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

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| **RYAN MCFADYEN, *et al.*,** | |
| **Plaintiffs,** | **BRIEF IN SUPPORT OF CITY OF DURHAM'S MOTION FOR JUDGMENT ON THE PLEADINGS ON PLAINTIFFS' CLAIM UNDER THE NORTH CAROLINA CONSTITUTION (COUNT 41 OF SECOND AMENDED COMPLAINT)** |
| **v.** | |
| **DUKE UNIVERSITY, *et al.*,** | |
| **Defendants.** | |

NOW COMES Defendant the City of Durham, North Carolina (the "City"), herein by and through its attorneys, and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure and Rules 7.2 and 7.3 of the Rules of Practice and Procedure of the United States District Court for the Middle District of North Carolina, submits this brief in support of the City of Durham's Motion for Judgment on the Pleadings on Plaintiffs' Claim under the North Carolina Constitution (Count 41 of Second Amended Complaint).

## STATEMENT OF THE NATURE OF THE MATTER BEFORE THE COURT AND FACTS RELEVANT TO THE MOTION

In March 2006, Duke lacrosse players hired Crystal Mangum as a stripper to perform at a party. Ms. Mangum alleged she was raped at the party. City police officers investigated Ms. Mangum's allegations by, inter alia, meeting with and interviewing

witnesses and gathering evidence, including DNA and photographic evidence from the Plaintiffs.

District Attorney Michael Nifong became involved in the case and eventually sought and obtained indictments against three of Plaintiffs' teammates. Those indictments were later dismissed.

Despite the fact that none of them was ever arrested for, charged with, or indicted for any crime, Plaintiffs filed this action on December 18, 2007. Plaintiffs brought this action against 50 Defendants, among whom were Duke University and related entities and employees (collectively, the "Duke Defendants') and the City and persons who are or were employees of the City (collectively, the "City Defendants").

Plaintiffs twice amended their lengthy complaint, which was originally 391 pages and 1,079 paragraphs, exclusive of 41 pages of attachments. (Doc. 2). Plaintiffs' final iteration of their 41 claims occurred on February 23, 2010. On that date, Plaintiffs filed their Second Amended Complaint ("SAC"). (Doc. 136). The SAC asserted claims against the Duke Defendants, the City Defendants, and other persons and entities. Among the claims asserted in the SAC against the City was Plaintiffs' Forty-First Cause of Action, by which Plaintiffs assert a claim against the City for violation of their rights under the North Carolina Constitution. (SAC, Doc. 136 ¶¶ 1382-1385).

On March 31, 2011, this Court entered a Memorandum Opinion, dismissing some of the claims asserted against the City Defendants. (Mem. Op., Doc. 186 pp. 216-23).[1]

[1] The Memorandum Opinion is published as McFadyen v. Duke Univ., 786 F. Supp. 2d 887 (M.D.N.C. 2011). References herein are to the document as it appears in

This Court, however, declined to dismiss Plaintiffs' claim based on the North Carolina Constitution (denominated by this Court as, and referred to herein as, "Count 41"). (Doc. 186 pp. 211-13, 215, 219). On December 17, 2012, the United States Court of Appeals for the Fourth Circuit entered a decision by which all remaining claims against the City and City Defendants, except Count 41, were dismissed. Evans v. Chalmers, 703 F.3d 636, 659 (4th Cir., 2012), cert. denied, 134 S. Ct. 98 (2013). As to Count 41, the Court of Appeals did not address its merits. Instead, the court declined to exercise pendent appellate jurisdiction over the City's request for dismissal of Count 41, remanding the claim to this Court. 703 F.3d at 659.

In Count 41, Plaintiffs allege violation of their rights under five sections of the North Carolina Constitution: Article I, §§ 1, 14, 15, 19 and Article IX, § 1. (SAC ¶ 1383). Plaintiffs asserted Count 41 "as an alternative remedy", should the City prevail on its governmental immunity argument and therefore be held immune from liability to Plaintiffs as to their state common-law claims. (SAC ¶ 1385). In its decision, the Court of Appeals held the City is entitled to governmental immunity as to Plaintiffs' state common-law claims. 703 F.3d at 656, 659. Consequently, Count 41 is ripe for decision.

