

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

DAVID F. EVANS, et al,)	
)	
Plaintiffs,)	
)	Case No. 1:07-CV-00739
vs.)	
)	
THE CITY OF DURHAM, et al,)	
)	

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

Defendant David Addison (“Defendant”) respectfully moves the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss Plaintiffs’ Second Amended Complaint 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 incorporates the reasons set forth in his Brief in support of his original Motion to Dismiss, (Docket # 41), his Reply Brief in Support of his Motion to Dismiss, (Docket # 62), his Supplemental Brief in Support of their Motion to Dismiss, (Docket # 99), and his Memorandum of Subsequently Decided Authority, (Docket # 114).

Defendant notes that in their Second Amended Complaint Plaintiffs eliminated causes of action against Defendant in his official capacity where the City was named, as well as state law causes of action against Defendant, save for causes of action for malicious prosecution and intentional infliction of emotional

distress. Thus, it is not now necessary for the Court to consider pages 8-9 (regarding official capacity claims) or pages 21-23 (regarding Causes of Action 16 and 19) in Defendant's initial brief (Docket # 41).

Because of the complexity of the causes of action at issue in this case, Defendants request oral argument be scheduled on their Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

WHEREFORE, Defendant Addison respectfully prays the Court that:

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

Respectfully submitted, this the 10th day of March, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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This the 10th day of March, 2010.

Respectfully submitted,

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