

**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.

Motion to Dismiss Amended Complaint
By “Duke Police Defendants”

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rules 7.2 and 7.3, the “Duke Police Defendants”—defined by the Court and the parties for purposes of this motion to comprise the Duke University Police Department, Jeffrey O. Best, Phyllis Cooper, Robert Dean, Joseph Fleming, William F. Garber II, Leila Humphries, James Schwab, Gary N. Smith, and Greg Stotsenberg—hereby move the Court to dismiss all claims asserted against them in the Amended Complaint for failure to state a claim on which relief may be granted.¹ A chart identifying the causes of actions and the defendants against whom each cause is asserted is attached as an Exhibit (Exhibit 1) to

¹ (*See* Joint Mot. to Extend Page Limitations and to Establish a Rule 12 Briefing Schedule, Dkt. 23; Order, Dkt. 29 (granting Joint Motion in part); Joint Mot. to Reestablish Deadlines in the Rule 12 Briefing Schedule, Dkt. 37 (defining “Duke Police Defendants” and treating Second Amended Complaint, filed April 18, 2008, as the First Amended Complaint; referred to herein as the “Amended Complaint,” (AC)); Order, Dkt. 38 (granting Joint Mot.).)

the accompanying Brief in Support of “Duke Police Defendants” Motion to Dismiss the Amended Complaint.

The bases for this Motion are presented in detail in the accompanying Brief in Support of “Duke Police Defendants” Motion to Dismiss the Amended Complaint. For the reasons set forth therein, the “Duke Police Defendants” respectfully request that the claims asserted against them be dismissed with prejudice. Because of the number of causes of action in the Amended Complaint and the complexity of the issues raised thereby, the “Duke Police Defendants” request that oral argument be scheduled on their Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

Respectfully submitted, this the 2d day of July, 2008.

/s/ Jamie S. Gorelick

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2008, I electronically filed the foregoing Motion to Dismiss Amended Complaint By “Duke Police Defendants” with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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As of the date of this filing, no attorneys have made an appearance on behalf of the following Defendants. I hereby certify that I served the following Defendants by U.S.

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This 2d day of July 2008.

/s/ Jamie S. Gorelick

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