

**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

**REQUEST FOR CLARIFICATION OF THE COURT'S JUNE 4, 2009, ORDER,
AND ALTERNATIVE MOTION TO ENLARGE THE NUMBER OF PAGES OR
BRIEFS PLAINTIFFS MAY FILE IN RESPONSE TO DEFENDANTS'
SUPPLEMENTAL BRIEFS REGARDING *ASHCROFT V. IQBAL***

The matter before the Court is the Court's June 4, 2009, Order authorizing Plaintiffs to file Responses to Defendants' Supplemental Briefs regarding *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (May 18, 2009) (Docket No. 119). After consulting with opposing counsel, Plaintiffs seek clarification of the Order as it applies to the number of pages and briefs that Plaintiffs are authorized to file in response to Defendants' Supplemental Briefs. Further, to the extent that the Order authorizes Plaintiffs to file one, 20-page Response to all Briefs filed by the Defendants, Plaintiffs move for an Order enlarging the number of either pages or briefs that Plaintiffs may file in response to Defendants' Supplemental Briefs.

In support of this Motion, the Plaintiffs state as follows:

1. On June 4, 2009, the Court entered an Order (Docket No. 119) (“Order”) authorizing the Defendant groups in this action to file a Supplemental Brief, not to exceed 20 pages, addressing the impact of the Supreme Court’s decision in *Iqbal* on the pending Motions to Dismiss. Order, *McFadyen v. Duke Univ.*, 1:08-cv-953 (M.D.N.C. 2007) (Docket No. 119).
2. The Order authorizes Plaintiffs to file a Response Brief, within 20 days after such Supplemental Briefs are filed, not to exceed 20 pages, responding to any issues raised in the Supplemental Briefs. *Id.*
3. On June 24, 2009, Defendants filed four separate Supplemental Briefs (two of them merely adopt the arguments contained in other Supplemental Briefs). In all, the four substantive briefs filed by Defendants total 65 pages . (Docket Nos. 120-125).
4. Plaintiffs request clarification regarding whether the Court’s Order permits Plaintiffs to file four Responses (each limited to 20 pages), or only one 20-page Response.
5. To the extent that the Order authorizes only one 20-page Response to address the issues raised in the four Briefs filed by the Defendants, Plaintiffs respectfully request a modification of the Order permitting Plaintiffs to file either four Responses limited to 20 pages each, or, in the alternative, because there is some overlap in the issues raised in Defendants’ briefs, Plaintiffs request authorization to file one consolidated Response to all of Defendants’ Briefs, not to exceed 60 pages.
6. Counsel for Plaintiffs has consulted with opposing counsel on this matter and have received the following responses: The City of Durham Defendants, including the City of Durham, City’s Supervisory Defendants, and other Durham Police

Department and Spokesperson Defendants do not oppose the Motion. The Duke University Defendants, the Duke SANE Defendants, the Duke Police Defendants, Defendant DNA Security, Inc., Defendant Clark, and Defendant Linwood Wilson all take no position on the Motion. Defendant Meehan does not consent to the Motion.

7. A proposed order granting the relief sought is attached as Exhibit A.

FOR THE FOREGOING REASONS, Plaintiffs respectfully request that the Court (1) clarify its June 4, 2009, Order with respect to the number of pages and briefs Plaintiffs are authorized to file in response to Defendants' Supplemental Briefs, and (2) if the Order in fact authorizes Plaintiffs to file only one 20-page response, Plaintiffs request a modification of the Order authorizing Plaintiffs to file either one consolidated response to all Defendants' briefs, not to exceed 60-pages, or, in the alternative, four 20-page briefs in response to the four substantive Supplemental Briefs filed by Defendants.

Dated: June 29, 2009

Respectfully submitted,

EKSTRAND & EKSTRAND LLP

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CERTIFICATE OF SERVICE

I hereby certify that, on June 29, 2009, I electronically filed the foregoing **Request for Clarification of the Court's June 4, 2009, Order, and Alternative Motion to Enlarge the Number of Pages or Briefs Plaintiffs May File in Response to Defendants' Supplemental Briefs Regarding *Ashcroft V. Iqbal*** 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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