

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

RYAN MCFADYEN, <i>et al.</i> ,	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	1:07-cv-953-JAB-JEP
	)	
DUKE UNIVERSITY, <i>et al.</i> ,	)	
<i>Defendants.</i>	)	

MOTION FOR LEAVE TO FILE REPLY BRIEF

RYAN MCFADYEN, MATTHEW WILSON, and BRECK ARCHER (“Plaintiffs”), respectfully request leave to file their Reply Brief supporting their Motion for a Protective Order regarding the Duke Defendants’ subpoenas to take their counsel’s depositions in *Carrington, et al. v. Duke University, et al.* The Reply Brief is attached as Exhibit 1.

In support of this Motion, Plaintiffs show the Court the following:

1. In *Carrington, et al. v. Duke University, et al.*, undersigned counsel filed a Motion to Quash Duke’s Subpoenas to Take the Depositions of Litigation Counsel in *McFadyen,*

*et al. v. Duke University, et al.* (Carrington, DE 258) on September 3, 2012. The Duke Defendants filed their Response in Opposition to the Motion to Quash (Carrington, DE 261) on September 10, 2012. Undersigned counsel filed a Motion to Extend Time to File their Reply Brief (Carrington, DE 268) on September 25, 2012. The Duke Defendants filed their Response (Carrington, DE 269) on September 26, 2012. In their Response, Duke neither consented to nor opposed the Motion for Extension of Time. Undersigned counsel's Reply to the Duke Defendants' Response to undersigned counsel's Motion to Extend Time to File Reply Brief was originally due on October 15, 2012.

2. Undersigned counsel then filed their Motion for Extension of Time to Harmonize Deadlines for Reply Briefs in *Carrington* and *McFadyen* (Carrington, DE 272) on October 4, 2012. The Duke Defendants filed their Response (Carrington, DE 275) on October 12, 2012. In

their Response, the Duke Defendants neither consented to nor opposed undersigned counsel's request for an extension. Undersigned counsel's Reply to the Duke Defendants' Response to undersigned counsel's harmonization Motion was originally due on October 29, 2012.

3. After an Order from the District Court of Maine, undersigned counsel requested an extension of 3 days in *Carrington* on October 15, 2012 (*Carrington*, DE 276).
4. The Duke Defendants filed their Response on October 18, 2012. (*Carrington*, DE 279.) In their Response, the Duke Defendants neither consented to nor opposed the Motion for a 3-day extension in *Carrington*. As of October 18, 2012, the date requested in *Carrington*, DE 276, undersigned counsel had not received an order from the Court granting their extension of time. Thus, on October 19, 2012, undersigned counsel filed a Reply to Duke's

Response to undersigned counsel's Motion for Extension of Time (*Carrington*, DE 280) with a revised protective order that would essentially permit undersigned counsel to file their Reply Brief supporting their Motion to Quash Duke's Subpoenas on the date an order was issued by the Court granting their extension of time.

5. Undersigned counsel's Motion for Extension of Time was referred to the Court on October 22, 2012.
6. To date, the Court has not yet issued an order relating to the undersigned counsel's Motion for Extension of Time (*Carrington*, DE 276).
7. Undersigned counsel is filing a similar Motion for Leave to File a Reply Brief in 1:08-cv-119.
8. In this case, Plaintiffs filed their Motion for a Protective Order (DE 294) relating to the Duke Defendants' subpoenas to take the depositions of their litigation counsel Robert Ekstrand and Stefanie Smith on September 3, 2012. The Duke Defendants filed their

Response in Opposition to the Motion for a Protective Order (DE 300) on September 27, 2012. The original deadline for Plaintiffs' Reply Brief was October 15, 2012.

9. On October 12, 2012 the Honorable John H. Rich III of the United States District Court for the District of Maine entered an order granting in part and denying for the most part Duke's motion to compel the deposition and production of documents of one of the two authors of one of the books the Duke Defendants refer to in their response briefs opposing Plaintiffs' Motion for a Protective Order and undersigned counsel's Motion to Quash the Duke Defendants' subpoenas to take Plaintiffs' counsel's depositions. In granting in part Duke's Motion, the District Court of Maine is permitting a very limited inquiry. Plaintiffs were evaluating whether the District Court of Maine's order had any bearing upon the arguments the Duke Defendants advanced in their responses in opposition to the Motion to Quash and Motion for

Protective Order relating to Duke's subpoenas to take the depositions of Plaintiffs' litigation counsel.

10. Plaintiffs did not require significant time to do so, but did require a modest amount of time to assess the Order and thus respectfully requested from the Court a short extension of 3 days. Plaintiffs were made aware of the Memorandum Decision on October 15, 2012 in an email from the Duke Defendants' counsel to Plaintiffs' counsel, which the Memorandum Decision was attached to.
11. Plaintiffs requested a 3-day extension of time to file their Reply Brief supporting their Motion for a Protective Order. (DE 305.) The Duke Defendants filed their Response on October 18, 2012. (DE 308.) In their Response, the Duke Defendants neither consented to nor opposed Plaintiffs' Motion for a 3-day extension. As of October 18, 2012, the date requested in DE 305, Plaintiffs had not received an order from the Court granting their extension of time. Thus, on October 19, 2012, Plaintiffs filed a Reply to Duke's Response to Plaintiffs' Motion for Extension of

Time (DE 309) with a revised protective order that would essentially permit the Plaintiffs to file their Reply Brief supporting their Motion for a Protective Order on the date an order was issued by the Court granting their extension of time.

12. Plaintiffs' Motion for Extension of Time was referred to the Court on October 22, 2012.
13. To date, the Court has not yet issued an order relating to Plaintiffs' Motion for Extension of Time (DE 305).
14. Because of the nature of the Motion for Protective Order and the privilege issues involved, Plaintiffs are now respectfully requesting leave to file their Reply Brief.
15. Plaintiffs certify that no significant changes have been made to their Reply Brief since October 18, 2012.
16. This Motion is made in good faith and not for purposes of delay.
17. Plaintiffs' counsel contacted counsel for the Duke Defendants early this morning to obtain their position on this Motion. Plaintiffs' counsel has not yet heard from

counsel for the Duke Defendants but will advise the Court when Plaintiffs' counsel does hear from the Duke Defendants' counsel.

For the reasons set forth above, Plaintiffs respectfully request an order permitting them to file their Reply Brief in support of their Motion for Protective Order regarding the Duke Defendants' subpoenas to take their counsel's depositions in *Carrington, et al. v. Duke University, et al.*<sup>1</sup> A proposed order is attached as Exhibit 2.

November 2, 2012

Respectfully submitted by:

/s/ Robert C. Ekstrand .

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<sup>1</sup> Plaintiffs believe that an order granting this request will make the pending motion to extend time in *McFadyen* (DE 305) moot.



/s/ Stefanie A. Smith .

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                  *Plaintiffs,*                )  
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**CERTIFICATE OF SERVICE**

On the date electronically stamped below, the foregoing Motion and text of Plaintiffs' proposed order granting the Motion was filed with the Court's CM/ECF System, which will send a Notice of Electronic Filing containing a link to download the filing to counsel of record, all of whom are registered with the Court's CM/ECF System.

Respectfully submitted,

/s/ Stefanie A. Smith  
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