

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

RYAN McFADYEN, et al.,
Plaintiffs,
v.
DUKE UNIVERSITY, et al.,
Defendants.

Civil Action No. 1:07-cv-953

**PLAINTIFFS' MOTION TO STRIKE OR EXCLUDE FROM CONSIDERATION
ELEMENTS OF THE DEFENDANTS' 12(b)(6) MOTIONS**

PLAINTIFFS, Ryan McFadyen, Matthew Wilson and Breck Archer, pursuant to Federal Rules of Civil Procedure 12(f) and 12(d) and L.R. 7.2 and 7.3, hereby move the Court for an Order striking and excluding from the Court's consideration certain elements of the Defendants' Motions, Memoranda, and the Exhibits annexed thereto on the grounds that they are not intrinsic to the complaint, not subject to judicial notice, and neither authenticated or self-authenticating. Specifically, Plaintiffs move for an Order excluding the City of Durham's Exhibit 4 [Document # 61-5], Duke Univ. Br. Ex. 1 [Document #46-2] and 4 [Document #46-5]; Duke SANE Br. Ex. 1 [Document #48-2]; and DUPD Ex. 1 [Document #50-2]. None of these exhibits are within the scope of the AC or intrinsic to its allegations, and they are not subject to judicial notice under F. R. Evid. 201.

WHEREFORE, for the foregoing reasons and for the reasons set forth in Plaintiffs' supporting brief, which has been submitted along with this motion, Plaintiffs respectfully request that the Court strike or exclude the extraneous material from consideration at this time.

Dated: October 10, 2008

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that, on October 10, 2008, I electronically filed the foregoing PLAINTIFFS' MOTION TO STRIKE ELEMENTS OF DEFENDANTS' 12(B)(6) MOTIONS 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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