

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN McFADYEN, et al.,)	
)	
Plaintiffs,)	
)	Civil Action Number
v.)	1:07-CV-00953-JAB-JEP
)	
DUKE UNIVERSITY, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION FOR STATUS CONFERENCE AND
FOR EXTENSION OF DISPOSITIVE MOTIONS DEADLINE**

Pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, Defendants Duke University, Matthew Drummond, Aaron Graves, Robert Dean, and Gary N. Smith (“Duke Defendants”), through their undersigned counsel, hereby request that the Court order a status conference to discuss scheduling issues in this action, including the schedule and procedures for summary judgment motions. In addition, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Local Rule 6.1, and the Initial Pretrial Order, Duke Defendants request that any existing deadline under Local Rule 56.1 for the filing of dispositive motions in this matter be extended and tolled pending resolution of this motion and resolution of discovery-related matters pending before the Court.

In support of their Motion, Duke Defendants state as follows:

1. On 21 September 2011, the Court issued a LR 16(c) Initial Pretrial

Order that addressed discovery on Counts 21 and 24 of Plaintiffs' Second Amended Complaint [DE 244]. The Initial Pretrial Order required the parties to complete discovery on Counts 21 and 24 within twelve (12) months of the date of the order. (Initial Pretrial Order ¶ 2.b.(1).) The Initial Pretrial Order also provided that expert discovery would be stayed pending resolution of the Durham Defendants' interlocutory appeal in this matter. (*Id.* ¶ 2.f.)

2. Subject to the resolution of certain pending discovery motions – including the Motion for a Protective Order re: Duke's Subpoenas to Take the Deposition of Plaintiffs' Litigation Counsel, filed by Plaintiffs on 3 September 2012 [DE 294] – and the completion of any additional discovery that may be permitted following resolution of those motions, the parties completed fact discovery on Counts 21 and 24 on 21 September 2012, as required by the Initial Pretrial Order.

3. The Initial Pretrial Order does not address the filing of dispositive motions. However, Local Rule 56.1(b) provides that “[a]ll dispositive motions and supporting briefs must be filed and served within 30 days following the close of the discovery period.”

4. Duke Defendants believe it would promote judicial efficiency and expedite the disposition of this action if the Court were to allow the filing and briefing of summary judgment motions on liability issues related to Counts 21 and 24 within 30 days after resolution of all pending discovery motions and, if

applicable, completion of any remaining discovery that is permitted after the resolution of those discovery motions. Specifically, Duke Defendants believe resolution of dispositive motions on liability issues related to Counts 21 and 24 could streamline future discovery and other proceedings in this matter, and potentially could eliminate the need for expert discovery on certain subjects.

5. For these reasons, Duke Defendants respectfully request that the Court schedule a status conference to discuss the interaction between the Initial Pretrial Order and Local Rule 56.1(b), and specifically whether fact discovery has closed on Counts 21 and 24 subject to resolution of the discovery-related motions now pending before the Court. Duke Defendants also seek clarity from the Court on the calculation of the deadline for dispositive motions in light of the discovery motions still pending in this action. In addition, Duke Defendants would like to discuss how the parties could format the briefing of their dispositive motions so as to present the issues and arguments most clearly for the Court.

6. Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Local Rule 6.1, and the Initial Pretrial Order, Duke Defendants request that any existing deadline under Local Rule 56.1 for the filing of dispositive motions in this matter be extended and tolled pending resolution of this motion, resolution of the discovery-related motions pending before this Court, and completion of any discovery allowed as a result of such resolution.

7. On October 3, 4, and 5, 2012, Dixie Wells, counsel for Duke Defendants, and Stefanie Smith, counsel for Plaintiffs, conferred regarding the relief requested in this motion. Plaintiffs' counsel consents to Duke Defendants' request that the deadline for the filing of dispositive motions be stayed. The parties have not been able to agree, however, on whether dispositive motions should be filed as soon as the pending discovery-related motions are resolved and any discovery required as a result of same is completed, or whether dispositive motions should be deferred until after discovery of the Durham-related defendants is completed.

WHEREFORE, Defendants Duke University, Matthew Drummond, Aaron Graves, Robert Dean, and Gary N. Smith respectfully request that the Court order a status conference to discuss scheduling issues in this action, including the schedule and procedures for summary judgment motions. Duke Defendants also request that any existing deadline under Local Rule 56.1 for the filing of dispositive motions in this matter be extended and tolled pending the Court's disposition of pending discovery motions, the completion of any further fact discovery that may be permitted by the Court on Counts 21 and 24 as a result of that disposition, and resolution of this motion.

This the 5th day of October, 2012.

/s/ Paul K. Sun, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on 5 October 2012, I filed the foregoing with the Court's CM/ECF system, which caused it to be served on all counsel of record and Mr. Linwood Wilson, who is registered with the Court's CM/ECF System.

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