

**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.

DUKE UNIVERSITY, *et al.*,

Defendants.

**MOTION FOR ENLARGEMENT
OF TIME FOR CITY DEFENDANTS
AND LINWOOD WILSON TO
ANSWER PLAINTIFFS' SECOND
AMENDED COMPLAINT
FED. R. CIV. P. 6(b), LR6.1(a), MDNC**

Defendant the City of Durham, North Carolina (the "City") respectfully moves the Court, pursuant to FED. R. CIV. P. 6(b) and LR6.1(a), MDNC for a thirty-day (30) day further enlargement of time for the City and its former and present personnel who are named as Defendants (collectively, the "City Defendants") and Defendant Linwood Wilson to answer or otherwise plead or respond to Plaintiffs' Second Amended Complaint (Doc. no. 136), through and including **July 14, 2011**. In support of this Motion, the City respectfully shows the Court the following:

1. Plaintiffs filed their Second Amended Complaint on February 23, 2010. The complaint is 428 pages long, and has 1,388 allegations and 41 causes of action.
2. The City Defendants and other Defendants filed motions to dismiss the Second Amended Complaint. (*See* Doc. nos. 167, 168, 169, 170, 171, 173, 174, 175, 176, 177, and 179.)

3. On March 31, 2011, this Court filed its Memorandum Opinion, (Doc. no. 186), and Order (Doc. no. 187), granting and denying in part the defendants' various motions to dismiss.

4. On April 11, 2011, the Court enlarged the time within which the City Defendants and Defendant Linwood Wilson could answer or otherwise plead or respond to Plaintiffs' Second Amended Complaint through and including **June 14, 2011**. (See Doc. no. 192.)

5. The City Defendants are also defendants in two related cases, *Evans v. City of Durham* (1:07-CV-739) and *Carrington v. Duke University* (1:08-CV-119). On March 31, 2011, the Court entered similar orders in the *Evans* and *Carrington* cases.

6. The Second Amended Complaint in *Evans*, to which the City Defendants, Defendant Wilson, and Defendant Nifong must respond by June 14, 2011, is 152 pages long, and has 570 numbered paragraphs of allegations and 23 causes of action. (See Doc. no. 116 in 1:07-CV-739.)

7. In addition, the First Amended Complaint in *Carrington*, to which the City Defendants and Defendant Wilson must also respond by June 14, 2011, is 225 pages long, and has 751 numbered paragraphs of allegations and 32 claims. (See Doc. no. 145 in 1:08-CV-119.)

8. The City anticipates that the process of answering Plaintiffs' Second Amended Complaint in this case, as well as the lengthy complaints in the *Evans* and *Carrington* cases, which together are not quite as long as the Second Amended Complaint in the instant case (377 pages in *Evans* and *Carrington* and 428 pages in this

case) will consume a substantial amount of time for each of the City Defendants or group of City Defendants, and will be extraordinarily and unduly burdensome, unless some limited adjustment of the deadlines is not made. As this Court noted in its Memorandum Opinions in this case and in the *Evans* and *Carrington* cases, the Court had to take "the time-consuming process of wading through a mass of legally unsupportable claims and extraneous factual allegations." (See Doc. no. 186, p. 221; Doc. no. 133, p. 96 in 1:07-CV-739; Doc. no. 164, p. 176 in 1:08-CV-119.)

9. Accordingly, the City Defendants respectfully request that the time within which they and Defendant Wilson be enlarged in this case only (no enlargement is being requested in the *Evans* and *Carrington* cases) by an additional 30 days, through and including July 14, 2011.

10. This request is not made for the purposes of delay. To the contrary, given: 1) the length of the pleadings and the volume of the allegations in this case and in the *Evans* and *Carrington* cases; 2) the need to review the extensive analysis by this Court as to remaining and dismissed claims in each case; and 3) a deadline of June 14, 2011 in the *Evans* and *Carrington* cases, an enlargement of time would better enable the City Defendants and Defendant Wilson to respond appropriately in this case as well as in the *Evans* and *Carrington* cases.

11. The undersigned has conferred with counsel for every Defendant and with *pro se* Defendant Linwood Wilson. Counsel for each of the City Defendants and Defendant Wilson have authorized and requested the undersigned to make this request on behalf of their clients and him, for the reasons set forth above and for purposes of

efficiency by avoiding the need to file multiple motions and thereby reducing the volume of filings (*see* Memorandum Opinion, March 31, 2011, Doc. no. 186, p. 221).

12. Counsel for the City has also conferred with counsel for Plaintiffs and Plaintiffs' counsel has authorized the undersigned to represent to the Court that he consents to the enlargement of time herein requested.

13. Counsel for the DNA Security Defendants have authorized the undersigned to represent to the Court that they consent to the enlargement of time herein requested. Counsel for the Duke Defendants has informed the undersigned that the Duke Defendants take no position with respect to the enlargement of time herein requested.

WHEREFORE, Defendant the City of Durham, North Carolina respectfully prays that the Court enter an Order enlarging the time for the City and its former and present personnel who are named as Defendants and Defendant Linwood Wilson to answer or otherwise plead or respond to Plaintiffs' Second Amended Complaint by an additional thirty (30) days, through and including **July 14, 2011**.

Respectfully submitted, this the 9th day of June, 2011.

FAISON & GILLESPIE

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

Reginald B. Gillespie, Jr.

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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 9th day of June, 2011.

FAISON & GILLESPIE

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

Reginald B. Gillespie, Jr.

North Carolina State Bar No. 10895