

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

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|------------------------------------|---|------------------------|
| DAVID F. EVANS, <i>et al</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 1:07-CV-00739 |
| |) | |
| THE CITY OF DURHAM, <i>et al</i> , |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT MARK GOTTLIEB’S MOTION TO DISMISS
PLAINTIFFS’ SECOND AMENDED COMPLAINT
FED. R. CIV. P. 12(b)(6)**

Defendant Mark Gottlieb respectfully moves the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss all claims in Plaintiffs’ Second Amended Complaint against him for failure to state a claim upon which relief can be granted. In support thereof, and pursuant to this Court’s February 16, 2010 Order (Docket # 115), Defendant Gottlieb incorporates the arguments and authorities set forth in the Memorandum in support of his original Motion to Dismiss (Docket # 39), the Joint Reply Memorandum in Support of the Motions to Dismiss of Mark Gottlieb and Benjamin Himan (Docket # 61), the Supplemental Brief in Support of the Motions to Dismiss of the City of Durham, North Carolina, Mark Gottlieb, and Benjamin Himan (Docket # 100), and the Suggestion of Subsequent Authority (Docket # 114).

WHEREFORE, Defendant Gottlieb respectfully prays the Court that:

1. The Action against him be dismissed;
2. Judgment be entered for Defendant Gottlieb;
3. Plaintiffs have and recover nothing from Defendant Gottlieb; and
4. Defendant Gottlieb have such other and further relief as the Court shall deem just and proper.

This the 8th day of March, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **DEFENDANT MARK GOTTLIEB'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**, with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

| | |
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This the 8th day of March, 2010.

/s/ Eric P. Stevens

Eric P. Stevens