Count 41 is the sole claim that remains pending in this case against the City. The City's motion for judgment on the pleadings seeks dismissal of Count 41, for its failure to state a claim upon which relief can be granted.

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the CM/ECF document filing system, Doc. 186.

## ARGUMENT

## COUNT 41 SHOULD BE DISMISSED

Count 41 suffers from four fundamental defects, any one of which requires dismissal. First, Plaintiffs fail to give adequate notice of the basis for their claim under the North Carolina Constitution. Second, Plaintiffs have failed to state a claim under any of the provisions of North Carolina Constitution cited in Count 41. Third, alternative remedies are available for Plaintiffs' alleged injuries; Plaintiffs are therefore precluded under North Carolina law from bringing a claim directly under the state constitution. Fourth, Count 41 is fatally flawed because there is no duty owed by the City and no right conferred upon Plaintiffs that will support a claim.

### I. THE SAC, AND COUNT 41 IN PARTICULAR, FAIL TO GIVE ADEQUATE NOTICE OF THE BASIS FOR PLAINTIFFS' PURPORTED CLAIM UNDER THE NORTH CAROLINA CONSTITUTION

Despite 428 pages and 1,388 numbered paragraphs of excruciating, if not nauseating, detail in the SAC, Plaintiffs merely assert in Count 41 that all "the foregoing acts, omissions, agreements, and concerted conduct" of Defendants (of whom only the City remains as a Defendant with respect to this claim) violated five separate sections of the North Carolina Constitution. (SAC ¶ 1383). The City cannot possibly know what alleged acts, omissions, agreements or concerted conduct are alleged to have occurred, or which constitutional provision was allegedly violated, especially when Plaintiffs cite such disparate provisions.

Although Rule 8(a)(2) of the Federal Rules of Civil Procedure contemplates notice pleading, requiring "a short and plain statement of the claim showing that the pleader is

entitled to relief", a defending party must nevertheless be sufficiently informed about what must be defended.

> Rule 8(a)(2) still requires a "showing," rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only "fair notice" of the nature of the claim, but also "grounds" on which the claim rests.

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 n.3 (2007) (citation omitted). In this case, despite 428 pages, 1,388 numbered paragraphs, and 28 attachments, Count 41 consists of slightly more than one page, three numbered paragraphs, and no attachments. Of all the matter in the SAC, less than 0.3% measured in pages and barely 0.2% measured by numbered paragraphs is devoted to Count 41. The City simply has nothing to go on to find out what is alleged or to understand what is involved so it can defend this claim.

## II. NONE OF THE PROVISIONS OF THE NORTH CAROLINA CONSTITUTION CITED BY PLAINTIFFS SUPPORT THEIR CLAIM

Plaintiffs assert that five provisions of the North Carolina Constitution support Count 41: Article I, §§ 1, 14, 15, and 19, and Article IX, § 1. As explained below, none of these provisions will sustain Count 41.

### A. Article I, § 1 Does Not Support Plaintiffs' Claim

Article I, § 1, of the North Carolina Constitution provides as follows:

> We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

This section has no relevance to the present case. Despite its seemingly broad language, it applies only in one narrow context–protection against undue business regulation. State v. Warren, 114 S.E.2d 660, 663-64 (N.C. 1960) (holding that this provision protects the right to engage in "ordinary trades and occupations" without undue government interference); N.C. Real Estate Licensing Bd. v. Aikens, 228 S.E.2d 493, 496 (N.C. Ct. App. 1976) (Article I, § 1 "guarantee[s] the right to pursue ordinary and simple occupations free from governmental regulation."); Sanders v. State Pers. Comm'n, 677 S.E.2d 182, 191 (N.C. Ct. App. 2009) ("Article I, Section 1 is intended to be a check against the government's excessive regulation of business affairs."). Courts have not expanded the reach of this provision beyond that narrow context. See Orth, The North Carolina Constitution with History and Commentary 38 (1995) (noting the absence of litigation under Article I, § 1 in any context outside of claims of excessive business regulation is because such claims would be brought under "more detailed provisions elsewhere in the constitution").

