

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

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

**DEFENDANTS**  
**BAKER, CHALMERS, COUNCIL, HODGE, LAMB, RIPBERGER, and RUSS**  
**MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT**  
**FED. R. CIV. P. 12(b)(6)**

Defendants Patrick Baker, Steven Chalmers, Beverly Council, Ronald Hodge, Jeff Lamb, Michael Ripberger, and Lee Russ (“Defendants”) respectfully move the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss Plaintiffs’ Second Amended Complaint, (Docket # 116), 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), Defendants incorporate the reasons set forth in their Brief in Support of their original Motion to Dismiss, (Docket # 35), their Reply Brief in Support of their Motion to Dismiss, (Docket # 60), their Supplemental Brief in Support of their Motion to Dismiss, (Docket # 99), and their Suggestion of Subsequently Decided Authority, (Docket # 114).

Defendants note that in Plaintiffs’ Second Amended Complaint, Plaintiffs eliminated causes of action against Defendants in their official capacity where the City

was named, as well as state law causes of action against Defendants, save for an intentional infliction of emotional distress cause of action against Defendant Hodge. Thus, it is not now necessary for the Court to consider sections II (Official Capacity Claims Are Redundant), VII. A. (State Law Claims: Negligence Claims Against Defendants) and VII. B. 3. (State Law Claims: Claims Against Defendant Hodge: Negligence)<sup>1</sup> in Defendants' Initial Brief, (Docket # 35).

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, Defendants Baker, Chalmers, Council, Hodge, Lamb, Ripberger, and Russ respectfully pray the Court that:

1. The Action against these Defendants be dismissed;
2. Judgment be entered for Defendants;
3. Plaintiffs have and recover nothing from Defendants; and

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<sup>1</sup> Because Plaintiffs have retained their 15th Cause of Action for Intentional Infliction of Emotional Distress against Defendant Hodge, Section VII. B. 1 & 2 (State Law Claims: Claims Against Defendant Hodge: The Statute of Limitations; Intentional Infliction of Emotional Distress) at pages 40-44, remain relevant, and Defendants incorporate those sections as grounds for this Motion.

4. Defendants 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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By: /s/ Patricia P. Kerner

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**CERTIFICATE OF SERVICE**

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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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I further certify that a copy of the foregoing was served today upon each of the following non CM/ECF participants by United States mail, postage prepaid, addressed as follows:

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This the 10th day of March, 2010.

Respectfully submitted,

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