOLAS O'HARA, LYNND A )  
O'HARA, DANIEL OPPEDISANO, SAM )  
PAYTON, JOHN BRADLEY ROSS, KENNETH )  
SAUER, III, STEVE SCHOEFFEL, ROBERT )  
SCHROEDER, DEVON SHERWOOD, DANIEL )  
THEODORIDIS, BRET THOMPSON, )  
CHRISTOPHER TKAC, TRACY TKAC, JOHN )  
WALSH, JR., MICHAEL WARD, ROBERT H. )  
WELLINGTON, IV, WILLIAM WOLCOTT, )  
MICHAEL YOUNG, )

Plaintiffs, )

vs. )

DUKE UNIVERSITY, DUKE UNIVERSITY )  
HEALTH SYSTEM, INC., RICHARD )  
BRODHEAD, PETER LANGE, LARRY )  
MONETA, JOHN BURNES, TALLMAN )  
TRASK, SUZANNE WASIOLEK, MATTHEW )  
DRUMMOND, AARON GRAVES, ROBERT )  
DEAN, TARA LEVICY, THERESA ARICO, )

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

J. WESLEY COVINGTON, KATE HENDRICKS, )  
VICTOR DZAU, CITY OF DURHAM, )  
LINWOOD WILSON, MARK GOTTLIEB, )  
BENJAMIN HIMAN, PATRICK BAKER, )  
STEVEN CHALMERS, RONALD HODGE, )  
LEE RUSS, STEPHEN MIHAICH, BEVERLY )  
COUNCIL, JEFF LAMB, MICHAEL )  
RIPBERGER and DAVID ADDISON, )  
Defendants. )

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Defendant Benjamin 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 officer immunity.

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

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

Respectfully submitted this the 30<sup>th</sup> day of May, 2008.

KENNON, CRAVER, BELO,  
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## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that I electronically filed the foregoing Defendant Benjamin Himan's 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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*Pro Se*

This the 30th day of May, 2008.

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