

2022 APR -1 PM 2: 59

NORTH CAROLINA

MECKLENBURG COUNTY

MECKLENBURG CO..C.S.C.
BY _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

21 - CVS - 4063

ROBERT WRIGHT, MARK
MICHALEC, and SCOTT SHIPMAN
individually and on behalf of all others
similarly situated,

Plaintiffs

v.

CITY OF CHARLOTTE

Defendant.

**PLAINTIFFS' MOTION TO WITHDRAW
PREVIOUS AMENDMENTS TO AND AMENDING
ALTERNATIVE THIRD CLAIM FOR RELIEF AND
ALTERNATIVE FOURTH CLAIM FOR RELIEF.**

Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman ("Plaintiffs"), individually and on behalf of all other similarly situated participants in The Charlotte-Mecklenburg Voluntary Police Pledge Fund move this Court pursuant to Rules 15(a) of the North Carolina Rules of Civil Procedure to Amend the Alternative Third Claim for Relief and the Alternative Fourth Claim for Relief. Justice requires the granting of this motion.

As to the Alternative Third Claim for Relief, plaintiffs alleged that all payroll deductions taken by the City of Charlotte were ultra-vires in that

(a) the North Carolina General Assembly at all times relevant never granted to Defendant City of Charlotte the power to take a payroll deduction for a death benefit,

(b) alternatively, the Charlotte City Council never granted to Charlotte the power to take a payroll deduction for a death benefit ,

(c) alternatively, that the City Manager never exercised whatever power he might have had to allow Charlotte to take payroll deductions for a death benefit.

(d) the North Carolina General Assembly at all times relevant never granted to Defendant City of Charlotte the power to take a payroll deduction for a retirement benefit,

(e) alternatively, the Charlotte City Council never granted to Charlotte the power to take a payroll deduction for a retirement benefit,

(f) alternatively, that the City Manager never exercised whatever power he might have had to allow Charlotte to take payroll deductions for a retirement benefit.

City of Charlotte is aware and on notice of these allegations and not prejudiced by being required to defend against them.

As to the Alternative Fourth Claim for Relief, Plaintiffs allege that the City of Charlotte was negligent in that it failed:

(a) to confirm it had authority from the General Assembly, the City Council, or the City Manager (to the extent the City Council and the City Manager had authority to grant) to take death benefit deductions, which authority it did not possess,

(b) to confirm that it had authority from the General Assembly, the City Council, or the City Manager (to the extent the City Council or the City Manager had authority to grant) to take retirement deductions after the initial approval only applied to death benefits, which authority it did not possess,

(c) to confirm that the deductions when initially commenced were taken for a viable entity and a sustainable purpose as for example deductions taken for the United Way or other similar organizations,

(d) to confirm from time to time that the deductions taken were taken for the purpose for which they were initially approved,

(e) to monitor information in its possession to insure that the program was sustainable and prospectively able to meet its purported purpose,

(f) to prevent the advertising and publishing of the fund as a “benefit” along with other benefits during recruitment class presentations on a city website when information available to the City would show that the fund was not sustainable,

(g) to monitor the activities of its finance and payroll department to insure those funds deducted were properly authorized, had a reasonable chance of achieving the purpose of the deduction and would not cause its employees financial loss.

Justice requires the granting of this motion as defendant City of Charlotte’s approval, solicitation, and administration of the Volunteer Police Pledge Fund was ultra-vires from the first deduction. The City had no authority from the North Carolina General Assembly to approve the deductions taken, either initially for a death benefit or subsequently for retirement benefits. Even if Charlotte had had authority, the deductions taken were not authorized by Charlotte’s City Council as required and even if the Charlotte City Manager could have unilaterally approved the deductions, there is no evidence that he or she ever did so.

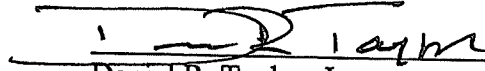
Alternatively, even if the first death benefit deductions and later retirement benefit deductions were not ultra-vires, Charlotte was negligent not having the Pledge Fund reviewed to confirm that it would meet its intended purpose as is done with the approval of other benefit deductions or charitable deductions.

This motion should be granted in the interests of justice, as it is an attempt to simplify the claims; the claims for the most part raise only issues of law, and to the extent they could be said to raised factual issues, defendant cannot be said to be prejudiced, as defendant is aware of Plaintiffs position on these issues and has not undertaken any discovery on any claims in this suit.

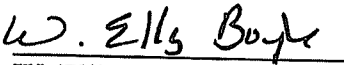
A copy of the proposed Amended Alternative Third Claim for Relief and Amended Alternative Fourth Claim for Relief is attached hereto.

WHEREFORE, Plaintiffs pray the Court, finding justice so requires, grant their motion to Amend Alternative Third Claim for Relief and Alternative Fourth Claim for Relief.

This the 29th day of March 2022.



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CERTIFICATE OF SERVICE

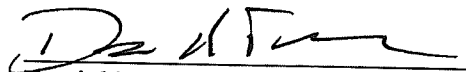
The undersigned hereby certifies that on 21th day of March 2022, he served the following:

**PLAINTIFFS' MOTION TO WITHDRAW
PREVIOUS AMENDMENTS TO AND AMENDING
ALTERNATIVE THIRD CLAIM FOR RELIEF AND
ALTERNATIVE FOURTH CLAIM FOR RELIEF**

upon counsel for Defendant by United States Postal Service addressed to:

Daniel E. Peterson
Parker Poe
620 South Tryon Street, Suite 800
Charlotte, NC 28202
Attorney for Defendant City of Charlotte

This the 25th day March 2022.



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