B. Article I, § 14 Does Not Support Plaintiffs' Claim

Plaintiffs also cite Article I, § 14 of the North Carolina Constitution. That section provides as follows:

> Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Count 41 does not state what actions by the City allegedly violated this provision. To the extent Plaintiffs base this claim on the same "retaliation" theory on which they based their now-dismissed federal retaliation claim (Count 9, SAC ¶¶ 992-1001), this

claim should be dismissed for the same reasons this Court dismissed their federal claim. (See Mem. Op., Doc. 186 pp. 94-99).

Article I, § 14 of the North Carolina Constitution imposes the same substantive requirements on would-be plaintiffs as the First Amendment to the United States Constitution. See State v. Petersilie, 432 S.E.2d 832, 841 (N.C. 1993); Harter v. Vernon, 953 F. Supp. 685, 697 n.11 (M.D.N.C.), aff'd, 101 F.3d 334 (4th Cir. 1996). This is true specifically with respect to free-speech retaliation claims. See Sheaffer v. County of Chatham, 337 F. Supp. 2d 709, 729-30 (M.D.N.C. 2004) ("The standards for free speech retaliation claims under the state constitution are the same as those for free speech claims under the federal constitution."); Swain v. Elfland, 550 S.E.2d 530 (N.C. App. Ct. 2001).

Plaintiffs' federal retaliation claim is based on an allegation that Defendants violated their constitutional rights "'in retaliation for Plaintiffs' decision to exercise their constitutional right not to submit to police interrogation without the benefit of counsel." (Mem. Op. p. 95, quoting SAC ¶ 994). Specifically, Plaintiffs allege that this retaliation infringed on their right "not to speak." (Mem. Op. pp. 97-98). This Court has found in this case that the right not to speak "has been limited to the context of government compelled speech with respect to a particular political or ideological message," and that there was no First Amendment right to decline to speak to police officers during a criminal investigation (which is a situation addressed by other constitutional provisions). (See Mem. Op. p. 98, rejecting Plaintiffs' contention that refusing to speak with police during an investigation is protected under the First Amendment). This same reasoning

requires dismissal of Plaintiffs' state constitutional claim to the extent it is based on Article I, § 14.

C. Article I, § 15 and Article IX, § 1 Do Not Support Plaintiffs' Claim

Plaintiffs also cite two constitutional sections pertaining to education. These sections provide as follows:

> The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

N.C. Const. art. I, § 15.

> Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

N.C. Const. art. IX, § 1.

Neither of these sections has any application to Plaintiffs. Instead, these provisions of the North Carolina Constitution simply protect the rights of the children of North Carolina to a public education. See, e.g., Leandro v. State, 488 S.E.2d 249, 255 (N.C. 1997); Mebane Graded School Dist. v. Alamance County, 189 S.E. 873, 879 (N.C. 1937). These provisions do not provide a right to a private college education. In any event, this claim could not be brought against the City, because there are no allegations. or at least no allegations that satisfy Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), that plausibly state that the City, rather than the Duke Defendants, if anyone, caused a deprivation of Plaintiffs' right to an education.

D. Article I, § 19 Does Not Support Plaintiffs' Claims

Article I, § 19 of the North Carolina Constitution, also referred to as the "law of the land" clause, provides as follows:

> No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

This provision imposes the same limits and requirements on due process and equal protection claims that led to the demise of Plaintiffs' federal claims. This Court dismissed Plaintiffs' claims asserting violation of their federal constitutional rights of equal protection, because Plaintiffs are not members of a protected class and did not adequately plead that the City or any other Defendant acted out of racial animus. (See Mem. Op. pp. 134-42).

A similar fate awaits Count 41. North Carolina courts have held that the "law of the land" clause of the North Carolina Constitution is synonymous with the "due process of law" clause in the Fourteenth Amendment to the United States Constitution. See State v. Bryant, 614 S.E.2d 479, 485 (N.C. 2005); see also Tri-County Paving, Inc. v. Ashe County, 281 F.3d 430, 435 n.6 (4th Cir. 2002) ("North Carolina courts have consistently interpreted the due process and equal protection clauses of the North Carolina Constitution as synonymous with their Fourteenth Amendment counterparts.").

