

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NUMBER 1:07-CV-00953**

RYAN McFADYEN, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendants.

**CONSENT MOTION TO
EXTEND DISCOVERY PERIOD
SOLELY TO SECURE AN
AFFIDAVIT FROM PLAINTIFF
BRECK ARCHER AND OBTAIN
ATTORNEY BILLING
RECORDS FOR PLAINTIFFS
RYAN MCFADYEN AND BRECK
ARCHER**

Duke University, by and through counsel, pursuant to the Rule 6(b) of the Federal Rules of Civil Procedure, Local Rule 6.1, and the Initial Pretrial Order [Dkt. No. 244], respectfully moves for an order enlarging the discovery period through and including October 2, 2012 solely for the purposes of the production of Plaintiff Breck Archer's signed affidavit and the production of attorney billing records for Plaintiffs Ryan McFadyen and Matthew Wilson. A proposed order accompanies this Motion.

In support of this Motion, Duke states as follows:

1. Plaintiff Breck Archer was deposed on April 19, 2012.
2. During his deposition, a dispute arose between the parties. Through the meet and confer process, the parties agreed to resolve the dispute by Mr. Archer providing an affidavit.

3. On June 11, 2012, the parties agreed on the text of the affidavit.
4. The parties intended to have the affidavit finalized (and the dispute for the deposition resolved thereby) prior to the close of discovery on September 21, 2012.
5. As described in Plaintiffs' Motion to Extend Time to Respond to Defendants' Requests for Admissions [Dkt. No. 295], Mr. Archer is abroad in Japan in connection with his employment by the United States.
6. Plaintiffs intended on producing the attorney billing records of Plaintiffs Ryan McFadyen and Matthew Wilson in response to Duke's September 2011 document requests. Plaintiffs have indicated that technical issues beyond Plaintiffs' control have impacted Plaintiffs' ability to make that production at the present time.
7. On September 21, 2012, the parties jointly moved to extend the discovery period through and including September 25, 2012, solely for the purpose of obtaining the affidavit from Breck Archer and the production of the attorney billing records. [Dkt. No. 296.] On September 24, 2012, this Court granted that motion. [Dkt. No. 298.]
8. On September 25, 2012, Plaintiffs indicated to undersigned counsel that they have been unable to obtain the affidavit or the attorney billing records. Plaintiffs indicated they should be able to produce the attorney billing records by

September 26, 2012.

9. Accordingly, Duke seeks to extend the discovery period through and including October 2, 2012, solely for the purposes of the production of Plaintiff Breck Archer's signed affidavit and the production of attorney billing records for Plaintiffs Ryan McFadyen and Matthew Wilson.

10. Plaintiffs' counsel consented to the relief requested in this Motion.

11. This Motion is brought in good faith and not for the purposes of delay. This Motion is made prior to the expiration of the deadline sought to be extended hereby.

WHEREFORE, Duke respectfully requests that the Court enter an Order enlarging the discovery period through and including October 2, 2012, solely for the purposes of the production of Plaintiff Breck Archer's signed affidavit and the production of attorney billing records for Plaintiffs Ryan McFadyen and Matthew Wilson.

Respectfully submitted, this the 25th day of September 2012.

/s/ Jeremy M. Falcone

Paul K. Sun, Jr.

N.C. State Bar No. 16847

Email: paul.sun@elliswinters.com

Thomas H. Segars

N.C. State Bar No. 29433

Email: tom.segars@elliswinters.com

Jeremy M. Falcone

N.C. State Bar No. 36182

Email: jeremy.falcone@elliswinters.com

Ellis & Winters LLP

1100 Crescent Green, Suite 200

Cary, North Carolina 27518

Telephone: (919) 865-7000

Facsimile: (919) 865-7010

Dixie T. Wells

N.C. State Bar No. 26816

Email: dixie.wells@elliswinters.com

Ellis & Winters LLP

333 N. Greene St., Suite 200

Greensboro, NC 27401

Telephone: (336) 217-4197

Facsimile: (336) 217-4198

Counsel for Duke University

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and to Mr. Linwood Wilson, who is also registered to use the CM/ECF system.

This 25th day of September, 2012.

/s/ Jeremy M. Falcone
Jeremy M. Falcone
N.C. State Bar No. 36182
Email: jeremy.falcone@elliswinters.com
Ellis & Winters LLP
1100 Crescent Green, Suite 200
Cary, North Carolina 27518
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

Counsel for Duke University