

**UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

File No. 1:07-CV-00953

RYAN McFADYEN, MATTHEW WILSON;
and BRECK ARCHER,

Plaintiffs,

vs.

DUKE UNIVERSITY et. al,

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 # 135), Defendant Gottlieb incorporates the arguments and authorities set forth in the Memorandum in support of his original Motion to Dismiss (Docket # 54), the Joint Reply Memorandum in Support of the Motions to Dismiss of Mark Gottlieb and Benjamin Himan (Docket # 106), the Supplemental Brief in Support of the Motions to Dismiss of the City of Durham, North Carolina, Mark Gottlieb, and Benjamin Himan (Docket # 123), and the Suggestion of Subsequent Authority (Docket # 134).

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 PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of 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
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