Thus, the requirements for valid claims are the same under the federal and state constitutions: First and foremost, a plaintiff must adequately plead a cognizable

deprivation of liberty or property. See State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 446 S.E.2d 332, 344 (N.C. 1994). Regardless of how Plaintiffs characterize the alleged conduct, no claim exists unless that alleged conduct caused a cognizable deprivation of liberty or property. In this case, no liberty was restrained and no property was taken. Again, Plaintiffs were never charged with or indicted for any crime. They were not arrested, imprisoned, or fined.

To the extent this Court were indulgently to construe Count 41 as alleging an unlawful search or seizure, the proper basis for such a claim would be Article I, § 20 of the North Carolina Constitution, not Article I, § 19. State v. Carter, 370 S.E.2d 553, 555 (N.C. 1988). Even if Plaintiffs had cited § 20, however, they still would not have stated a claim. Article I, § 20 is co-extensive with the Fourth Amendment to the United States Constitution. See Hartman v. Robertson, 703 S.E.2d 811, 815 (N.C. Ct. App. 2010) ("Article I, section 20 of our North Carolina Constitution provides the same protections as the federal Fourth Amendment."); State v. Garner, 417 S.E.2d 502, 510 (N.C. 1992) (finding no support for assertion that Article I, § 20 provides "broader" protection than the Fourth Amendment because "there is nothing to indicate anywhere in the text of Article I, Section 20 any enlargement or expansion of rights beyond those afforded in the Fourth Amendment"). Accordingly, even if Plaintiffs did or now do rely on Article I, § 20, dismissal would be required for the same reasons upon which Plaintiffs' Fourth Amendment claims have been dismissed. See Evans, 703 F.3d at 654, 654 n.12 ("Given that we hold that plaintiffs failed to state Fourth Amendment claims"). See also id. at 649-54 (thoroughly canvassing and comprehensively rejecting Plaintiffs' claims of

violations of their rights in connection with a non-testimonial order ("NTO") and search warrant based on allegations that applications for NTO and search warrant contained false statements and omitted material facts).[2]

Just as with their failed federal claims, Plaintiffs do not plausibly allege a cognizable deprivation of Article I, § 19 (or an "unspoken" claim under Article I, § 20). Accordingly, Count 41 does not state a claim under Article I, § 19 of the North Carolina Constitution. See, e.g., Toomer v. Garrett, 574 S.E.2d 76, 87 (N.C. Ct. App. 2002).

## III. ALTERNATIVE REMEDIES PRECLUDE DIRECT CONSTITUTIONAL CLAIMS

Not only is Count 41 substantively deficient, the claim also fails to satisfy an essential procedural requirement: Plaintiffs fail to allege that no alternative remedy is available. See Corum v. Univ. of N.C., 413 S.E.2d 276, 291-92 (N.C. 1992) (a court's recognition of a direct claim under the state constitution is an "extraordinary exercise of its inherent constitutional power," which may be exercised **only** when no other adequate remedies are available). Because such remedies are available here, Plaintiffs cannot maintain a state constitutional claim, and Count 41 must be dismissed.

As the North Carolina Supreme Court has confirmed, a court must look to any remedies available "based on the same facts" forming the basis of Plaintiffs' constitutional claim. See Craig v. New Hanover County Bd. of Ed., 678 S.E.2d 351, 355 (N.C. 2009). A remedy is adequate for these purposes when, "if successful, [it] would

[2] These purported claims were a central focus of Plaintiffs' unsuccessful petition to the United States Supreme Court for a writ of certiorari.

have compensated [a plaintiff] for the same injury he claims in his direct constitutional action." Rousselo v. Starling, 495 S.E.2d 725, 731 (N.C. Ct. App. 1998) (citation omitted). Moreover, "the **form** of relief available . . . is irrelevant." Iglesias v. Wolford, 539 F. Supp. 2d 831, 839 (E.D.N.C. 2008) (emphasis added). A remedy may be adequate even though it arises by virtue of different types of available claims. See, e.g., Copper v. Denlinger, 688 S.E.2d 426 (N.C. 2010) (administrative appeal provided adequate remedy precluding state constitutional claim); Alt v. Parker, 435 S.E.2d 773, 779 (N.C. Ct. App. 1993) (available administrative remedies precluded constitutional tort claim). Similarly, a remedy may be adequate even though it must be brought in different venues or proceedings. See, e.g., Love-Lane v. Martin, 355 F.3d 766, 789 (4th Cir. 2004) (precluding assertion of North Carolina constitutional claim in federal venue when statutory remedy had been available in state venue). Indeed, a remedy may be adequate even though it must be obtained from different defendants. See, e.g., Cooper v. Brunswick County Bd. of Educ., No. 7:08-CV-48, 2009 WL 1491447, at *4 (E.D.N.C. May 26, 2009) (finding that "a state-law remedy is still 'adequate' notwithstanding that a plaintiff could not use it to sue his preferred defendant.").

