IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA CIVIL ACTION NO. 1:07-CV-00953

RYAN MCFADYEN, et al.,))
Plaintiffs, v.) DEFENDANT CITY OF DURHAM'S AND ALL INDIVIDUAL CITY DEFENDANTS' MOTION TO STAY PROCEEDINGS
DUKE UNIVERSITY, et al.,	
Defendants.	,))

Defendants the City of Durham, North Carolina (the "City"), and individual City Defendants Patrick Baker, Steven Chalmers, Beverly Council, Ronald Hodge, Jeff Lamb, Lee Russ, Michael Ripberger, David Addison, Mark Gottlieb, and Benjamin Himan (collectively, the "City Defendants"), by and through their attorneys, and pursuant to Fed. R. Civ. P. 7(b) and 26(d), to the extent applicable, hereby move this Court for a stay of all proceedings pending the outcome of their appeals to the United States Court of Appeals for the Fourth Circuit.

IN SUPPORT WHEREOF, the City Defendants respectfully show the following:

- 1. The City Defendants have timely filed notices of appeal from this Court's Orders partially denying their motions to dismiss and denying the City's motion for partial summary judgment. *See* Doc. Nos. 196, 199.
- 2. The individual City Defendants have exercised their right to an immediate interlocutory appeal of this Court's decisions regarding their defenses of qualified immunity and public official immunity. The City has also exercised its right to an immediate interlocutory appeal of this Court's decision regarding its defense of

governmental immunity. The City Defendants have further appealed other claims based on the doctrine of pendent appellate jurisdiction.

- 3. The pending appeals divest this Court of jurisdiction over all claims that are on appeal.
- 4. The City Defendants respectfully submit that this Court should stay discovery and all other proceedings with respect to all claims in this matter, including all claims on appeal and any remaining claims not on appeal. A complete stay of proceedings is necessary to prevent frustrating the purpose of the City Defendants' immunity defenses, and to avoid piecemeal litigation, and its related undue burden and costs.

WHEREFORE, the City Defendants pray that this Motion be granted and that the Court stay all proceedings pending the outcome of the appeals.

Respectfully submitted, this the 13th day of May, 2011.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.

Reginald B. Gillespie, Jr.

North Carolina State Bar No. 10895

Post Office Box 51729 [27717-1729]

5517 Chapel Hill Boulevard

Suite 2000

Durham, North Carolina 27707

Telephone: (919) 489-9001

Fax: (919) 489-5774

E-Mail: rgillespie@faison-gillespie.com

Attorneys for Defendant the City of Durham, North Carolina

STEPTOE & JOHNSON LLP

By: /s/ Roger E. Warin

Roger E. Warin*

Michael A. Vatis*

Matthew J. Herrington*

Leah M. Quadrino*

John P. Nolan*

1330 Connecticut Avenue, NW

Washington, DC 20035

Telephone: (202) 429-3000

Fax: (202) 429-3902

E-Mail: rwarin@steptoe.com

*(Motion for Special Appearance to

be filed)

Attorneys for Defendant the City of Durham, North Carolina

SIGNATURES OF COUNSEL CONTINUED ON NEXT PAGE

POYNER & SPRUILL LLP

By:/s/ Edwin M. Speas

Edwin M. Speas

North Carolina State Bar No. 4112

Eric P. Stevens

North Carolina State Bar No. 17609

Post Office Box 1801

Raleigh, North Carolina 27602-1801

Telephone: (919) 783-6400

Fax: (919) 783-1075

E-Mail: espeas@poynerspruill.com E-Mail: estevens@poyners.com

Attorneys for Defendant Mark Gottlieb

KENNON, CRAVER, BELO, CRAIG & MCKEE, PLLC

By: /s/ Joel M. Craig

Joel M. Craig

North Carolina State Bar No. 9179

Henry W. Sappenfield

North Carolina State Bar No. 37419

4011 University Drive, Suite 300

Post Office Box 51579

Durham, North Carolina 27717-1579

Telephone: (919) 490-0500

Fax: (919) 490-0873

E-Mail: jcraig@kennoncraver.com

E-Mail: hsappenfield@kennoncraver.com

Attorneys for Defendant Benjamin Himan

SIGNATURES OF COUNSEL CONCLUDED ON NEXT PAGE

TROUTMAN SANDERS LLP

By: /s/ Patricia P. Kerner

Patricia P. Kerner

North Carolina State Bar No. 13005

D. Martin Warf

N.C. State Bar No. 32982

434 Fayetteville Street Mall

Two Hannover Square, Suite 1100

Raleigh, North Carolina 27601

Telephone: (919) 835-4100

Fax: (919) 829-8714

E-Mail: tricia.kerner@troutmansanders.com

Attorneys for Defendants Patrick Baker, Steven Chalmers, Beverly Council, Ronald Hodge, Jeff Lamb, Lee Russ, and Michael Ripberger

MAXWELL, FREEMAN & BOWMAN, P.A.

By: /s/ James B. Maxwell

James B. Maxwell

North Carolina State Bar No. 2933

Post Office Box 52396

Durham, North Carolina 27717

Telephone: (919) 493-6464

Fax: (919) 493-1218

E-Mail: jmaxwell@mfbpa.com

Attorneys for Defendant David Addison

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

The undersigned hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action is represented by at least one registered user of record (or that the party is a registered user of record), to each of whom the NEF will be transmitted.

This the 13th day of May, 2011.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.
Reginald B. Gillespie, Jr.
North Carolina State Bar No. 10895

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