That the availability of a claim in another form, in another forum, or against another defendant precludes a direct claim under the North Carolina Constitution makes perfect sense when it is considered that, regardless of the number of bases of liability, a plaintiff may have only one recovery for an injury. A plaintiff may not have multiple recoveries for the same wrong. See, Whitacre Partnership v. Biosignia, Inc., 591 S.E.2d 870, 883 (N.C. 2004) (doctrine of election of remedies is used to "prevent double redress

for a single wrong"); United Laboratories, Inc. v. Kuykendall, 437 S.E.2d 374, 379 (N.C. 1993) (stating same principle; a party may not recover punitive damages for tortious conduct and treble damages for an unfair trade practice in violation of N.C. Gen. Stat. Ch. 75 based on the same conduct).

Moreover, whether the alternative remedy would ultimately be successful is irrelevant. Even if a claim wholly lacks merit–or is defective for other reasons–its availability precludes a direct constitutional claim based on the same alleged facts. See, e.g., Alt, 435 S.E.2d at 779 (plaintiff's claim for false imprisonment constituted adequate state-law remedy notwithstanding that "plaintiff's claim for false imprisonment is fatally deficient"). The only reason a remedy would not be adequate would be if it were barred on the ground of governmental immunity in the face of a colorable claim under applicable provisions of the North Carolina Constitution. See Craig, 678 S.E.2d at 339-42, 356, 357. In this case, there were multiple remedies available, some now dismissed, but some still pending (i.e., pending claims in Counts 1, 2, 18, 21, 24, and 32 against the Duke Defendants), that were not barred by governmental immunity. (See Plaintiffs' statement of Status Report of Remaining Claims and Defendants, filed March 14, 2014, Doc. 350). Although some of Plaintiffs' claims have failed, and perhaps more and maybe even all of them will fail, Plaintiffs' lack of success on failed claims does not permit Plaintiffs to resurrect them disguised as constitutional claims. See Alt, 435 S.E.2d at 779, and cases cited infra.

The merit, or more precisely the lack of merit, of other claims is irrelevant to the "alternative remedy" inquiry. Id. In this case, common law claims were not only brought

against the Duke Defendants, claims were also asserted against other City Defendants in their individual capacities. As explained above, the lack of merit and thus the ultimate dismissal of those claims is irrelevant. Courts in North Carolina have repeatedly concluded that when common-law claims against individual government actors in their individual capacities are available, they are "adequate remedies."

For example, in Glenn-Robinson v. Acker, 538 S.E.2d 601 (N.C. Ct. App. 2000), the court examined whether a plaintiff could bring a constitutional claim against a city arising out of an alleged false arrest by a city law enforcement officer. See id. at 631-32. After finding that the plaintiff could bring a claim against a city law enforcement officer in his individual capacity, the court held that a constitutional claim against the city for the same conduct was precluded. See id.; see also Rousselo, 495 S.E.2d at 731 ("the existence of an adequate alternate remedy is premised on whether there is a remedy available to plaintiff for the violation, not on whether there is a right to obtain that remedy from the State in a common law tort action"); Cooper, 2009 WL 1491447, at *4 (same); Iglesias, 539 F. Supp. 2d 831 (same); Seaton v. Owens, No. 1:02CV00734, 2003 WL 22937693, at *8 (M.D.N.C. Dec. 8, 2003) (same). Because Plaintiffs have available to them common-law claims against a number of individual defendants–and they, in fact, asserted many such claims in the SAC–they may not bring a direct claim under the North Carolina Constitution and Count 41 should be dismissed.

## IV. COUNT 41 FAILS AT THE MOST BASIC LEVEL

The foregoing discussion reveals the fundamental and insurmountable flaw in Count 41: Plaintiffs have not articulated any duty owed to them that was not fulfilled, or

any right they held that was breached. The absence of a duty owed or right conferred is absolutely essential; it is also fatal to Plaintiffs' claim. For in the absence of a duty or right, there is no basis for liability. See Wood v. Guilford County, 558 S.E.2d 490, 494 (2002) (A claim for damages based on a defendant's allegedly tortious conduct is premised on an assumption that the defendant owed the plaintiff a duty of care) .

As the cases discussed in Part II above show, none of the provisions of the North Carolina Constitution cited in Count 41 impose any duty on the City that was not met. Nor do any of those provisions confer a right on Plaintiffs that was violated. For example Article I, § 1 is limited to business regulation. Likewise, Article I, § 15 and Article IX, § 1 provide public education rights to school children. The duties imposed and rights conferred by the remaining provisions (Article I, §§ 14 and 15) are coextensive with federal constitutional rights, and Plaintiffs have failed to state claims under the parallel federal provisions. To entertain Count 41 would require this Court to disregard existing case law with respect to the provisions of the North Carolina Constitution cited in Count 41, or to conceive a new duty or right, under a provision not cited in Count 41.

Craig, 678 S.E.2d at 352, involved a school child in a public school, and plaintiff's claims were based on provisions of the North Carolina Constitution that were applicable to public schools and the education of children. Id., citing N.C. Const. art. I, § 15 and art. IX, § 1. The analysis in Part II above demonstrates that in this case, unlike Craig, there is no provision under the North Carolina Constitution that applies or imposes a duty on the City or confers a right on Plaintiffs. In Craig, the court noted a "colorable constitutional" claim. 678 S.E.2d at 356, 357. As explained in Part II, there is no such colorable

constitutional claim in the present case. In addition, in Craig, the plaintiff alleged and there existed a common law duty of ordinary care–a basis for a negligence claim. In the present case, no such duty is alleged in Count 41, and again, the analysis in Part II shows the absence of such a duty.

In order for there to be liability in tort, a defendant must have been under a legal duty of care. Coleman v. Cooper, 366 S.E.2d 2, 5, disc. rev. denied, 371 S.E.2d 275 (1988), disapproved on other grounds, Hunt v. N.C. Dept. of Labor, 499 S.E.2d 747, 750 (N.C. 1998). In this case, no duty was alleged, no duty exists, and no claim can be maintained. Count 41 should therefore be dismissed.

## CONCLUSION

For the reasons discussed above, Count 41 fails to state a claim upon which relief can be granted. Plaintiffs fail to give adequate notice of the basis for their claim under the North Carolina Constitution. Second, Plaintiffs have failed to state a claim under any of the provisions of the North Carolina Constitution they cite in Count 41. Third, alternative remedies are available for Plaintiffs' alleged injuries that preclude a claim under the North Carolina Constitution. Finally, Count 41 is also fatally flawed because there is no duty owed by the City to Plaintiffs and no right conferred upon Plaintiffs that will support a claim.

WHEREFORE, Defendant the City of Durham, North Carolina prays that the Court grant this motion for judgment on the pleadings, dismiss Count 41 and this action as to the City, and award the City such other and further relief as is just and proper.

Respectfully submitted, this the 22nd day of April, 2014.


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STATEMENT OF SERVICE BY HAND DELIVERY PRIOR TO FILING

The undersigned hereby certifies that the foregoing pleading, motion, affidavit, notice, or other document/paper was this day served by hand delivery to counsel for Plaintiffs:

by delivering it to and handing it to:

Mr. Robert C. Ekstrand or Ms. Stephanie A. Smith
Ekstrand & Ekstrand, LLP
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as provided in Rule 5(b)(2)(A) of the Federal Rules of Civil Procedure, or

by leaving it at Mr. Ekstrand's and Ms. Smith's office with a clerk or other person in charge

as provided in Rule 5(b)(2)(B)(i) of the Federal Rules of Civil Procedure.

This the 22nd day of April, 2014.

WILSON & RATLEDGE, PLLC

By: */s/ Reginald B. Gillespie, Jr.*
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CERTIFICATE OF ELECTRONIC FILING AND ADDITIONAL 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 22nd day of April, 2014.

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